

**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)

**COMMENTS OF THE LARGE-SCALE SOLAR ASSOCIATION
IN RESPONSE TO ADMINISTRATIVE LAW JUDGE'S RULING
REQUESTING ADDITIONAL INFORMATION FROM SOUTHERN
CALIFORNIA EDISON COMPANY REGARDING PROPOSAL NOT TO
HOLD A 2012 RPS SOLICITATION**

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On August 31, 2012, Administrative Law Judge DeAngelis issued a ruling requesting additional information from Southern California Edison Company (“SCE”) regarding its proposal not to hold a solicitation in 2012 for offers from projects of all sizes under the California Renewables Portfolio Standard (“RPS”) Program (the “Ruling”). In accordance with the Ruling, the Large-scale Solar Association (“LSA”) respectfully submits these comments responding to SCE’s response to the Ruling (“SCE Response”).¹

I. INTRODUCTION

In its Response, SCE does not dispute that the 2012 RPS solicitation would provide the last opportunity for larger RPS projects to take advantage of the ITC in its current form before its expiration at the end of 2016, as LSA highlighted in its comments on the 2012 RPS Procurement Plans filed on May 23, 2012.² Instead, SCE justifies its decision to forego a 2012 RPS solicitation for offers from all sizes of projects able to take advantage of the existing federal

¹ Southern California Edison Company’s (U 338-E) Response to Administrative Law Judge’s Ruling Requesting Additional Information From Southern California Edison Company Regarding Proposal Not To Hold A 2012 RPS Solicitation, dated Sept. 5, 2012.

² Comments of the Large-Scale Solar Association on the April 5th Assigned Commissioner’s Ruling and The 2012 Renewable Portfolio Standard Procurement Plans dated June 27, 2012, p. 4. (“LSA RPS Plan Comments”)

Investment Tax Credit (“ITC”) because “any increased costs due to the possible reduction in the ITC are likely to be outweighed by forecasted decreases in overall project costs.” (SCE Response, p. 2.) LSA respects SCE’ confidence that the solar cost curve will continue to decline. But make no mistake; in gist, SCE is arguing that it is willing to gamble with ratepayer savings in the form of unrealized ITC benefits based on such projected cost declines for one of the technologies now eligible for the ITC. While LSA is bullish that the solar industry will continue to generate cost savings, we are always cautious when forecasting cost improvements or market conditions so far in the future. SCE has no assurances that the projected price reductions will be realized and no guarantee that any such reductions will compensate for the foregone ITC benefits.

LSA does not believe that SCE’s choice is prudent or in the best interest of its customers. In its reply comments on the 2012 RPS procurement plans, which SCE’s Response overlooks, LSA pointed out that the current 2016 ITC expiration created two extremes for procurement options in the third compliance period and beyond. The first would be to procure for all of these needs now, in order to take advantage of the current tax credits; the second would be foregoing all forward procurement and “allowing ratepayers to bear the price risk associated with tax credit expiration and technology prices.”³ In electing to forego a 2012 RPS solicitation, SCE has chosen this second extreme. As LSA has recommended, the more prudent approach would be to hedge the price and market risks stemming from the 2016 ITC cliff through procurement in 2012/2013 of a portion of SCE’s net short position in the third compliance period and beyond. Because SCE’s Response neither justifies its decision to forego a 2012 solicitation nor demonstrates that subsequent RPS procurement will result in lower ratepayer costs, LSA urges

³ Reply Comments of the Large-Scale Solar Association On The April 5th Assigned Commissioner’s Ruling And the 2012 Renewables Portfolio Standard Procurement Plans, dated July 18, 2012, p. 4. (“LSA RPS Plan Reply Comments”)

the Commission to require that SCE conduct a 2012 solicitation to meet a portion of SCE's RPS net short position in the third compliance period and beyond in which all sizes of projects eligible for the current ITC may participate.

