



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE  
STATE OF CALIFORNIA

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Order Instituting Rulemaking to Continue )  
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Renewables Portfolio Standard Program. )

Rulemaking 08-08-009  
(Filed August 21, 2008)

**COMMENTS OF SOUTHERN CALIFORNIA EDISON COMPANY (U 338-E) ON**  
**ADMINISTRATIVE LAW JUDGE'S RULING REGARDING PRICING APPROACHES**  
**AND STRUCTURES FOR A FEED-IN TARIFF**

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**I.**

**INTRODUCTION**

Pursuant to the Administrative Law Judge’s Ruling Regarding Pricing Approaches and Structures for a Feed-In Tariff (“Ruling”) issued August 27, 2009, Southern California Edison Company (“SCE”) respectfully submits these comments.

SCE appreciates Energy Division staff’s efforts to design a program structure that will contribute to the State’s Renewables Portfolio Standard (“RPS”), allocate risk in a fair and equitable manner and not impede or duplicate existing programs. The competitive, market-based pricing structure or Renewable Auction Mechanism (“RAM”) set forth in the System-Side Renewable Distributed Generation Pricing Proposal (“Pricing Proposal”) appropriately looks to the market for competitive pricing. While SCE is supportive of this structure, the program still inequitably places all responsibilities only on the investor-owned utilities (“IOUs”). Such a structure is discriminatory and fails to recognize the roles and accountability that all load-serving entities (“LSE”) share in achieving California’s renewable energy goals. California’s RPS law requires that electric service providers and community choice aggregators shall be “subject to the

same terms and conditions applicable to an electrical corporation.”<sup>1</sup> If the California Public Utilities Commission (“Commission” or “CPUC”) cannot achieve an equitable distribution of feed-in tariff (“FIT”) program requirements across all LSEs, then the Commission should implement a cost allocation mechanism that allows all customers connected to the distribution system to share in the expense of the program.

As noted above, SCE supports the RAM pricing structure. This competitive, market-based approach is consistent with SCE’s preferred RPS procurement efforts and is the approach most likely to result in the execution of contracts for the most competitive products in the market. SCE offers the following recommended modifications, which are discussed in more detail throughout the response:

- Projects should be ranked by value rather than by price alone. A value-based ranking system will account for a project’s quantitative and qualitative attributes and allow for evaluation of a project based on its costs and benefits. Such a structure can provide a mechanism to protect against customers paying inordinately high prices if only a small number of unreasonable bids are received into the auction and allow the IOUs to reject inappropriate bids. If such a value-based ranking system is not adopted, the Commission should provide an off-ramp to release the IOUs from their obligation to execute contracts with unreasonably high bid prices.
- The RAM auction should be open to all RPS-eligible renewable technologies and not be limited to specific types of resource buckets (*i.e.*, baseload, peaking, and non-peaking). While SCE understands Energy Division staff’s reasons for including such a determination, SCE’s current needs are for any near-term, eligible renewable energy resource that can contribute to the State’s renewable energy goals.<sup>2</sup> The value-based

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<sup>1</sup> Cal. Pub. Util. Code Sections 399.12(g)(2) & (3) (emphasis added); *see also* Cal. Pub. Util. Code Section 380(e) (“Each load-serving entity shall be subject to the same requirements for resource adequacy and the renewables portfolio standard program that are applicable to electrical corporations pursuant to this section, or otherwise required by law, or by order or decision of the commission.”)

<sup>2</sup> *See* SCE’s 2009 RPS Procurement Plan.

ranking system will allow different technologies to propose different levelized pricing proposals, and the highest valued proposals will be successful.

- The required minimum number of auctions should be removed. The appropriate number of auctions should be determined through an analysis of each IOU's need in the annual RPS procurement plans or the long-term procurement plan proceeding ("LTPP"). SCE recommends that its FIT auction be offered in parallel with its Solar Photovoltaic ("PV") Program auction to take advantage of existing procurement efforts and resources.
- The proposed interim cap of 1,000 megawatts ("MW") should serve as a total cap, not as an additional amount of renewables to be procured. Contracts executed through other voluntary efforts (*i.e.*, SCE's voluntary Renewable Standard Contracts ("RSC") Program and Solar Photovoltaic Program) should count towards SCE's proportional share of the FIT program cap. LSEs should not be discouraged from proactively advancing future programs that also contribute to achieving the RPS goals.

Finally, pursuant to the Ruling's directive to make a coordinated showing, SCE, Pacific Gas and Electric Company ("PG&E") and San Diego Gas & Electric Company ("SDG&E") attempted to coordinate with other parties to the proceeding. Unfortunately the participants could not reach consensus on the issues. A report on the efforts to coordinate and the results of such attempts are included in a concurrently filed joint IOU document.<sup>3</sup>

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<sup>3</sup> See Joint Comments ("Joint Comments") of San Diego Gas & Electric Company (U 902 E), Pacific Gas and Electric Company (U 39 E), Southern California Edison Company (U 338 E), the Solar Alliance, GreenVolts, the Sierra Club, Baytel and L. Jan Reid on Administrative Law Judge's Ruling Regarding Pricing Approaches and Structures for a Feed-In Tariff.

