

Decision **PROPOSED DECISION OF ALJ EBKE** (Mailed 3/6/2014)

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of Southern California Edison Company (U338E) for authority to Implement and Recover in Rates the Cost of its Proposed Solar Photovoltaic (PV) Program.

Application 08-03-015  
(Filed March 27, 2008)

**DECISION DENYING THE SOLAR ENERGY INDUSTRIES ASSOCIATION  
PETITION FOR MODIFICATION OF DECISIONS 09-06-049 AND 12-02-035  
(SOLAR PHOTOVOLTAIC PROGRAM)**

**1. Summary**

This decision denies the Solar Energy Industries Association's (SEIA) petition for modification of Decision (D.) 09-06-049 and D.12-02-035 regarding the Solar Photovoltaic Program (SPVP).

SPVP, as adopted in 2009, was for 500 megawatts (MW) of direct current (DC) solar photovoltaic generation, with 250 MW to be owned by the utility and 250 MW to be owned by independent power producers (IPPs). As modified in 2012 and again in 2013, the total program remains at 500 MW but 91 MW are designated for utility ownership, 125 MW are designated for IPP ownership, and the remaining 284 MW have been transferred to the Renewable Auction Mechanism (RAM) program.<sup>1</sup>

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<sup>1</sup> Capacity in SPVP is measured in direct current (DC), while the capacity in RAM is measured in alternating current (AC). Except as otherwise noted, all references to MW

*Footnote continued on next page*

The IPP projects in SPVP were to be selected through a series of annual solicitations over a five-year period. As of the date of this decision, only one year and two solicitations remain, but only 25.5 MW are under contract and approved by the Commission. SEIA requests that the IPP portion of SPVP be modified to increase the size of the next solicitation and to authorize two additional solicitations. This decision denies SEIA's request as unnecessary, in part, and as premature, in part. This proceeding is closed.

## **2. Background**

### **2.1. Procedural Background**

On June 22, 2009, we adopted a Solar Photovoltaic Program (SPVP) for Southern California Edison Company (SCE). (*See* Decision (D.) 09-06-049.) SPVP is a five-year program to develop 500 megawatts (MW) of direct current electricity procured from solar photovoltaic (PV) facilities. SPVP emphasizes projects sited on existing commercial rooftops. Participation by ground-mounted projects is limited. In addition, project size is expected to be one to two MW per project. As originally approved, the SPVP was composed of 250 MW of utility-owned generation (UOG) and 250 MW of power purchase agreements with independent power producers (IPPs).

On December 17, 2010, we adopted the Renewable Auction Mechanism (RAM) as part of the Renewables Portfolio Standard (RPS) program. (*See* D.10-12-048 in Rulemaking 08-08-009.) Renewable Auction Mechanism (RAM) is a procurement mechanism for utility purchases from IPP-owned

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in this decision are in DC. When transferring MW from SPVP to RAM, the Commission has used a factor of 0.9 to convert DC to AC. (D.12-02-035 at 22 (footnote 23).)

eligible renewable facilities<sup>2</sup> of up to 20 MW per project. Under RAM, the three largest investor-owned utilities were required to purchase a specified amount of MW. SCE's purchase requirement for RAM was increased as a result of the transfer of MW from SPVP to RAM.

On February 16, 2012, we partially granted SCE's petition for modification of SPVP, with conforming changes to RAM. (See D.12-02-035, which modified both D.09-06-049 (SPVP) and D.10-12-048 (RAM).) SPVP remained a five-year 500 MW program, but was adjusted to no more than 125 MW of UOG and no more than 125 MW of IPP owned generation. The remaining 250 MW (equivalent to 225 MW alternating current (AC)) was transferred to RAM.

On June 3, 2013, we granted a portion of an SCE petition to transfer an additional 34 MW from the UOG portion of SPVP to RAM. (D.13-05-033.) Thus the current allocation of MW in the program is 91 MW of UOG under SPVP, 125 MW of IPP owned generation under SPVP, and 285 MW (equivalent to 256 AC) under RAM.

Both RAM and SPVP are of limited duration. RAM is currently set to hold its last solicitation in June 2014, but the rulemaking remains open. SPVP is also expected to hold its last solicitation in 2014. SCE must file a Tier 2 advice letter before the end of the five-year SPVP if SCE plans to procure less than 115 MW from IPPs. (D.12-02-035 at 16.)

SEIA filed this Petition for Modification of Decisions 09-06-049 and 12-02-035 (Solar Photovoltaic Program) (PFM) on June 10, 2013.

