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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.)
_____)

**PETITION FOR MODIFICATION OF DECISION D.07-07-027 IN RULEMAKING R.06-05-027
(CONTINUED IN RULEMAKING R.08-08-009)**

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Dated: June 18, 2010

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I.

BACKGROUND INFORMATION

Pursuant to Rule 16.4(a) of the Commission's Rules of Practice and Procedure, Solutions For Utilities, Inc. ("SFUI") files this Petition for Modification of Decision D.07-07-027, mailed on July 27, 2007, to ask the Commission to make changes to an issued decision. Rulemaking R.06-05-027 has been closed and Rulemaking R.08-08-009 is the continuation proceeding.

Pursuant to Rule 16.4(b), the justification for the requested relief is that D.07-07-027 has resulted in Feed-In-Tariff program contract documents that comport with project economics, financial viability, nor acceptable credit risk for renewable generators, their lenders, nor their equipment procurement contractors.

We would ask the Commission to take official notice of the verifiable historical data that, in approximately two years, the Feed-In-Tariff Program has resulted in maybe one hand full of projects.

Specific wording to carry out requested modifications to the Decision will be discussed below. When these requested modifications are looked at as a package, they combine to result in a decision by potential lenders that they will not lend under these contract terms and conditions.

Pursuant to Rule 16.4(d) and (e), D.07-07-027 was issued July 26, 2007. SFUI was not involved with CPUC proceedings until approximately May, 2008. SFUI was not a party to R.06-05-027. SFUI has participated in R.08-08-009, which is the

continuation of R.06-05-027, as a party, since approximately 4-29-09. Prior to April/May, 2009, SFUI had participated as "information only."

As early as December 9, 2008 SFUI has posted "Comments," "Reply Comments," and an "Ex Parte Communication Notice," raising serious concerns about SCE's CREST Agreement terms and pricing for the Feed-In Tariff. Please see Attachment 3 hereto, SFUI's December 9, 2008 "*Comments of SFUI on Rulemaking R.08-08-009 ALJ Mattson's Ruling Requiring Draft Revised Tariffs Based on SB380*".

However, SFUI was not aware of the reality that D.07-07-027 has created contract documents and payment terms that could not be funded in the real-world marketplace. In discussions within the past 30 days, approximately, with lenders and project developers regarding funding and development of SFUI's Solar Farm #1, SFUI was informed that SCE's CREST Agreement and its Appendices were not financially viable nor an acceptable credit risk on the basis of the SCE CREST documents alone. Therefore, the Request for Modification is presented at this time because the reality of nonfinanceable projects due to the contract documents has just recently been found in the marketplace by SFUI.

II(a)

Request modification of Decision D.07-07-027 at page 8, Section 3.2

Entitled "Standard Contract"

Quote:

"We do so noting that, while the proposed tariff/standard contract package requires each seller to select limited items (e.g., term of contract), the package is otherwise on a "take it or leave it" basis. We agree with this approach. The fundamental principle here is a simple, streamlined program. A potential seller can review the tariff, standard contract and rates; perform its own analysis; and make necessary decisions (e.g., contract length, whether to sign the contract). The seller does not need to incur potentially substantial time and expense in lengthy or complex negotiations. A seller may elect to engage in negotiations, but the resulting deal would then be a bilateral or other type of contract, and outside the scope of the Section 399.20 tariff/standard contract program."

Section 3.2 appears to be at odds with the State's goals as reflected in Feed-In-Tariff legislation such as AB 1969 and SB 380. If the contract documents

are so skewed to the utility company's favor that neither a lender nor a renewable developer could agree to project viability under these circumstances, then the Feed-In-Tariff program will never work.

Decision D.07-07-027 at page 54, "Findings of Fact," Item 3 states:

"3. A "take it or leave it" tariff/standard contract (i.e., one that does not require substantial negotiation between buyer and seller) is consistent with the Commission's fundamental goal here of a simple and streamlined program."

And at page 58, "Conclusions of Law", Item 4 states:

"4. Other than the seller selecting limited items with the contract (e.g., contract terms, full buy/sell or excess sales), the standard contracts should be "take it or leave it" (i.e., not require seller to engage in substantial negotiation to complete the transaction).

