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

Application of Southern California Edison Company (U 338-E) for Authority to Implement and Recover in Rates the Cost of its Proposed Solar Photovoltaic (PV) Program	)))))	Application 08-03-015 (Filed March 27, 2008)

PROTEST OF CALIFORNIANS FOR RENEWABLE ENERGY, INC. (CARE)

CAlifornians for Renewable Energy, Inc. (CARE) protests this application pursuant to the Commission's Rules of Practice and Procedure. CPUC Rule 2.6 (b) states that "[a] protest objecting to the granting, in whole or in part, of the authority sought in an application must state the facts constituting the grounds for the protest, the effect of the application on the protestant, and the reasons the protestant believes the application, or a part of it, is not justified. If the protest requests an evidentiary hearing, the protest must state the facts the protestant would present at an evidentiary hearing to support its request for whole or partial denial of the application." CARE protests this application because:

1. Southern California Edison Company (SCE)'s application for entrance into the Solar Photovoltaic (PV) market is in direct conflict with the provisions in the California Solar Initiative (CSI), because it will be unfair competition for those solar providers who require private investment, either from their customers, from bonds, or from investment firms or banks.

2. The solar equipment, which is proposed by SCE, will be fully owned by SCE and it should be paid for by its shareholders, just as they are paying for the Smart Meter Installations which are now in progress. Under no circumstances should SCE be funded for their Solar PV installations at all, let alone fully funded, by ratepayer money. It appears that they are trying to avoid any risk to their shareholders, which is patently unrealistic when any company embarks on

a new venture. Essentially, SCE will be building a "Power Plant", consisting of MWs which may not be contiguous, but which will cumulatively produce, at first 250 megawatts, and they hope, ultimately, 500 megawatts, all of which they will then sell back to the ratepayers.

3. The SCE representative at the California Solar Initiative (CSI) Forum on April 17, 2008, in Rancho Cucamonga, spoke of training IBEW workers, and integrating them into the process. Edison's Central Station energy plants are all Union Shops. This proposed Solar Power Plant, while being Distributed Generation (DG), will be a vertically integrated monopolistic venture. SCE will use its own Union employees to develop its own internal installation team, much like the State Employees who install all the Fair Grounds solar throughout the state.

Since there are IBEW Signatory Solar Companies in California, it is highly unlikely that any non-union shops will receive sub-contracts for this work. All indications point to no subcontracting with existing non-union solar installation companies. CARE's representative participated in the forming of SB1, and is well aware of the IBEW's desire to participate more fully in the Solar PV industry. Coming in on a program that is a utility program, would make that desire to expand into the Solar PV industry as a wholesaler, rather than a retailer, a reality. This is occurring at a time when existing solar companies have had their incentives for large solar systems drastically reduced, further making it difficult for them to compete with the potentially completely utility owned and operated, for their own internal financial benefit, not for the benefit of customers or ratepayers. Furthermore, this ratepayer subsidized program will own its Renewable Energy Credits (RECs), alleviating the utility from at least part of the burden of purchasing RECs. And these too will have been paid for by ratepayers, again a cross-subsidization.

By not using the electricity generated from the panels on warehouse rooftops on-site, SCE will also avoid the Energy Audit and required Energy Efficiency measures that would be required of the other solar installers.

One Power Purchase Agreement (PPA) model which has been used with great efficacy by several major installers is the vertically integrated model, where the PPA is owned by the company and the installation group is also owned by the company. Thus when a solar company bids on a job, they have their own fully owned solar installer install the solar system. There is no competitive bidding regarding those particular installations. However, the Host Customer does get a discount on the electricity which the Host Customer purchases from the PPA provider, and the electricity is an on-site usage DG model installed in accordance with the CSI Handbook.

The SCE model would take that vertical integration two-step furthers into a monopoly and cross-subsidization. They would own the equipment, provide the installations, own the electricity, be subsidized by Ratepayer Public Goods Charges, and then sell the electricity back to the ratepayers in their Utility District at full price, while not using any of the electricity to reduce on site demand and relieve pressure from the grid. By feeding the electricity directly into the grid, they are in direct opposition to the whole rationale behind the CSI and in direct competition to the CSI with their "wholesale feed-in" model. A feed-in tariff is one thing, and would open up the market to more, not less competition. This electricity will not have to be paid for by SCE because they will completely own it, thus in the future, putting in jeopardy any proposed feed-in tariff program. They will have already sabotaged such a program by avoiding having to purchase what is in effect, direct feed-in electricity minus the tariff. Who can compete with that model? This is most unfair to the ratepayers, independent solar installers, and potential solar host customers.