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<sup>2</sup> Eligible renewable facilities are determined by the California Energy Commission (CEC). Eligible facilities include solar PV, wind, biomass, geothermal, and several other types. (See RPS Eligibility Guidebook, Sixth Edition, CEC, Efficiency and Renewable Energy Division, Publication Number: CEC-300-2012-006-CMF; August 2012 at 12.)

## 2.2. Timeline of IPP SPVP Solicitations

The Commission directed SCE to issue competitive solicitations seeking approximately 20 percent of the 250 MW IPP program once per year. (D.09-06-049 at 42). Although SPVP is a five-year program, because of delays following the start of RAM, only four solicitations are scheduled to be held. D.12-02-035 set the target for procurement for the IPP portion at approximately 25 MWs annually, but SPVP encourages SCE “to accelerate the procurement if practical and not adverse to program costs.” (D.12-02-035, Attachment 2 Summary of Solar Photovoltaic Program (SPVP) for SCE at 2.)

The first solicitation (SPVP) Request for Offer (RFO) was conducted in 2010 and resulted in execution of 29 power purchase agreements for a total of 50.9 MW. The contracts were then submitted to the Commission for approval by advice letter. (Advice Letter (AL) 2513-E and AL 2514-E.) According to SEIA, of the 50.9 MWs, only 19 MW remain active to date. (PFM at 3.)

SPVP RFO 2 was conducted in March 2012 and resulted in seven offers for a total of 10.7 MW. The contracts were submitted to the Commission for approval on October 31, 2012. (AL 2802-E.) However, according to SEIA, 4.2 MW were terminated because the sellers failed to provide the development security required by contract. (PFM at 3.)

On November 20, 2012, citing the small amount of MW procured to date, SEIA submitted a response to AL 2802-E asking that (1) SPVP RFO 3 be increased to 70 MW, and (2) SCE be required to conduct a fifth SPVP RFO. (PFM at 3.) The Commission disposition letter for AL 2802-E stated that SEIA’s request was not appropriate in the context of the advice letter process but that SEIA could raise the issue through a petition for modification of SPVP. (AL 2802-E, Signed Disposition Letter, February 4, 2013.)

In May 2013, SCE filed an advice letter regarding SPVP RFO 3 stating that it would seek a total of 100 MW in the last two SPVP RFOs. (AL 2889-E, May 8, 2013.) SCE's target for SPVP RFO 3 was 50 MW. (SCE Response at 4.)

SPVP RFO 3 launched in September 2013 and offers were due in December 2013. SCE is scheduled to submit a Tier 2 Advice Letter seeking approval of the executed power purchase agreements resulting from SPVP RFO 3 in March 2014.

SPVP RFO 4 has not yet been scheduled but is expected to take place in summer 2014.

If, at the end of the five-year program, SCE has failed to procure at least 115 MW under the IPP portion of the program, then SCE must file a Tier 2 Advice Letter for authorization. (D.12-02-035, Attachment 2 Summary of SPVP for SCE at 2.) That letter is due six months prior to the end of SPVP.

### **3. Timing of Petition**

A petition for modification must be filed within one year of the effective date of the decision proposed to be modified or, absent sufficient justification by petitioner for the delay, the petition is subject to summary denial. (Rule 16.4(d) of the Commission's Rules of Practice and Procedure.) D.09-06-049 became effective in June 2009 and D.12-02-035 became effective in February 2012. SEIA's petition was filed more than a year after both decisions and is therefore eligible for summary denial.

In light of the additional information gained from the IPP procurement process to date, however, we do not believe that the petition should be summarily denied. SEIA could not have sought the proposed changes prior to the release of information on the status of the IPP procurement. Specifically, as of the date of filing of this petition, less than 25 percent of the IPP MW were under

contract with only two SPVP RFOs remaining. An earlier petition would not have reflected this information.

We are persuaded that adequate reasons justify our consideration of the petition on its merits, and we decline to issue a summary denial.

#### **4. Petition and Responses**

SEIA petitions for the following modifications:

1. SPVP RFO 4 should cover all of the 125 MW allocated to the IPP solar program that have not yet been contracted for;
2. SCE should be granted the authority to procure additional MW beyond the remaining MW, at SCE's discretion, in order to address the high failure rate; and
3. SCE should be directed to conduct two additional "clean-up" solicitations on an annual basis after the SPVP RFP 4 to account for any failed MW. The first solicitation should be held no sooner than 12 months after the contracts from SPVP RFO 4 have been approved by the Commission.