II. SCE'S RESPONSE DOES NOT JUSTIFY ITS DECISION TO FOREGO A 2012 RPS SOLICITATION.

In its Response, SCE explains it has decided to put its large-scale RPS procurement "on hold" because of two factors: its lack of need in the first and second compliance periods and its desire to focus its efforts on the smaller resource solicitations. (SCE Response, pp. 3-4) However, SCE described the same lack of need for these periods in its initial RPS procurement plan filed on May 23, 2012, in which SCE nonetheless proposed conducting a 2012 solicitation.⁴ Further, SCE's amended 2012 RPS procurement plan submitted on August 15, 2012, states that it has a net short position in the third compliance period and beyond.⁵ SCE's Response states that it may hold an RPS solicitation in 2014/2015 for larger renewable resources in order to meet that need. According to the Response, SCE "expects many of its qualifying facility contracts to expires beginning in 2021, leaving SCE with a *significant need for large-scale renewables* in that time period and future years." (SCE Response, p. 4. Emphasis added.) Indeed, SCE's August 15th Amended RPS Plan shows that it may have only about two-thirds of the RPS resources needed to meet its RPS goal in 2021 and 2022.⁶

⁴ Southern California Edison Company's (U 338-E) 2012 Renewables Portfolio Standard Procurement Plan, Public Version, dated May 23, 2012, p. 3. ("May 23rd RPS Plan") In its Response, SCE points out that LSA did not request that SCE or any other investor-owned utility be required to conduct a 2012 RPS solicitation due to the potential reduction in the ITC, citing to LSA's June 27th RPS Plan Comments. (SCE response, p. 3) But as SCE and all the other utilities stated their intent to conduct a 2012 solicitation in the RPS Procurement Plans filed on May 23, 2012, LSA had no reason then to ask the Commission to order them to do so.

⁵ Southern California Edison Company's (U 338-E) First Amended 2012 Renewables Portfolio Standard Procurement Plan, Public Version, dated August 15, 2012, p. 7. ("August 15th Amended RPS Plan")

⁶ SCE's August 15th Amended RPS Plan, Public Appendix C.2.

LSA's recommendation that the Commission authorize forward procurement in the 2012 RPS solicitations to meet the utilities' net short needs subsequent to the first and second compliance periods was presented in direct response to the May 23rd RPS procurement plan statements that the utilities do not have a net short need for the first and second periods. LSA proposed that the Commission allow and encourage procurement structures that minimize the problems associated with near-term over-procurement while securing the benefits of the current ITC in the long term. Consequently, SCE's lack of need in the first and second compliance period does not provide sufficient justification to disregard the potential for capturing benefits from the ITC in its current form through a 2012 solicitation open to larger as well as smaller renewable projects, particularly given SCE's "significant" need for large-scale RPS resources in 2021 and beyond.

This leaves only what amounts to workload concerns to justify SCE's decision to "put its large-scale RPS procurement on hold." (SCE Response, p. 3) In its Response and in its August 15th Amended RPS Plan, SCE emphasizes its concern about the workload it anticipates from upcoming solicitations for smaller-scale renewable generation. In its amended plan, SCE explains that even though "SCE has determined it has a long-term renewable procurement need", it "has concluded that its resources would be better utilized focusing on the legislatively- and Commission-adopted renewable procurement programs for these resources."⁷ However, LSA strongly doubts that the incremental costs associated with conducting a 2012 RPS solicitation for resources of all sizes are material relative to the potential savings associated with forward procurement from RPS projects able to take advantage of the current ITC. Thus, in our view, SCE has not justified its decision to forego a 2012 solicitation in its Response.

⁷ SCE's August 15th Amended RPS Plan, pp. 4, 5.

III. SCE'S RESPONSE DOES NOT PROVIDE EVIDENCE THAT PROCUREMENT OF RPS-ELIGIBLE RESOURCES AT A LATER DATE WILL RESULT IN LOWER RATEPAYER COSTS.

SCE “strongly disagrees with any notion that foregoing a 2012 RPS solicitation will decrease procurement options and increase customer costs in the future due to the potential reduction in the ITC.” (SCE Response, p. 2.) In support of this statement, SCE questions the motivations of those who have raised concerns about the potential customer cost impact of the 2016 ITC cliff, claims the concerns are premature and speculative, relies on a single analyst’s projection of future solar PV costs, and points to the potential costs of forward procurement but disregards the potential benefits. In LSA’s view, SCE’s Response fails to provide the evidence requested in the Ruling suggesting that subsequent procurement of RPS resources will result in lower ratepayer costs. (Ruling, p. 2)

1. SCE Has No Basis To Question The Legitimacy Of Comments Expressing Concern Over Expiration Of The ITC.

SCE implies that the concerns over the potential customer cost impacts from the expiration of the current ITC at the end of 2016 have dubious merit because LSA and others raising them are acting out of self-interest. (SCE Response, p. 5). SCE has no basis for challenging the legitimacy of these concerns. Among the commentators expressing them was The Utility Reform Network (“TURN”), which in its reply comments regarding PG&E’s RPS procurement plan stated that PG&E “should be strongly encouraged to contract for resources with online dates prior to the expected ITC sunset” because doing so reduces project ITC risk “and thereby maximizes the benefits of these credits for ratepayers.”⁸

