



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE  
STATE OF CALIFORNIA

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Rulemaking 11-05-005  
(Filed May 5, 2011)

**SOUTHERN CALIFORNIA EDISON COMPANY'S (U 338-E)**  
**COMMENTS TO SECTION 399.20 RULING DATED JUNE 27, 2011**

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**SOUTHERN CALIFORNIA EDISON COMPANY’S (U 338-E)  
COMMENTS ON SECTION 339.20 RULING DATED JUNE 27, 2011**

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Pursuant to the Administrative Law Judge’s Ruling Setting Forth Implementation Proposal for SB 32 and SB 2 1X Amendments to Section 399.20 (“Section 399.20 Ruling”), Southern California Edison Company (“SCE”) respectfully submits these comments. On July 15, 2011, Administrative Law Judge Mattson granted the investor-owned utilities (“IOUs”) an extension of time to file their proposed tariffs and contracts until August 5, 2011. Accordingly, SCE will file its proposed tariff, contract, and any related documents on August 5, 2011.

**I.**

**INTRODUCTION**

Public Utilities Code Section 399.20 (“Section 399.20”) establishes a power purchase program for small generators to sell wholesale renewable energy to utilities pursuant to a standard offer power purchase agreement. As set forth in the Section 399.20 Ruling, both Senate Bill (“SB”) 32 and SB 2 1X modify the requirements of Section 399.20. Among other things, SB 32 increases the size of eligible electric generation facilities from 1.5 MW to 3 MW and the total program cap from 500 MW to 750 MW. SB 32 also applies the program to publicly-owned utilities (“POUs”). SB 2 1X removes the requirement that generators selling power under the

Section 399.20 tariff be paid at the market price referent (“MPR”) set by the California Public Utilities Commission (“Commission” or “CPUC”).

The Section 399.20 Ruling makes an initial proposal for implementing SB 32’s and SB 2 1X’s amendments to Section 399.20 and asks for party comments on that proposal. Along with the other parties, SCE filed opening and reply briefs regarding implementation of SB 32 in March 2011.<sup>1</sup> SCE does not repeat the arguments included in those briefs here. As discussed below, SCE recommends that that pricing under Section 399.20 be established using a pricing methodology that looks to the market to establish pricing. This approach is consistent with the requirements of the Renewables Portfolio Standard (“RPS”) statute and federal law, and will allow the Commission to implement a Section 399.20 tariff program that meets the State’s RPS goals while minimizing customer costs in accordance with the ratepayer indifference requirement included in Section 399.20. The Commission has already determined a market-based mechanism is appropriate for pricing of standard power purchase agreements for renewable generators 20 MW and under in its recently adopted Renewable Auction Mechanism (“RAM”) program. Similarly, market-based pricing is both appropriate, and consistent with legal requirements, for the Section 399.20 program.

In contrast, a Commission-established requirement that utilities pay Section 399.20 generators the MPR is unlawful under the Federal Power Act. It would also require utility customers to pay such generators an administratively-determined price that is not consistent with actual market conditions. This is likely to lead to higher prices for customers and is contrary to Section 399.20’s ratepayer indifference mandate.

Finally, the Section 399.20 Ruling proposes that the Commission will implement certain portions of SB 32 and SB 2 1X by the end of 2011, and other statutory provisions, such as denial of tariff requests and contract termination provisions, in 2012. SCE understands the Commission

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<sup>1</sup> See Southern California Edison Company’s (U 338-E) Opening Brief Regarding Implementation of Senate Bill 32, R.08-08-009 (March 7, 2011) (“March Opening Brief”); Southern California Edison Company’s (U 338-E) Reply Brief Regarding Implementation of Senate Bill 32, R.08-08-009 (March 22, 2011) (“March Reply Brief”).

intends to implement revised Section 399.20 tariffs and contracts by the end of 2011. In that case, the Commission cannot defer consideration of statutory requirements like denial of tariff requests and contract termination provisions. These legal requirements of Section 399.20 are interrelated to other aspects of the program, and the Commission cannot direct the utilities to offer tariffs and contracts without procedures for denial of tariff requests and termination of such contracts. SCE believes that expedited interconnection procedures may be deferred; however, all of the other issues identified in the Section 399.20 Ruling should be considered and addressed by the Commission before it issues a decision adopting revised tariffs and contracts.