## II.

### DISCUSSION

#### **A. FIT Pricing Approach**

As SCE understands the Pricing Proposal, the RAM potentially provides a competitive bidding process that will look to the market for pricing and not require the Commission to set prices. As set forth in SCE's prior filings,<sup>4</sup> the Commission's only authority to set power prices for an expanded FIT program is to use an avoided cost price for utilities' purchases from Qualifying Facilities ("QFs") pursuant to the Public Utility Regulatory Policies Act of 1978 ("PURPA") or to use a market-based pricing structure.

#### **B. Energy Division Pricing Proposal (Attachment A)**

1. *Do you agree with the program's goals and guiding principles (see Attachment C for a list of the Guiding Principles)? If you do not agree, please explain.*

Any program designed to contribute towards the State's renewable energy goals should apply equally to all LSEs. As noted above, if the Commission chooses to excuse other LSEs from obligations under the FIT program, then a cost allocation mechanism must be implemented to fairly and equitably allocate the costs of the program. Equitable cost allocation is a critical part of other systems which employ feed-in tariffs. For example, in Germany, costs for feed-in tariffs are not limited to a subsection of electricity customers. All electricity customers share in the costs of providing such service through the attachment of the costs to transmission service.<sup>5</sup>

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<sup>4</sup> See SCE's Opening and Reply Briefs on Jurisdiction in the Setting of Prices for a Feed-in Tariff, dated June 18, 2009 and July 10, 2009.

<sup>5</sup> See KEMA, Inc., "California Feed-In Tariff Design and Policy Options," May 2009, at p. 24 (CEC-300-2008-009F) ("Both Germany and Spain evenly distribute the costs of their feed-in tariff policies nationally. Germany initially limited its feed-in tariff cost distribution within each utility service territory but eventually switched to a broader socialization system in light of cost imbalances and their effect on competition in the electricity industry."); see also KEMA, Inc., "Feed-In Tariff Design and Implementation Issues and Options," June 2008, at p. 51 (CEC-300-2008-003-D) ("A significant portion of the statewide renewable resource base is in SCE service territory. Therefore, adopting a feed-in tariff without some reallocation method may cause some rate impacts to SCE. Germany faced a similar issue, where a majority of the wind capacity was installed in E.On-Netz's service territory in northern Germany. A change to Germany's feed-in tariff was made where the costs

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Ensuring equity within a FIT program will allow for all of California’s electricity customers to further the State’s policy goals, while allowing all LSEs who serve retail load to receive renewable credit in a fair and equitable manner.

SCE supports the majority of the FIT program goals set forth in Attachment C to the Ruling. Some of the stated goals, however, are problematic or unclear. SCE provides specific comments on such goals in the table below.

<b>Goal</b>	<b>Comment</b>
Goal #2: Provide sufficient payment to simulate [sic] untapped market segments at the distribution level and build new projects while minimizing ratepayer costs and preserving competition.	SCE disagrees with any type of subsidized payment, or goal that appears to indicate that the IOUs’ customers should stimulate a certain type of technology or market. The RPS program is technology neutral, and requires procurement of the least-cost, best-fit resources to achieve the State’s renewable goals. It does not require customers to provide sufficient payment to create opportunities for untapped markets.
Goal #3: Focus on projects of a certain size that can effectively mitigate the market and regulatory constraints (such as site control and permitting) that slow down development of larger renewable projects.	SCE agrees that there is value in creating additional opportunities for smaller projects that are viable and price competitive. However, this goal appears to indicate that options are not currently available for such smaller projects. SCE notes that it currently offers its Renewable Standard Contracts Program for such generators outside of the RPS solicitations.
Goal #7: Adopt program design elements and a contract that adequately address project viability.	Project viability is an important design element but should not be the only design element to address the value of renewable projects. All projects should be evaluated through a cost/benefit analysis to better understand the true value of a potential project.

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of the feed-in tariff was allocated to Germany’s transmission system operators on a statewide load-ratio basis. Allocation could be done through trading energy in ‘make-up’ transactions or through cost allocation.”)

Goal #10: Provide sufficient regulatory certainty to create a sustainable marketplace for small distributed generation renewable developers.	The IOUs' customers should be not be responsible for creating a sustainable marketplace for specific technologies.
#13: Economic efficiency	It is unclear what is meant by "economic efficiency" (i.e., cost of technology, program cost, cost recovery, or other economic aspect).
#15: Align performance with demand	This should not be a goal of the program. Rather, the Commission should encourage the lowest cost renewable resources for the State's electric customers. Aligning performance with demand has different value for different IOUs.

