

June 24, 2013

Energy Division  
California Public Utilities Commission  
Attn: Tariff Unit  
505 Van Ness Avenue  
San Francisco, CA 94102  
E-mail: [EDTariffUnit@cpuc.ca.gov](mailto:EDTariffUnit@cpuc.ca.gov)

**Re: Reply Comments of the Solar Energy Industries Association on Draft Resolution E-4593**

Dear Energy Division Tariff Unit:

The Solar Energy Industries Association (SEIA)<sup>1</sup> supports the Draft Resolution's approval of 80 CREST power purchase agreements ("CREST Contracts") totaling 112.52 MW, submitted by Southern California Edison Company (SCE). Through this submission, SEIA responds to certain comments on Draft Resolution E-4953 which were tendered to the Energy Division on June 17, 2013.

**1. The Draft Resolution Is Correct in its Determination that SCE has the Authority to Voluntarily Procure MW above the Program Cap**

The Draft Resolution was correct in its determination that Decision 07-07-027 allows for SCE to voluntarily purchase energy from additional projects (*i.e.*, above the established MW cap) provided that such additional purchases are reviewed by the Commission. The argument advanced by the Independent Energy Producers Association (IEP) that it was never the Commission's intent to allow for such additional purchases from non-water/waste water projects has no merit.<sup>2</sup> Specifically IEP argues that it was the Commission's intent to expressly limit purchases from non-water/waste water projects to the established cap of 123.8 so that experience

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<sup>1</sup> The comments contained in this letter represent the position of the Solar Energy Industries Association as an organization, but not necessarily the views of any particular member with respect to any issue.

<sup>2</sup> Comments of the Independent Energy Producers Association on Draft Resolution E-4593 (June 17, 2013) (IEP Comments), p 2. (asserting that the provision for voluntary purchases applied solely to projects owned and operated by a public water or wastewater agency).

with a feed-in rate program could be gained, “without exposing projects, ratepayers, utilities, or the state to unreasonable risks.”<sup>3</sup> IEP, however, fails to note that the Decision, by requiring that contracts for amounts above the MW cap receive express Commission approval, provided the necessary protection from unreasonable risks. Indeed, the Decision clearly states that the purpose of such additional review was for the Commission to have the opportunity to determine whether the “oversubscription” has caused, or may be foreseen to cause, a material problem.<sup>4</sup> IEP’s assertions regarding the Commission’s express limitation on the MW to be procured under the CREST Program should be disregarded.

**2. SCE should not be Allowed to Credit the MW under the CREST Contracts Towards its Total Section 399.20 Procurement Obligations.**

SCE argues that the Draft Resolution errs in ordering SCE “not to attribute the capacity for the [CREST] contracts ‘against the procurement requirement established for its feed-in tariff program for water/wastewater agencies as authorized by D.07-07-027.’”<sup>5</sup> In this regard, SCE asserts that its execution of the CREST Contracts “comport[s] with Senate Bill (“SB”) 380’s elimination of any distinction between the public water/wastewater and non-public water / wastewater components of SCE’s PU Code Section 399.20 program.”<sup>6</sup> Thus, according to SCE, it should be permitted to credit the MW under the CREST Contracts towards its total Section 399.20 obligations (including the Re-MAT), because failing to do such would impose on SCE an “*additional* procurement obligation of approximately 102 MW beyond its statutory cap under Section 399.20 when the Re-MAT program starts.”<sup>7</sup> As illustrated below, SCE’s argument is circuitous and should be rejected.

As set forth in SCE’s Advice Filing, Decision 07-07-027’s expansion of the feed-in-tariff program allocated an additional 123.8 MW to SCE’s Schedule CREST for non-water/wastewater customers.<sup>8</sup> SCE explained that it reached this 123.8 MW allocation on June 20, 2012, but since that time had executed an additional 80 PPAs.<sup>9</sup> SCE acknowledged that once it had reached the allocated 123.8 MW, it was relieved of an obligation to purchase energy from additional projects, but that it could voluntarily do so.<sup>10</sup> As noted above, the only caveat provided by the Commission with respect to those additional purchases was that “Projects up to the allocated capacity are per se reasonable” while “[p]rojects beyond the capacity allocation

<sup>3</sup> IEP Comments, p.2 *citing* D.07-07-027, p. 48.

