

DRAFT

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

ID #9914  
RESOLUTION E-4382  
December 2, 2010

REDACTED

**R E S O L U T I O N**

Resolution E-4382. Southern California Edison Company (SCE) requests approval of two amended and restated renewable energy power purchase and sale agreements with Calico Solar, LLC.

PROPOSED OUTCOME: This Resolution approves cost recovery for two amended and restated renewable energy power purchase and sale agreements (PPAs) between SCE and Calico Solar, LLC. The amended and restated Calico Solar, LLC PPAs are approved without modification.

ESTIMATED COST: Costs of the PPAs are confidential at this time.

By Advice Letter (AL) 2502-E filed on August 24, 2010.

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**SUMMARY**

**Southern California Edison's renewable energy power purchase and sale agreements with Calico Solar, LLC, as amended and restated, comply with the Renewable Portfolio Standard (RPS) procurement guidelines and are approved without modification.**

Southern California Edison (SCE) filed advice letter (AL) 2502-E requesting Commission review and approval of two amended and restated power purchase and sale agreements (PPA) to replace the approved PPA between SCE and SES Solar One, LLC (SES) in its entirety. The SES PPA resulted from SCE's 2003 RPS solicitation and was approved by the Commission on October 27, 2005 in Commission Resolution E-3957.

In April 2009, SES approached SCE requesting to modify the SES PPA based on a redesign of the power conversion units (SunCatchers™), finalized contracts for supply and fabrication of major components, updated projections of Bureau of Land Management (BLM) land lease rates, and a refined project capital cost structure.

In early 2010, SES Solar and Calico Solar (Calico) merged. Pursuant to the merger, SES Solar assigned, and Calico assumed, all rights, duties, and obligations of SES Solar under the SES PPA. During renegotiations SCE and Calico agreed to amend and restate the SES PPA in two parts, resulting in two development phases for the Calico project which together equal the original project capacity under the SES PPA. Additionally, the amended and restated PPAs modify and update several terms and conditions of the SES PPA.

The following table summarizes the amended and restated PPAs and the original SES PPA:

<b>Generating Facility</b>	<b>Technology Type</b>	<b>Term (Years)</b>	<b>Capacity (MW)</b>	<b>Energy (GWh/yr)</b>	<b>Online Date</b>	<b>Location</b>
Calico Solar (Phase I)	Solar Thermal	20	275	638	December 31, 2012	Near Barstow, CA
Calico Solar (Phase II)	Solar Thermal	20	575	1,335	January 1, 2014	Near Barstow, CA
<b>TOTAL</b>			<b>850</b>	<b>1,973</b>		
SES Solar One (original PPA)	Solar Thermal	20	500 - 850	1,047 - 1,780	December 31, 2008	Near Barstow, CA

The amended and restated PPAs are priced above the 2009 market price referent (MPR) but at or below the 2008 MPR for a 20-year contract and compare favorably to the bid prices from SCE's 2009 RPS solicitation.

Deliveries from the amended and restated PPAs are reasonably priced and fully recoverable in rates over the life of the contract, subject to Commission review of SCE's administration of the contract.

AL 2502-E is approved without modification.

## **BACKGROUND**

### **Overview of the Renewables Portfolio Standard (RPS) Program**

The California RPS Program was established by Senate Bill (SB) 1078, and has been subsequently modified by SB 107 and SB 1036.<sup>1</sup> The RPS program is codified in Public Utilities Code Sections 399.11-399.20.<sup>2</sup> The RPS program administered by the Commission requires each utility to increase its total procurement of eligible renewable energy resources by at least one percent of retail sales per year so that 20 percent of the utility's retail sales are procured from eligible renewable energy resources no later than December 31, 2010.<sup>3</sup>

Additional background information about the Commission's RPS Program, including links to relevant laws and Commission decisions, is available at <http://www.cpuc.ca.gov/PUC/energy/Renewables/overview.htm> and <http://www.cpuc.ca.gov/PUC/energy/Renewables/decisions.htm>.

