JOHN NIMMONS & ASSOCIATES, INC.
SUSTAINABLE ENERGY STRATEGIES

CPUC Energy Division
Attention: Tariff Unit
Cc: Paul Douglas, Sean Simon
505 Van Ness Ave.
San Francisco, CA 94102

August 1, 2012

Subject: **Recurrent Energy Comments on Southern California Edison Advice Letter 2759-E**, *Request for Modifications to SCE's Renewable Auction Mechanism ("RAM") Program Pursuant to Decision 10-12-048*

I. INTRODUCTION

Since the Renewable Auction Mechanism (RAM) was first proposed in R. 08-08-009, Recurrent Energy has been an active participant at every stage of that proceeding and its successor, R.11-05-005. We have been and continue to be strong supporters of RAM. We are committed to building on its early successes, and we welcome program modifications where, as the Commission requires, proponents convincingly *demonstrate, based on evidence, that the modification is necessary to improve the RAM program*.[1]

Recurrent Energy is a solar developer headquartered in San Francisco. The company began in 2007 with about a dozen employees, and has now grown to over 100 people. In these terms, we remain a small developer relative to many solar companies, but we have succeeded well in the markets we target. In these markets, we develop, own, and operate distributed solar projects, with most of our recent projects ranging from 5–20 MW. Today we have projects in development in all major North American markets. The company is also active in emerging markets globally, with over 500 MW of solar projects operating, in construction, or under contract, and some 2 GW overall in our development pipeline (including ground-mounted systems as large as 200 MW).

We have competed in California utility RPS solicitations for large projects; in RAM 1 and 2 auctions for projects up to 20 MW; and in utility PV programs for projects ranging from 1–20 MW. Since 2008, we have also participated extensively in Commission rulemakings to help shape each of these programs.

Our comments on SCE's Advice Letter 2759-E are summarized below and discussed in the following pages:

A. The Commission should reject SCE's proposed unilateral termination right, as it has done twice before.

B. SCE's proposal to adopt curtailment provisions now under review in the RPS Procurement proceeding should await Commission action in that proceeding rather than including them prematurely in RAM.

C. RAM COD has already been extended from 18 to more than 24 months. Extending it yet further undermines RAM's central goal to get smaller projects online quickly to backstop long-delayed or failed RPS projects. The Commission has already rejected SCE's proposal once, and should do so again now.

[1] D. 10-12-048, *Decision Adopting the Renewable Auction Mechanism* ("RAM Decision"), p. 74, and Conclusion of Law 14, p. 88.

D. SCE's proposal to add two more RAM procurements is a step in the right direction, but the creation, scope, and longevity of procurements beyond RAM 4 should be considered as part of a broader Commission inquiry to determine the future of RAM.

II. RESPONSES TO SPECIFIC ISSUES IN SCE'S ADVICE LETTER

A. The Commission should reject SCE's proposed unilateral termination right, as it has done twice before.

1. SCE has presented no evidence that RAM projects have caused or will cause excessive network upgrade costs, or that the PPA modifications it requests are necessary to improve the RAM program.

As noted in our previous comments on this subject,[2] Recurrent Energy shares the Commission's interest in protecting ratepayers from excessive network upgrade costs, which we agree could undermine RAM if they were actually to materialize. However, SCE has not demonstrated by credible evidence that this is happening, and has not satisfied the Commission's clear requirement to justify modifications to RAM PPAs that were vetted extensively in earlier proceedings.

