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TO PARTIES OF RECORD IN RULEMAKING 11-05-005

This is the proposed decision of Administrative Law Judge (ALJ) DeAngelis. It will not appear on the Commission's agenda sooner than 30 days from the date it is mailed. The Commission may act then, or it may postpone action until later.

When the Commission acts on the proposed decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the proposed decision as provided in Article 14 of the Commission's Rules of Practice and Procedure (Rules), accessible on the Commission's website at www.cpuc.ca.gov. Pursuant to Rule 14.3, opening comments shall not exceed 15 pages.

Comments must be filed pursuant to Rule 1.13 either electronically or in hard copy. Comments should be served on parties to this proceeding in accordance with Rules 1.9 and 1.10. Electronic and hard copies of comments should be sent to ALJ DeAngelis at rmd@cpuc.ca.gov and the assigned Commissioner. The current service list for this proceeding is available on the Commission's website at www.cpuc.ca.gov.

/s/ KAREN V. CLOPTON
Karen V. Clopton, Chief
Administrative Law Judge

KVC:jt2

Attachment

Decision PROPOSED DECISION OF ALJ DeANGELIS (Mailed 10/11/2011)

BEFORE THE PUBLIC COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Continue
Implementation and Administration of
California Renewables Portfolio Standard
Program.

Rulemaking 11-05-005
(Filed May 5, 2011)

**DECISION GRANTING, WITH MODIFICATIONS, THE MOTION BY
CLEAN COALITION FOR IMMEDIATE AMENDMENTS OF THE
SOUTHERN CALIFORNIA EDISON COMPANY AB 1969
CREST POWER PURCHASE AGREEMENT**

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**DECISION GRANTING, WITH MODIFICATIONS, THE MOTION BY
CLEAN COALITION FOR IMMEDIATE AMENDMENTS OF THE
SOUTHERN CALIFORNIA EDISON COMPANY AB 1969
CREST POWER PURCHASE AGREEMENT**

1. Summary

This decision grants, with modifications, the motion by Clean Coalition,¹ entitled *Motion of Clean Coalition for Immediate Amendments of AB 1969 CREST Power Purchase Agreement*. Clean Coalition's motion requests changes to the Southern California Edison Company's (SCE) California Renewable Energy Small Tariff (CREST) Power Purchase Agreement (PPA) so that small renewable developers have an acceptable PPA to receive federal cash grants under § 1603 of the American Recovery and Reinvestment Tax Act for their projects. We direct SCE to file a Tier 1 advice letter to (1) modify Section 2.8 (Date of Initial Operation) and Section 4.2(d)(3) (Term and Termination); (2) modify Section 4 (Term & Termination); (3) modify Section 12 (Assignment); (4) remove Sections 14.2 (future modifications) and 14.4 (application for modifications); (5) add two new contract sections, Force Majeure and Indemnification; and (6) modify the CREST PPA to provide more options for interconnection agreements. This proceeding remains open.

2. Background

Pub. Util. Code §§ 399.11 – 399.19, the California Renewables Portfolio Standard Program (RPS),² enacted in 2002 by Senate Bill (SB) 1078 (Sher) and

¹ The Clean Coalition describes itself as a California-based advocacy group, part of Natural Capitalism Solutions, a non-profit entity based in Colorado which advocates primarily for vigorous Feed-in Tariffs and wholesale distributed generation.

² All statutory references are to the Public Utilities Code unless otherwise indicated.

amended in 2006 by SB 107 (Simitian), requires retail electricity sellers regulated by the Commission to procure an additional 1% of retail sales per year from eligible renewable sources until 20% is reached, no later than 2010. In 2011, SB 2 1X³ of the 2011- 2012 First Extraordinary Session (Simitian) amended §§ 399.11-399.22 to increase the renewable target to 33% by 2020 and also require publicly-owned utilities to achieve the 33% renewables goal.

In 2006, the Legislature added § 399.20, Assembly Bill 1969 (Yee), which directs investor-owned utilities (IOUs) to establish standard tariffs to purchase renewable energy from water and wastewater customers. The Commission implemented § 399.20 in Decision (D.) 07-07-027 and directed the IOUs to offer standard tariffs and contracts to water and wastewater customers for the purchase of renewable energy from projects up to 1.5 MW. The decision also directed SCE and Pacific Gas and Electric Company (PG&E) to offer standard tariffs and contracts to all customers in their service territories selling renewable energy from projects up to 1.5 megawatts (MW).

In addition to the legislative mandates, the Governor of the State of California has announced his intention to encourage the development of 12,000 megawatts of small scale distributed generation projects located on the existing electric grid by 2020. To achieve this goal, the Governor has called upon the Commission and other state agencies to assist with the development of small scale distributed generation. Efforts to encourage such development have been

³ SB 2 (1X) (Simitian), Stats. 2011, ch. 1, enacted in the 2011-2012 First Extraordinary Session of the Legislature, will “go into effect on the 91st day after adjournment of the special session at which the bill was passed.” (Gov't. Code § 9600(a).) The 2011-2012 First Extraordinary Session adjourned on September 10, 2011, making SB 2 (1X) effective on December 10, 2011.

ongoing. These efforts have, in part, consisted of implementing the legislative directives set forth in §§ 399.11 - 399.22 and formal proceedings, such as this proceeding and Rulemaking (R.) 08-08-009. Efforts have also included encouraging informal processes, such as the process SCE and stakeholders initiated last year to reform the California Renewable Energy Small Tariff (CREST) Power Purchase Agreement (PPA).⁴

In late 2010, stakeholders asked the Commission staff and SCE to establish a process to address hurdles experienced by developers and producers in obtaining the financing needed to develop small scale renewable generation for interconnection to SCE's distribution system. In May 2011, SCE initiated this informal process, with the Commission staff encouraging all stakeholders, including SCE, to collaborate in resolving these critical issues. Stakeholders and SCE worked together to complete reforms to the CREST PPA with the target date of September 2011 to implement contract reforms.

The goal of this process, as described by Clean Coalition's motion, continued to be, at least in part, to modify the PPA so that producers and developers could provide lenders and investors with a higher level of certainty on the timely progress of generation projects toward successful interconnection with SCE and the execution of a PPA. For example, stakeholders sought a more expedited interconnection process, increased opportunities to execute PPAs, the ability to execute PPAs earlier in the interconnection evaluation process, more control over the circumstances resulting in termination of the contract, and

⁴ D.07-07-007 directed the IOUs to file standard contracts and tariffs. SCE filed the CREST PPA to comply with the decision.

increased standardization of contract terms and conditions to include, for example, Force Majeure and Indemnification provisions.

Clean Coalition's motion explains that, while this informal process was ongoing, producers and developers continued to work on project development in SCE's service territory and invested significant resources toward this end. In developing these generation projects, developers and producers recognized the deadlines for the federal cash grants under § 1603 of the American Recovery and Reinvestment Tax Act. Generally, the § 1603 program, which is administered by the U.S. Department of Treasury in conjunction with the Department of Energy, offers renewable energy project developers cash payments in lieu of the investment tax credits. The value of the awards is equivalent to 30% of the project's total eligible cost basis in most cases.

Importantly, under § 1603, producers and developers must meet certain development milestones by the end of 2011 to preserve their eligibility for federal cash grants. For example, cash grant eligibility may be preserved by completing work of a significant nature on the project or investing 5% of each project's tax basis in equipment destined for that project by the end of 2011.