## **NOTICE**

Notice of AL 2502-E was made by publication in the Commission's Daily Calendar. SCE states that a copy of the Advice Letter was mailed and distributed in accordance with Section 3.14 of General Order 96-B.

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<sup>1</sup> SB 1078 (Sher, Chapter 516, Statutes of 2002); SB 107 (Simitian, Chapter 464, Statutes of 2006); SB 1036 (Perata, Chapter 685, Statutes of 2007).

<sup>2</sup> All further references to sections refer to Public Utilities (Pub. Utils.) Code unless otherwise specified.

<sup>3</sup> See, Pub. Utils. Code § 399.15(b)(1).

## **PROTESTS**

Advice Letter 2502-E was not protested.

## **DISCUSSION**

### **SCE requests approval of two amended and restated PPAs with Calico Solar, LLC**

On August 24, 2010, SCE filed AL 2502-E requesting Commission approval of two amended and restated PPAs to replace a Commission-approved renewable energy power purchase and sale agreement with SES Solar One, in its entirety. The SES PPA resulted from SCE's 2003 RPS solicitation and was approved by the Commission on October 27, 2005 in Commission Resolution E-3957.

In April 2009, Tessera Solar North America (Tessera), Calico's parent company, approached SCE requesting modification to the SES PPA price due to redesigned SunCatchers™, finalized contracts for supply and fabrication of major components, updated projections of United States Bureau of Land Management (BLM) land lease rates, and a refined project capital cost structure.<sup>4</sup> After reviewing cost data, SCE concluded that without changes to the SES PPA the Calico project would not be viable.

Tessera and SCE agreed to amend and restate the SES PPA using SCE's 2009 pro forma contract instead of amending the SES PPA. Additionally, they agreed to amend and restate the SES PPA into two parts due to 575 MW of the project not being able to interconnect until the Pisgah Substation is rebuilt and relocated which is part of SCE's plans for upgrading the Lugo-Pisgah transmission line. The amended and restated PPAs also modify the SES PPA price as well as several other terms and conditions, including the commercial operation date. The proposed Amendment modifies the commercial operation date from December 31, 2008 to December 31, 2012 for Calico Solar One and January 1, 2014 for Calico Solar Two.

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<sup>4</sup> The Calico project is owned and operated by Calico, which is wholly-owned by Tessera Solar North America. Tessera Solar North America and its sister company SES are the developers of the Calico Solar project.

The amended and restated PPAs are for renewable generation from a proposed new solar thermal facility which will use SunCatcher™ solar dish Stirling engine systems.<sup>5</sup> Generation from the 850 megawatt (MW) Calico solar facility is expected to contribute an average of 1,973 gigawatt-hours (GWh) annually towards SCE's Annual Procurement Target (APT) beginning in December 2017.<sup>6</sup> The facility will be located approximately 37 miles east of Barstow, California and is being developed on United States Bureau of Land Management (BLM) lands.<sup>7</sup>

**SCE requests the Commission to issue a resolution containing:**

1. Approval of the Amended & Restated Calico PPAs in their entirety;
2. A finding that any electric energy sold or dedicated to SCE pursuant to the Amended & Restated Calico PPAs constitutes procurement by SCE from ERRs for the purpose of determining SCE's compliance with any obligation that it may have to procure from ERRs pursuant to the RPS Legislation or other applicable law concerning the procurement of electric energy from renewable energy resources;
3. A finding that all procurement under the Amended & Restated Calico PPAs counts, in full and without condition, towards any annual procurement target established by the RPS Legislation or the Commission which is applicable to SCE;
4. A finding that all procurement under the Amended & Restated Calico PPAs counts, in full and without condition, towards any incremental procurement target established by the RPS Legislation or the Commission which is applicable to SCE;<sup>8</sup>

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<sup>5</sup> <http://www.stirlingenergy.com/>

<sup>6</sup> Incremental energy deliveries are expected to begin in 2012, but full delivery from the full project capacity is not expected until 2017.