SCE, along with SDG&E, first proposed to cap network upgrade costs in their February 2011 Advice Letters[3] to implement the RAM Decision. The Commission rejected those proposals because it found that the caps were "arbitrary and could unnecessarily limit competition." Instead the Commission chose to address concerns over any undue ratepayer exposure by directing the IOUs to add estimated network upgrade costs from the most recent interconnection study to the seller's price when ranking RAM bids.[4]

The Commission revisited this issue in Res. E-4489. Citing widespread stakeholder concern, the Commission again declined to authorize cost caps or a unilateral termination right based on them. Instead, it ordered SCE to include this issue for stakeholder discussion in its next Program Forum.[5] SCE did present this issue in its May 11 Forum, where it described the unilateral termination right that it now proposes to add to its RAM 3 PPA.[6]

The May 11 Forum offered SCE a third opportunity to present evidence "required by the RAM decision" that this PPA modification "is necessary to improve the RAM program."[7] SCE offered no such evidence, nor any evidence that any particular RAM project selected by the utility had actually caused or would cause ratepayers to absorb excessive network upgrade costs. During the May 11 Forum, SCE's representative did report that the utility has sometimes experienced unexpectedly high upgrade costs. However, the only concrete example offered was an unidentified SCE project for which the PPA admittedly *did* confer termination rights "in other words, *not a RAM project* by definition.[8]

---

[2] *Recurrent Energy Comments on Draft Resolution E-4489*, submitted to the Energy Division on April 9, 2012.

[3] SCE AL 2557-E and SDG&E AL2232-E. SCE's proposed cap would have been in "$/MWh", and SDG&E's in "$/MW".

[4] Resolution E-4414, issued August 22, 2011, at pp. 17-18.

[5] Resolution E-4489, issued April 23, 2012, at pp. 15-16.

[6] SCE AL 2759-E, at p.3, and *Presentation "Ram Program Forum 5-11-12 with link to recording.pdf,"* Slides 30-31, and recording at https://sceram.accionpower.com/_sceram_1202/documents.asp?strFolder=Forum/&filedown=&HideFiles=True

[7] Note 1, *supra*.

[8] SCE May 11 Program Forum recording cited in note 5, at 1:02:40–1:04:30.

If, as seems likely, that project was one selected under an RPS RFO, it may well have been much larger than projects subject to RAM's 20 MW ceiling, and for that reason alone its network impacts would be much greater and more likely to impose significant ratepayer burdens if costs substantially exceeded early utility estimates. In response to a stakeholder's question pressing the utility for actual evidence that this has been or will be a genuine problem for RAM projects, SCE explained that information on transmission upgrade costs for individual projects is confidential, and could not be disclosed. When the questioner suggested that the utility could at least release aggregate data to support its expressed concerns regarding RAM projects, SCE did not respond.[9]

SCE's Advice Letter discussion[10] of termination rights is equally devoid of data or evidence from which to conclude that network upgrades for RAM projects have or will result in excessive costs for ratepayers, or that the unilateral termination right SCE proposes is necessary to improve RAM. Most of that discussion simply restates arguments tendered in SCE's previous filings, and its concerns about ratepayer burdens that may never arise. Nothing in the Advice Letter demonstrates that RAM projects are actually imposing undue burdens on ratepayers, or justifies PPA modifications *based on evidence*, as the Commission clearly requires.

Recurrent Energy believes that all stakeholders can benefit from carefully balancing the possible risk of excessive upgrade charges borne by ratepayers, with renewable developers' actual ability to finance projects at a cost ratepayers can afford. Speculation about future ratepayer harm is not evidence, and imposing unworkable termination provisions will not improve RAM.

2. Even if there were evidence that some form of unilateral termination right is necessary to improve the RAM program, SCE's proposed cap would have the opposite effect, and could seriously jeopardize RAM's success in facilitating mid-scale renewable projects.

