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

Order Instituting Rulemaking to Continue ) Rulemaking 08-08-009  
Implementation and Administration of ) (Filed August 21, 2008)  
California Renewables Portfolio Standard )  
Program. )  
\_\_\_\_\_ )

**NOTICE OF EX PARTE COMMUNICATION**

Pursuant to Rule 8.3 of the Commission's Rules of Practice and Procedure, Solutions For Utilities, Inc. (SFUI) submits this Notice of Ex Parte Communication regarding the above-captioned rulemaking.

Today, May 5, 2010, the President of Solutions For Utilities, Inc. sent an email to Commission President Michael R. Peevey and Administrative Law Judge Burton Mattson assigned to this proceeding. A copy of that email follows:

**From:** Mary Hoffman [mary@solutionsforutilities.com]  
**Sent:** Wednesday, May 05, 2010 12:20 PM  
**To:** 'as2@cpuc.ca.gov'; 'bwm@cpuc.ca.gov'  
**Subject:** R.08-08-009 All Party Meeting on May 6, 2010

May 5, 2010

To President Peevey and Administrative Law Judge Mattson,

Thank you for the All-Party Meeting and this discussion.

The Meeting Notice, Attachment A to ALJ's Ruling Regarding Notice of Meeting, states:

"The purpose of the All-Party meeting is to discuss the utilities' respective interpretation and enforcement of the curtailment provisions of RPS contract as applied to existing contracts, as well as **prospectively**, for contract that have not yet been submitted to the

Commission pursuant to the utilities' 2010 RPS procurement plans."

And continues in the fourth paragraph,

"Respondents should come to the meeting prepared to discuss their positions on the curtailment issue as well as to **discuss the implications of the utilities' respective curtailment provisions and interpretation thereof on project financing and viability.**"

This discussion also affects prospective Independent Power Producers (IPPs) with CREST Agreements with Southern California Edison (SCE), under the RPS Feed-In-Tariff Program. SCE's Feed-In-Tariff Contracts are titled "CREST Agreements". IPPs with current or prospective RPS contracts are in the same position as those holding CREST Agreements, so any Commission decision should address the issues of the CREST-Agreement holders, also.

SCE's 2010 CREST (Feed-In Tariff) Agreement can be found at: <http://www.sce.com/NR/sc3/tm2/pdf/2419-E-A.pdf>

There are three paragraphs in SCE'S CREST Agreement that we would bring forward for discussion regarding project financing and viability. These are found in the "EXCESS" Agreement.

Paragraph 4.2:

"4.2 SCE may elect to terminate this Agreement at 12:01 A.M. on the 61st day after SCE provides written Notice pursuant to Section 10 of this Agreement to the Producer of SCE's intent to terminate this Agreement for one or more of the following reasons:

(a) A change in applicable Tariffs as approved or directed by the Commission or a change in any local, state or federal law, statute or regulation, any of which materially alters or otherwise materially affects SCE's ability or obligation to perform SCE's duties under this Agreement."

Paragraph 14.2:

"14.2 This Agreement shall, at all times, be subject to such changes or modifications by the Commission as it may from time to time direct in the exercise of its jurisdiction."

Paragraph 14.3:

"14.3 Notwithstanding any other provisions of this Agreement, SCE shall have the right to unilaterally file with the Commission an application for change in rates, charges, classification, service, Tariffs or any agreement relating thereto; pursuant to the Commission's rules and regulations."

Paragraph 4.2 appears to state that SCE has the right to terminate a Feed-In- Tariff Contract, upon writing a letter, if a change in tariffs at any level occurs which "materially alters or otherwise materially affects SCE's ability or obligation to perform..." A banker, who is considering financing the project for many years, and the IPP, who is considering the contract for a 20-year period, would give serious pause to the implications of curtailment by SCE using this contract language. To monitor any change in tariffs, local, state or Federal law, statute or regulation for 20 years, with the potential of your project being shut down with a 60-day letter, is not contract language that would support project financing and viability of bringing projects online.

Likewise, SCE's CREST paragraphs 14.2 and 14.3 should be included in the discussion at the All-Party meeting.

Paragraph 14.2 would appear to indicate that the executed contract between the parties can change at any time during the 20-year contract term. Is that the intent of the CPUC with regard to RPS contracts and Feed-In-Tariff contracts? From a project financing point of view, that is questionable because, as it stands today, for example, the MPR could go down and the project would not be economically viable. The 2009 MPR went down from the 2008 MPR. Hypothetically, in year three or four of the contract, if the MPR was still being used and it went down to some quantifiable extent, the IPP may not be able to make their payments due to lenders. A negotiated or standard term contract that could then potentially change multiple times due to changes or modification made by the Commission over a 20-year period, as stated in paragraph 14.2, is not conducive to project financing and viability.

Paragraph 14.3 appears to indicate that SCE shall have the unilateral right to file with the Commission for permission to change the terms of an executed contract. The implications for a lender and IPP of this contract language is not conducive to securing project financing nor to a comfort level that the project will be viable for its contract term of 20 years.

Thank you for your consideration of the Feed-In Tariff contract language implications on project financing and viability during the RPS All-Party Meeting.

Sincerely,

/S/ Mary Hoffman  
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cc: Service List R.08-08-009 per Rule 8.3 Notice of Ex Parte Communication

To receive a copy of this Ex parte Notice, please contact Mary Hoffman at 760.724.4420, or mary@solutionsforutilities.com.

Respectfully submitted,

/S/ Mary Hoffman

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May 5, 2010

Certificate of copy sent electronically

To reduce the burden of service in this proceeding, the Commission will allow the use of electronic service, to the extent possible using the electronic service protocols provided in this proceeding. All individuals on the service list should provide electronic mail addresses. The Commission and other parties will assume a party consents to electronic service unless the party indicates otherwise.

I hereby certify that I have this day served the foregoing document "Notice of Ex Parte Communication" under CPUC Docket Case No. R.08-08-009. Service was effected by one or more means indicated below:

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

Executed this 5th day of May, 2010 for the Rulemaking R.08-08-009.

/S/ Mary Hoffman

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