## **II.**

### **SCE'S RESPONSE TO SECTION 399.20 RULING**

#### **3.1 Definition of Market Price**

In general, SCE regards the day-ahead market prices established through the California Independent System Operator (“CAISO”) as reflecting the market price of electricity, and does not believe that there is more than one “type of electricity.” However, transactions involving the purchase or sale of electricity may be bundled together with various product attributes, which may result in prices that differ from either observed or forecast day-ahead market prices. For example, a buyer may pay a premium for renewable energy procurement because renewable power both serves customer electricity needs and contributes to meeting the State’s RPS goals. Similarly, a forward procurement contract that obligates parties to deliver a specified quantity of electricity and establishes pricing terms over a period of time creates both risks and benefits for the parties that will be factored into aggregate pricing agreed to by a buyer and seller.

For purposes of the program established in Section 399.20, where eligible generation will contribute to the State’s RPS goals and must also count towards the purchasing utility’s Resource

Adequacy (“RA”) obligations, SCE recommends that the Commission adopt a market-based methodology for determining the price to be paid for eligible power.<sup>2</sup>

A market-based methodology has many benefits. First, it is consistent with SCE’s Commission-approved least-cost, best-fit procurement strategy, and ensures that SCE’s customers will get the best value for their procurement dollars. Second, this methodology ensures that the price for Section 399.20 contracts will take into account the factors enunciated in the statute. For example, a market-based pricing mechanism is consistent with determining the “long-term market price of electricity for fixed price contracts, determined pursuant to an electrical corporation’s general procurement activities as authorized by the commission.”<sup>3</sup> Indeed, the pricing for most of SCE’s long-term electricity procurement is set through similar market-based processes (e.g., RPS solicitations, the RAM program, All-Source Requests for Offers). The “long-term ownership, operating, and fixed-price fuel costs associated with fixed-price electricity from new generating facilities” will also be reflected.<sup>4</sup> Moreover, a market-based process will allow the “current and anticipated environmental compliance costs” discussed in Section 399.20(d)(1) to be included. Further, using a market-based methodology allows evaluation of “different electricity products including baseload, peaking, and as-available electricity,” as required by Section 399.20.<sup>5</sup>

Third, and perhaps most importantly, SCE’s proposed market-based methodology avoids the legal and practical pitfalls of establishing an administratively-determined price with static inputs and assumptions that cannot respond to market conditions. For example, the MPR benchmark established by the Commission and advocated by certain parties as the price for Section 399.20 contracts does not reflect market conditions. Indeed, prices for SCE contracts

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<sup>2</sup> SCE will provide additional details on its market-based approach in its filing on August 5, 2011. The expedited schedule associated with these comments, proposed tariffs, and contracts and related documents did not allow SCE to develop all of the details of its proposal by July 21, 2011.

<sup>3</sup> Cal. Pub. Util. Code § 399.20(d)(2)(A). Unless otherwise noted, references to Section 399.20 are to Section 399.20 as amended by both SB 32 and SB 2 1X.

<sup>4</sup> Cal. Pub. Util. Code § 399.20(d)(2)(B).

<sup>5</sup> Cal. Pub. Util. Code § 399.20(d)(2)(C).

obtained through RPS solicitations and other renewable procurement mechanisms have been both higher and lower than the MPR. Using a stagnant administratively-determined price with no connection to market conditions is unlikely to reflect the costs to the seller, or benefits to the buyer, or the lowest cost to which the buyer and seller would agree. Requiring customers to pay more for power than they otherwise would pay would violate the ratepayer indifference standard in Section 399.20,<sup>6</sup> and could result in protracted litigation. As an example, issues related to “stale” administratively-determined pricing have also arisen in the context of avoided cost payments for Qualifying Facilities (“QFs”) and have resulted in prolonged litigation at both the Commission and the California Court of Appeal.<sup>7</sup>

With rapidly changing market conditions, the best way to ensure that customers pay no more, and no less, for power under Section 399.20 contracts than they otherwise would is to establish prices through market-based pricing mechanisms. By doing so, the Commission will ensure that ratepayers are indifferent to the existence of the Section 399.20 tariff as required by law.

SCE’s proposed market-based approach would not segment the market based on technology. The RPS statute is technology neutral among eligible renewable technologies, and therefore SCE’s RPS procurement is likewise technology neutral. It makes little sense – and would not be consistent with Section 399.20 – to create artificial carve-outs by technology when California’s RPS statute does not do so. Customers cannot be required to pay more for one RPS-eligible technology than they would pay for another, because either technology will satisfy the State’s RPS goals. To require otherwise would violate the ratepayer indifference standard in Section 399.20.