<sup>7</sup> California Energy Commission's Calico Project Site:  
<http://www.energy.ca.gov/sitingcases/calicosolar/index.html>

<sup>8</sup> As defined by SCE, "'RPS Legislation' refers to the State of California Renewable Portfolio Standard Program, as codified at California Pub. Utils. Code Section 399.11 *et seq.*"

5. A finding that all procurement under the Amended & Restated Calico PPAs counts, in full and without condition, towards the requirement in the RPS Legislation that SCE procure 20 percent (or such other percentage as may be established by law) of its retail sales from ERRs by 2010 (or such other date as may be established by law);
6. A finding that the Amended & Restated Calico PPAs, and SCE's entry into the Amended & Restated Calico PPAs, is reasonable and prudent for all purposes, including, but not limited to, recovery in rates of payments made pursuant to the Amended & Restated Calico PPAs, subject only to further review with respect to the reasonableness of SCE's administration of the Amended & Restated Calico PPAs; and
7. Any other and further relief as the Commission finds just and reasonable.

### **Energy Division Review Of the Proposed Amended and Restated PPAs**

Energy Division evaluated the amended and restated PPAs according to the following criteria:

- Consistency with the Resolution E-4199 requirements for above-MPR contract price amendments
- Consistency with the resource needs identified in SCE's 2009 RPS Procurement Plan (Plan)
- Consistency with RPS standard terms and conditions (STC)
- Cost reasonableness
- Cost containment
- Consistency with the Interim Emissions Performance Standard (EPS)
- Procurement Review Group (PRG) participation
- Project viability

### **Consistency with Resolution E-4199, which established requirements and evaluation criteria for contract amendments affecting price**

Resolution E-4199 set forth eligibility criteria and guidelines for IOUs requesting approval of contract amendments for renewable energy contracts with above-market costs. The amended and restated Calico contract price is above the 2009 market price referent (MPR); thus, certain criteria outlined in E-4199 apply.

As required, SCE explained why the PPA changes are needed and provided a showing, which included relevant data and information to justify the change in PPA price. Confidential Appendix A attached to this Resolution includes a detailed discussion comparing the contract cost between the original and amended and restated PPAs. SCE also made a showing in the advice letter that the amended and restated contracts are competitive compared to SCE's 2009 RPS shortlist.

Also, consistent with Resolution E-4199, Tessera provided a cash flow model that SCE and independent evaluator (IE) Merrimack Energy Group, Inc. reviewed to determine if the price modifications were reasonable in relation to the current market. SCE provided both the pro forma cash flow models and the project-specific IE report with AL 2502-E. The IE's project-specific evaluation of the amended and restated PPAs, which includes his assessment of the project's cash flow model and inputs, is attached as Confidential Appendix D to this resolution. (See "Cost Reasonableness" for a discussion of how the PPAs compare to SCE's 2009 RPS solicitation and Confidential Appendix C for SCE's LCBF evaluation of the PPAs.)

The proposed amended and restated PPAs are consistent with the Resolution E-4199 requirements for above-MPR price amendments.

### **Consistency with the Resource Needs Identified in SCE's 2009 Plan**

Pursuant to statute, SCE's Plan includes an assessment of supply and demand to determine the optimal mix of renewable generation resources, consideration of flexible compliance mechanisms established by the Commission, and a bid solicitation protocol setting forth the need for renewable generation of various operational characteristics.<sup>9</sup>

SCE's 2009 Plan states that SCE seeks to procure renewable resources to augment those under contract from prior solicitations. Specifically, SCE intends to secure resources from its 2009 solicitation, as necessary, to ensure that it meets the 20% RPS goal as soon as possible, with a reasonable margin of safety. SCE requested proposals based upon standard term lengths of 10, 15 or 20 years or a non-

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<sup>9</sup> Pub. Utils. Code, Section §399.14(a)(3).

standard delivery term of no less than 1 month. SCE also requested proposals with a minimum capacity of 1.5 MW.