The Commission's intention of streamlining the negotiations has had the unintended consequence of creating contract documents that are not conducive to project viability nor successful project economics.

Attachment 1 hereto is a June 2, 2010 letter from bancpacific to Julie Fitch, Director, Energy Division, which describes just one facet of the deficit in the contract documents that render them financially not viable and not an acceptable credit risk to the lenders. In Mr. Swift's letter he indicates that, without the CREST Agreement having a minimum guaranteed payment to the renewable generator, who potentially has been curtailed by the utility company even though the generator was ready and able to deliver energy, the project does not pass the acceptable credit risk test. Lenders are typically looking for a minimum guaranteed payment of 125% of the monthly debt service.

Pursuant to Rule 16.4(b), the following are suggestions to carry out the requested modifications to the Decision. SCE's 2010 CREST (Feed-In Tariff) Agreement can be found at: <http://www.sce.com/NR/sc3/tm2/pdf/2419-E-A.pdf>
The Form 14-785 SCE CREST EXCESS Agreement is being quoted herein.

1. Add to the CREST Agreement: "Buyer has a right to require the Seller to curtail without compensation for up to 20 hours each year, which 20 hours annually will be spread evenly over a 12-month period."

2. Add to the CREST Agreement: "If Buyer orders Seller to curtail output over the monthly allotment (based on 20 hours annually), Buyer agrees to pay Seller for energy that Seller was ready, willing and able to output at Seller's contracted rates."

3. Delete Paragraph 4.2 in its entirety.

"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."

4. Delete Paragraph 14.2 in its entirety:

"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."

5. Delete Paragraph 14.4 in its entirety:

"14.4 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."

Discussion: Paragraph 4.2 states 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 renewable generator who is considering the contract for a 20-year period, would not agree to such a condition. 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 acceptable.

Paragraph 14.2 appears 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 not acceptable. The lender and generator need certainty to pass the project viability, project economics and acceptable credit risk assessments.

For example, the MPR could go down year after year, and SCE would impose paragraph 14.2, and the project could become economically unviable. 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 generator may not be able to make their payments due to lenders. In other words, a negotiated or standard term contract 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.

Paragraph 14.4 appears to imply that SCE shall have the unilateral right to file with the Commission for many items, which the utility could then invoke paragraph 14.2 to change an executed contract with the generator, and again over the life of the contract term. The implications for a lender or a generator 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.

II (b)

Request for Modification to SCE's CREST Agreement Appendix B, entitled "Interconnection Facilities Financing and Ownership Agreement"

Appendix B to the SCE CREST Agreement is the IFFOA. The request for modification is to strike the IFFOA and its attachments in their entirety. The parties have presented alternative contracts, such as the German Wind Energy Association's four-page contract or the Gainesville, Florida Feed-In Tariff Contract of five pages.

SCE's IFFOA at paragraphs 4.1, 10.10, 10.2 and 10.3 indicate that payment for the estimated costs of the interconnection equipment is payable to the utility company within 30 days after presentation of an invoice. That invoice may be

presented at any time after the IFFOA has been executed. Also, that the developer may be responsible for any and all of the costs of the interconnection facilities whether or not construction has started on those facilities. Paragraph 10.2 further states that the actual book cost of the interconnection facilities and a retroactive adjustment between the estimated cost and the actual book cost may occur anytime during the term of the IFFOA. 20 years. So SCE may charge, for example, \$660,000.00 upon signing the IFFOA and submitting an invoice to developer. SCE then has up to 20 years to adjust the IFFOA based on the actual book value. Twenty years.

Attachment A to the IFFOA is entitled "Added Facilities Investment for Producer-Financed Facilities". The Commission's goals of transparency require modification to this Attachment A of Appendix B.

Attachment #2 hereto is a "Draft Interconnection Facilities Financing and Ownership Agreement, **"Attachment A to Appendix B"** issued to SFUI regarding SFUI's Solar Farm 1, RAP ID #5216, issued May 29, 2010. This document is provided for illustrative purposes. The Appendix B document is five pages in length before Attachment A.

Pursuant to Advice Letter 2413-E on January 21, 2010, SCE raised the Income Tax Component of Contribution from 22% to 35%.