<sup>4</sup> Decision 07-07-027, p. 13, footnote 12.

<sup>5</sup> Comments of Southern California Edison Company (U 338-E) on Draft Resolution E-4593 (June 17, 2012) (SCE Comments), pp. 1-2.

<sup>6</sup> *Id.*, p. 2.

<sup>7</sup> *Id.* (emphasis added).

<sup>8</sup> Advice 2870-E Contracts from Southern California Edison Company’s (“SCE’s”) California Renewable Energy Small Tariff (“CREST”) Program (March 26, 2013), p. 4, as supplemented by Advice 2870-E-A (April 23, 2013).

<sup>9</sup> *Id.*, p. 5

<sup>10</sup> *Id.*

need Commission review (e.g., by applicant submitting an advice letter).”<sup>11</sup> Given this caveat, SCE filed the advice letter seeking approval of the additional CREST Contracts. If, as SCE now argues, there is no delineation between the water/waste water project aspect of the program and the non-water/non-waste water project aspect of the program, then SCE would not have needed to submit an advice letter for approval of the additional CREST Contracts, as it would not have met the total MW allocation for the CREST Program ( 247.7 MW). Through its own filing, SCE has acknowledged that its purchase of the additional MW under the CREST tariff was outside its PU Code Section 399.20 purchase obligations. The Draft Resolution is not in error. SCE should not be allowed to credit the MW under the CREST Contracts towards its total Section 399.20 procurement obligations.

**3. The Draft Resolution Should be Amended to Adopt SCE’s Proposal for Amendment of the CREST PPA to Accommodate Regulatory Delay for the Crest Contracts**

SEIA supports the Draft Resolution’s determination to grant a six-month extension of the Commercial Operation Date for the eighty CREST Contracts to accommodate the delay associated with the process for gaining Commission approval for these contracts, which was not envisioned when the contracts were executed. SEIA, however, shares SCE’s concern regarding the manner in which the Draft Resolution would achieve such extension -- *i.e.*, interpreting D.11-11-012, which modified the terms of the CREST power purchase agreement, as incorporating such a six-month extension for regulatory delay.<sup>12</sup> In fact, as pointed out by SCE, the current CREST PPA does not contain such a provision. A Commission interpretation of a PPA which may directly conflict with the provisions of the PPA could set a harmful precedent for future financing of projects. Moreover, with respect to the specific projects in question, such an interpretation may create greater ambiguity and may not provide the necessary certainty for lenders. Accordingly, SEIA supports SCE’s recommendation that the Resolution instead direct SCE to offer an amendment with a six-month COD extension<sup>13</sup> for the eighty CREST Contracts, and SCE would then submit executed amendments as part of a Tier 1 conformed advice letter filing.

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<sup>11</sup> *Id.*, citing D.07-07-027, at 13 n.12.

<sup>12</sup> SCE Comments, pp. 3-4.

<sup>13</sup> Consistent with the Re-MAT program this should be one-time”, six-month extension rather than a “day-to-day” extension for up to six months. *See* D.13-05-034 p. 30.

For the reasons above stated, the Commission should approve the Draft Resolution in its current form, with the one recommended change to address the contract extension issue discussed above.

Very truly yours,

GOODIN, MACBRIDE, SQUERI,  
DAY & LAMPREY, LLP

By /s/ Jeanne B. Armstrong  
Jeanne B. Armstrong

Counsel for the Solar Energy  
Industries Association

cc: President Michael Peevey, CPUC  
Commissioner Michel Florio, CPUC  
Commissioner Catherine Sandoval, CPUC  
Commissioner Mark Ferron, CPUC  
Commissioner Carla Peterman, CPUC  
Edward Randolph, Director, CPUC Energy Division  
Karen Clopton, Chief Administrative Law Judge, CPUC  
Regina DeAngelis, Administrative Law Judge, CPUC  
Frank Lindh, General Counsel, CPUC  
Adam Schultz, J.D., CPUC Energy Division  
Paul Douglas, CPUC Energy Division  
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