Lenders and investors, however, often require producers or developers to execute a PPA with the utility, such as SCE, before they consider the project sufficiently credit worthy for financing purposes. Obtaining an executed PPA with SCE continues to be a lengthy process under the existing interconnection procedures set up by SCE's CREST PPA. For that reason, one of the critical topics addressed in the stakeholder process remained timely progress of the project toward successful interconnection and obtaining an executed PPA in a timely manner.

Progress toward reform of SCE's CREST PPA ended on July 21, 2011. On this date, SCE suspended the stakeholder process, just one day prior to SCE's target date for stakeholder distribution of its revised CREST PPA. In SCE's July 21, 2011 notice suspending the stakeholder process, SCE explained that this suspension was due to the Commission's renewed efforts in this proceeding to address pending matters related to the interconnection of small scale generation to the distribution system. SCE's notice stated as follows:

Notice to all interested parties: On May 19, 2011, Southern California Edison Company ("SCE") launched a stakeholder process to reform SCE's pro forma CREST PPA ("CREST PPA"). SCE received and has been reviewing stakeholder feedback on SCE's proposed new pro forma CREST PPA. Originally, SCE had targeted July 22, 2011 for the distribution of the revised CREST PPA. However, in light of the California Public Utilities Commission's ("CPUC") current implementation of SB 32, which would replace the existing CREST program with a new Feed-in-Tariff, SCE is suspending the stakeholder process until further notice. SCE will consider comments it has received in this stakeholder process in the implementation of SB 32.⁵

Upon the termination of the stakeholder process, Clean Coalition filed the motion we consider in today's decision. Clean Coalition's August 15, 2011 motion seeks Commission consideration of some of the reforms previously under consideration in the stakeholder process.

On August 30, 2011, SCE filed a response in opposition to the motion. SCE's motion primarily objected to Clean Coalition's request on procedural grounds. No other responses to this motion were filed. We address the merits of the motion and SCE's opposition below.

⁵ Clean Coalition's Motion at Section I (Background).

On September 12, 2011, the assigned Commissioner issued a ruling finding the motion sufficiently important to bring the issue before the full Commission as soon as possible. The ruling also urged parties to engage in efforts to resolve this matter through negotiation and for SCE to submit a revised tariff and contract through the advice letter process.

Since parties were unable to resolve this matter informally, we address the contract reforms presented in the motion and SCE's opposition in today's decision.

3. Jurisdiction

Jurisdiction of the Commission is established under § 701 and Art. 16 of the Pub. Util. Code, §§ 399.11 - 399.22, the California Renewables Portfolio Standard Program.

4. SCE Opposition to Clean Coalition Motion

While SCE's main objections are procedural, SCE also generally opposes Clean Coalition's motion. We respond to SCE's specific objections below. The procedural and general objections are addressed here.

SCE claims that Clean Coalition overstates the urgency of the contract modifications. We disagree. The federal cash grants expire at the end of the year. Prompt modification is needed to enable producers to ensure they qualify for these grants.

SCE also claims that Clean Coalition wants to help producers to lock into an above-market price for projects rather than wait for the Commission in this proceeding to determine pricing reform. We disagree. In D.07-07-027, the Commission ordered the IOUs to offer standard tariffs and contracts to all customers at the Market Price Referent (MPR) and determined that the MPR was a reasonable price to pay the Feed-in Tariff producers. Under D.07-07-027, the

IOUs are required to offer the Feed-in Tariff under the MPR until their allocated capacity is fully subscribed or until the Commission modifies the program through another decision. Neither has occurred.

SCE also claims that Clean Coalition's request is procedurally flawed because the SCE's CREST PPA, which was approved via a Commission resolution, can only be modified through an action by the full Commission, such as another resolution or a decision in response to a petition for modification. We agree with SCE that Clean Coalition's request to rely on the advice letter process to modify the CREST PPA is procedurally inappropriate. The CREST PPA was approved by the full Commission via Resolution E-4137 and, therefore, must be modified via an action by the full Commission.

This decision achieves this requirement. We disagree with SCE that a petition for modification must be filed. A petition for modification would be an appropriate procedural vehicle, but other appropriate processes exist as well, including today's decision. Today's decision relies on the record evidence from this proceeding. Moreover, we have notified all interested parties related to Resolution E-4137 of our intention to consider modifications to the CREST PPA. This notice was provided in the Assigned Commissioner's Ruling dated September 12, 2011, and further notice will be provided in conjunction with the service of the proposed decision herein.⁶ In short, all potential interested parties have had notice of our intention to act on this matter and have had the

⁶ Service of this decision will be provided to the electronic service list for General Order 96-B, attached hereto as Attachment B, and the electronic service list for this proceeding.

opportunity to be heard. We will further consider the comments and reply comments received on this proposed decision.

For these reasons, we conclude that our decision today, together with the September 12, 2011 Assigned Commissioner's Ruling, is procedurally appropriate for addressing the motion by Clean Coalition.

5. Clean Coalition's Motion – Request for Revisions to CREST PPA

Clean Coalition's motion seeks to achieve the following regarding SCE's CREST PPA:

- (1) Modify Section 2.8 (Date of Initial Operation) and Section 4.2(d)(3) (Term and Termination);
- (2) Modify Section 4 (Term & Termination);
- (3) Modify Section 12 (Assignment);
- (4) Remove Sections 14.2 (future modifications) and 14.4 (application for modifications);
- (5) Add two new contract sections, Force Majeure and Indemnification; and
- (6) Modify the CREST PPA to provide more options for interconnection agreements.

We address the merits of each request separately below.

5.1. Section 2.8 (Date of Initial Operation) and Section 4.2(d)(3) (Term and Termination) of the CREST PPA

Clean Coalition requests that the Commission direct SCE to add contract language to the CREST PPA at Section 2.8 (Date of Initial Operation) and modify Section 4.2(d)(3) (Term and Termination) to provide additional protections to the producers and developer in the event that SCE is responsible for delays in the interconnection process. Clean Coalition claims that, as currently written, SCE may elect to terminate the PPA regardless of whether a delay is caused by SCE or

the developer. The specific language requested by Clean Coalition is set forth in Appendix A to Clean Coalition's motion and, essentially, seeks to prevent termination of the PPA for an unspecified period of time in the event the delay is caused by SCE.

SCE objects to Clean Coalition's request on a number of grounds. SCE claims that the contract modification proposed by Clean Coalition is vague and ambiguous. The Commission, SCE explains, cannot extend the date by which a generation project can begin operations indefinitely, even if those delays are caused by SCE, and SCE says that limits on these extensions need to be provided. SCE also expresses concern that, if the Commission adopts the suggested contract modifications, producers and developers may potentially fill the capacity cap for the § 399.20 program indefinitely, with non-viable projects.

Based on SCE's existing backlog in completing interconnection studies and other project development challenges that may delay a project from coming online in 18-months, we find merit in Clean Coalition's claim that the existing contract language provides SCE with excessive control over termination in the event SCE has unduly delayed the processing of interconnection requests by generators or if the project faces other legitimate delays outside of the producer's control. Accordingly, we find it appropriate to consider contract modifications suggested by Clean Coalition.

The contract language proposed by Clean Coalition provides for an extension to the Initial Operations date, set forth in Section 2.8, but lacks, as SCE points out, sufficient definition. Clean Coalition fails to provide a specific time period for any additional extension. The Commission recently addressed a very similar issue in D.10-12-048, the Renewable Auction Mechanism (RAM) decision. D.10-12-048 directs IOUs to require an 18-month online date plus one 6-month

extension for regulatory delays, such as interconnection for the RPS contracts approved therein. In adopting this contract provision, the Commission reasoned in D.10-12-048 that a defined period of time, such as the 18 months, is preferable because it imposes strict time limits on processing and, in turn, attracts the most viable projects. The Commission in D.10-12-048 also recognized that “legitimate delays can occur relative to any timeline.” (D.10-12-048 at 50.)