SCE's IFFOA has an Income Tax Component of Contribution Provision (ITCC) of 35% for the renewable generator to pay the Federal taxes that SCE states it would have to pay on the income received from the generator for the interconnection construction project. This is found on Attachment A to Appendix B to the CREST Agreement. Item E on that Attachment A adds the total of Item D and multiplies Item D's total by 35% to arrive at Item E's figure. SCE is charging the generator 35% of the gross cost of the job; meaning, SCE is charging the 35% on the full amount of the job without any deduction for its costs of any type whatsoever. In other words, if the 35% Income Tax Component Contribution is on the gross cost of

the interconnection project, then SCE is stating the profit is 100% of their listed cost. This illustrates the request to modify an unfair and unjust element of SCE's contract documents. In light of today's economy, California's contractors are bidding jobs at very skinny prices. It appears to be abnormal that SCE can make a 100% profit on a construction project and then charge the generator 35% taxes on top of that 100% profit. The Commission should modify the document so that SCE is required to line item the costs, the overhead, and the profit, before a determination of the ITCC is calculated. This will provide transparency and fairness.

III

Request for Modification of D.07-07-027 Section 3.5 Tariff Rates,

3.5.1 Market Price Referent

"3.5.1, Market Price Referent: The rate is to be determined as follows: 'The tariff shall provide for payment for every kilowatt hour of renewable energy output produced at an electric generation facility at the market price as determined by the commission pursuant to Section 399.15 for a period of 10, 15, or 20 years, as authorized by the commission.' (Section 399.20(d).)

"That is, the rate is to be the market price as determined by the Commission."

The requested modification is to delete the Market Price "Referent" and have the Commission replace that contract language with "The market price as determined by the Commission, which is ..." Since 2007, there have been consultants' reports that have reviewed the pricing and structure for a successful Feed-In-Tariff Program. The Commission has the benefit of those expert opinions.

The Commission may take official notice that the existing pricing structure has not resulted in filling the gap in the State's renewable energy goals.

The specific language requested to be modified is to delete paragraphs 6.2, 6.5 and Appendix H in their entirety and replace paragraph 6.2 with "The Market Price as determined by the Commission is _____."

The Commission has stated that there shall be nondiscriminatory access to the electric market. The Commission has also identified a goal of the Feed-In-Tariff price structure, #10, is to provide "sufficient regulatory certainty to create a sustainable marketplace for small distributed renewable developers."

Time is of the essence for Feed-In-Tariff-sized generators who require the economic benefit Section 1603 of the ARRA provides to the project's viability. Investors in Feed-In-Tariff-sized projects, to my understanding as of this time, are not interested in the tax credit; they are interested in reducing the long-term financing economics of the project.

Thank you for your consideration.

June 18, 2010

Respectfully submitted,

/S/ Mary Hoffman

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Verification

I am an officer of Solutions For Utilities, Inc., the corporation herein, and am authorized to make this verification on its behalf. The statements in the foregoing document are true of my own knowledge except matters which are therein stated on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.
Executed on June 18, 2010, at Vista, California.

/S/ Mary C. Hoffman

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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 these proceedings. All individuals on the service lists 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 pursuant to the Commission's Rules of Practice and Procedure, I have this day served a true copy of "**PETITION FOR MODIFICATION OF DECISION D.07-07-027 IN RULEMAKING R.06-05-027 (CONTINUED IN RULEMAKING R.08-08-009) under CPUC Docket Rulemaking 08-08-009.**" Each person designated on the official service list for this Docket current as of June 18, 2010 has been provided a copy via email.

/S/ Mary C. Hoffman

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dbp@cpuc.ca.gov
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gtd@cpuc.ca.gov
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bancpacific

June 2, 2010

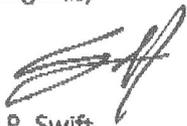
Julie Fitch
Director Energy Division
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102-3298

Re: Feed-In-Tariff Contract of SCE, CREST Agreement

Dear Miss Fitch:

At the request of Mary Hoffman of Solutions For Utilities, Inc., I have reviewed the CREST agreement for the purpose of determining its financial viability. In reviewing the agreement it was determined that verbiage pertaining to a minimum guaranteed payment to the energy provider (borrower) was not present. The absence of a minimum guaranteed payment prohibits financing for the proposed project. Bancpacific does not represent all financing that may or may not be open to the borrower nor have we reviewed the agreement for any other purpose, but to determine financing viability. Financial viability or "project economics" is one of the key factors in determining if the proposed project represents an acceptable credit risk. Without financial viability, the request is simply not an acceptable credit risk for Bancpacific or its lending partners. The contents of this correspondence are not meant to represent any person or institution outside of Bancpacific and its lending partners. Please feel free to contact me via phone or email should you have questions and or comments.