SEIA gives the following argument in support of its proposal:

At the current rate of accepted bids, the program will fall significantly short of the 125 MW goal. Specifically, as of the date of filing of the PFM, with half the scheduled solicitations already complete, only 20 percent of the IPP target had been reached. Under the original five-year plan, the procurement target was 20 percent per year. SEIA points out that if SCE had consistently procured the IPP MW at that rate, SCE would now have 75 MW instead of 25.5 MW under contract. (PFM at 4.)

In its July 10, 2013 Response to Petition of the Solar Energy Industries Association for Modification of Decisions 09-06-049 (Solar Photovoltaic Program) (SCE Response), SCE states that it intends to procure the remaining capacity in

SPVP through the two remaining solicitations so no additional modification of the decision is needed. (SCE Response at 2.) SCE contends that it does not need to be granted authority to procure additional MWs at this time because if there are unsubscribed MW due to project failures and terminations, and if the Commission requires SCE to replace those MW, the unsubscribed MW could be transferred to RAM program at that time. (*Id.*) Finally, SCE asserts that it is premature to direct SCE to have had two more competitive solicitations beyond those already required. (*Id.*)

SCE asserts that it has been reasonable in its actions during previous solicitations and that there have been “roadblocks to cost-competitive procurement [in the IPP program] outside of SCE’s control.” (SCE Response at 3.) The “roadblocks” cited by SCE include the absence of a 2011 RFO, the significant number of early projects that were selected but were then terminated, and weak bids in SPVP RFO 2. However, SCE asserts that it has made reasonable efforts to keep the selected projects on track and expects that customers will benefit going forward because of forecasts of declining solar panel prices and increasing solar competition.

The Division of Ratepayer Advocates (DRA)<sup>3</sup> submitted Comments on Solar Energy Industries Association Petition for Modification of Decisions 09-06-049 and 12-02-035 (DRA Comments) on July 10, 2013. DRA is concerned that the proposed changes are “unnecessarily complicated and not cost-effective.” (DRA Comments at 2.) Like SCE, DRA does not support SEIA’s

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<sup>3</sup> The Division of Ratepayer Advocates was renamed the Office of Ratepayer Advocates effective September 26, 2013, pursuant to Senate Bill 961 (Budget Act of 2013 Public Resources) which was approved by the Governor on September 26, 2013.

request to modify the IPP portion of the program. As an alternative, DRA recommends that if SCE fails to procure the full 125 MW of IPP PV at the end of SPVP, and if the Commission determines that procuring the remainder is required, then the remaining MW should be transferred to RAM. (*Id.*) DRA argues that such a transfer would “reduce costs, promote simplicity, and maximize program efficiency.” (DRA Comments at 3, citing D.13-05-033 at 10-12.) DRA asserts that there are other programs such as the Feed-in-Tariff and RAM that could provide support for new distributed solar PV projects. (*Id.*)

SEIA, in its Reply to the Responses of SCE and the DRA to Petition for Modification of Decisions 09-06-049 and 12-02-035 (Solar Photovoltaic Program) (SEIA Reply) filed on July 22, 2013, asserts that there are two fundamental reasons why transferring any remaining IPP MW to RAM would not fulfill the objectives of the SPVP program. First, SEIA asserts that the purpose of the SPVP program is to develop one to two MW solar rooftop projects located near load. In contrast, RAM does not allow projects smaller than 3 MW and does not specifically promote rooftop solar. (SEIA Reply at 4.). Second, the RAM program will end prior to the SPVP program, making it impossible to transfer any MW to RAM after the end of SPVP. (*Id.* at 5.)

SEIA also reiterated its arguments that the Commission should direct SCE to include all remaining IPP MW in the next SPVP RFO and to hold two additional auctions. SEIA argues that such actions are necessary in part to give potential IPP developers enough confidence in the program to promote competitive bidding. (*Id.* at 3.)

## **5. Discussion**

We deny the PFM for two reasons. First, the new information cited by SEIA does not warrant piecemeal changes to the program. Second, the five-year

program is still underway; it is premature to require additional solicitations after the program's end. Below we briefly examine these two reasons for denying the PFM.

SEIA, SCE and DRA all touched on the concept of transferring MW from the IPP portion of SPVP to RAM. Because we are denying the PFM, it is not necessary to examine whether such a transfer would be reasonable. As SEIA points out, such a transfer might not even be viable in light of the scheduled duration of RAM. The market for renewable technologies is rapidly evolving and these changes will impact the structure of incentive programs - including both SPVP and RAM. All parties will benefit from waiting until the end of SPVP so that any IPP under procurement can be evaluated in light of the most up-to-date information on renewable technology, markets and incentive programs.