2. *Please comment on the strengths and weaknesses of staff's proposed market-based pricing mechanism, including auction design details, using the guiding principles.*

The proposed RAM structure provides a competitive, market-based mechanism which appropriately looks to the market for pricing. The competitive bid process has been a successful mechanism in the RPS solicitations resulting in increasingly robust and diverse proposals each year. To date, SCE's annual RPS competitive solicitations have resulted in more than 49 executed contracts that, once operational, will have maximum renewable energy deliveries of 30 billion kilowatt-hours ("kWh") annually.

The concern with the RAM process is that it also requires utilities to rank projects on price alone and then execute *all* contracts that meet the program's pre-determined criteria, up to the Commission-authorized revenue requirements cap.<sup>6</sup> In the event that only a small number of bidders participate, those sellers could potentially bid inordinately high prices, and the IOUs would have no mechanism to disallow those unreasonable bids. To prevent this possibility (and also preclude the possibility of a small number of sellers controlling a FIT market and forcing unreasonably high prices), the Commission should provide an off-ramp excusing utilities from any obligation to execute such contracts. The best approach is to modify the proposed RAM

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<sup>6</sup> Pricing Proposal, at p.7.

structure so that projects are ranked by value rather than price alone, and include an analysis using the Commission’s Project Viability Calculator. A value-based ranking system maintains the integrity of the program and accounts for a project’s cost-effectiveness and overall benefits to the IOU’s portfolio. IOUs should have the discretion not to execute contracts with projects that fall outside the goals of the program and that are not in the best interests of their customers.

SCE agrees that the prices of individual bids should remain confidential and that any information publicly released must adhere to CPUC confidentiality rules.

3. *If you have specific modifications to the staff proposal, please provide a rationale for the modifications pursuant to the guiding principles.*

SCE proposes modifications to the Pricing Proposal on the following points:

- A. Value-based project ranking
- B. Identification of preferred locations
- C. Resource technology buckets
- D. Frequency of auctions
- E. 1,000 MW interim cap

A. **Project ranking**: SCE proposes that projects be ranked by value rather than price alone to account for quantitative and qualitative attributes and the project’s cost/benefit relationship. Specifically, SCE recommends this analysis include the Commission’s prescribed Project Viability Calculator to assess such factors as the company/development team, technology, and development milestones.

B. **Identification of preferred locations**: The Pricing Proposal states that “IOUs will make information available on preferred distribution substations based on available capacity of that substation, which the IOUs will update on a real-time basis.”<sup>7</sup> SCE will provide the same information it is preparing for the Solar PV Program auction. This information includes potential “project areas” in the form

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<sup>7</sup> Pricing Proposal, at p. 9.

of a zip code and geographic area bounded by landmarks or specific streets. SCE will also indicate an estimate of the approximate available distribution capacity in the area. (Areas that have either experienced growth or where growth is expected are typically good locations for distributed generation.)

Providing these estimates will not warrant economic project viability or the ability of the proposed projects to interconnect without requiring system upgrades or passing the Fast Track interconnection screens. Project areas identified by SCE will only be *potential* project sites based on estimated system needs and should not be interpreted as the *only* possible locations for distributed generation. It is unreasonable and near impossible to provide “real-time” updates, but SCE will endeavor to provide project area updates as often as possible and prior to the issuance of each auction.

- C. **Resource technology buckets:** The RAM auction should not require the IOUs to limit the auction through a requirement to fill specific resource buckets (*i.e.*, baseload, peaking, and non-peaking). While SCE understands Energy Division staff’s reasons for including such a determination, SCE’s current needs are for any near-term, eligible renewable energy resources that can contribute to the State’s renewable energy goals.<sup>8</sup> The value-based ranking system will allow different technologies to propose different levelized pricing proposals, and the highest valued proposals will be successful. A specific breakdown by resource bucket may be needed in the future, but the IOUs should have the flexibility to use them if future planning assessments dictate such a need.

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<sup>8</sup> See SCE’s 2009 RPS Procurement Plan.

**D. Frequency of auctions:** The Pricing Proposal proposes a minimum of two auctions per utility per year.<sup>9</sup> The procurement plan analysis through the RPS procurement plan or the LTPP may warrant a higher or lower frequency of auctions and thus the IOUs should not be tied to a fixed number of auctions. Further, any FIT auction be offered in parallel with other procurement efforts (*i.e.*, SCE's Solar PV auction, etc.) to maximize administrative efforts, minimize program costs, and reduce confusion in the marketplace.