⁸ Reply Comments of the Utility Reform Network on New Proposals Related to Renewables Portfolio Standard Procurement Plans dated July 18, 2012, p. 6. TURN made the same points with respect to the Production Tax Credit. (“TURN RPS Plan Reply Comments”). See also Reply Comments of the Independent Energy Producers Association on the RPS Procurement Plans dated July 18, 2012, p. 3 (“California should not miss the opportunity to

2. Contrary to SCE’s assertions, concerns about the impact of the ITC expiration are neither premature nor speculative.

SCE suggests that the concerns expressed about the 2016 ITC expiration cliff are speculative and “premature” since the ITC may be extended as it has previously. However, LSA’s concerns are not “premature” since the 2012 solicitation will provide the last opportunity for larger eligible RPS projects to take advantage of certainties afforded by the existing ITC, as discussed above. And the concerns are, unfortunately, well-founded. The federal renewable energy production tax credit (“PTC”) is a good example of the impact federal inaction can have on an industry’s competitiveness. Anyone with faith in an extension of the ITC should take a hard look at the situation with the PTC. The PTC is set to expire at the end of this year, but Congress is not expected to act on legislation to extend it until after the November 6, 2012 election.⁹ Even if the ITC is ultimately extended, as SCE suggests, similar brinksmanship could very well haunt later solicitations for larger renewable resources.

SCE itself describes the “uncertainty surrounding the federal production and investment tax credits” as one of the factors “that could jeopardize the ability of SCE and other retail sellers to reach the State’s RPS goals.”¹⁰ The uncertainties surrounding the ITC will grow exponentially as the 2016 cliff for the current ITC nears, and developers lose the certainty of locking in the current ITC benefits for projects able to achieve commercial operation prior to December 31, 2016. SCE’s August 15th Amended RPS Plan describes how expiration of the production tax credit for wind at the end of 2012 currently impacts any newly proposed wind generating facilities “given the time needed for Commission approval of contracts, siting,

access this federal funding as long as it remains available, because these credits provide significant benefits to California consumers and ratepayers.”)

⁹ See discussion at http://awea.org/issues/federal_policy/index.cfm. The PTC “has been extended mostly in one- and two-year intervals, and even allowed to expire on occasion.” The ITC has also experienced short-term extensions. See discussion at <http://www.seia.org/policy/finance-tax/solar-investment-tax-credit>.

¹⁰ SCE’s August 15th Amended RPS Plan, p. 12.

permitting, construction and development of needed transmission.”¹¹ The problems that SCE acknowledges wind projects are now experiencing will be increasingly felt by projects eligible for the ITC as 2016 approaches. Deferring RPS procurement for larger renewable resources until the 2014/2015 cycle as SCE proposes will only exacerbate the federal tax uncertainties which SCE says could prevent it from achieving the state’s RPS goals.

3. SCE Fails to Provide Credible Evidence That Future Technology Cost Reductions Will Offset the Loss of Current ITC Benefits.

SCE minimizes the significance of the existing 30% ITC to reducing RPS procurement costs, and asserts that future technology cost reductions will more than offset any such contribution. (SCE Response, p. 5.) However, SCE’s technology projection pertains only to solar PV, and ignores another major solar technology eligible for the current ITC, solar thermal. Moreover, the only evidence that SCE cites to support its assertion regarding future technology costs is a slide from a Bloomberg New Energy Finance presentation. Yet the presentation itself states that Bloomberg New Energy Finance does “not guarantee its accuracy or completeness”, that “[a]ny opinions expressed reflect the current judgment of the author of the relevant article or features, and does not necessarily reflect” Bloomberg’s own opinion, and that “[t]he opinions presented are subject to change without notice.” (SCE Response, Att. 1, p. 22) In LSA’s view, this single slide presentation provides insufficient basis for SCE’s risky decision to waive the opportunity to realize benefits from the certainty of the existing ITC and to bet instead on future technology cost reductions.