SCE proposes to cap network upgrade costs at $100,000 over the costs estimated in an interconnection study or final interconnection agreement, or 125% of those estimated costs, whichever is less.[11] Its Advice Letter suggests that this termination right is standard across many of SCE's procurement programs, from the RPS RFO, to the Renewable Standard Contract (RSC), to the Solar Photovoltaic Program (SPVP).[12] However, the reality is that SCE's pro forma contract for the RPS RFO is negotiable, and in fact leaves the threshold for the network upgrade termination right blank, to be filled in following a negotiation. As for the RSC program, when it was developed in 2009 all network upgrades were studied individually in a serial process, insulating them from the effects of interconnection decisions involving other projects. Both the RSC and SPVP programs equally allow greater negotiation than the RAM standardized contract, and neither program caps network upgrades at the lesser of $100,000 or 125%. Their only similarity to SCE's RAM proposal appears to be that they each do include a termination right, which we remain open to in principle if a genuine need is demonstrated, and if such a right can be structured in a way that will improve the RAM program.

---

[9] Id., at 1:05:00 – 1:07:30. In its Forum comments, the Clean Coalition reported its calculation that if the risk presented by SCE's proposed unilateral termination right increased developers' financing costs by just 1%, that would cost SCE ratepayers some $30 million over the course of its RAM program.

[10] AL 2759-E, pp. 3-4.

[11] AL 2759-E, pp. 3-4.

[12] AL 2759-E, p. 4, footnote 8

3. Although SCE's proposed cap formula would jeopardize RAM and may well increase ratepayer costs, other elements of its proposal should be retained but modified should the Commission allow some form of unilateral termination right.

In its May 11 Program Forum, SCE commendably acknowledged valid stakeholder concerns that a unilateral termination provision for excess upgrade costs would make many projects unfinanceable, especially when there was no time limit on its exercise and no opportunity for the developer to cure or negotiate a resolution short of termination.[13]

SCE's proposed PPA modifications begin to address those concerns by (1) requiring SCE to exercise any termination right within 60 days after the seller provides it with new interconnection study results or an interconnection agreement,[14] and (2) allowing the seller to buy down "excess" network upgrade costs and pay for any transmission service that SCE must procure from others to schedule energy from the seller's facility.[15] While these provisions do improve on SCE's previous termination proposals, they do not satisfactorily addresses developer concerns.

First, SCE's proposed contract language[16] would trigger a unilateral termination right if an interconnection study or agreement estimates that aggregate transmission upgrade costs "may" exceed its proposed cap "and this right would exist "irrespective of any subsequent amendments of such Interconnection Study or agreement or any contingencies or assumptions upon which such Interconnection Study or agreement is based." In other words, the termination right would arise even where (1) any estimated exceedance is shown to be based on faulty assumptions or on contingencies that will not materialize; (2) an incomplete or flawed interconnection study or agreement is amended to reveal costs *below* SCE's contractually-imposed cap; and (3) the project would *not in fact* burden ratepayers with excessive upgrade costs. Among other defects, this language imposes a one-way ratchet: if a study erroneously estimates upgrade costs exceeding SCE's cap then SCE can terminate the PPA, but if the study is corrected to show costs below the cap, the developer has no right to enforce or reinstate the PPA, or to be repaid its development costs. At a minimum this asymmetry should be eliminated, and termination should be allowed only on a convincing showing that ratepayers will actually bear unjustified costs.

Beyond that, we appreciate that SCE's proposed buydown provision responds to our previous request[1] for flexibility to allow developers to cure actual cost overages. However, we are concerned that the buydown option is largely negated by proposed subsection 2.04(a)(i)(4). We interpret this language to mean that SCE is not certain as to whether or not it can even offer a binding buydown option. For the Commission's benefit, the mechanics of any "buydown" would actually be that the Seller identifies in its Interconnection Agreement that it will accept a reduced reimbursement for network upgrade costs. The mutual termination provision proposed in subsection 2.04(a)(i)(4) appears to mean that if FERC, CAISO, or the Transmission Provider decides that the Seller's is unable to accept reduced reimbursement for network upgrades it can terminate the contract. If it is unclear whether FERC, CAISO, or a Transmission Provider can effectively override a Seller's buydown option, that should be resolved with those entities in advance, and Sellers should be assured that a buydown option can actually be exercised. Terms that penalize developers who stand ready and willing to absorb costs so that ratepayers will not need to, sends a perverse market signal and should not be included in a RAM standard contract.