We similarly find, as discussed in D.10-12-048, that language providing for an 18-month online date plus one 6-month extension for regulatory delays should be incorporated into the CREST PPA. In modifying the existing PPA to provide for a 6-month extension of time, we likewise recognize that legitimate delays can occur relative to any timeline.

Accordingly, within five days of the effective date of this decision, SCE shall file a Tier 1 advice letter, effective immediately, incorporating into the CREST PPA the same language required by D.10-12-048 and as set forth below, with non-substantive changes as needed to align internal references.

1.04 Commercial Operation Deadline.

(a) Subject to any extensions made pursuant to Sections 1.04(b), 1.04(c), 3.06(c) or 5.03, and further subject to Section 1.04(d), the Commercial Operation Date must be no later than the earlier of (i) *[sixty (60) days] {for Baseload} [one hundred twenty (120) days] {for Intermittent}* from the Initial Synchronization Date, and (ii) eighteen (18) months from the date of CPUC Approval (“Commercial Operation Deadline”).

(b) If all of the interconnection facilities, transmission upgrades and new transmission facilities, if any, described in Seller’s interconnection agreement and required to interconnect the Generating Facility to the CAISO Controlled Grid have not been completed and placed into operation by the CAISO or the Transmission Provider on the estimated completion date set forth in Seller’s interconnection agreement, then, upon SCE’s receipt of

Notice from Seller, which Notice must be provided at least sixty (60) days before the date that is eighteen (18) months from the date of CPUC Approval, the Commercial Operation Deadline shall be extended on a day-for-day basis until all of the interconnection facilities, transmission upgrades and new transmission facilities, if any, described in Seller's interconnection agreement and required to interconnect the Generating Facility to the CAISO Controlled Grid have been completed and placed into operation by the CAISO or the Transmission Provider, except to the extent any delay in such completion and placement into operation results from Seller failing to complete its obligations, take all actions and meet all of its deadlines under Seller's interconnection agreement needed to ensure timely completion and operation of such interconnection facilities, transmission upgrades and new transmission facilities.

(c) If Seller has not obtained Permit Approval on or before that date that is ninety (90) days before the date that is eighteen (18) months from the date of CPUC Approval, then, upon SCE's receipt of Notice from Seller, which Notice must be provided at least sixty (60) days before the date that is eighteen (18) months from the date of CPUC Approval, the Commercial Operation Deadline shall be extended on a day-for-day basis until Seller obtains Permit Approval, except to the extent any such delay results from Seller failing to take all commercially reasonable actions to apply for and meet all of its requirements and deadlines to obtain such Permit Approval.

(d) Notwithstanding anything in this Agreement to the contrary, the Commercial Operation Deadline may not be later than twenty-four (24) months from the date of CPUC Approval.

5.2. Section 4 (Terms & Termination) of the CREST PPA

Clean Coalition requests that the Commission direct SCE to change the contract language in the CREST PPA by replacing the existing Section 4 (Term & Termination) with Section 6 from a similar but more recent Commission-approved contract, the SCE 2010 solar photovoltaic program (SPVP) contract. Clean Coalition states that, under the existing Section 4, SCE has the right to elect to terminate the PPA due to "a change in applicable Tariffs as provided 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 [the PPA]." Clean Coalition states that traditional non-recourse financing will not accept this contract provision as lenders interpret it as providing an open right for SCE to terminate the PPA if a material change in law were to occur, and that the existing provision does not introduce a process to resolve issues associated with potential changes in the law.

SCE appears to generally object to Clean Coalition's request on the basis that the contract modifications are vague and ambiguous but does not offer any specific arguments in opposition to this proposal.

Based on the contract language approved by the Commission more recently in other standard RPS contracts, such as the SPVP contract, we find merit in Clean Coalition's claim that the existing language in Section 4 of the CREST PPA provides SCE with excessive control over termination of the PPA in the event of changes in the underlying law governing the PPA. We further find Clean Coalition's recommendation reasonable to replace Section 4 of the existing CREST PPA with Section 6 of the 2010 SPVP contract.

In adopting the 2010 SPVP contract, the Commission relied upon the already existing CREST PPA. Section 6 of the SPVP was not sufficiently controversial to warrant discussion when the Commission approved the 2010 SPVP contract via Resolution E-4299 on January 21, 2010. However, due to the similarity between the two contracts, Section 6 of the 2010 SPVP contract can essentially be described as a more refined version of Section 4 of the CREST PPA. Since the Commission's initial approval of Section 4 of the SCE CREST PPA on February 18, 2008 through Resolution E-4137, we have gained a better

understanding of the contract terms and conditions that balance the utility's, ratepayer's, and producer's interests. More specifically, we understand the need for lenders to obtain a sufficient level of stability in the terms and conditions of a Commission-approved PPA and for a process to resolve potential changes to existing PPAs by the Commission. As a result, we find it reasonable to replace Section 4 of the CREST PPA (Term and Termination) with language from Section 6 of the SPVP contract.

Accordingly, within 5 days of the effective date of this decision, SCE shall file a Tier 1 advice letter, effective immediately, removing Section 4 of the existing CREST PPA and inserting the below noted language, Section 6 of the 2010 SPVP, with non-substantive changes as needed to align internal references and to delete references to "photovoltaic."

6. TERMINATION; REMEDIES

6.1. SCE may terminate this Agreement on Notice, which termination becomes effective on the date specified by SCE in such Notice, if:

6.1.1. Producer fails to take all corrective actions specified in any SCE Notice, within the time frame set forth in such Notice, that any Generating Facility is out of compliance with any term of this Agreement;

6.1.2. Producer fails to interconnect and Operate a Photovoltaic Module within any Generating Facility, in accordance with the terms of this Agreement, within one hundred twenty (120) days after SCE delivers electric energy to such Generating Facility for Station Use;

6.1.3. Producer abandons any Generating Facility;

6.1.4. Electric output from any Generating Facility ceases for twelve (12) consecutive months;

6.1.5. The Term does not commence within eighteen (18) months of CPUC Approval, subject to any extension of the Term Start Date as a

result of Force Majeure as to which Producer is the Claiming Party (subject to Section 9.4);

6.1.6. Producer or the owner of a Site applies for or participates in the California Solar Initiative or any net energy metering tariff with respect to any Generating Facility at such Site, as set forth in Section 7.12.6 and Section 7.16, respectively; or

6.1.7. Producer has not installed any of the equipment or devices necessary for any Generating Facility to satisfy the Gross Power Rating of such Generating Facility, as set forth in Section 4.2.2.

6.2. A Party may terminate this Agreement:

6.2.1. If any representation or warranty in this Agreement made by the other Party is false or misleading in any material respect when made or when deemed made or repeated if the representation or warranty is continuing in nature, if such misrepresentation or breach of warranty is not remedied within ten (10) Business Days after Notice thereof from the nonbreaching Party to the breaching Party;

6.2.2. Except for an obligation to make payment when due, if there is a failure of the other Part to perform any material covenant or obligation set forth in this Agreement (except to the extent such failure provides a separate termination right for the non-breaching Party or to the extent excused by Force Majeure), if such failure is not remedied within thirty (30) days after Notice thereof from the non-breaching Party to the breaching Party;

6.2.3. If the other Party fails to make any payment due and owing under this Agreement, if such failure is not cured within five (5) Business Days after Notice thereof from the non-breaching Party to the breaching Party; or

6.2.4. In accordance with Section 9.4.

6.3. This Agreement automatically terminates on the Term End Date.

6.4. If a Party terminates this Agreement in accordance with Section 6, such Party will have the right to immediately suspend performance under this Agreement and pursue all remedies

available at law or in equity against the other Party (including seeking monetary damages).