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<sup>6</sup> See Cal. Pub. Util. Code § 399.20(d)(4).

<sup>7</sup> See, e.g., California Court of Appeal Docket B210398 (September 3, 2008); pending Applications for Rehearing concerning Decision (“D.”) 09-04-032 and D.09-04-034; Application (“A.”) 08-11-001, Application of Southern California Edison Company (U338E) for Applying the Market Index Formula and As-Available Capacity Prices adopted in D.07-09-040 to Calculate Short-Run Avoided Cost for Payments to Qualifying Facilities beginning July 2003 and Associated Relief. These cases and filings are presently held in abeyance awaiting the outcome of the QF/Combined Heat and Power (“CHP”) Settlement Agreement adopted in D.10-12-035.

### **3.2 Continued Reliance on Market Price Referent**

Consistent with SCE's comments above, SCE does not support using the current MPR to establish the price for Section 399.20 tariff contracts. As explained in the Section 399.20 Ruling, SB 2 1X modifies Section 399.20 so that payment under the tariff need not be set at the MPR established by the Commission.<sup>8</sup> This statutory change allows the Commission to set a lawful price under Section 399.20 since, as further detailed in SCE's March Opening Brief and March Reply Brief, setting the tariff price using the MPR would be unlawful.<sup>9</sup>

Recent Federal Energy Regulatory Commission ("FERC") orders reaffirm that states and state commissions have limited jurisdiction to set wholesale power prices.<sup>10</sup> Specifically, states and state commissions may only set prices for purchases from QFs, and those prices may not exceed the avoided costs of the purchasing utility pursuant to the Public Utility Regulatory Policies Act of 1978 ("PURPA").<sup>11</sup> Other than this limited exception, states and state commissions have no other jurisdiction to set wholesale power prices.

Section 399.20 does not require that a generator apply for or obtain QF status; thus, there is no guarantee that the generators participating in the Section 399.20 program will be QFs. Additionally, as SCE explained in its March Opening Brief and March Reply Brief, the MPR was never intended to be a price for power, or reflect the avoided cost of power.<sup>12</sup> Rather, the MPR was a benchmark developed as a part of a cost limitation mechanism for the procurement of renewable resources under the RPS program. The Commission also uses the MPR as a *per se* reasonableness benchmark for RPS contract approval. The Commission decisions that developed the MPR and MPR methodology have never determined that the MPR is an avoided cost pursuant to PURPA, nor even addressed the issue. Instead, in those decisions, the

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<sup>8</sup> Section 399.20 Ruling at 2-4. *See also* Cal. Pub. Util. Code § 399.20(d)(1)-(2).

<sup>9</sup> *See* March Opening Brief at 3-9; March Reply Brief at 3-5.

<sup>10</sup> *See* 132 FERC ¶ 61,047.

<sup>11</sup> *See id.* at P 67.

<sup>12</sup> *See* March Opening Brief at 5-6; March Reply Brief at 4.

Commission based the MPR on the long-term costs to build, operate, and maintain a new 500 MW natural gas fired combined cycle gas turbine (“CCGT”).<sup>13</sup>

FERC recently issued an advisory opinion which interprets PURPA as allowing a state to limit the sources considered in setting an avoided cost price pursuant to PURPA for generators with characteristics that meet a state procurement mandate (i.e., RPS), provided the price established is based on generators with similar characteristics.<sup>14</sup> The MPR, however, has no relation to the cost of purchasing renewable power, and has nothing to do with the cost a utility avoids through the purchase of power from a renewable QF. Indeed, the Commission based the MPR on a CCGT. The MPR is simply a benchmark by which the Commission judges the reasonableness of RPS contract prices and the extent to which the IOUs are obligated to continue purchasing renewable power to meet the State’s RPS goals. To the extent the Commission seeks to establish any administratively-determined price, it must demonstrate the price reflects the costs the utility would avoid through the purchase of power from Section 399.20 tariff generators. No such analysis has taken place. Accordingly, the Commission cannot legally base the price for Section 399.20 contracts on the MPR.

In addition to this substantial legal hurdle, the MPR should not be utilized to set the price under Section 399.20 because the MPR is an administratively-determined benchmark that is not reflective of actual market conditions. In adopting the RAM, the Commission noted the potential for an administratively-established fixed price to be set too high or too low, and concluded that “either option could create financial and regulatory uncertainty.”<sup>15</sup> “If the price is too high, it

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<sup>13</sup> See generally D.05-12-042; D.08-10-026.