---

[13] Note 6 *supra*, at Slide 30.

[14] Proposed RAM3 PPA "2.04(a)(iii).

[15] Id., subparagraphs (A) and (B), in the paragraph beginning with "Notwithstanding anything " "following section (iii)(2).

[16] Id., "2.04(a)(iii)(1).

4. If the Commission were to conclude that some form of termination right for excess upgrade costs is necessary to improve RAM, any such provision should meet certain minimum criteria to balance ratepayer protection with other RAM goals and with commercial realities.

In its April 9 Comments on Draft Resolution E-4489,[17] Recurrent Energy suggested minimum requirements to balance ratepayer interests in containing costs with other RAM program objectives, and with developer and financier needs to contain risks and ensure predictability. We appreciate that SCE's current proposal begins to incorporate some of these suggestions, by limiting the time within which any termination right can be exercised; providing at least some opportunity for developers to buy down (although not to negotiate) unexpected network upgrade costs; and recognizing that termination on these grounds is "no fault" to the developer, entitling it to reimbursement of its development deposit.[18]

All of these features in some form would be necessary for a workable termination provision, but together they would not be sufficient. Other essential considerations noted in Recurrent Energy's April 9 Comments include:

- an evaluation of total ratepayer value that balances any additional upgrade costs with additional benefits that the project and upgrade together confer, rather than a "percent overage" or other static termination trigger;
- a clear definition of the specific information that a utility can consider in re-evaluating contracts already executed and approved to determine whether a project will proximately cause ratepayers to bear excessive transmission upgrade costs;
- a transparent and fair process for independent review and evaluation of the information that the utility considers in any such decision; and
- an efficient and fair mechanism to challenge any termination decision.

While these may be self-explanatory, the first point bears particular emphasis. SCE's proposed termination provision focuses solely on upgrade costs, without considering offsetting benefits to ratepayers from any "excess" network upgrades that become the property of the utility and are used to serve its customers. To the extent that those upgrades confer benefits beyond delivering power from the individual renewable project responsible for their costs, those benefits should be credited to the project that pays for them. Just as ratepayers should be protected from excessive costs, project owners should be compensated for quantifiable system contributions that benefit the utility and its ratepayers.

B. SCE's proposal to adopt curtailment provisions now under review in the RPS Procurement proceeding should await Commission action in that proceeding rather than including them prematurely in RAM.

Recurrent Energy generally supports SCE's efforts to bring consistency to the various procurement programs that it manages, but recommends that RAM III use the curtailment provisions from the 2011 pro forma contract until the Commission determines what curtailment provisions it will adopt for SCE's 2012 pro forma in the RPS Procurement Plan proceeding currently underway.

---

[17] Note 11, *supra*, at pp. 3-4.

[18] SCE's proposed RAM 3 PPA, §2.04 (iii).

Consistent terms and provisions can substantially reduce transaction costs for all parties, and it may well be appropriate to borrow from the RPS pro forma that utilities expect most RPS procurement to use. However, the merits of the curtailment language that SCE proposes for its 2012 pro forma contract have not yet been decided by the Commission, and it is premature to extend them to RAM until parties to the RPS proceeding, Energy Division, and Commissioners' staff complete their consideration and the Commission decides to adopt or modify specific curtailment language. Accordingly, Recurrent Energy recommends that the Commission reject the curtailment provisions proposed here until it decides similar questions under consideration in the Procurement Plan proceeding.

C. The RAM COD has already been extended from 18 to more than 24 months. Extending it yet further undermines RAM's central goal to get smaller projects online quickly to backstop long-delayed or failed RPS projects. The Commission has already rejected SCE's proposal once, and should do so again here.