5.3. Section 12 (Assignment) of the CREST PPA

Clean Coalition requests that the Commission direct SCE to change the contract language in the CREST PPA by replacing the existing Section 12 (Assignment) with Section 18 (Assignment) from 2010 SPVP contract. The existing Section 12 provides, in pertinent part that “Producer shall not voluntarily assign its rights nor delegate its duties under [the PPA] without SCE’s prior written consent” and that “SCE shall not unreasonably withhold its consent to Producer’s assignment of the [the PPA].” In support of its request, Clean Coalition states that the CREST PPA should be modified to (1) recognize that traditional non-recourse project financing requires assignment to lenders and (2) remove the uncertainty of obtaining SCE’s reasonable consent in the event of an assignment.

SCE appears to generally object to Clean Coalition’s request on the basis that the contract modifications are vague and ambiguous but does not offer any specific arguments in opposition to this proposal.

We find Clean Coalition’s recommendation reasonable to replace Section 12 of the existing CREST PPA with Section 18 of the 2010 SPVP contract. As we previously stated, in creating the 2010 SPVP contract, SCE modified the CREST PPA but made modifications to update the terms and conditions to reflect a better understanding of the terms and conditions that balance the utility’s and producer’s interests. As a result, the 2010 SPVP contract essentially represents a more refined version of the CREST PPA. When SCE filed advice letter 2364-E seeking approval of its 2010 SPVP contract, some parties protested Section 18 (Assignment) on the basis that Section 18 could potentially hinder project

financing. As a result of these protests, SCE agreed to modify Section 18. When the Commission approved the 2010 SPVP contract via Resolution E-4299 on January 21, 2010, the Commission recognized the need of lenders for more flexibility in the terms and conditions related to assignment. Therefore, the Commission incorporated more flexibility into Section 18 (Assignment) of the SPVP contract. As a result, it is reasonable to replace Section 12 of the CREST contract (Assignment) with language from Section 18 of the SPVP contract.

Accordingly, within five days of the effective date of this decision, SCE shall file a Tier 1 advice letter, effective immediately, removing Section 12 of the existing CREST PPA and inserting the below noted language, Section 18 of the 2010 SPVP, with non-substantive changes as needed to align internal references.

18. ASSIGNMENT

Producer may not assign this Agreement or its rights or obligations under this Agreement without SCE's prior written consent, which consent will not be unreasonably withheld; provided, however, that Producer may, without SCE's consent (and without relieving Producer from liability under this Agreement), transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof to its Lender in connection with any financing for a Generating Facility if (i) such Lender assumes the payment and performance obligations provided under this Agreement with respect to Producer, (ii) such Lender agrees in writing to be bound by the terms and conditions of this Agreement, and (iii) Producer delivers such tax and enforceability assurance as SCE may reasonably request. Any assignment of this Agreement by Producer without SCE's written consent is not valid.

5.4. Sections 14.2 (future modification) and 14.4 (application for modifications) of the CREST PPA

Clean Coalition requests that the Commission direct SCE to change the contract language in the CREST PPA by removing the existing Sections 14.2

(future modifications) and 14.4 (application for modifications by SCE) of the CREST PPA.

Section 14.2 provides that the PPA “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.” In support of its request to remove Section 14.2, Clean Coalition states that Section 14.2 hinders the developer from obtaining traditional financing because lenders are concerned that the Commission may unilaterally amend the PPA to materially change the economics of the contract and adversely impact the financial positions of the producer and lender. Clean Coalition suggests removing Section 14.2 from the CREST PPA to provide the required additional certainty to lenders that contracts will not be unexpectedly modified.

Section 14.4 provides that “Notwithstanding any other provision 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 support of its request to remove Section 14.4, Clean Coalition states that Section 14.4 hinders the developer from obtaining traditional financing because lenders are concerned that SCE may unilaterally seek Commission permission to materially change the economics or governance provisions of the PPA and, as a result, adversely impact the financial positions of the producer or lender.

SCE appears to generally object to Clean Coalition’s request on the basis that the contract modifications are vague and ambiguous but does not offer any specific arguments in opposition to this proposal.

For guidance on this issue, we again refer to SCE’s 2010 SPVP contract. Notably, the 2010 SPVP contract does not contain provisions similar to

Sections 14.2 and 14.4 of the existing CREST PPA. Multiple parties reviewed and commented upon SCE's initial proposal for the 2010 SPVP and, based on these comments, the Commission decided not to include terms and conditions similar to Sections 14.2 and 14.4 in the final version of the 2010 SPVP contract approved by the Commission. Consistent with the latter contract, we find merit in Clean Coalition's claim that the existing language in Sections 14.2 and 14.4 of the CREST PPA introduces excessive uncertainty into the future financial risks of the developer and the lender. As a result, it is reasonable to remove Sections 14.2 and 14.4 from the CREST PPA.

Accordingly, within 5 days of the effective date of this decision, SCE shall file a Tier 1 advice letter, effective immediately, removing Sections 14.2 and 14.4 of the existing CREST PPA.

5.5. Addition of Force Majeure and Indemnification Provisions to CREST PPA

Clean Coalition requests that the Commission direct SCE to change the contract language in the CREST PPA by adding two sections from the 2010 SPVP contract, Sections 9 (Force Majeure) and 16 (Indemnification). Clean Coalition states that the additional two provisions are needed to protect the buyer and the producer from events outside of their control but that the additions are not necessarily required to obtain financing. In support of its request to add these two sections to the CREST PPA, Clean Coalition states that no provisions in the existing CREST PPA address indemnification and force majeure.

SCE appears to generally object to Clean Coalition's request on the basis that the contract modifications are vague and ambiguous but does not offer any specific arguments in opposition to this proposal.

For guidance, we again turn to the 2010 SPVP contract, which includes provisions regarding force majeure and indemnification. We find that including these provisions in the CREST PPA, as suggested by Clean Coalition, would provide clarity to the developer and the lender by protecting the producer from events outside of its control. As a result, financing may proceed more smoothly. The majority of similar renewable PPAs now include these provisions. As a result, it is reasonable to add these provisions from the 2010 SPVP contract to the CREST PPA.

Accordingly, within five days of the effective date of this decision, SCE shall file a Tier 1 advice letter, effective immediately, adding the language set forth in Sections 9 (Force Majeure) and 16 (Indemnification) of the 2010 SPVP, which is reproduced below, to the CREST PPA, with non-substantive changes as needed to align internal references.

9. FORCE MAJEURE

9.1. Neither Party shall be in default in the performance of any of its obligations set forth in this Agreement, except for obligations to pay money, when and to the extent failure of performance is caused by Force Majeure.

9.2. If a Party, because of Force Majeure, is rendered wholly or partly unable to perform its obligations when due under this Agreement, such Party (the "Claiming Party") shall be excused from whatever performance is affected by the Force Majeure to the extent so affected. In order to be excused from its performance obligations under this Agreement by reason of Force Majeure:

9.2.1. The Claiming Party, on or before the fourteenth (14th) day after the initial occurrence of the claimed Force Majeure, must give the other Party Notice describing the particulars of the occurrence; and

9.2.2. The Claiming Party must provide timely evidence reasonably sufficient to establish that the occurrence constitutes Force Majeure as defined in this Agreement.