SCE indicated a preference for projects:

- With near-term deliveries
- Located in California or outside of California if the seller complies with all requirements pertaining to “Out-of-State Facilities” as set forth in the California Energy Commission (CEC) Guidebook for RPS eligibility
- Delivered within the CAISO Control Area, but would consider proposals for facilities interconnected to the Western Electricity Coordinating Council (WECC) transmission system

The proposed amended and restated PPAs fit SCE’s identified renewable resource needs. The amended and restated PPAs are 20-year contracts for new renewable generation in California, expected to commence deliveries by 2012.

The proposed amended and restated PPAs are consistent with SCE’s 2009 Procurement Plan, as approved by D.09-06-018.

### **Consistency with RPS Standard Terms and Conditions (STCs)**

The Commission adopted a set of standard terms and conditions (STCs) required in RPS contracts, four of which are considered “non-modifiable.” The STCs were compiled in D.08-04-009 and subsequently amended in D.08-08-028.

The amended and restated PPAs include the current non-modifiable STCs consistent with D.08-04-009, as modified by D.08-08-028.

### **Cost Reasonableness**

The Commission evaluates the reasonableness of each proposed RPS PPA price by comparing the proposed PPA to a variety of factors including RPS solicitation results and other proposed RPS projects. Using this analysis, the amended and restated PPAs are reasonably priced and provide reasonable value to ratepayers. Specifically, the PPAs compare favorably to SCE’s 2009 RPS solicitation shortlist.

Additionally, the IE performed a comparison of the amended and restated PPAs to SCE’s 2009 RPS shortlist by comparing their least-cost, best fit (LCBF) values

(as calculated by SCE).<sup>10</sup> The IE found that the amended and restated PPAs compare favorably and asserts that they would have been selected for SCE's shortlist if they had participated in SCE's 2009 RPS solicitation.<sup>11</sup>

Confidential Appendix C, attached to this resolution, provides a detailed comparison of the proposed project to SCE's 2009 shortlist of bids. Appendix C also includes the LCBF analysis and rankings of other resources in SCE's 2009 RPS solicitation shortlist as compared to the amended and restated PPAs.

The total expected costs of the amended and restated PPAs, as estimated by SCE, are reasonable based on their relation to bids received in response to SCE's 2009 solicitation. Payments made by SCE under the amended and restated PPAs are fully recoverable in rates over the life of the amended and restated PPAs, subject to Commission review of SCE's administration of the amended and restated PPAs.

### **Cost Containment**

The MPR is used by the Commission to assess the above-market costs of RPS contracts. There is a statutory limit on the IOUs above-MPR costs, which serves as a cost containment mechanism for the RPS program.<sup>12</sup> SCE states that the amended and restated PPAs' prices are above the applicable 2009 MPR for contracts starting in 2012 and 2014.

While the amended and restated PPAs meet the eligibility criteria for above-market funds (AMFs) established in Pub. Utils. Code § 399.15(d)(2), SCE has

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<sup>10</sup> LCBF is the process by which the utility ranks bids in order to select or "shortlist" the bids from a solicitation with which it will commence negotiations. While the PPAs were not part of a solicitation SCE performed a LCBF bid evaluation includes a quantitative and qualitative analysis of various factors including, price, time of delivery factors, transmission costs, and debt equivalence mitigation.

<sup>11</sup> Independent Evaluator: Amendment and Restatement of the Power Purchase and Sale Agreement Between Southern California Edison Company and Calico Solar, LLC (Merrimack Energy Group, Inc.), August 20, 2010, p.10, submitted with SCE AL 2502-E

<sup>12</sup> See Pub. Utils. Code §399.15

exhausted its AMFs. SCE is therefore proposing to voluntarily enter into the amended and restated PPAs at prices that exceed the applicable market price referent as permitted by Pub. Utils. Code § 399.15(d)(4).