<sup>14</sup> 133 FERC ¶ 61,059 at P 27. SCE, joined by Pacific Gas and Electric Company and San Diego Gas & Electric Company, sought rehearing of this issue, and continue to maintain that the advisory principle enunciated by FERC in this Order is inconsistent with PURPA. SCE reserves its right to challenge FERC’s interpretation of PURPA in an enforcement proceeding. See *Niagara Mohawk Power Corp. v. FERC*, 117 F.3d 1485 (D.C. Cir. 1997) (“An order that does no more than announce the [FERC’s] interpretation of the PURPA or one of the agency’s implementing regulations is of no legal moment unless and until a district court adopts that interpretation when called upon to enforce PURPA.”).

<sup>15</sup> D.10-12-048 at 16.

would be unreasonable for ratepayers. If it is too low, no projects would be built.”<sup>16</sup> The Commission adopted a market-based pricing mechanism for the RAM program, holding that:

We endorse healthy competition and seek to avoid regulatory approaches that result in hostility from ratepayers or undermine long-term market stability. We also look for an approach that can quickly respond to changes in cost (both increases and decreases). Administrative determination of contract prices is less likely to be as responsive to cost changes than is a seller determining the price it wishes to seek in an auction based on its understanding of the underlying project costs, and changes in those costs.<sup>17</sup>

The same reasoning applies to the Section 399.20 program. Accordingly, use of the MPR for pricing the Section 399.20 contracts should be rejected.

Because SCE urges the Commission to reject using the MPR to establish the price for Section 399.20 tariff contracts, and SB 2 1X eliminates the MPR as it is currently calculated, SCE believes the Commission should not continue to calculate the MPR.

### **3.3 Additional Pricing Proposals**

#### **3.3.1 Technology-Specific Rates and Product-Specific Rates**

As referenced above, SCE does not support technology-specific pricing. SCE’s procurement strategy is technology neutral and SCE’s procurement is based on least-cost, best-fit principles that are fundamentally inconsistent with technology-specific pricing. The RPS program is technology neutral among eligible renewable technologies, and Section 399.20 does not create any special rules for different technologies. It would be inconsistent with the RPS statute and least-cost, best-fit principles to create artificial carve-outs for specific renewable technologies. Under the ratepayer indifference standard in Section 399.20, customers cannot be required to pay more for one RPS-eligible technology than they would pay for another, because either technology will satisfy the State’s RPS goals. If the Commission sets technology-specific prices, these prices will differ amongst technologies, and SCE’s customers will pay more for certain technologies, even though those technologies do not allow SCE’s customers to avoid any

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<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at 17.

additional costs. Such subsidization would violate the ratepayer indifference mandate in Section 399.20.

SCE's proposed market-based pricing methodology will examine the "value of different electricity products including baseload, peaking, and as-available electricity."<sup>18</sup> This approach is entirely consistent with SCE's overall procurement strategy, where SCE examines its system needs and seeks to procure the best-valued resources and products that fit those needs.

### **3.3.2 Market-Based Rate**

As explained above, SCE's market-based approach to Section 399.20 program pricing is the best way to set pricing that is consistent with state and federal law, and with meeting the State's RPS goals while minimizing customer costs in accordance with the ratepayer indifference requirement included in Section 399.20. SCE's market-based approach is also consistent with SCE's preferred RPS procurement efforts, and is the methodology most likely to result in the execution of contracts for the most competitive products in the market.

Further, SCE's approach is consistent with Section 399.20. Under SCE's proposal, once the project meets the statutory eligibility requirements it will be eligible to participate in the Section 399.20 program. This system meets the statutory requirements that tariffs be made "available" to eligible projects. Under SCE's market-based pricing model, the tariff will be available on a "first-come-first-served" basis to all projects that are eligible to participate. SCE will supply additional details on its proposed pricing mechanism in its August 5, 2011 filing in its proposed tariff, contract, and related documents.