Regards,



J.P. Swift
Managing Director
Bancpacific

cc: The Honorable Michael R. Peevey, President, The Honorable John Bohn, Commissioner, The Honorable Dian Grueneich, Commissioner, The Honorable Nancy Ryan, Commissioner, The Honorable Timothy Alan Simon, Commissioner, Presiding Judge Anne E. Simon, Presiding Judge Burton Mattson.

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DRAFT
 ATTACHMENT A TO APPENDIX B
 INTERCONNECTION FACILITIES FINANCING AND OWNERSHIP AGREEMENT
 SOUTHERN CALIFORNIA EDISON COMPANY
 Solutions for Utilities, Inc.
 RAPID 5216

1. **Added Facilities Investment for Producer- Financed Facilities**
 (Provided per Section 3.2.2)

	Interconnection Facilities Component	Original Estimate *	Revised Estimate	Recorded Cost	Firm Price (per 10.4)
A.	Provide and install Electrical Interconnection (includes RCS and ground detector bank)	\$203,000.00			
B.	Remote Terminal Unit ("RTU") and telecom interface. *Assumes applicant-provided T1 service	\$133,000.00*			
C.	12 kV Distribution voltage mitigation	\$140,000.00			
D.	Total Added Facilities Investment (A.+B.+C.)	A. = \$203,000.00 B. = \$133,000.00 C. = \$140,000.00 <u>D. = \$476,000.00</u>			
E.	Income Tax Component of Contribution (ITCC) (35%) (eff. 1/1/2010) (D. X 35%)	A. = \$71,050.00 B. = \$46,550.00 C. = \$49,000.00 <u>E. = \$166,600.00</u>			
F.	Total Amount to be Advanced by Producer (D.+ E.)	\$642,600.00			
G.	<i>Producer shall pay to SCE a Monthly Replacement Coverage Charge determined by SCE based upon an initial monthly rate of % times the Added Facilities Investment amount shown in Row D. above pursuant to customer elections in Section 7.3 of this Agreement.</i>	\$ _____ per month			

SOLUTIONS FOR UTILITIES
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Email: mary@solutionsforutilities.com

December 9, 2008

Administrative Law Judge Mattson
And California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102-3298

RE: Comments of Solutions For Utilities on Rulemaking 08-08-009
ALJ Mattson's Ruling Requiring Draft Revised Tariffs Based
On SB 380

Dear Administrative Law Judge Mattson and Commission,

Thank you for the opportunity to comment. We would comment on two issues, Feed-In Tariff Prices and the Standard Tariff Contract (STC) for Purchase of Renewable Energy.

We would preface these comments with a quote from AJL Simon at CPUC Rulemaking 06-02-012, Decision 08-08-028, Issued on 8/22/08, page 3 of 3, Decision on Definition and Attributes of Renewable Energy Credits for Compliance with the CA RPS. Quote:

"We believe that in order for a market to function correctly, participating entities must have a clear and consistent understanding of what, exactly, they are buying and selling."

Feed-In Tariff Prices:

It would be most revealing if the KEMA Consultants or Staff could prepare EXCEL spreadsheets for the Commission showing the economic analysis of, for example, among other types and sizes of renewable generating facilities, a 1-MW solar generating facility, which would demonstrate that the MPR pricing does not work.

In considering the initial expense for labor, materials and equipment to build a 1-MW solar park, a published cost¹ would be:

¹ www.etsolar.com

\$6.50/Watt for a fixed solar system;
\$6.75/Watt for a single-axis solar system; and
\$7.00/Watt for a dual-axis solar system.