**E. 1,000 MW cap:** The Pricing Proposal suggests an additional, interim 1,000 MW cap over the next four years. SCE disagrees. Since the RAM will apply to an extension of the existing FIT, the cap should be inclusive of both the existing and the expanded programs. To SCE's knowledge, the proposed cap is not based on any analysis or data that would warrant its adoption. Considering that the existing FIT tariff has a statewide cap of 500 MW, and that less than 2% of that cap has been reached,<sup>10</sup> an additional 1,000 MW cap for the expanded program alone is unwarranted.

Additionally, contracts that the IOUs have already executed or are about to enter through their voluntary programs (*i.e.*, SCE's Renewable Standard Contracts, Solar PV Rooftop Program auction, etc.) should count toward the cap. The Commission should encourage market buyers to propose voluntary programs or take action without enforcement. Sellers should not be penalized for responding to market needs and proactively creating other procurement opportunities to meet the RPS goals.

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<sup>9</sup> Pricing Proposal, at p. 8.

<sup>10</sup> See CPUC presentation at the CEC Committee Workshop: Feed in Tariffs on May 28, 2009 by Brendan Keeler, at p. 10 (illustrating that the IOUs have collectively signed 10.695 MW of projects under the existing feed-in tariff).

4. *If RAM is not your preferred pricing mechanism, please provide an alternative proposal that addresses the guiding principles and how your proposal results in the procurement of viable and low-cost projects within a capped program.*

SCE supports the RAM pricing structure with the modifications outlined above.

5. *Staff has proposed a soft 1000 MW interim target over the next four years, which needs to be converted into a revenue requirement. Please propose a methodology to calculate the revenue requirement based on the 1000 MW interim target. Parties should address, at a minimum:*

- *Definition of renewable products (e.g. peaking “as-available”, non-peaking “as available,” and baseload*

SCE currently uses least-cost, best-fit criterion to select projects and suggests a similar process for the RAM. This process takes into account time-of-delivery (“TOD”) factors in the contract payments made to selected projects. SCE would expect to use TOD factors to define products as on-, mid- and off-peak, if necessary, for the revenue requirement calculation. For illustrative purposes, SCE provides its current TOD periods and factors in the chart below.

**Time-of-Delivery (TOD) Periods and Factors<sup>11</sup>**

<u>Time of Delivery Periods (“TOD Periods”)</u>			
<i>TOD Period</i>	<i>Summer Jun 1st – Sep 30th</i>	<i>Winter Oct 1st – May 31st</i>	<i>Applicable Days</i>
On-Peak	Noon – 6:00 p.m.	Not Applicable.	Weekdays except Holidays
Mid-Peak	8:00 a.m. – Noon	8:00 a.m. - 9:00 p.m.	Weekdays except Holidays
	6:00 p.m. – 11:00 p.m.		Weekdays except Holidays
Off-Peak	11:00 p.m. – 8:00 a.m.	6:00 a.m. – 8:00 a.m.	Weekdays except Holidays
		9:00 p.m. – Midnight	Weekdays except Holidays
	Midnight – Midnight	6:00 a.m. – Midnight	Weekends and Holidays
Super-Off-Peak	Not Applicable.	Midnight – 6:00 a.m.	Weekdays, Weekends and Holidays

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<sup>11</sup> [http://www.sce.com/NR/rdonlyres/39D2957B-E51C-4FDA-A59F-D4AFA0FA451B/0/20090629\\_RFP\\_Time\\_of\\_Delivery\\_Periods.doc](http://www.sce.com/NR/rdonlyres/39D2957B-E51C-4FDA-A59F-D4AFA0FA451B/0/20090629_RFP_Time_of_Delivery_Periods.doc)

<u>Energy Payment Allocation Factors</u>			
<i>Season</i>	<i>TOD Period</i>	<i>Calculation Method</i>	<i>Energy Payment Allocation Factor</i>
Summer	On-Peak	Fixed Value.	3.13
	Mid-Peak	Fixed Value.	1.35
	Off-Peak	Fixed Value.	0.75
Winter	Mid-Peak	Fixed Value.	1.00
	Off-Peak	Fixed Value.	0.83
	Super-Off-Peak	Fixed Value.	0.61

- *Preferred resource mix of the renewable DG portfolio. The preferred resource mix should be broken down by megawatts of specific renewable products and then by commercialized technologies that conform with the renewable product definitions identified above.*

Currently, SCE does not make renewable procurement decisions based on technology specific preferences. Rather, SCE’s near-term need is for any renewable energy that meets the requirements of the RPS program. Renewable need is simply based on the amount of renewable energy required to reach the annual procurement target (“APT”). By not discriminating among projects based solely on technology, SCE has greater flexibility to select the projects best suited for attaining the State’s 20% renewable energy goal.<sup>12</sup> The introduction of the RAM and the FIT program should continue to maximize competition and remain technology neutral. Increased competition will help to decrease prices in the auction while neutrality to technology is consistent with the current RPS structure that does not favor one technology over another. Accordingly, the auction should be available to all RPS-eligible technologies and not differentiated by renewable products. For these reasons, SCE does not recommend any initial use of technology limits in the program. Instead, a least-cost, best-fit scoring criterion similar to that used with existing RPS solicitations should be used by the buyer to choose the optimal mix of resources for their customers.