#### **5.1. Changes in Circumstances Insufficient to Compel Piecemeal Changes to SPVP**

The slow rate of IPP MW procurement is not a sufficiently compelling reason to justify making the proposed changes.

We are reluctant to make piecemeal changes because such an approach could lead to disorganized and fragmentary results which both reduce the Commission's ability to fulfill its regulatory role efficiently and hurt participants who have relied on the program structure.

Our previous modifications to SPVP were based on reductions in solar PV costs over several years, the availability of other programs providing development opportunities for distributed solar PV projects, and the fact that a significant number of MW remained in the SPVP. (D.12-02-035 at 7-9; D.13-05-033 at 8-12.) The Commission reasoned that, because the changes would reduce costs, promote simplicity and maximize program efficiency, there was a

sufficiently compelling reason to make the modifications. Where requested changes have not been supported by such compelling reasons, the Commission has declined to make changes to SPVP.

Here, the requested changes are not supported by compelling arguments that would merit making piecemeal changes to a program. The requested changes would not reduce costs and would likely increase the complexity of administering the program by making small changes midstream.

It should also be noted that SPVP already encourages SCE to accelerate procurement, if practical and not adverse to program costs (D.12-02-035, Attachment 1 SPVP for SCE.)

Although procurement of the IPP portion of SPVP has been slow, we are not persuaded that it is necessary to make piecemeal modifications to SPVP at this time.

## **5.2. Requested Change is Premature**

The full five years of SPVP should run before the Commission considers whether additional solicitations are warranted. We adopted SPVP to be a creative, innovative program. This is a unique opportunity and the full five years should be used to consider, address and resolve problems, if any.

For the IPP portion of SPVP, SCE is required to develop as close to 125 MW as reasonable, to keep us informed via periodic reports, and to explain what steps it is taking to achieve 125 MW if it is not on track to do so. In addition, SCE must file an advice letter seeking authorization if it will not reach 115 MW by the end of the program.<sup>4</sup> At that time, the state of SPVP and other solar PV programs,

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<sup>4</sup> "SCE shall procure 125 MW, or as close to 125 MW as reasonable. SCE shall explain in periodic SPVP reports why it is not on target to achieve 125 MW of IPP if that is the

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will assist the Commission in determining how to proceed if there is a failure to procure.

In the meantime, we expect SCE to fully use the opportunity presented by SPVP to examine reasonable solutions to problems with IPP resource development, if any.

## **6. Comments on Proposed Decision**

The proposed decision of the assigned Administrative Law Judge (ALJ) in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on March 26, 2014 by Southern California Edison Company. No reply comments were filed. The proposed decision has been revised to reflect the comments.

## **7. Assignment of Proceeding**

Michael R. Peevey is the assigned Commissioner and Maryam Ebke is the assigned ALJ in this proceeding.

### **Findings of Fact**

1. After completing half of the required competitive solicitations, SCE has procured less than 25 percent of the MW allocated to the IPP portion of SPVP.
2. SPVP RFO 3 launched in September 2013.

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case, and explain what steps it is taking to achieve 125 MW. SCE shall, no later than 180 days before the end of the five year SPVP program, file a Tier 2 advice letter for authorization if IPP procurement will be less than 115 MW by the end of year five." (D.12-02-035, Attachment 1 at 2.)

3. SPVP RFO 4 is the last SPVP RFO.
4. A piecemeal approach to program modification is undesirable because it can lead to disruptive and fragmentary program administration.
5. Prior to the scheduled end of SPVP, SCE must file a Tier 2 Advice Letter if it is unlikely to procure at least 115 MW from IPPs for SPVP.

### **Conclusions of Law**

1. SEIA reasonably justifies why the PFM was not filed within 12 months of the effective date of the decisions proposed to be modified.
2. SEIA's reasons for requesting changes to SPVP are not sufficiently compelling to make piecemeal changes at this time.
3. SEIA's PFM should be denied.
4. SCE can seek authority to develop less than 115 MW, or to seek other relief such as extending the deadline for procurement of IPP MW, by Tier 2 Advice Letter 180 days before the end of SPVP.
5. SCE has the authority to increase the size of SPVP RFO 4.
6. This order should be effective today so that certainty is provided to SCE with respect to its SPVP IPP efforts.

## **O R D E R**

### **IT IS ORDERED** that:

1. The Petition of the Solar Energy Industries Association for Modification of Decisions 09-06-049 and 12-02-035 is denied.
2. Application 08-03-015 is closed.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.