9.3. The suspension of the Claiming Party's performance due to Force Majeure may not be greater in scope or longer in duration than is required by such Force Majeure. In addition, the Claiming Party shall use diligent efforts to remedy its inability to perform. When the Claiming Party is able to resume performance of its obligations under this Agreement, the Claiming Party shall give the other Party prompt Notice to that effect.

9.4. The non-Claiming Party may terminate this Agreement on at least five (5) Business Days' prior Notice, in the event of Force Majeure which materially interferes with such Party's ability to perform its obligations under this Agreement and which extends for more than 365 consecutive days, or for more than a total of 365 days in any consecutive 540-day period.

16. INDEMNIFICATION

16.1. Each Party as indemnitor shall defend, save harmless and indemnify the other Party and the directors, officers, employees, and agents of such other Party against and from any and all loss, liability, damage, claim, cost, charge, demand, or expense (including any direct, indirect, or consequential loss, liability, damage, claim, cost, charge, demand, or expense, including reasonable attorneys' fees) for injury or death to persons, including employees of either Party, and physical damage to property including property of either Party arising out of or in connection with the negligence or willful misconduct of the indemnitor relating to its obligations under this Agreement. This indemnity applies notwithstanding the active or passive negligence of the indemnitee; provided, however, that neither Party is indemnified under this Agreement for its loss, liability, damage, claim, cost, charge, demand or expense to the extent resulting from its own negligence or willful misconduct.

16.2. Producer shall defend, save harmless and indemnify SCE, its directors, officers, employees, and agents, assigns, and successors in interest, for and against any penalty imposed upon SCE to the extent

caused by Producer's failure to fulfill its obligations as set forth in Sections 7.2 through 7.4.

16.3. Each Party releases and shall defend, save harmless and indemnify the other Party from any and all loss, liability, damage, claim, cost, charge, demand or expense arising out of or in connection with any breach made by the indemnifying Party of its representations, warranties and covenants in Section 14. Notwithstanding anything to the contrary in this Agreement, if Producer fails to comply with the provisions of Section 10, Producer shall, at its own cost, defend, save harmless and indemnify SCE, its directors, officers, employees, and agents, assigns, and successors in interest, from and against any and all loss, liability, damage, claim, cost, charge, demand, or expense of any kind or nature (including any direct, indirect, or consequential loss, damage, claim, cost, charge, demand, or expense, including reasonable attorneys' fees and other costs of litigation), resulting from injury or death to any individual or damage to any property, including the personnel or property of SCE, to the extent that SCE would have been protected had Producer complied with all of the provisions of Section 10. The inclusion of this Section 16.3 is not intended to create any express or implied right in Producer to elect not to provide the insurance required under Section 10.

16.4. All indemnity rights survive the termination of this Agreement for 12 months.

5.6. Modification of the CREST PPA to Provide More Interconnection Agreement Options

Clean Coalition requests that the Commission direct SCE to modify the CREST PPA contract language to (1) provide a producer or developer with the option of entering into a CREST PPA even if the project is potentially experiencing delays when undergoing a system impact interconnection study, and (2) provide a producer or developer with options for interconnection agreements in addition to the currently available interconnection agreement under SCE's Electric Tariff Rule 21, referred to as the Interconnection Facilities

Financing and Ownership Agreement (IFFOA). In support of these requests, Clean Coalition generally states that SCE has unduly delayed the processing of interconnection requests by generators. Clean Coalition further states that these delays impact investment and eligibility for federal grants.

Specifically regarding its first request, Clean Coalition states that producers and developers need the ability to enter into a PPA with SCE earlier in the process when undergoing an interconnection study. Having a PPA enables the producer or developer to make necessary investments in preparing for construction and to preserve eligibility for federal cash grants under § 1603 of the American Recovery and Reinvestment Tax Act. Under SCE's current procedure, producers and developers cannot enter into a PPA until they have completed the required interconnection studies and submitted the signed IFFOA.

Regarding its second request, Clean Coalition states that, as a result of existing delays in processing interconnection requests under the CREST PPA, producers and developers would like to be able to pursue other existing SCE interconnection agreements, not only the IFFOA, so that they can determine (1) if the processing time under other interconnection agreements is shorter than under the IFFOA and (2) how other interconnection agreements balance the risks between the producer or developer and SCE.

In response, SCE claims that Clean Coalition's second request is vague and ambiguous because the request does not state what interconnection agreements Clean Coalition is referring to or what process producers or developers would follow to obtain one of these other interconnection agreements. SCE appears to generally object to Clean Coalition's first request but does not offer any specific arguments in opposition to this proposal.

Based on the Commission's experience with the RPS program and related contracts, we find merit in Clean Coalition's first requested modification to the CREST PPA. Appendix B of the CREST PPA requires a producer to complete its interconnection studies and submit an IFFOA to SCE before the producers or developers can enter into the CREST PPA. Notably, with the exception of the CREST PPA and San Diego Gas & Electric Company standard tariff and contract, other IOU renewable programs or contracts do not require producers or developers to have progressed so far toward completing the interconnection process before being eligible for a PPA. Based on our review of other RPS-related contracts, including the SPVP contract and the RAM contract, we understand that producers and developers need to execute a contract at some point during the project development process rather than at the end of the process. The timing is critical because producers and developers need a guaranteed buyer for the electricity before investing a significant amount of capital in the project. An executed contract is a key to reduce uncertainty and obtain financing.

Interestingly, those Feed-in Tariff programs that require significant progress toward a completed interconnection study before executing a PPA have smaller programs. Since the CREST program began in February 2008, SCE has executed three contracts: one with an existing facility and two with new solar PV facilities. San Diego Gas & Electric Company (SDG&E) has a similar requirement as SCE and has not executed a Feed-in Tariff contract with any new

project.⁷ In contrast, PG&E does not require any interconnection milestones prior to contract execution and currently has 74 executed contracts.⁸

We find that SCE's existing requirement could hinder investment and contract execution. Instead of requiring an executed interconnection agreement before qualifying for a PPA, Clean Coalition proposes that a producer conducting a system impact study be eligible for the CREST PPA. The system impact study is the first of two studies the utility conducts in order to determine if a producer can safely and reliably interconnect to the grid.

We recently addressed interconnection requirements in the context of small renewable generation in Resolution E-4414, which the Commission approved on August 18, 2011. This resolution represents the latest Commission direction on interconnection requirements and requires a producer or developer to have completed the System Impact Study, or the Phase I Cluster Study, or to have passed the Fast Track screens in order to be eligible for the RAM program.⁹ SCE's SPVP program has the same requirement as the RAM program.

Accordingly, today we adopt the specific requirement that SCE provide a producer or developer with the option of entering into a CREST PPA when that

⁷ See SDG&E's Feed-in Tariff webpage to download a list of executed contracts: <http://www.sdge.com/regulatory/AB1969.shtml>.