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<sup>12</sup> See SCE’s 2009 RPS Procurement Plan.

- *Cost and capacity factor for different renewable technologies that were identified above in the preferred resource mix.*

It is unclear what the interim cap is and what portion of the interim cap will be allocated to SCE. This uncertainty makes it difficult to provide specific recommendations for a revenue requirement cap. Notwithstanding those limitations, one possible option to convert the currently proposed 1,000 interim MW cap into an annual revenue requirement is to divide the 1,000 MW by four years of the program resulting in 250 MW. This amount can then be multiplied by an average overall capacity factor comparable to existing renewable resources and the most current MPR. For example:

250 MW \* 25% capacity factor<sup>13</sup> \* 8760 hours/yr \* \$110/MWh<sup>14</sup> = \$60 million annual revenue requirement

Since selected projects are likely to be both above and below the MPR, the revenue requirement calculation set forth in the option above may result in less than 1,000 MW if the majority of bids selected are above the MPR.

Prior to the development of any revenue requirement, the Commission should first consider how this process will interact (or compete) with Senate Bill (“SB”) 32, a feed-in tariff for renewable projects up to 3 MW.<sup>15</sup>

6. *Additional comments regarding the Energy Division FIT pricing proposal.*

Public Utilities Code Section 399.15(d), which was added to the RPS statute in SB 1036, establishes a cost limitation on each IOU’s total costs expended above the MPR for the procurement of renewable resources. Section 399.15(d) also provides that IOUs shall only be required to procure contracts from renewable energy resources at a cost above the MPR until

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<sup>13</sup> This is an illustrative value. SCE recommends that the capacity factor performance of California’s existing renewable fleet and SGIP/CSI data be reviewed to establish a specific value.

<sup>14</sup> This represents the adopted 2008 MPR for a 15-year contract, with an on-line date of 2011. See Resolution E-4124.

<sup>15</sup> SB 32, Negrete McLeod, Renewable electric generation facilities, chaptered October 11, 2009.

their cost limitations are exhausted. Consistent with current law, the Commission must apply any above-MPR costs of an expanded FIT program towards each IOU's cost limitation. An expanded FIT program must not require IOUs to procure renewable energy resources at a cost above the MPR after their cost limitations are exhausted because such a requirement would be inconsistent with the RPS legislation.

**C. Pricing Structure Issues (Attachment B)**

In particular, comments should identify and discuss the following 14 items:

*1. Who are the stakeholders with respect to the FIT?*

In general, the stakeholders with respect to the FIT are most likely buyers, sellers, regulators, and retail customers.

*2. What are the interests of those stakeholders relative to the FIT?*

Individual stakeholder interests vary, and SCE can only speculate regarding such interests. In general, however, the interests of stakeholder groups are most likely as follows:

- Buyers (energy service entities or IOUs) are interested in achieving the State's RPS goals through procurement of renewables under a least-cost, best-fit analysis, as determined by the Commission.
- Sellers are interested in selling a product that offers a reasonable return on investment, over a fixed term.
- Regulators are interested in developing and overseeing programs and processes that will contribute to the State's RPS goals, being responsive to parties, and supporting programs at the lowest cost to ratepayers.
- Retail customers are generally interested in the lowest cost impact to their bills.

3. *What price components may be used in various pricing approaches and structures, and what are the advantages and disadvantages relative to each price component?*

SCE supports the use of an all-in price that is adjusted by TOD factors. This represents the current payment structure used with projects selected through the RPS solicitations, the existing FIT program,<sup>16</sup> and SCE's Renewable Standard Contracts program. There is no reason to deviate from this approach for an expanded FIT program. Sellers may choose to include escalation factors in their bids, depending on their business needs.

4. *What is the best combination of price components to meet stakeholder interests?*

Please see response to question number three above.

5. *If there are competing stakeholder interests, what is the best combination of price components to reasonably balance competing interests?*

The best combination of price components will effectively balance the interests of all parties, providing a shared risk and a shared reward. The costs of FIT contracts will ultimately be passed onto customers and recovered through rates. LSEs have a responsibility to their customers to procure the most-cost effective resources that achieve their long-term and near-term goals. Therefore, the primary interest of the FIT should be to obtain the best projects at the lowest cost to customers.