### **Compliance with the Interim Greenhouse Gas Emissions Performance Standard (EPS)**

California Pub. Utils. Code §§ 8340 and 8341 require that the Commission consider emissions costs associated with new long-term (five years or greater) baseload power contracts procured on behalf of California ratepayers.<sup>13</sup>

D.07-01-039 adopted an interim Emissions Performance Standard (EPS) that establishes an emission rate for obligated facilities at levels no greater than the greenhouse gas (GHG) emissions of a combined-cycle gas turbine power plant. Generating facilities using certain renewable resources are deemed compliant with the EPS.<sup>14</sup>

The amended and restated PPAs meet the conditions for EPS compliance established in D.07-01-039 because the Calico solar facility is one of the pre-approved renewable energy technologies listed in D.07-01-039 that is deemed EPS compliant.

### **Procurement Review Group (PRG) Participation**

The Procurement Review Group (PRG) was established in D.02-08-071 as an advisory group to review and assess the details of the utilities' overall procurement strategy, solicitations, specific proposed procurement contracts and other procurement processes prior to submitting filings to the Commission.<sup>15</sup>

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<sup>13</sup> "Baseload generation" is electricity generation at a power plant "designed and intended to provide electricity at an annualized plant capacity factor of at least 60%." Pub. Utils. Code § 8340 (a).

<sup>14</sup> D.07-01-039, Attachment 7, p. 4

<sup>15</sup> The PRG for SCE includes representatives of the California Department of Water Resources, the Commission's Energy Division and Division of Ratepayer Advocates, Union of Concerned Scientists, The Utility Reform Network, and the California Utility Employees.

SCE states that it discussed the amended and restated Calico PPAs once with its PRG on May 12, 2010.

At the May 12, 2010 briefing, the Division of Ratepayer Advocates (DRA) requested additional information which SCE provided in Confidential Appendices A, L, and N of AL 2502-E.

Pursuant to D.02-08-071, SCE's briefed its Procurement Review Group on the PPAs.

### **Project Viability**

For SCE's 2009 solicitation, SCE evaluated and scored each bid's viability using a the Project Viability Calculator, which utilizes a number of factors such as development issues, site control, technology maturity and seller experience to score a project's viability (see Confidential Appendix B in AL 2502-E). SCE scored the Calico project using the same Project Viability Calculator used for the 2009 bids. See Confidential Appendix C of this Resolution for a comparison of the Calico project to SCE's 2009 RPS solicitation offers.

SCE provided the following information regarding the viability of the project.

### Technology

The Calico project uses Stirling Solar Dish technology, which consists of mirrors set in a radial frame that concentrate and focus the sun's rays onto a collector that uses a Stirling engine to convert the thermal energy into electric energy.<sup>16</sup> Each

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<sup>16</sup> The power conversion unit (PCU) of the SunCatcher's™ converts the focused solar thermal energy into grid-quality electricity. The conversion process in the PCU involves a closed-cycle, high-efficiency four-cylinder, reciprocating Solar Stirling Engine utilizing an internal working fluid that is recycled through the engine. The Solar Stirling Engine operates with heat input from the sun that is focused by the SunCatcher's™ dish assembly mirrors onto the PCU's solar receiver tubes which contain hydrogen gas. The PCU solar receiver is an external heat exchanger that absorbs the incoming solar thermal energy. This heats and pressurizes the gas in the heat exchanger tubing, and this gas in turn powers the Solar Stirling Engine. A generator is connected to the Solar Stirling Engine; and produces the electrical output of the SunCatcher™. Waste heat from the engine is transferred to the ambient air via a radiator system. The gas is

*Footnote continued on next page*

dish or unit is a fully independent 25 kilowatt power plant known as a SunCatcher™ system. SunCatcher™ systems have been operating at Sandia National Laboratory since 2005 as part of a pilot project. Additionally, in January 2010, Tessler began operating its first commercial plant (1.5 MW) comprising of 60 SunCatcher™ systems in Peoria, Arizona.

To provide the 34,000 SunCatcher™ units necessary for the Calico project, SES has developed a “high-quality, low-cost” manufacturing supply chain which includes automotive and aerospace suppliers that will support the “rapid and scalable” supply of SunCatchers™.<sup>17</sup> Also, while water is not needed for power generation, Tessler plans to obtain a water supply to wash the SunCatcher™ mirrors from water wells permitted and drilled on site.<sup>18</sup> During operation the Calico project will consume approximately 6.5 million gallons of water per year.