### **3.3.3 Rate Based on Power Purchase Agreements**

Pricing under Section 399.20 should not be based on historical RPS power purchase agreement prices divorced of any connection to current market conditions, because those prices change over time, and historical prices are not necessarily a good indication of prices moving forward. That said, SCE believes that it is consistent with the statute and its overall procurement

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<sup>18</sup> Cal. Pub. Util. Code § 399.20(d)(2)(C).

strategies to use the prices in other executed renewable power purchase agreements to *inform* whether the pricing in a given market is consistent with prevailing market conditions. For example, if all of the projects in a given solicitation come in at a single inflated price, then SCE would use pricing data from other programs on a qualitative basis to assess whether market manipulation has occurred.

### **3.4 Additional Pricing Questions**

SCE's recommended market-based approach will reflect market conditions, which are the best data source to use for assessing the appropriate pricing for Section 399.20 contracts.

### **3.5 Ratepayer Indifference**

Section 399.20 provides that the "commission shall ensure, with respect to rates and charges, that ratepayers that do not receive service pursuant to the tariff are indifferent to whether a ratepayer with an electric generation facility receives services pursuant to the tariff."<sup>19</sup> This means that any compensation for Section 399.20 power must leave other customers unaffected. That is, customers should be no worse off as a result of the power purchased pursuant to Section 399.20 tariff contracts. If costs incurred by customers who do not participate in the Section 399.20 program *increase* as a result of others' participation in the program, the ratepayer indifference standard will be violated.

Generally, an avoided cost rate, *assuming it is appropriately calculated*, will result in ratepayer indifference because an avoided cost rate is by definition the incremental costs to the buyer which, but for the mandated purchase, the buyer would generate itself or purchase from another source.<sup>20</sup> However, unlike Clean Coalition, SCE does not agree with the Commission's application of the customer indifference provision in its implementation of Assembly Bill ("AB") 1613 because, among other things, the Commission focused on benefits to buyers rather than the costs avoided through the purchase of AB 1613 power, in contravention of PURPA, and

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<sup>19</sup> Cal. Pub. Util. Code § 399.20(d)(4).

<sup>20</sup> 18 C.F.R. § 292.101(b)(6) ("Avoided costs means the incremental costs to an electric utility of electric energy or capacity or both which, but for the purchase from the qualifying facility or qualifying facilities, such utility would generate itself or purchase from another source.").

provided compensation for so-called benefits which were not supported in the record of the proceeding.<sup>21</sup>

SCE's proposed market-based methodology meets the ratepayer indifference requirements of Section 399.20. The best way to ensure that customers pay no more for power than they otherwise would is to establish prices through market-based mechanisms. By doing so, the Commission will ensure that ratepayers are indifferent to the existence of the Section 399.20 tariff as required by the statute, because ratepayers would be no worse off as a result of the power purchased pursuant to Section 399.20.

### **3.6 FERC Order 134 FERC ¶ 61,044 – Order Denying Rehearing**

The Section 399.20 Ruling asks parties for any additional comments on the impact of federal law on the implementation of Section 399.20 given the enactment of SB 2 1X.<sup>22</sup> Although the legal principles discussed in SCE's March Opening Brief and March Reply Brief remain the same,<sup>23</sup> it is worth noting that the amendments provided by SB 2 1X provide the Commission with flexibility to develop a methodology that complies with both state and federal law that did not exist before. Under SB 32, the Commission's hands were tied in a manner of speaking, because the statute specifically required that Section 399.20 pricing be based on the MPR established by the Commission. Now, however, the Commission has the flexibility to adopt a methodology that does not violate federal law. SCE urges the Commission to take the opportunity to do so, and SCE maintains that a market-based methodology will allow the Commission to satisfy both state and federal law, and avoid the practical pitfalls of setting an administratively-determined price not connected to market conditions.

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<sup>21</sup> See Docket R.08-06-024 for SCE's and the other IOUs' various Applications for Rehearing concerning AB 1613 pricing. Indeed, on rehearing, the Commission attempted to remedy at least one aspect of this by revising its calculation of the reimbursement for the CHP sellers' greenhouse gas costs. See D.11-04-003 at 37.

<sup>22</sup> Section 399.20 Ruling at 13.

<sup>23</sup> See March Opening Brief at 3-9; March Reply Brief at 3-5.