In December 2010, the RAM Decision concluded that RAM projects should be given 18 months from contract execution to begin commercial operation ("COD") or lose RAM eligibility, subject to one 6-month extension if the seller can prove a regulatory delay.[19] Just two months later, and long before the first RAM auction, SCE proposed to extend this deadline from 18 to 36 months,[20] as it does again here. In August 2011, in Resolution E-4414, the Commission noted that "No parties support SCE's request to change the online date from 18 months to 36 months," and adopted Energy Division's recommendation to *reject* the same extension SCE proposes now. However, the Commission did effectively extend the COD by about two more months when it clarified that the 18-month deadline runs from the date of *Commission approval* rather than the date of *contract execution*.[21]

On February 2012, PG&E filed its Advice Letter 4000-E, suggesting maintaining the 18-month COD, but extending the 6-month extension for regulatory delay to 12 months. Several commenters supported extending the COD from 18 to 24 months, and SCE later reported that 45 of the 92 bids it received in RAM I could begin commercial operation within 18 months, while another 36 (totaling 81 of the 92 bids) could do so if COD were extended from 18 to 24 months.[22] The Commission considered all of this input when, on April 23, 2012, it issued Resolution E-4489, extending RAM's COD from 18 months to the current 24 months.[23]

Barely two and a half months later SCE filed this advice letter once again proposing a 36-month COD which the Commission has already rejected; which no parties supported when SCE first proposed it; and which under SCE's own reckoning for RAM 1would have increased eligible projects by only about 10% over those eligible with the 24-month COD now in place.[24] Moreover, nothing prevents those few projects from bidding into the next RAM auction six months later, when they are closer to viability.

---

[19] RAM Decision, Conclusions of Law 31-32, p. 90; see also Finding of Fact 32, p. 84, and Appendix A, section 4.

[20] SCE Advice Letter 2557-E, February 25, 2011, pp. 6, 9, and Exhibit H, *Redline of SCE Preferred RAM Contract versus Decision-Consistent RAM Contract, full buy/sell version,* p.3.

[21] Resolution E-4414, issued August 22, 2011, at pp. 26-27; RAM 1 Calendar at https://sceram.accionpower.com/_ram2011/calendar.asp www.cpuc.ca.gov/NR/.../RPS_Project_Status_Table_2012_July.xls

[22] SCE Advice Letter 2712-E, March 29, 2012, at p.5.

[23] Resolution E-4489, issued April 23, 2011, at pp. 9-10.

[24] See note 22, above.

We know of nothing that has changed since the Commission last addressed this issue three months ago that would warrant revisiting it now. SCE has offered no new evidence on which a RAM modification could be based, and no evidence that its proposal would improve the RAM program.[25] To the contrary, the Commission has repeatedly emphasized that "the purpose of RAM is the procurement of projects that can come online quickly".[26] Moreover, as Recurrent Energy observed when SCE first proposed a 36-month COD as its Preferred option a year and a half ago, the Commission's original 18-month COD (now effectively 26 months)

> "serves at least two important RAM goals. It incentivizes projects that are far enough along in the development process and have increased viability to bid into each auction. It also accelerates the speed with which projects deliver power to the grid that meets RPS requirements and reduces greenhouse gas emissions. To extend the development timeline as SCE's Preferred option would do, would dilute one of the most valuable features of RAM."[27]

For all these reasons, we urge the Commission to reject SCE's proposal, retain the current COD at 24-months following contract approval, and keep driving RAM projects to deliver renewably-generated electricity sooner rather than later.

D. SCE's proposal to add two more RAM procurements is a step in the right direction, but the creation, scope, and longevity of procurements beyond RAM 4 should be considered as part of a broader Commission inquiry to determine RAM's future.