⁸ See PG&E's Feed-in Tariff webpage to download a list of executed contracts: <http://www.pge.com/b2b/energysupply/wholesaleelectricsuppliersolicitation/standardcontractsforpurchase/>

⁹ The System Impact Study is the first of two interconnection studies in a serial study process. The Phase I study is name of the first study in the cluster study process, which is essentially a system impact study. The Fast Track is a process to determine if a producer has such a minimal impact that it can avoid the interconnection study process. The Fast Track contains a set of 10 screens that a producer must pass in order to avoid the interconnection studies.

producer or developer has completed the System Impact Study, or the Phase 1 Cluster Study, or passed the Fast Track screens. This requirement is consistent with our actions in other more recently approved renewable programs. We do not adopt Clean Coalition's recommendation that SCE provide a producer or developer with the option of entering into a CREST PPA during the time the project is still undergoing a system impact interconnection study.

We also find merit in Clean Coalition's second requested modification that developers may use interconnection agreement processes other than Tariff Rule 21. Based on our review of interconnection agreements offered in other more recently approved renewable programs and the fact that the existing IFFOA has not been reviewed or vetted through a stakeholder process, we require SCE to offer producers or developers the option to enter into other existing SCE interconnection agreements., specifically the Generator Interconnection Agreement (GIA) used for generators studied through the serial Independent Study Process. We find that producers or developers may be hesitant to sign SCE's IFFOA because it has not been reviewed or vetted through a stakeholder process. Based on the completed stakeholder process at the California Independent System Operator and at SCE, we also find that producers and developers may be comfortable signing the GIA, which SCE offers to generators that applied for interconnection through the GIP, a Federal Energy Regulatory Commission (FERC)-jurisdictional process. All other renewable programs require producers and developers to use the Wholesale Distribution Access Tariff (WDAT) if interconnecting to the distribution system, which contains the GIA. While SCE's CREST program requires producers and an interconnection agreement to apply for interconnection through Tariff Rule 21 (and rely upon the IFFOA), SCE has in practice used the WDAT/GIA serial study process

procedures to study and interconnect the CREST projects since there is no defined interconnection study process in Rule 21. As a result, it would be reasonable for SCE to give producers and developers the option to sign the GIA or the IFFOA.

Thus, we adopt, with modifications, the second request by Clean Coalition. SCE must allow producers and developers to execute either the IFFOA or the most recently approved GIA. A copy of SCE's GIA can be found at Attachment A.

Accordingly, within five days of the effective date of this decision, SCE shall file a Tier 1 advice letter, effective immediately, making the following changes to the CREST PPA.

1. Delete Appendix B.
2. Delete references to Appendix B in contract language.
3. Modify the contract language as follows:

6. BILLING AND PAYMENT

- 6.11 Monthly charges, if any, associated with Interconnection Facilities shall be billed and paid pursuant to the applicable Interconnection Facilities Financing and Ownership Agreement or the Generator Interconnection Agreement and monthly charges, if any, associated with electric service provided by SCE shall be billed and paid pursuant to the applicable Tariffs filed by SCE with the Commission.

7. INTERCONNECTION FACILITIES

- 7.1 Producer and/or SCE, as appropriate, shall provide Interconnection Facilities that adequately protect SCE's Distribution System, personnel, and other persons from damage or injury, which may be caused by the Operation of Producer's Renewable Generating Facility.

- 7.2 Producer shall be solely responsible for the costs, design, purchase, construction, Operation, and maintenance of the Interconnection Facilities that Producer owns.
 - 7.3 If the provisions of SCE's Rule 21, or any other Tariff approved by the Commission or the Federal Energy Regulatory Commission, require SCE to own and operate a portion of the Interconnection Facilities, Producer and SCE shall promptly execute an Interconnection Facilities Financing and Ownership Agreement or the Generator Interconnection Agreement that establishes and allocates responsibility for the design, installation, Operation, maintenance, and ownership of the Interconnection Facilities.
4. Add at Appendix F Definitions:
21. "Interconnection Facilities Financing and Ownership Agreement" and "Generator Interconnection Agreement" means that certain agreement between Producer and SCE.

6. Comments on Proposed Decision

The proposed decision in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on _____, and reply comments were filed on _____ by _____.

7. Assignment of Proceeding

Mark J. Ferron is the assigned Commissioner and Regina DeAngelis is the assigned ALJ in this proceeding.

Findings of Fact

1. SCE has an existing backlog in completing interconnection studies, among and other project development challenges that may delay a project from coming online in 18 months.

2. The Commission recently addressed a contract extension issue in D.10-12-048, the Renewable Auction Mechanism (RAM).
3. In D.10-12-048 and D.07-07-027, the Commission found that a defined period of time for small renewable projects to come online, such as the 18-month provision, is appropriate because it imposes strict time limits on processing and, in turn, attracts the most viable projects.
4. In D.10-12-048, the Commission also recognized that “legitimate delays can occur relative to any timeline.”
5. Section 4 of the CREST PPA provides SCE with excessive control over termination of the PPA in the event of changes.
6. Contract language approved by the Commission for other standard Renewable Portfolio Standard contracts, such as SCE’s 2010 SPVP contract, provides a process to resolve issues associated with potential changes in the law governing the contract.
7. The SCE’s 2010 SPVP contract in general, and Section 6 of the 2010 SPVP contract in particular, can essentially be described as a more updated and refined version of Section 4 of the CREST PPA.
8. Since the Commission’s initial approval of Section 4 of the SCE CREST PPA on February 18, 2008 through Resolution E-4137, we have gained a better understanding of the contract terms and conditions that balance the utility’s, ratepayer’s, and producer’s interests.
9. Lenders need sufficient stability in the terms and conditions of a Commission-approved PPA and a process to resolve potential Commission changes.
10. SCE’s CREST PPA contains restrictions on assignment of the PPA that are more burdensome than other more recently-approved renewable contracts.

11. When SCE filed advice letter 2364-E seeking approval of its 2010 SPVP contract, some parties protested Section 18 (Assignment) on the basis that Section 18 could potentially hinder project financing due to the restrictions placed on assignment of the contract.

12. The language adopted by the Commission for Section 18 (Assignment) in Resolution E-4299 recognizes the need of lenders for more flexibility in the terms and conditions related to assignment.

13. The 2010 SPVP contract does not contain provisions similar to Sections 14.2 and 14.4 of the existing CREST PPA. Those sections, in certain circumstances, might be interpreted to permit the Commission to unilaterally amend the PPA to materially change the economics of the contract and adversely impact the financial positions of the producer and lender.

14. Multiple parties reviewed and commented upon SCE's initial proposal for the 2010 SPVP contract and, based on SCE's proposed contract and these initial comments, the Commission decided not to include terms and conditions similar to Sections 14.2 and 14.4 of the CREST PPA in the approved version of the 2010 SPVP.

15. The existing SCE CREST PPA does not contain provisions for Force Majeure and Indemnification.

16. SCE's 2010 SPVP contract and the majority of similar more recently-approved renewable PPAs include provisions for Force Majeure and Indemnification.

17. The addition of the language to the CREST PPA from Sections 9 (Force Majeure) and 16 (Indemnification) of the 2010 SPVP will provide needed clarity to producers and lenders and, as a result, financing may proceed more smoothly.

18. Delays in the processing of interconnection requests by generators may impact investment decisions and eligibility for federal grants under § 1603 of the American Recovery and Reinvestment Tax Act.

19. Under the current SCE procedure, producers and developers cannot enter into a PPA with SCE until they have completed the required interconnection studies and submitted the executed IFFOA.

20. Resolution E-4414, which the Commission approved on August 18, 2011, represents the latest Commission direction on interconnection requirements and requires a producer or developer to have completed the System Impact Study, or the Phase I Cluster Study, or have passed the Fast Track screens, in order to be eligible for the RAM program. SCE's SPVP program has the same requirement as Resolution E-4414.