The single-axis solar system installation expense could be \$6,750,000 for a 1-MW solar park. This does not include the purchase cost of the land, nor does this \$6,750,000 include the yearly operating and maintenance (O&M) costs, debt costs, property, state and Federal taxes nor depreciation. These yearly costs must be added to the EXCEL spreadsheets prepared for this Cost Analysis, starting at year one. These costs are identified in the format of the CalWea EXCEL spreadsheet titled "CalWEA-et-al-Jun-08-Proposed-Changes-for-the-2008-MPR-Model.xls" and found at www.calwea.org/publicFilings.html. On-site security personnel and equipment may or may not be included in those operating costs listed by CalWea.

This spreadsheet is referenced only for the format used therein of taking the Market Price Referent (MPR) multiplied by the Allocation Factor multiplied by the Time-Of-Use rate to arrive at the payment due to the renewable energy generator. This is also influenced by when the renewable energy generator's site comes on-line versus the date of signing the Standard Contract.

Estimating the annual income for a 1-MW solar farm using the 2008 MPR and the calculation cited above, initial estimates based on information at this time is \$461,000 per year. This would be a site in Daggett, CA, which has the highest solar radiation in California. This also estimates using a single-axis tracker.

A base cost, as described above, of \$6,750,000 with a yearly income of \$475,500 would be **14.64 years** of payback period, minimum considering only this installation cost, without the other expense items cited above. This vividly demonstrates that the current payment structure to Producers is not working.

The Federal Tax Credit for electricity produced from certain renewable resources, Title 26, Subtitle A, Chapter 1, Subchapter A, Part IV, Subpart D, Section 45 has limitations and adjustments. On the 1-MW solar generating park that credit might be estimated at \$67,571 per year. This credit is not the 30% that is offered for when a solar system is installed on a residence or commercial structure.

During the CPUC 12-1-08 workshop, it was stated that Wisconsin's Governor's Task Force on Global Warming is considering tariff payments for producers less than 15-MW that are "based on special production cost plus profit equal to utility companies' profits" and also that Spain has used a payment schedule of 70% of retail value. Hawaii's Clean Air Initiative is considering tariff payments of \$.45 to \$.70 per kWh. These might be put into a spreadsheet and compared to the cost of construction for a 1-MW solar farm.

Implementing a tariff payment of 70% of retail immediately could significantly shorten the time before producers would be signing up and fulfilling the goals of bringing renewable energy online.

Standard Contract Clarifications Requested:

SDG&E, SCE and PG&E have filed with the CPUC on 12/2 and 12/5/08, respectively, per Rulemaking 08-08-009 their "Draft Revised Tariffs Based on SB380." When compared side by side, they are not "standardized". Each one is different than the other.

The guidance of the CEC and the CPUC to review the paragraphs in the "standard" contract is requested for a complete and transparent understanding of the contract document and terms.

We are referencing "SCE's Redlined Draft Proposed CREST Excess Power Purchase Agreement," as filed in R.08-08-009 on 12-2-08 attached to "Southern California Edison Company's (U 338-E) Response to Ruling Requiring Draft Revised Tariffs Based on SB 380". The proposed clarifications are highlighted in green to differentiate from SCE's redlines.

At page 3, after Item 9, that document states, quote, "The changes to the draft proposed CREST EXCESS Power Purchase Agreement are identical to the changes to the CREST Full Buy/Sell Power Purchase Agreement except for the following: 1. On page 9, section 14.5, the term WATER has been deleted and replaced with CREST."

Clarification is requested for the following:

1. On page 3, Section 4.1(c) currently states, quote:

"4. TERM AND TERMINATION

"4.1 This Agreement shall become effective on the Effective Date. The Agreement shall continue in full force and effect until the earliest date that one of the following events occurs:

"4.1(c) At 12:01 A.M on the day following the completion of: (Check one) ___10/ ___ 15/ ___20 Term Years from Initial Operation ~~per Section 2.8~~ per Section 1 of Appendix H."

Comment: "Section 2.8" is an estimate of the Initial Operation Date;

whereas, "Section 1" of Appendix H is the Actual Initial Operation Date. The term of 10, 15 or 20 years should end that many years after the Actual Initial Operation Date, not after the *estimated* generation online date in 2.8.