Moreover, the premise behind SCE’s calculations is flawed. SCE asserts that developers who secure 30% ITC are “not obligated to pass on the resulting cost savings to SCE.” (SCE Response, p. 7) SCE overlooks that its assertion about ITC benefits applies equally to

¹¹ *Id.* at p. 14.

technology cost declines. LSA concurs with TURN's observation in its reply comments on the May 23rd RPS procurement plans that developers will always utilize all available tax credits,¹² just as they will take advantage of reduced technology costs. But in the end, the degree of competition in the market will determine the ultimate procurement pricing and final costs for customers. As of now, the RPS market is highly competitive with numerous developers and a large pipeline of projects. Deferring larger renewable procurement, which SCE admittedly will need by 2021, means that SCE is betting not only on future technology price reductions, but also on the RPS market remaining as competitive in the future as it is at present. Yet future levels of competitiveness in the renewable energy market are strongly influenced by consistent and expected procurement rounds, the elimination of which SCE is proposing and which undermines the likelihood that SCE will find the market in 2014 the same as it is today.

4. SCE Disregards the Benefits From Forward Procurement In Mitigating Obstacles to RPS Compliance.

Forward procurement in the 2012 solicitation of RPS needs in the third compliance period and beyond could help mitigate some of the obstacles that SCE has identified in achieving its RPS goals. As described above, SCE has identified uncertainty regarding federal taxes including the ITC as a factor that could jeopardize its ability to reach RPS goals. In addition, according to SCE's August 15th Amended Plan, "[t]he lack of sufficient transmission infrastructure and the prolonged process for permitting and approval of new transmission lines continues to be the most significant impediment to reaching California's RPS goals."¹³ SCE also observes that "[i]n SCE's prior experience meeting the 20% renewable energy goal, it is prudent to contract with projects early on in the process to support the development of needed

¹² TURN RPS Plan Reply Comments, p. 6.

¹³ SCE's August 15th Amended RPS Plan, p. 11.

transmission.”¹⁴ Forward procurement of RPS resources in 2012/2013 could thus help SCE address these obstacles to attaining California’s RPS goals.

5. SCE Should Conduct A 2012 Solicitation To Obtain Creative Proposals That Minimize Short-Term Over-Procurement Risks And Capture Long-Term Benefits From the Existing ITC.

SCE asserts that executing contracts with projects that would begin operations by the end of 2016 would put upward pressure on customer rates from unneeded RPS deliveries. LSA’s comments on the May 23rd RPS plans acknowledged this possibility, but urged the Commission to “allow the market to step up with creative, cost-effective options in the next solicitation” that could minimize short-term over-procurement risks while realizing long-term ITC benefits. (LSA RPS Plan Comments, pp. 3, 4). To be clear, the California renewable market is not new to such contract structures in which projects come online years before the contract identifies deliveries beginning, and the project developer finds other markets for its energy and RECs in the interim. LSA believes the best approach is a 2012 RPS solicitation open to larger as well as smaller projects. The 2016 ITC cliff is a generic problem for all eligible projects, and is not unique to a handful of projects or developers. Consequently, a solicitation is likely to be more efficient and result in greater competition among developers interested in pursuing creative proposals to take advantage of the current ITC than the approach of relying on bilateral contracting.

If the Commission is persuaded that ratepayer savings have a reasonable chance of increasing by delaying procurement beyond ability to take advantage of the ITC, it should at a minimum direct SCE specifically to consider offers for bilateral contracts with projects that could take advantage of the existing ITC. This is in line with SCE’s statement that it is “open to considering offers for bilateral contracts that provide a unique, fleeting, or compelling value to customers.” (SCE Response, p. 4).

¹⁴ *Id.*, p. 9.

IV. CONCLUSION

LSA appreciates the opportunity to respond to SCE's response to the Ruling. In LSA's view, SCE has not justified its decision to forego a 2012 solicitation or shown that doing so will result in lower ratepayer costs. LSA accordingly requests that the Commission require SCE to conduct a 2012 solicitation open to larger as well as smaller renewable projects and consider creative proposals to capture the benefits of the existing ITC.

Dated: Sept. 10, 2012

Respectfully Submitted,

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VERIFICATION

I, Shannon Eddy, am the Executive Director of the Large-scale Solar Association. I am authorized to make this Verification on its behalf. I declare that the statements in the foregoing copy of **COMMENTS OF THE LARGE-SCALE SOLAR ASSOCIATION IN RESPONSE TO ADMINISTRATIVE LAW JUDGE'S RULING REQUESTING ADDITIONAL INFORMATION FROM SOUTHERN CALIFORNIA EDISON COMPANY REGARDING PROPOSAL NOT TO HOLD A 2012 RPS SOLICITATION** are true of my own knowledge, except as to the matters which are therein stated on information and belief, and as to those matters I believe them to be true.

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

Executed on September 10, 2012 at Sacramento, California.

/s/ Shannon Eddy

Shannon Eddy

Executive Director, Large-scale

Solar Association