#### Transmission

As noted above, the project will be interconnecting at the Pisgah substation. A CAISO Large Generator Interconnection Agreement (LGIA) has been executed for interconnection of the full (850 MW) project capacity.

#### Financing

During the recent credit crisis, large renewable energy projects like the Calico project have faced significant financing risk. Tessler is seeking American Recovery and Reinvestment Act (ARRA) of 2009 funding, which, if received, will increase the project's ability to secure project financing.<sup>19</sup> In order to receive ARRA funding, the project must meet certain project milestones by the end of

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cooled by a radiator system and is continually recycled within the engine during the power cycle. The conversion process does not consume water.

<sup>17</sup> AL 2502-E, pg 17

<sup>18</sup> A new community well located on private property adjacent to the project site has been deeded to the Applicant as of September 2010

<sup>19</sup> Specifically, Tessler is seeking: Federal Loan Guarantees for Projects that Employ Innovative Energy Efficiency, Renewable Energy, and Advanced Transmission and Distribution Technologies (reference number: DE-FOA-000410) and Grants for Specified Energy Property in Lieu of Tax Credits

2010. One precondition to achieving the milestones is to receive its Application for Certification (AFC) from the CEC.<sup>20</sup>

In addition, the following information on the project's viability can be found from public sources.

### Permitting

The Calico project has also made permitting progress. As noted above, since the facility will be located on BLM land, SES (as the original developer) submitted a right-of-way (ROW) grant application to the BLM to construct, operate and the facility and related facilities on 8,230 acres. A joint draft environmental impact statement/staff assessment (EIS/SA) was issued by the CEC and BLM on April 2, 2010.<sup>21</sup> More recently on October 20, 2010, Interior Secretary Ken Salazar approved Calico's BLM application which authorizes the BLM to offer Tessler use of 4,600 acres of BLM land for the Calico facility.

### Resource potential

From a solar resource perspective, the project location is favorable. National Renewable Energy Lab (NREL) data from Daggett, California (approximately 23 miles west of the project site) shows a high annual average insolation of 5.6 kWh/m<sup>2</sup>/day. Additionally, Daggett, CA is where SEGS I and II solar thermal facilities have been successfully operating since 1985 and 1986, respectively. Also, the project site is located within the Renewable Energy Transmission Initiative (RETI) defined Pisgah Competitive Renewable Energy Zone (CREZ) which ranked favorably in terms of economics and environmental impact.<sup>22</sup>

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<sup>20</sup> On September 25, 2010, the CEC issued a Presiding Member's Proposed Decision (PMPD) that recommends that the project's AFC be approved, and that the CEC grant the Tessler a license to construct and operate the Project. The CEC is scheduled to consider whether or not to adopt, modify, or reject the PMPD on October 28, 2010.

<sup>21</sup> See BLM Calico Project webpage:  
[http://www.blm.gov/ca/st/en/fo/barstow/solar\\_one\\_calico.html](http://www.blm.gov/ca/st/en/fo/barstow/solar_one_calico.html)

<sup>22</sup> See RETI CREZ map (March 2010):  
[http://www.energy.ca.gov/reti/documents/phase2B/RETI-CREZ\\_Map\\_10\\_0309.pdf](http://www.energy.ca.gov/reti/documents/phase2B/RETI-CREZ_Map_10_0309.pdf)

Overall, the project's viability has increased since the original PPA was approved by the Commission; Tessera has continued to develop the project, has made improvements in its technology, and successfully tested its technology. Also, a large international renewable energy development company invested \$100 million in Tessera. The project still faces development risk, however, as there are no commercial projects of this size yet operating with this technology and financing is difficult for such large renewable energy projects.

In AL 2502-E, SCE asserts that the amended and restated PPAs are viable and Calico will meet the terms and conditions in the amended and restated PPAs.