4. SCE is proposing, starting in 2008, a $5.50/Watt cost of installation which is a higher reimbursement rate then the $2.30/Watt that is currently offered to Governmental and Non-profit entities under the California Solar Initiative (CSI) by SCE as the CSI Program Administrator (PA) in its service territory. They are offered a higher reimbursement rate than private participants because they are not eligible for a Federal Tax incentive which SCE may be eligible for under its proposal. Since they plan to choose large warehouse rooftops where there is a small electricity demand for the facility, they will simply rent out the roof from the Host Customer, and send the electricity directly into the grid. Private non-residential reimbursement rates currently are at only $1.55/Watt. This is not the Self-Generation model that all the other installers and Host-Customers currently must follow because SCE will be avoiding all Net Metering Costs. This presents completely unfair competition to the current solar industry.

This is a solar monopoly that will eliminate its competition, extending their monopolistic model, taking away the whole idea of Host Customer energy independence, in the form of reduced energy costs for the customer. Their Host Customer's will still have to pay the going utility rates, and will not be protected in any way from rate increases. Part of the rationale for the use of Public Goods Charges for solar installations is that they offer some measure of protection to the customer from rate increases. SCE's business model offers nothing of the kind.

5. Clearly SCE is attempting to destroy the CSI for Non-Residential customers like it has already done for its Residential customers. If SCE wants to pursue this model, their shareholders should certainly pay for the investment, not the ratepayers.

DISCUSSION

The Non-Residential segment of the CSI based on Trigger Tracker totals[1] shows that in the first six months of the new CSI starting in January 2007 the non-residential segment reserved over 130 MW and over 11% of an imagined 10 year program in the first six months.

By watching the Trigger Tracker results each week we began to see that the non-residential segment was in 'Run on the Reservations Bank' mode - like a solar gold rush. Project developers and Power Purchase Agreement and Lease (PPA&L) providers scrambled for the most lucrative incentives, first in Step 2, $2.50/Watt or $0.39/kWh, then in Step 3, $2.20/Watt or $0.34/kWh, until each of these steps, in PG&E and SCE step 5 (at $1.55/Watt or $0.22/kWh) had been consumed. This year's program requires all systems 100kW and greater to use the PBI incentive. Solar systems of these sizes start at around $800,000 and go up to many millions. Increasingly businesses want solar, but the majority does not have the ability to fully consume the 30% Federal tax credit and/or choose to preserve their capital for other uses.

Third party financing delivered created the current problems for the Non-Residential segment of the CSI that SCE seeks to take advantage of. The PPA&Ls dominated the market because purportedly they could offer a reasonable return to their investors and offer businesses substantial electricity savings and price stability over term, with no upfront costs. California's historical non-residential project dropout rate - projects that will not be completed - is over 55%. Interestingly the data also showed that out of about 250 companies who participated in the program the Top 10 companies caused 137 MW or 55% of the dropouts[2]. If the same cast of

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[1] See http://www.csi-trigger.com/

[2] See *The California Solar Initiative -- Triumph or Train Wreck?* The authors of the September 2007 report by SunCentric President Glenn Harris and Vice President Shannon Moynahan closely studied the CSI over the first eight months and put together a report on how the program has impacted the California solar industry at

characters cause dropouts in the CSI program - they hurt the whole industry because based on new program rules these 'dropped out' project MWs will be placed into Step 5, not back in Step 1, Step 2, Step 3, or Step 4 where they were issued. If the CSI dropout rate is similar to SGIP dropouts - and only time will tell – these dropouts could potentially cause Step 5 to over 100 MW and stall the industry at Step 5 for the foreseeable future as it appears to have as of today.

In the Order Instituting Rulemaking into distributed generation, Rulemaking 99-10-025, Jonathan A. Bromson, Staff Counsel for the Office of Ratepayer Advocates [now called the Division of Ratepayers Advocates] opposed SCE's previous "attempt to enter in to the DG market SCE's breezy admission that its DG units will possess market power and that therefore they must be owned solely by a regulated UDC (*i.e.*, them), [3]."