#### **4 Compliance with SB 32**

The Section 399.20 Ruling identifies those provisions added to Section 399.20 by SB 32 and SB 2 1X that the Commission proposes to implement by the end of 2011 – determine price, eliminate separate tariffs, eliminate retail customer requirement, increase facility size to 3 MW, adjust program cap to 750 MW, the 10-day internet posting requirement for new tariff requests, the exemption for small electric utilities, and coordination with POUs – and those portions of the statute the Commission intends to wait to address in 2012 – yearly inspection and maintenance reports required by Section 399.20(p), denial of tariff requests set forth in Section 399.20(n), contract termination provisions in Section 399.20(l), the expedited interconnection process set forth in Section 399.20(e), and refunds of other incentives as provided in Section 399.20(k).<sup>24</sup>

SCE understands the Commission intends to implement revised Section 399.20 tariffs and contracts by the end of 2011. Given this plan, SCE opposes deferral of any of the issues identified in the Section 399.20 Ruling until 2012, except for expedited interconnection procedures. The various requirements of Section 399.20 are interrelated. The Commission cannot adopt revised tariffs and contracts without addressing the statutory provisions allowing utilities to deny tariff requests, termination provisions for those contracts, required reporting from facilities receiving tariffs, or issues surrounding the refunds of other incentives that affect eligibility for the Section 399.20 tariff. All of these are statutory requirements that must be resolved to implement Section 399.20 tariffs and contracts. For example, the Commission cannot require utilities to offer tariffs without allowing them to exercise their statutory rights to deny such tariffs in some circumstances. Similarly, both generators and utilities need certainty as to how the receipt of other incentives will affect eligibility for the Section 399.20 tariff. As such, SCE believes that carving out any of these issues for later resolution will ultimately prove unworkable, and will result in further delays in program implementation.

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<sup>24</sup> Section 399.20 Ruling at 5.

As discussed below, SCE suggests that certain interconnection issues be resolved by the Commission in the near-term. However, the Commission can defer consideration of any expedited interconnection procedures. Consideration of expedited interconnection procedures implicates jurisdictional issues that need not be resolved this year in order to proceed with the Section 399.20 program.<sup>25</sup>

#### **4.1 Increase Size of Eligible Facility to 3 MW**

SCE will submit its proposed tariff, contract, and related documents, including changes needed to increase the size of eligible facilities from 1.5 MW to 3 MW, on August 5, 2011. As detailed in SCE's March Opening Brief, increasing the size of eligible generators to 3 MW will require interconnections that are more complex.<sup>26</sup>

#### **4.2 Proportionate Share and Increased Program Cap to 750 MW**

SB 32 increased the total Section 399.20 program cap to 750 MW, and allocates this 750 MW to all utilities, including POU's. Accordingly, changes to the calculation of the utilities' proportionate shares of the cap are required. SCE set forth a methodology for allocating the 750 MW in its March 2011 Opening Brief.<sup>27</sup>

#### **4.3 Separate Tariffs**

SCE supports the elimination of separate tariffs (the CREST and WATER programs). SCE will include any tariff and contract revisions necessary to implement this change in its August 5, 2011 filing.

#### **4.4 Retail Customer Requirement Eliminated**

SCE will include any tariff and contract revisions necessary to implement this change in its August 5, 2011 filing. As SCE discussed in its March Opening Brief, contract provisions should prevent generators from gaming the price they receive under the contract against the power they procure to serve on-site load.<sup>28</sup>

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<sup>25</sup> See March Opening Brief at 20-22.

<sup>26</sup> See *id.* at 13.

<sup>27</sup> See *id.* at 13-14.

<sup>28</sup> See *id.* at 22.

#### **4.5 Yearly Inspection and Maintenance Report**

As discussed above, yearly inspection and maintenance reports are a statutory requirement that should be implemented in the Section 399.20 contract and not deferred until a later date. SCE will include such a requirement in its proposed contract filed on August 5, 2011.

#### **4.6 10-Day Reporting Requirement of Request for Service Under Tariff**

SCE provided its comments on this issue in its March Opening Brief.<sup>29</sup>

#### **4.7 Publicly-Owned Electric Utilities**

SCE does not have any comments on this issue at this time.

#### **4.8 Utility Discretion to Deny Tariff**

As explained above, the Commission must address utility discretion to deny tariffs along with other Section 399.20 issues before a tariff and contract can be implemented. SCE proposed certain denial rights in its March Opening Brief,<sup>30</sup> and will provide any additional detail to implement its proposal in its August 5, 2011 filing. SCE currently denies counterparties a CREST tariff if they do not have an executed Interconnection Facilities Financing and Ownership Agreement (“IFFOA”) or if they are participating in the California Solar Initiative or Net Energy Metering. Each of these items would make the counterparty non-compliant with program requirements.