6. *Discuss whether or not the Commission should state a preference for certain price components and price structures to be used in a Commission-adopted FIT. If so, identify and discuss which components and structures should be preferred by the Commission.*

As noted in the Pricing Proposal,<sup>17</sup> sellers should bid the price at which they are willing to build and develop their projects. The bid price should reflect a levelized, all-in price for energy and capacity. Each IOU will apply their relative TOD factors in their evaluation of the bids. Sellers may choose to propose offers with or without escalation factors. Parties should always be encouraged to explore alternative structures as the market continues to evolve. These

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<sup>16</sup> SCE administers the existing feed-in tariff under the California Renewable Energy Small Tariff ("CREST").

<sup>17</sup> Pricing Proposal, at p. 10.

alternative structures should be left to the market participants to decide if they are superior to the traditional structure or not and should not be subject to a regulatory mandate.

7. *Discuss whether or not the Commission should require certain price components and price structures to be used in a Commission-adopted FIT. If so, identify and discuss which components should be required by the Commission.*

Please see response to question number six above.

8. *State anything else that is material and relevant to the issue of pricing structure (rate design) for a Commission-adopted FIT.*

N/A

*In addition, please comment on the following specific examples for a twenty year contract. Each example applies to any FIT pricing approach (e.g., price based on seller's cost, buyer's avoided cost, auction, bi-lateral negotiation, other).*

9. *Example A: If the sole or primary interest is to ensure cost recovery for the project, the optimal payment may be a lump sum at the commercial operation date. Please comment.*

Although a lump sum, up-front payment could provide an incentive that projects are constructed, this scenario gives the seller a greater incentive not to perform under the contract terms, or to walk away from the contract entirely. The buyer of the energy and capacity would have no recourse against such a failure to perform. A lump sum prepayment leaves the buyer (and therefore ultimately customers) to absorb 100% of the energy production and delivery risk. This imbalance is inconsistent with goal number six of the proposed expanded FIT program, which is to “equitably allocate risk, relative to project size, between the buyer and the seller.”<sup>18</sup> Although it may be possible to implement credit strategies to hedge against the risk that sellers would not deliver pursuant to the contract, the implementation of such credit strategies are impractical and would likely be more costly than the up-front payment itself.

Even in the unlikely event that adequate credit strategies could be implemented, the IOUs could not rely on the delivery of energy from these contracts to serve their load. As discussed

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<sup>18</sup> See Attachment C to the Ruling.

above, this pricing structure may encourage a failure to perform, making delivery of the FIT contract energy completely uncertain. If sellers under an expanded FIT program fail to deliver energy pursuant to their contracts, the FIT program will not facilitate meeting the State's climate change and RPS goals.

SCE strongly recommends against using a lump sum, up-front payment pricing structure. The sole or primary interest of any FIT program is not merely to ensure cost recovery for the project. It is equally important to ensure that electric customers are protected against financing projects that will not ultimately deliver as provided under the contract.

*10. Example B: If the project has both fixed and variable costs and the sole or primary interest is to ensure cost recovery for the project, the optimal payment may be a lump sum at the commercial operation for the fixed costs and payment of variable costs as incurred over time. Please comment.*

This example presents the same problem as Example A: it provides no protection for customers against developers who do not fulfill their contractual obligations, and the risk of a failure to provide energy deliveries is absorbed entirely by the buyer and its customers. Any payment for variable costs would need to be based on a "pay for performance" methodology, not "as incurred over time." The buyer and seller both need an understanding of the expected revenue stream. As discussed above, a lump sum, up-front payment pricing structure means that the buyer of the energy and capacity would have no recourse against the seller's failure to perform under the contract. SCE's experience in negotiating power purchase contracts with non-utility generators indicates that lump sum payments are not necessary to enable project owners to finance equipment capital costs, provided that the payment stream is reasonably defined and predictable. Banks, not IOUs, are the proper entities to serve in the role as financing institutions for these projects. SCE would not support such a structure where there is no balance of interests or risks.

11. *Example C: Assume that the primary interests are revenue certainty for the seller, conservation (i.e., optimal use of resources), efficiency and equity. Assume that the selected payment structure is a combination of fixed (e.g., dollars per month) along with demand and energy prices; the demand price (dollars/kW per month) is at a fixed level (dollar amount) in the contract for the life of the contract and paid upon performance (delivery); the initial energy price (cents/kWh) is fixed in the contract, payment varies by time of delivery (TOD) based on TOD factors, is paid based upon performance (delivery), and the energy rate is adjusted to the market once every 5 years. Under this price structure, perhaps the fixed payment provides revenue security for the project; the demand and energy rates provide an incentive for performance; and the periodic adjustment to the market provides assurance to both the project and ratepayers that prices never vary too drastically from current market realities while the seller's variable costs (to the extent they vary with the market) are recovered without over- or under-payment, thereby promoting efficiency and equity. Is this an optimal price structure? Please comment.*

The payment structure in this example<sup>19</sup> is a step in the right direction in that it provides *some* equitable allocation of risk between the seller and the buyer through the “pay for performance” element in the demand and energy payment. The proposed periodic adjustment to energy payments to reflect market prices is an additional risk-balancing feature. However, these positive aspects are largely negated by the third payment component, the fixed dollars per month. If this fixed payment is large enough to cover the fixed costs of the generation equipment, regardless of whether the system produces energy or not, then customers are still assuming an inappropriate share of the performance risk. To the extent that such a project could have been financed under a 100% pay for performance payment structure, the ratepayers are underwriting, or subsidizing, the financing of the project. This result does not align with the principles of the program.