> The objective of this rulemaking proceeding is "to develop policies and rules regarding the deployment of distributed generation (DG), such as interconnection standards, and rules for participation in these new markets." (Order Instituting Rulemaking (OIR), R.99-10-025, October 26, 1999, p. 1). ORA has focused its efforts in Phase 1 of this proceeding on issues regarding ownership and control of DG, its impact on distribution system planning, how DG costs should be recovered… [ORA July 24, 2000 Opening Brief at page 1.]

Likewise in SCE's *Application for Authority to Implement and Recover in Rates the Cost of its Proposed Solar Photovoltaic (PV) Program*, the Commission is faced with a momentous decision in this Application that will influence for years to come the development of a critical category of generation resources that will help assist California in its search for more reliable electricity. Who shall provide these crucial generation services? Will it be provided by the current incumbent investor owned utilities (IOUs), the IOU affiliates; third-party, independent

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http://www.renewableenergyworld.com/assets/documents/2007/CSI_SUNCENTRIC_REPORT.pdf

[3] *See* SCE/Jurewitz, Exh. 63, p. 24 ("TURN's argument for maintaining UDC ownership of hydroelectric generation is that this generation inherently possesses market power and that it, therefore, should remain regulated. This is precisely SCE's reason for advocating UDC ownership of Distribution DG.") This would imply CPUC jurisdiction over DG similar to hydroelectric (*see* Public Utilities Code §§ 216(h), 377), although SCE might argue that its UDC-owned DGs are not subject to CPUC jurisdiction, but to FERC jurisdiction. (SCE/Nunnally, Tr. Vol. 1, p. 16).

generating companies; customer self-generators, or a combination of all of the above? Will the competition which was introduced into the generation market with the passage in 1978 of the Public Utility Regulatory Policies Act (PURPA), and increased somewhat in California with the passage of Assembly Bill (AB) 1890 in 1996, be inhibited by allowing the IOUs simultaneously to own DG units and control and operate distribution systems? Or, if the IOUs proposals to own DG units are accepted, will the IOUs act on their competitive incentive to use their position as operators of the distribution system literally to turn off generation of third-party DG units which are in competition with IOU-owned DG units? Would the possibility of IOU shut off of DG make competition with IOU DG too onerous for such third-parties to contemplate?

One salient fact that the SCE would have the Commission overlook is that **dispatch by the IOUs of their DG units can have the effect of preventing the output of other DG units, both on the grid-side and the customer-side of the grid**. It is this critical factor that distinguishes IOU DG ownership from IOU ownership of central station generation units, particularly hydroelectric power. Whereas the ISO chooses to dispatch particular central station generating units, the IOUs will dispatch DG units. The commercial interest of the IOUs will be impossible to ignore in choice of dispatch. Allowing IOUs to own DG that forces competing DG to turn off, will thwart both non-IOUs and customers from deploying DG units. California will thus be far worse off than if the IOUs are barred outright from the DG market. As long as an IOU has the ability to site an IOU-owned DG plant on the same distribution line as third-party DG plant, even subsequently, third parties will be naturally reluctant to invest in DG units, because there is no guarantee that the IOU will not favor its own unit in dispatch and force off the non-IOU DG unit. Even the operation of customer-side DG can be affected by subsequently installed IOU-owned DG units. Allowing IOUs to expand their current role in the DG market would provide them an incentive to compete with, and inhibit, customer-side DG.

Not only have SCE and Pacific Gas and Electric Company (PG&E) proposed that they participate in the numerous local DG markets, but they want to be able to book the costs of such generation not to generation-related accounts to be recovered from the market, but to distribution accounts to be recovered from all distribution ratepayers. **Generation is generation, not distribution.** CARE cannot reiterate this point enough, because use of the term "distributed generation" in and of itself creates confusion. "Distribution" refers to the *delivery* of power to *distributed* customers, in the sense that customers are "distributed" or dispersed everywhere throughout an IOU's service territory. The term "distributed" in "distributed generation" has nothing to do with the *delivery* of power to customers, but refers to the fact that DG is "distributed" or dispersed throughout the service territory. DG should more accurately refer to "decentralized generation" or "dispersed generation," and it could more appropriately be called "local generation." The word "distributed" in "distributed generation" does not imply that somehow distributed generation fulfills some different purpose than other generation.