21. The existing SCE IFFOA has not been reviewed or vetted through a stakeholder process and, therefore, stakeholders may be hesitant to enter into this interconnection agreement.

22. SCE also offers to interconnect with generators under the more recently FERC-approved GIA.

Conclusions of Law

1. Recognizing that legitimate delays can occur relative to any timeline, the language providing for an 18-month online date plus one six-month extension for regulatory delays, as discussed in D.10-12-048, should be incorporated into the CREST PPA.

2. Replacing Section 4 of the CREST PPA (Term and Termination) with language from Section 6 of the SPVP contract is reasonable because lenders need a sufficient level of stability in the terms and conditions of a Commission-approved PPA and a process to resolve potential Commission changes.

3. It is reasonable to replace Section 12 of the CREST contract (Assignment) with language from Section 18 of the SPVP contract based on the need for more flexibility in the terms and conditions related to assignment to lenders of Commission-approved contracts.

4. Based on our recent consideration of SCE's 2010 SPVP contract, it is reasonable to find that the existing language in the SCE CREST PPA at Sections 14.2 (future modifications) and 14.4 (application for modifications by SCE) introduces excessive uncertainty into the future financial risks of the producer and the lender. To resolve this uncertainty, it is reasonable to remove Sections 14.2 and 14.4 from the CREST PPA.

5. It is reasonable to add language regarding Force Majeure and Indemnification from the 2010 SPVP contract to the CREST PPA as the majority of similar renewable PPAs now include this language, and the addition of this language will provide needed clarity to producers and lenders and, as a result, financing may proceed more smoothly.

6. Consistent with other renewable programs, such as RAM and the SPVP program, producers and developers need the ability to enter into a PPA with SCE earlier in the process when the producer or developer has completed the System Impact Study, the Phase I Cluster Study or passed the Fast Track, because a PPA is often needed to make the necessary investments in preparing for construction and for the purpose of preserving eligibility for the federal cash grants under § 1603 of the American Recovery and Reinvestment Tax Act.

7. By offering developers and producers additional contract options for interconnection, delays in processing may be shortened.

8. By permitting developers and producers to rely on interconnection agreements, other than the IFFOA, delays in processing time may be shortened.

9. To enable timely project development and preserve eligibility for federal cash grants, today's decision should be made effective immediately.

O R D E R

IT IS ORDERED that:

1. Within five days of the effective date of this decision, Southern California Edison Company shall file a Tier 1 advice letter, effective immediately, incorporating into its California Renewable Energy Small Tariff Power Purchase Agreement the language set forth below, including any non-substantive changes to align internal references.

1.04 Commercial Operation Deadline.

(a) Subject to any extensions made pursuant to Sections 1.04(b), 1.04(c), 3.06(c) or 5.03, and further subject to Section 1.04(d), the Commercial Operation Date must be no later than the earlier of (i) *[sixty (60) days] {for Baseload} [one hundred twenty (120) days] {for Intermittent}* from the Initial Synchronization Date, and (ii) eighteen (18) months from the date of CPUC Approval ("Commercial Operation Deadline").

(b) If all of the interconnection facilities, transmission upgrades and new transmission facilities, if any, described in Seller's interconnection agreement and required to interconnect the Generating Facility to the CAISO Controlled Grid have not been completed and placed into operation by the CAISO or the Transmission Provider on the estimated completion date set forth in Seller's interconnection agreement, then, upon SCE's receipt of Notice from Seller, which Notice must be provided at least sixty (60) days before the date that is eighteen (18) months from the date of CPUC Approval, the Commercial Operation Deadline shall be extended on a day-for-day basis until all of the interconnection facilities, transmission upgrades and new transmission facilities, if any, described in Seller's interconnection agreement and required to interconnect the Generating Facility to the CAISO Controlled Grid have been completed and placed into operation by the CAISO or the Transmission Provider, except to the extent any delay in such

completion and placement into operation results from Seller failing to complete its obligations, take all actions and meet all of its deadlines under Seller's interconnection agreement needed to ensure timely completion and operation of such interconnection facilities, transmission upgrades and new transmission facilities.

(c) If Seller has not obtained Permit Approval on or before that date that is ninety (90) days before the date that is eighteen (18) months from the date of CPUC Approval, then, upon SCE's receipt of Notice from Seller, which Notice must be provided at least sixty (60) days before the date that is eighteen (18) months from the date of CPUC Approval, the Commercial Operation Deadline shall be extended on a day-for-day basis until Seller obtains Permit Approval, except to the extent any such delay results from Seller failing to take all commercially reasonable actions to apply for and meet all of its requirements and deadlines to obtain such Permit Approval.

(d) Notwithstanding anything in this Agreement to the contrary, the Commercial Operation Deadline may not be later than twenty-four (24) months from the date of CPUC Approval

2. Within five days of the effective date of this decision, Southern California Edison Company shall file a Tier 1 advice letter, effective immediately, removing Section 4 of the existing California Renewable Energy Small Tariff Power Purchase Agreement and inserting the below noted language, Section 6 of the 2010 Solar Photovoltaic Program contract, including any non-substance changes needed to align internal references and to delete references to "photovoltaic."

6. TERMINATION; REMEDIES

6.1. SCE may terminate this Agreement on Notice, which termination becomes effective on the date specified by SCE in such Notice, if:

6.1.1. Producer fails to take all corrective actions specified in any SCE Notice, within the time frame set forth in such Notice, that any Generating Facility is out of compliance with any term of this Agreement;

- 6.1.2. Producer fails to interconnect and Operate a Photovoltaic Module within any Generating Facility, in accordance with the terms of this Agreement, within one hundred twenty (120) days after SCE delivers electric energy to such Generating Facility for Station Use;
- 6.1.3. Producer abandons any Generating Facility;
- 6.1.4. Electric output from any Generating Facility ceases for twelve (12) consecutive months;
- 6.1.5. The Term does not commence within eighteen (18) months of CPUC Approval, subject to any extension of the Term Start Date as a result of Force Majeure as to which Producer is the Claiming Party (subject to Section 9.4);
- 6.1.6. Producer or the owner of a Site applies for or participates in the California Solar Initiative or any net energy metering tariff with respect to any Generating Facility at such Site, as set forth in Section 7.12.6 and Section 7.16, respectively; or
- 6.1.7. Producer has not installed any of the equipment or devices necessary for any Generating Facility to satisfy the Gross Power Rating of such Generating Facility, as set forth in Section 4.2.2.
- 6.2. A Party may terminate this Agreement:
- 6.2.1. If any representation or warranty in this Agreement made by the other Party is false or misleading in any material respect when made or when deemed made or repeated if the representation or warranty is continuing in nature, if such misrepresentation or breach of warranty is not remedied within ten (10) Business Days after Notice thereof from the nonbreaching Party to the breaching Party;
- 6.2.2. Except for an obligation to make payment when due, if there is a failure of the other Part to perform any material covenant or obligation set forth in this Agreement (except to the extent such failure provides a separate termination right for the non-breaching Party or to the extent excused by Force Majeure), if such failure is not remedied within thirty (30) days after Notice thereof from the non-breaching Party to the breaching Party;

6.2.3. If the other Party fails to make any payment due and owing under this Agreement, if such failure is not cured within five (5) Business Days after Notice thereof from the non-breaching Party to the breaching Party; or

6.2.4. In accordance with Section 9.4.

6.3. This Agreement automatically terminates on the Term End Date.

6.4. If a Party terminates this Agreement in accordance with Section 6, such Party will have the right to immediately suspend performance under this Agreement and pursue all remedies available at law or in equity against the other Party (including seeking monetary damages).