2. On page 3, section 4.2(a), currently states, quote:

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;"~~

Comment: From a producer's perspective, any tariff change in 20 years that SCE decides "materially alters or otherwise materially affects SCE..." could cause a 60-day notice of cancellation to the producer. As described above, investment in excess of \$6.5 million, at a very minimum, is not appealing if the utility company can unilaterally cancel the contract with just a letter. This Section 4.2(a) is too vague. Also, does the producer then need to have a full-time staff person to review, for 20 years, all laws at the commission, local, state or federal levels that could potentially "alter or otherwise materially affect SCE's ability..."? That does not seem reasonable.

From the Producer's perspective, only a neutral third party could determine if there has or has not been a change that materially alters or otherwise materially affects SCE; perhaps an arbitrator that makes a finding of fact decision.

3. On page 3, Section 4.2(b), currently states, quote:

"Producer fails to take all corrective actions specified in any SCE Notice, within the time frame set forth in such Notice, that Producer's Renewable Generating Facility **is out of compliance with the terms of this Agreement excepting when Producer provides a substantive response detailing the reason for the delay which is controlled by a third party, such as a city or county planning or permitting department, a manufacturer or supplier of equipment or materials to be used at the facility, or any other third party over which Producer has no control.**"

Comment: The submission by SCE does not include a listing of time frames that are to be published in their Notices. From a practical standpoint, we have found that six weeks for delivery of parts is not uncommon. As currently stated, in reality, if SCE gave the Producer 10 or 15 days to take corrective actions, but parts are not available for six weeks out, SCE could terminate this contract. Guidance is requested to make this contract language amenable to both parties.

4. On page 4, Section 4.2(d) (3) currently states, quote:

4.2(d) "SCE shall deem the Renewable Generating Facility to be abandoned if SCE provides a Notice to Producer Advising Producer of SCE's determination, in its reasonable discretion, that the Renewable Generating Facility is non-operations for any of the following reasons:"...

(3) "Producer fails to achieve Initial operation within 18 months of the Effective Date; and Producer does not provide a substantive response to such Notice affirming producer's intent and ability to commence or to continue to Operate the Renewable Generating Facility within 15 days of such Notice" **except when Producer provides a Substantive Response detailing the reason for the delay in commencing or continuing operation which is controlled by a third party, such as a city or county planning or permitting department, a manufacturer or supplier of equipment or materials to be used at the renewable generating facility, or any other third party over which Producer has no control.**"

Comment: The Producer cannot control securing necessary parts, equipment or personnel within 15 days, due to outside parties' timetables.

5. On page 4, Section 6.1, currently states, quote:

"The amount of energy purchased under this Agreement shall be determined by electrical meters and equipment owned, Operated, and maintained by SCE. **Producer has the right to also have metering equipment owned, operated and maintained by Producer.**

6. Comment: On page 4, Section 6.2, regarding the Product Price using the Market Price Referent ("MPR") could be subject to change in these two docket numbered proceedings or other proceedings at the CEC, or CPUC proceedings such as Rulemaking 08-08-009, and/or the Governor's Orders.

7. On page 5, Section 6.3, currently states, quote:

"Producer agrees to sell all Excess electric energy produced by the Renewable Generating Facility as specified herein in Section 6.4 below and all Green Attributes, Capacity Attributes and Resource Adequacy Benefits (collectively, the "Attributes") associated with the energy sold to SCE."

And Section 6.4, currently states, quote:

"SCE shall pay Producer for all Attributes and all Excess electric energy measured by the SCE Meter located as shown on the Single-Line Diagram of Appendix A."

Comments: Clarification is requested. Producer must retain the rights to trade RECs. This is a potential estimated income to the Producer of \$283,056 per year for carbon dioxide futures² (initial estimate based on information at this time). As indicated above, the MPR multiplier calculation and the yearly tax credit are not sufficient to induce anyone to make this investment. If California is serious about creating 500 MW of renewable energy-generating facilities, the price paid to the Producer must be realistic. Tradable futures and other monetary value must flow to the Producer. The RECs for Renewable Portfolio Standard obligations of the utility companies could flow to utility companies separately, i.e. unbundled.