Just because both transmission and distribution (T&D) and DG can be alternative solutions to local distribution capacity problems, is not a reason to allow IOUs entree into the local DG market. CARE does propose that in those extremely limited circumstances where DG is truly needed for emergency purposes, the IOUs can own a DG unit. But any DG unit that sells any of its output to any market, whether the ISO, or a market redesign and technology upgrade MRTU successor market, performs a generation function. SCE's and PG&E's proposals would allow the IOUs unfettered discretion in choosing whether to operate a DG unit as a player in the market, but would treat the generation units as distribution assets. Not only would IOU-owned

DG units have the competitive advantage of self-interested dispatch, but its costs would be guaranteed to be repaid by the entirety of its ratepayers. In contrast, non-IOU-owned DG would not be able to recover its costs from any source other than the market.[4] The unfairness of such cross-subsidization both to ratepayers and competing generators is patently clear. What SCE overlooks is that it is the IOU's ability to dispatch particular units that can effectively bar other entities from competing in the DG market. The dispatcher will choose which units come on for reliability purposes, and this will in turn force other DG units to shut down. This is the access component of IOU market power. If SCE owned, but did not operate, the local distribution system, CARE would not be recommending that IOUs be barred from owning DG as well. It is the combination of generation, dispatch, and default provider status that CARE finds objectionable for IOUs like SCE.

CARE is opposition to allowing affiliates into the DG market also hinges upon the ability of the IOU to dispatch particular DG units to the detriment of others. An IOU affiliate could be just as prone to favor a unit owned by an affiliate that forces off a third-party unit as it would to favor an IOU-owned unit that forces off a third-party unit. The affiliate transaction rules have not considered dispatch of generation, either central station or distributed. But at the distribution level, the absence of an entity such as ISO eliminates the neutral party to ensure that preferential treatment is not afforded to affiliated entities.

If the Commission does decide to allow IOUs like SCE into the local DG markets, it must not compound that mistake either by barring non-IOUs from competing in any DG service

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[4] This holds even if the IOUs were allowed to book market-purchased DG output as "distribution" costs to be recovered from ratepayers rather than generation-related costs, because from the perspective of a third-party generator without its own distribution system the costs of generation must be recovered from *sale* of such generation rather than as some fixed costs to be spread throughout known customers as would be the case for IOU generation costs booked as distribution.

market or by allowing IOUs to book DG costs as distribution costs. Even though CARE is gravely concerned that allowing IOUs into any DG services market will seriously inhibit competition from third parties in all DG markets, such that it would be better to bar IOUs altogether, if IOUs are allowed into the market so must third parties. This is not just a function of the state's general policy of allowing third parties to own generation units and encouraging IOUs to divest theirs.[5] The nascent DG markets will not be developed fully if IOUs are to participate, but it will be squelched even more severely if third parties are officially barred.

As long as IOU DG units sell their output into a market – as they do in SCE's proposal – they function similarly to other generation units. If the Commission decides to allow IOUs to participate in the DG market, the ability and incentive to discriminate against competitor's DG will remain.

CONCLUSION

CARE Protests the Application because of the unnecessary surcharge. CARE protest this cost as an inappropriate expenditure of SCE's ratepayer's funds without any demonstrated need for the project.

For the reasons listed above, CAlifornians for Renewable Energy, Inc. (CARE) protests the Application of Southern California Edison Company for Authority to Implement and Recover in Rates the Cost of its Proposed Solar Photovoltaic (PV) Program.

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[5] *See* Public Utilities Code § 363 (requirement that purchasers of generating plants from IOUs operate them for at least 2 years); § 367(b) (valuation of generation-related assets for determination of transition costs through "appraisal, sale or other divestiture"); and § 377 (requirement that the IOU publicly demonstrate that it would not have an undue competitive advantage by retaining any nonnuclear generation assets after market valuation), all part of Assembly Bill (AB) 1890.

Because the issues CARE has identified in its protest involve issues of first impression CARE respectfully requests that evidentiary hearings be provided to further develop the record.

April 28, 2008

Respectfully submitted,

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Verification

I am an officer of the Protesting 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 this 28th day of April 2008, at San Francisco, California.

Lynne Brown

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BEFORE THE CALIFORNIA PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

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 "*Protest of CAlifornians for Renewable Energy, Inc. (CARE) to Application of Southern California Edison Company for Authority to Implement and Recover in Rates the Cost of its Proposed Solar Photovoltaic (PV) Program*" under CPUC Docket A.08-03-015. Each person designated on the official service list, has been provided a copy via e-mail, to all persons on the attached service list on April 28, 2008, for the proceedings, A.08-03-015.

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