#### **4.9 Tariff or Contract Termination Provisions**

The Commission must address contract termination provisions before a tariff and contract can be implemented as discussed above. SCE proposed certain termination rights in its March Opening Brief,<sup>31</sup> and will provide any additional detail to implement its proposal in its August 5, 2011 filing. For existing contracts, the terms and conditions of those contracts determine the conditions under which SCE or the seller may terminate the contract, or how the contract terminates automatically.

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<sup>29</sup> See *id.* at 26-27.

<sup>30</sup> See *id.* at 24-25.

<sup>31</sup> See *id.* at 19-20.

#### **4.10 Expedited Interconnection Procedures**

SCE is not opposed to delaying implementation of *expedited* interconnection procedures until 2012. Indeed, as SCE commented in its March Opening Brief, the Wholesale Distribution Access Tariff (“WDAT”) already includes a “Fast Track process” and an Independent Study process that allows certain generators to interconnect in an expedited manner.<sup>32</sup> Because such processes already exist, and because interconnection issues are very complex, and further refinements to the existing processes or the creation of a new process are not necessary to get the Section 399.20 program up and running, SCE is not opposed to implementing this portion of the program in 2012.

SCE would, however, like the Commission to address more basic interconnection questions at this time, such as what interconnection process the Commission believes will be applicable to this program. Section 399.20(i) requires that “[t]he physical generating capacity of an electric generation facility shall count toward the electrical corporation’s resource adequacy requirement for purposes of Section 380.” Currently, there are a number of requirements that must be met before a generating facility can be counted towards a utility’s RA requirements. One such requirement is that the generator must obtain full deliverability status from the CAISO. The CAISO will perform a deliverability study. If the CAISO determines that transmission/distribution upgrades are not required, the project is termed “fully deliverable.” Once fully deliverable, a project can receive a net qualifying capacity rating from the CAISO, which is the capacity that is eligible to be counted towards a utility’s RA requirements. If new upgrades are required, the project will not be fully deliverable until such upgrades are completed, and the facility will not count toward a utility’s RA requirements.

Currently, Rule 21 has no provisions to enable eligible generators to obtain the CAISO

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<sup>32</sup> See *id.* at 20-22. Generally, the Fast Track process is available to an interconnection customer (“IC”) proposing to interconnect its small generating facility to a distribution provider’s system if the small generating facility (1) is not larger than 2 MW; and (2) (i) the IC’s proposed small generating facility meets certain codes, standards, and certification requirements, or (ii) the distribution provider reviewed the design or tested the proposed small generating facility and is satisfied that it is safe to operate.

deliverability studies that are essential to the generators' ability to provide RA credit. However, the WDAT (for distribution level interconnections) and the CAISO tariff (for transmission level interconnections) do address the studies required for certification for RA credit. Because Section 399.20 requires that generators provide RA credit, and the WDAT and CAISO interconnection procedures are the only procedures which provide for such certification, the Commission should approve use of these tariffs. However, if, after development of all relevant program parameters, the Commission determines that Rule 21 is the appropriate interconnection path for Section 399.20 generators, SCE urges the Commission to allow SCE to utilize the FERC-jurisdictional interconnection procedures until Rule 21 can be revised to provide for the studies necessary for a generator to be eligible to provide RA credit.

#### **4.11 Adjustments for Small Electric Utilities**

For the reasons discussed in its March Opening Brief, SCE opposes exempting small utilities from the Section 399.20 program.<sup>33</sup>

#### **4.12 Refunds of Other Incentives**

As stated above, SCE recommends addressing issues surrounding Section 399.20(k) in coordination with other Section 399.20 implementation issues. SCE's proposal to implement this section was addressed in its March Opening Brief.<sup>34</sup>

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<sup>33</sup> See March Opening Brief at 15-16.

<sup>34</sup> See *id.* at 25-26.

**III.**

**CONCLUSION**

For all the foregoing reasons, SCE urges the Commission to adopt a Section 399.20 program in accordance with SCE's March Opening and Reply Brief and SCE's comments herein.

Respectfully submitted,

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Dated: July 21, 2011

**VERIFICATION**

I am a Manager in the Renewable and Alternative Power of Southern California Edison Company and am authorized to make this verification on its behalf. I am informed and believe that the matters stated in the foregoing pleading are true.

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

Executed this **21<sup>st</sup> day of July, 2011**, at Rosemead, California.

/s/ Laura Genao

By: Laura Genao

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