Finally, this example offers little certainty around the revenue stream for either the buyer or the seller. The quandary with a floating market based energy price is that neither the

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<sup>19</sup> It is not clear in this question how "conservation" and "efficiency" are defined. Conservation of resources (economic and natural) and efficiency (economic) might best be best balanced with a payment structure that is reasonably based on market alternatives available to the intended customers for the energy produced. Alternatively, the meaning of “conservative” could be in the context of using the fuel resource at optimal times. In this sense, and from a seller’s perspective, “conservation” is irrelevant for an intermittent renewable resource. The value of the production tax credit incentivizes them not to conserve. Conservation would only come into play for a fossil-fueled generator that should conserve when market prices are low and run when market prices are higher.

purchaser nor the producer knows the forward price; neither has certainty. This means there is both production risk (*i.e.*, how much will be produced?) and price risk (*i.e.*, what is paid?). Both of these risks will make project financing extremely difficult and costly, if not impossible. These risks could potentially be managed by each party if they are free to determine the necessary performance obligations that fit each party's need. A "standard" contract will not afford such flexibility. If the goal of the expanded FIT program is to have standard agreements, the contract terms and conditions will have to be carefully evaluated to ensure that both parties have appropriate options to pursue. SCE recommends against using this pricing structure.

12. *Example D: Assume the price structure is an energy payment only, and the initial average overall price is \$0.25/kWh to be paid by TOD factors set in the standard contract. To balance competing interests (e.g., revenue security, conservation, efficiency, equity), assume the payment is 80% fixed and 20% variable. That is, \$0.20/kWh is paid for each delivered kWh over the life of the contract. The remainder, \$0.05/kWh, is paid the first 5 years, and is then subject to adjustment to reflect the current market (e.g., formula in the contract that based on an index to model seller's variable costs), and is adjusted again at years 10 and 15. The TOD factors are updated once at year 10 to align with the current TOD profile of the buyer. This price structure might satisfy several interests including (a) simplicity (*i.e.*, based only on energy price), (b) providing some certainty to the seller of the payment type (energy only) and amount (with 80% fixed and 20% subject to adjustment), (c) payment upon performance (to provide the incentive to produce), (d) payment based on TOD (to provide the incentive to provide the product when needed), (e) an update to a portion of the price (to align with the market), (f) an update to TOD factors periodically (to align TOD factors with current market needs in order to give the seller an incentive to shift production, if possible, to the times the electricity is needed), and (g) revenue certainty for the majority (80%) of the payment (perhaps a benefit to the project) while aligning a portion (20%) of the total payment with the current "market" (a potential benefit to the project if the project has variable costs that vary with market conditions, and a potential benefit to ratepayers so the total payment does not get too far out of alignment with market realities). Please comment.*

This example provides a fixed energy price component similar to the forecast energy price option provided to renewable Qualifying Facilities ("QF") under the Interim Standard Offer No. 4 ("ISO 4") contracts approved by the Commission in the early 1980s. As such, it embodies significant risks of overpayment for ratepayers (and a windfall for project owners) similar to those experienced during the life of the ISO 4 contracts.

The forecast energy payments under the ISO 4 agreement (which could be paid on either a levelized cents/kWh price or an escalating series of prices at the producer's election) was based

on a forecast of utility avoided cost of energy that turned out to be higher than actual market energy prices for most of the term of these contracts (which extended up to 30 years). As a result, ratepayers were saddled with overpayments for energy from these projects for many years. In light of this experience, the Commission should approach fixed payment schemes as proposed in this example with extreme caution.

More specifically, the proposal here to offer a fixed component for 80% of the energy price (*i.e.*, 20 cents/kWh) for the entire 20 year term of the contract imposes the same price risk on ratepayers for an even longer period than the ISO 4 contract did.<sup>20</sup> In addition to the extreme ratepayer risk associated with the fixed prices being above market, in the event that pricing under this example falls below market prices, project owners might be tempted to cease operating under the FIT and seek other opportunities to sell their power. Unless mitigated by appropriate security requirements or contract sanctions, this scenario would force SCE's customers to bear the risk of having to pay for replacement power from other sources to make up the shortfall left by defaulting FIT producers. SCE strongly recommends against this scenario.