On August 21, 2008, ALJ Simon's Decision 8-08-028, in Rulemaking 06-02-012 at Section 4.1.2.3.4., "Other Exclusions", States, quote:

"In addition to the statutory exclusions, there are other Common aspects of renewable energy transactions that **should not** be part of the REC. These elements are **excluded** from the Green Attributes set out in STC 2 and should likewise be excluded from a REC:

- Energy, capacity, reliability or other power attributes;
- Production tax credits and other tax incentives;
- Fuel-related subsidies or "tipping fees" or subsidies

² 11/20/08 Bloomberg News Online, "U.S. Carbon Futures Trade as low as \$11.75/Ton"

- For promoting local environmental benefits; and
- Any emission reduction credits, other than those Issued pursuant to Sec. 40709 of the Health and Safety Code which are already excluded by statute), Encumbered or used for compliance with operating And/or air quality permits."

In that same Decision at Section 4.1.2.3.3., "Exclusions," 4.1.2.3.1.1., "Emissions Reduction Credits", quote,

"Section 399.12(h)2) expressly **excludes** from the attributes of a REC 'an emission reduction credit issued pursuant to Section 40709 of the Health and Safety Code.'"

It appears that there are exclusions to the attributes and that the Agreement is not recognizing any exclusions. Clarification is requested.

ADDITIONAL COMMENT: Any changes made at 6.3 and 6.4 would then potentially cause changes to be required at **Appendix F, "Definitions," Numbers 2, 4, 18, 38(b), 43, 45, 46.**

8. Also in Section 6.4, "SCE shall pay Producer **within 30 days after each monthly meter reading date, provided the amount due to Producer is \$1,000 or more,** for all Attributes and all Excess electric energy measured by the SCE Meter located as shown on the Single-Line Diagram of Appendix A."

9. On Page 5, Section 6.5, this method of calculating monthly payments could be subject to change in these two docket numbered proceedings or other proceedings at the CEC, CPUC proceedings such as Rulemaking 08-08-009, and/or the Governor's Orders.

10. On Page 5, Section 6.6, currently reads, quote,

"SCE shall determine the amount of energy received by SCE pursuant to this Agreement for each monthly period and provide a statement **and payment** to Producer approximately thirty (30) days after each monthly meter reading date."

11. On Page 9, Section 14.1, the last sentence reads, quote:

~~... "Each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Agreement."~~

Comment: Producer does not waive this right, especially when an agreed-upon resolution

mechanism is not detailed in the Agreement.

12. On Page 9, Section 14.2, currently reads, quote:

"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."

Comment: Referencing this pp. 14.2 to the Appendix F, "Definitions," No. 53, "Schedule Crest," the last sentence, quote, "This Tariff is subject to such changes or modifications by the Commission as it may from time to time direct in the exercise of its jurisdiction." So this Agreement may change many times during its term; is that correct? Put another way, the Agreement signed today is not the agreement for the entire term, if the Commission makes changes during the term; is that correct?

Clarification is requested, please. How will this work? If the Commission in later years makes a ruling favorable to the utility company, the utility company can file an application with the Commission to change our executed Agreement at that time? Because pp 14.4 of the Agreement states, quote:

"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."

In the alternative, if the Commission makes a ruling favorable to the Producer, for example a tariff payment increase, will it be up to the Producer to file an application with the Commission to change our executed Agreement?

And these changes could go back and forth for the 10-, 15- or 20-year contract term?

13. On Page 9, Section 14.3, reads, quote:

~~"The Interconnection and services provided under this Agreement shall at all times be subject to the terms and conditions set forth in the Tariffs applicable to the electric service provided by SCE. Copies of such Tariffs are available at www.sce.com or by request to SCE and are incorporated by reference into this Agreement."~~

Comment: This Section 14.3 appears to be relating to SCE providing service to the Producer and Tariffs applicable to when SCE provides service to the Producer. The

Renewable Power Agreement being executed clearly states a separate agreement is required for SCE providing retail electric service to the Producer's site. This is evidenced at Page 1 of this agreement, Section 1.1, "RECITALS," quote:

"This Agreement requires the Producer to be a retail customer and to obtain retail electrical service from SCE to serve all the electric loads, net of the Renewable Generating Facility, at the Premises identified in Appendix A."

and

"This Agreement does not constitute an agreement by SCE to provide retail electrical service to Producer. Such arrangements must be made separately between SCE and Producer."

Further, Section 1.1, as quoted above, describes that the renewable energy being purchased is that "identified in Appendix A," which is separate and apart from SCE providing service to the site. Therefore, all of Section 14.3 should be deleted.