RAM program results to date are very encouraging, and they affirm the efforts of the Commission, the Energy Division, and the parties to shape the program over several years of hard work. Recurrent Energy remains a strong supporter of RAM, looks forward to seeing early RAM projects begin to deliver power to the grid, and would like to see the program continue well into the future. At the same time, we recognize that California is witnessing only the "initial implementation" of a program several years in the making, and designed to meet an "interim procurement requirement of 1,000 MW" over two years.[28] As the program matures and proves its worth, we believe that it should and will continue to improve.

Recurrent Energy agrees with SCE that it is not too early to begin evaluating early RAM results and considering additional procurements beyond RAM.[4] We also believe that decisions about the scope of those procurements (e.g., limited to capacity from previous project failures, as SCE proposes, or open to all renewable projects that meet RAM eligibility requirements), and the longevity of the program (sunsetting after RAM 6, as SCE urges; continuing for as long as it serves California's resource and climate change goals; or expanding, contracting or evolving to complement other renewable procurement programs) "must await more experience with the program, a more structured and comprehensive inquiry than the Advice Letter process affords, and perhaps formal hearings.

We encourage that inquiry, but we believe that SCE's current proposal puts the cart before the horse. These questions should be the subject of broader consideration as RAM program experience accumulates

---

[25] See Advice Letter 2759-E, paragraph E on p. 7, containing the entirety of SCE's offering on this subject.

[26] RAM Decision, p. 75; see also p. 11 and Findings of Fact 2, p. 81; and 32, p. 84; Conclusions of Law 1, p. 86; 31, p. 90; and 43, p. 91-92.

[27] *Recurrent Energy Protest of SCE Advice Letter 2557-E*, submitted to the Energy Division on March 17, 2011, p. 4.

[28] Ram Decision, e.g. pp. 2-3, Conclusions of Law 10 and 12.

over the next year. The RAM Decision itself authorizes the Director of the Energy Division to initiate action to update RAM's capacity authorization. When the time is ripe, we submit that that would be a more appropriate and fruitful avenue for the thorough evaluation and future planning that RAM deserves. That process could begin in the months ahead, but it should not be prematurely foreclosed by decisions about future RAM procurements in this advice letter setting.

III. CONCLUSION

Recurrent Energy commends SCE for a thorough review of the RAM program and for proposing many thoughtful modifications in AL 2597-E. Although the RAM program is still relatively new, all indications are that it is operating as the Commission intended, and succeeding impressively in encouraging the development of mid-scale renewable projects. As RAM experience accumulates, incremental improvements are certainly possible and even likely. However, as an active participant at every stage of RAM's design and implementation, Recurrent Energy well knows how much effort and care has gone into shaping the program and we strive to maintain a high bar for program modifications.

We believe that most stakeholders are open to material changes based on evidence that problems have actually surfaced and that such changes are necessary to improve the program. But we urge caution in considering proposed modifications that have not met those tests, as we believe is the case here.

We appreciate SCE's efforts to incorporate some of the suggestions we and others have made in previous comments. However, its proposed termination rights will make financing more difficult and costly, and could ultimately increasing ratepayer costs and undermine the RAM program, rather than improve it. Moreover, the Commission has already rejected SCE's proposed COD extension to 36 months as inconsistent with RAM's goal of procuring viable projects that come online quickly; that has not changed, and the Commission should reject this proposed modification as well. Regarding SCE's proposed curtailment provisions, and its suggestions concerning the scope of RAM 5 and 6 and sunsetting RAM thereafter, we submit that these are not ripe or appropriate for consideration in this Advice Letter, and should be addressed at another time or in another forum.

Respectfully submitted,

/s/ John Nimmons
Counsel for Recurrent Energy

175 Elinor Ave., Suite G
Mill Valley, CA 94941
jna@speakeasy.org
415.381.7310

cc: CPUC, Energy Division (EDTariffUnit@cpuc.ca.gov)
Akbar Jazayeri (AdviceTariffManager@SCE.com)
Leslie E. Starck (Karyn.Gansecki@sce.com)
Joni Templeton (Joni.Templeton@sce.com)
Service List, R. 11-05-005