*13. Example E: Payment is made upon performance (i.e., an energy price paid in cents/kWh). Renewable technologies (with storage) that can guarantee on-peak energy are encouraged (e.g., photovoltaic with storage would receive a different FIT level of payment than photovoltaic without storage). To avoid over payment/under payment, FIT price levels are revisited annually and revised according to the amount of energy delivered. Revised prices apply to new contracts, but not existing contracts. If the amount of new FIT generation exceeds 2 percent of retail sales, FIT price levels should drop by 10 percent. Please comment.*

This payment scheme combines several elements that are problematic. First, the decision whether to include storage should be left to the project owner, relying on the pricing signals provided by the utility TOD weighting factors. To set up an administratively determined price premium for projects that have storage, as this example suggests, is to take on the task of

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<sup>20</sup> Under the ISO 4 contract, the project owner was paid for energy under the forecast for a "First Period" that was limited to 10 years for contracts with a term of 20, 25 or 30 years. For contracts with a 5 year term length, the forecast was only available for the first 5 years. After the First Period, energy payments were based on avoided cost.

determining the value of energy storage and extends the purpose of the FIT from facilitating renewable distributed generation to providing direct incentives for storage.

Second, the proposal to revise price levels annually is not clear regarding (1) what the over/under payment benchmark is (market?), and (2) how and why the price adjustment would be based on "amount of energy delivered." If the prices are set by market proposals, the adjustment mechanism outlined in the pricing proposal becomes unnecessary. Assuming that this is related to the concluding statement that FIT price levels should drop by 10% if new FIT generation exceeds 2% of retail sales, this seems like an arbitrary and indirect way of determining an appropriate FIT price.

SCE is supportive of a pricing structure that allows different technologies (e.g. with or without storage) to propose different levelized pricing proposals and the highest value proposals to be selected through the competitive process. The current RPS pricing structure of an all-in pricing adjusted for TOD payments provides this type of system and should be continued for an expanded FIT program. Projects receive monthly payments, based on metered amounts, and continue for the term of the contract (10, 15, or 20 years). If the prices for projects are set by market proposals, the adjustment mechanism outlined in Example E will be unnecessary.

*14. Other examples: Please provide other reasonable examples and explain whether or not the Commission should consider or adopt elements of those examples.*

The Commission should adopt a pricing structure that includes components that are consistent with the Commission-approved contracts already in use in the RPS program, the existing FIT program, and SCE's Renewable Standard Contracts program. There is no reason to deviate from this approach for an expanded FIT program.

*15. Based on a consideration of the range of stakeholder interests, various candidate price components and examples, please state the specific price structure (rate design), if any, you recommend be adopted by the Commission.*

SCE recommends a pay for performance methodology as opposed to a lump sum payment, or fixed price/variable cost strategy. The current structure of all-in pricing, adjusted

for TOD payments, appropriately balances risk among both the buyers and sellers and should be continued for an expanded FIT program.

**D. Price-Related Goals of a FIT (Attachment C)**

Please see response to question B(1) above.

**E. Assessment of Recommendations on FIT Pricing (Attachments D and E)**

Please see Joint Comments.

**F. Proposal to Take Official Notice of California Energy Commission FIT Final Consultant Report**

The Commission may take official notice of certain matters pursuant to Rule 13.9. As set forth in the Ruling, the proposed official notice will be only of the material and information in the document but not the truth of any of the material or information in the document.<sup>21</sup>

**G. Additional Material Information**

SCE recommends that all contracts executed through the RAM auction process be submitted to the Commission for approval under a single Tier 2 Advice Letter, following each auction.

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<sup>21</sup> Ruling, at p.5.

**III.**

**CONCLUSION**

For the foregoing reason, SCE respectfully requests that this Commission incorporate the above recommendations into the decision on an expanded FIT program.

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October 19, 2009

**VERIFICATION**

I am a manager in the Renewable and Alternative Power Department 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 **19th day of October, 2009**, at Rosemead, California.

/s/LAURA I. GENAO

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**CERTIFICATE OF SERVICE**

I hereby certify that, pursuant to the Commission's Rules of Practice and Procedure, I have this day served a true copy of **COMMENTS OF SOUTHERN CALIFORNIA EDISON COMPANY (U 338-E) ON ADMINISTRATIVE LAW JUDGE'S RULING REGARDING PRICING APPROACHES AND STRUCTURES FOR A FEED-IN TARIFF** on all parties identified on the attached service list(s). Service was effected by one or more means indicated below:

Transmitting the copies via e-mail to all parties who have provided an e-mail address. First class mail will be used if electronic service cannot be effectuated.

Executed this **20th day of October, 2009**, at Rosemead, California.

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**PROCEEDING: A0803015 - EDISON - TO IMPLEMEN  
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