14. On Page 9, Section 14.4, reads, quote:

"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...."

Comments: Same as described above at 14.2.

15. On Page 9, Section 16, "ENTIRE AGREEMENT," reads, quote:

This Agreement, including **Appendixes A through H**, and any incorporated Tariffs and Rules, contains the entire agreement and understanding between the Parties, their agents, and employees as to the subject matter of this Agreement. Each Party also represents that in entering into this Agreement, it has not relied on any promise, inducement, representation, warranty, agreement or other statement not set forth in this Agreement, **including Appendixes A through H or in the** incorporated Tariffs and Rules."

Comment: Clarifying that the Appendixes A through H are included in the Agreement.

16. On page 10, Section 17, "Signatures," reads, quote:

"IN WITNESS WHEREOF, the Parties hereto have caused two originals of this Agreement to be executed by their duly authorized representatives. This Agreement is **effective executed** ("**EffectiveExecuted** Date") as of the last date set forth below.

Comment: The "Effective Date" already has a very specific/detailed meaning at Section 6.2 on Page 4 of this Agreement, intertwined with the Appendix H. For clarity, "effective" should be replaced with "executed" to avoid misunderstanding.

If this change is made, it would also affect Appendix F, "Definitions," Section No. 9, quote, "'Effective Date' has the meaning set forth in Section 17." If "effective" is changed to "executed" then this Definition would need to be modified.

17. Appendix F, "Definitions," comments:

No. 2, quote, "'Attributes'" has the meaning set forth in Section 6.3." If Section 6.3 is modified, this Section No. 2 in the Appendix F might need to be modified.

No. 4, regarding "Capacity Attributes," same comment as No. 2.

No. 9, "Effective Date" comments are described at #16 above.

No. 18, same comment as No. 2.

No. 28, quote:

"'Market Price Referent'" or 'MPR' means the market price referent applicable to this Agreement as determined by the CPUC in accordance with California Public utilities Code Section 399.15(c) *subject to such changes or modifications by the Commission as it may from time to time direct in the exercise of its jurisdiction.*"

No. 38(b), same comment as No. 2.

No.s 43, 45 and 46, same comment as No. 2.

No. 53, "Schedule Crest," please see comment at #13 of this letter, which references page 9, pp. 14.2 of the Agreement.

Miscellaneous Comments:

A request is made for the Commission to take Official Notice of the CEC Docket No. 09-IEP-1G and Docket No. 03-RPS-1078 proceedings.

Regarding Notification Provisions: The utility companies have notification when the Application for Interconnection is submitted of the characteristics of the renewable generating facility. Because these are 1.5 MW or less, they are capable of interconnecting at the distribution level and, therefore, notice is appropriate for scheduling for the utility company.

Regarding Performance Guarantees: At the 1.5 MW or less, we feel it is important that the "Standard Contract" are left as is; that is, without requirements for performance guarantees. The producer wants the facility to come on line so that the money invested starts earning a return. Adding language that adds costs and/or penalties for this size facility will potentially be a deterrent to the exact entrepreneur that will build these facilities and fill up the queue with only the "large" companies.

Finally, with the 1.5 MW or less solar site, the cost to interconnect the generating facility is paid by the Producer to the utility company, per the STC. The cost of building the solar site is paid by the Producer. The tariff income paid to Producer by the Utility Company is less than retail value. Where is the burden on the ratepayers in this scenario? The time to bring the generating facility online is months versus years.

Respectfully submitted,

Mary C. Hoffman,
Solutions for Utilities

/S/MARY C. HOFFMAN
By: Mary C. Hoffman

December 9, 2008

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 SOLUTIONS FOR UTILITIES ON RULEMAKING 08-08-009 ALJ MATTSON'S RULING REQUIRING DRAFT REVISED TARIFFS BASED ON SB 380 on all parties identified on the attached service list. Service was effected by transmitting the copies via email to all parties listed on the attached "Service List".

Executed this 9th day of December, 2008, at Vista, California.

/S/MARY C. HOFFMAN
MARY C. HOFFMAN,
SOLUTIONS FOR UTILITIES
1192 Sunset Drive
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Service List: CPUC Proceeding Rule Making 08-08-009

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