3. Within five days of the effective date of this decision, Southern California Edison Company shall file a Tier 1 advice letter, effective immediately, removing Section 12 of its existing California Renewable Energy Small Tariff Power Purchase Agreement and inserting the below noted language, Section 18 of the 2010 Solar Photovoltaic Program contract, including any non-substance changes needed to align internal references.

18. ASSIGNMENT

Producer may not assign this Agreement or its rights or obligations under this Agreement without SCE's prior written consent, which consent will not be unreasonably withheld; provided, however, that Producer may, without SCE's consent (and without relieving Producer from liability under this Agreement), transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof to its Lender in connection with any financing for a Generating Facility if (i) such Lender assumes the payment and performance obligations provided under this Agreement with respect to Producer, (ii) such Lender agrees in writing to be bound by the terms and conditions of this Agreement, and (iii) Producer delivers such tax and enforceability assurance as SCE may reasonably request. Any assignment of this Agreement by Producer without SCE's written consent is not valid.

4. Within five days of the effective date of this decision, Southern California Edison Company shall file a Tier 1 advice letter, effective immediately, removing Sections 14.2 and 14.4 of the existing California Renewable Energy Small Tariff Power Purchase Agreement.

5. Within five days of the effective date of this decision, Southern California Edison Company shall file a Tier 1 advice letter, effective immediately, adding the language set forth in Sections 9 (Force Majeure) and 16 (Indemnification) of its 2010 Solar Photovoltaic Program contract, which is reproduced below, to the California Renewable Energy Small Tariff Power Purchase Agreement, including any non-substantive changes needed to align internal references.

9. FORCE MAJEURE

9.1. Neither Party shall be in default in the performance of any of its obligations set forth in this Agreement, except for obligations to pay money, when and to the extent failure of performance is caused by Force Majeure.

9.2. If a Party, because of Force Majeure, is rendered wholly or partly unable to perform its obligations when due under this Agreement, such Party (the "Claiming Party") shall be excused from whatever performance is affected by the Force Majeure to the extent so affected. In order to be excused from its performance obligations under this Agreement by reason of Force Majeure:

9.2.1. The Claiming Party, on or before the fourteenth (14th) day after the initial occurrence of the claimed Force Majeure, must give the other Party Notice describing the particulars of the occurrence; and

9.2.2. The Claiming Party must provide timely evidence reasonably sufficient to establish that the occurrence constitutes Force Majeure as defined in this Agreement.

9.3. The suspension of the Claiming Party's performance due to Force Majeure may not be greater in scope or longer in duration than is required by such Force Majeure. In addition, the Claiming

Party shall use diligent efforts to remedy its inability to perform. When the Claiming Party is able to resume performance of its obligations under this Agreement, the Claiming Party shall give the other Party prompt Notice to that effect.

9.4. The non-Claiming Party may terminate this Agreement on at least five (5) Business Days' prior Notice, in the event of Force Majeure which materially interferes with such Party's ability to perform its obligations under this Agreement and which extends for more than 365 consecutive days, or for more than a total of 365 days in any consecutive 540-day period.

16. INDEMNIFICATION

16.1. Each Party as indemnitor shall defend, save harmless and indemnify the other Party and the directors, officers, employees, and agents of such other Party against and from any and all loss, liability, damage, claim, cost, charge, demand, or expense (including any direct, indirect, or consequential loss, liability, damage, claim, cost, charge, demand, or expense, including reasonable attorneys' fees) for injury or death to persons, including employees of either Party, and physical damage to property including property of either Party arising out of or in connection with the negligence or willful misconduct of the indemnitor relating to its obligations under this Agreement. This indemnity applies notwithstanding the active or passive negligence of the indemnitee; provided, however, that neither Party is indemnified under this Agreement for its loss, liability, damage, claim, cost, charge, demand or expense to the extent resulting from its own negligence or willful misconduct.

16.2. Producer shall defend, save harmless and indemnify SCE, its directors, officers, employees, and agents, assigns, and successors in interest, for and against any penalty imposed upon SCE to the extent caused by Producer's failure to fulfill its obligations as set forth in Sections 7.2 through 7.4.

16.3. Each Party releases and shall defend, save harmless and indemnify the other Party from any and all loss, liability, damage, claim, cost, charge, demand or expense arising out of or in connection with any breach made by the indemnifying Party of its representations, warranties and covenants in Section

14. Notwithstanding anything to the contrary in this Agreement, if Producer fails to comply with the provisions of Section 10, Producer shall, at its own cost, defend, save harmless and indemnify SCE, its directors, officers, employees, and agents, assigns, and successors in interest, from and against any and all loss, liability, damage, claim, cost, charge, demand, or expense of any kind or nature (including any direct, indirect, or consequential loss, damage, claim, cost, charge, demand, or expense, including reasonable attorneys' fees and other costs of litigation), resulting from injury or death to any individual or damage to any property, including the personnel or property of SCE, to the extent that SCE would have been protected had Producer complied with all of the provisions of Section 10. The inclusion of this Section 16.3 is not intended to create any express or implied right in Producer to elect not to provide the insurance required under Section 10.

16.4. All indemnity rights survive the termination of this Agreement for 12 months.

6. Southern California Edison Company shall provide a producer or developer with the option of entering into a CREST PPA when that producer or developer has completed the System Impact Study, or the Phase 1 Cluster Study, or past the Fast Track screens.

7. Within five days of the effective date of this decision, Southern California Edison Company shall file a Tier 1 advice letter, effective immediately, making the below noted changes to the California Renewable Energy Small Tariff Power Purchase Agreement, including any non-substantive changes needed to align internal references.

1. Delete Appendix B.
2. Delete references to Appendix B in contract language.

3. Modify the contract language as follows:

6. BILLING AND PAYMENT

- 6.11 Monthly charges, if any, associated with Interconnection Facilities shall be billed and paid pursuant to the applicable Interconnection Facilities Financing and Ownership Agreement or the Generator Interconnection Agreement and monthly charges, if any, associated with electric service provided by SCE shall be billed and paid pursuant to the applicable Tariffs filed by SCE with the Commission.

7. INTERCONNECTION FACILITIES

- 7.1 Producer and/or SCE, as appropriate, shall provide Interconnection Facilities that adequately protect SCE's Distribution System, personnel, and other persons from damage or injury, which may be caused by the Operation of Producer's Renewable Generating Facility.
- 7.2 Producer shall be solely responsible for the costs, design, purchase, construction, Operation, and maintenance of the Interconnection Facilities that Producer owns.
- 7.3 If the provisions of SCE's Rule 21, or any other Tariff approved by the Commission or the Federal Energy Regulatory Commission, require SCE to own and operate a portion of the Interconnection Facilities, Producer and SCE shall promptly execute an Interconnection Facilities Financing and Ownership Agreement or the Generator Interconnection Agreement that establishes and allocates responsibility for the design, installation, Operation, maintenance, and ownership of the Interconnection Facilities.

4. Add at Appendix F Definitions:

21. "Interconnection Facilities Financing and Ownership Agreement" means that certain agreement between Producer and SCE.

8. Service of this decision will be provided to the electronic service list for General Order 96-B, attached hereto as Attachment B, and the electronic service list for this proceeding.

9. Rulemaking 11-05-005 remains open.

This order is effective today.

Dated _____, at San Francisco, California.