### **RPS ELIGIBILITY AND CPUC APPROVAL**

Pursuant to Pub. Utils. Code § 399.13, the CEC certifies eligible renewable energy resources. Generation from a resource that is not CEC-certified cannot be used to meet RPS requirements. To ensure that only CEC-certified energy is procured under a Commission-approved RPS contract, the Commission has required standard and non-modifiable "eligibility" language in all RPS contracts. That language requires a seller to warrant that the project qualifies and is certified by the CEC as an "Eligible Renewable Energy Resource," that the project's output delivered to the buyer qualifies under the requirements of the California RPS, and that the seller use commercially reasonable efforts to maintain eligibility should there be a change in law affecting eligibility.<sup>23</sup>

The Commission requires a standard and non-modifiable clause in all RPS contracts that requires "CPUC Approval" of a PPA to include an explicit finding that "any procurement pursuant to this Agreement is procurement from an eligible renewable energy resource for purposes of determining Buyer's compliance with any obligation that it may have to procure eligible renewable energy resources pursuant to the California Renewables Portfolio Standard (*Public Utilities Code Section 399.11 et seq.*), Decision 03-06-071, or other applicable law."<sup>24</sup>

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<sup>23</sup> See, e.g. D. 08-04-009 at Appendix A, STC 6, Eligibility.

<sup>24</sup> See, e.g. D. 08-04-009 at Appendix A, STC 1, CPUC Approval.

Notwithstanding this language, the Commission has no jurisdiction to determine whether a project is an eligible renewable energy resource, nor can the Commission determine prior to final CEC certification of a project, that “any procurement” pursuant to a specific contract will be “procurement from an eligible renewable energy resource.”

Therefore, while we include the required finding here, this finding has never been intended, and shall not be read now, to allow the generation from a non-RPS-eligible resource to count towards an RPS compliance obligation. Nor shall such finding absolve the seller of its obligation to obtain CEC certification or the utility of its obligation to pursue remedies for breach of contract. Such contract enforcement activities shall be reviewed pursuant to the Commission’s authority to review the administration of such contracts.

### **CONFIDENTIAL INFORMATION**

The Commission, in implementing Pub. Utils. Code § 454.5(g), has determined in D.06-06-066, as modified by D.07-05-032, that certain material submitted to the Commission as confidential should be kept confidential to ensure that market sensitive data does not influence the behavior of bidders in future RPS solicitations. D.06-06-066 adopted a time limit on the confidentiality of specific terms in RPS contracts. Such information, such as price, is confidential for three years from the date the contract states that energy deliveries begin, except contracts between IOUs and their affiliates, which are public.

The confidential appendices, marked "[REDACTED]" in the public copy of this resolution, as well as the confidential portions of the advice letter, should remain confidential at this time.

### **COMMENTS ON THIS RESOLUTION**

Public Utilities Code section 311(g)(1) provides that this resolution must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. Section 311(g)(2) provides that this 30-day period may be reduced or waived upon the stipulation of all parties in the proceeding.

The 30-day comment period for the draft of this resolution was neither waived nor reduced. Accordingly, this draft resolution was mailed to parties for comments, and will be placed on the Commission's agenda no earlier than 30 days from today.

## **FINDINGS AND CONCLUSIONS**

1. The proposed amended and restated PPAs are consistent with the requirements in Resolution E-4199 for contract amendments that are above the market price referent and eligible for above-MPR funds.
2. The proposed amended and restated PPAs are consistent with SCE's 2009 Procurement Plan, as approved in D.09-06-018.
3. The amended and restated PPAs include the current non-modifiable standard terms and conditions (STCs) consistent with D.08-04-009, as modified by D.08-08-028.
4. The total expected costs of the amended and restated PPAs, as estimated by SCE, are reasonable based on their relation to bids received in response to SCE's 2009 solicitation.
5. Payments made by SCE under the amended and restated PPAs are fully recoverable in rates over the life of the amended PPAs, subject to Commission review of SCE's administration of the amended PPAs.
6. SCE is voluntarily entering into the amended and restated PPAs at prices that exceed the applicable market price referent, as permitted by Public Utilities Code §399.15(d)(4).
7. The amended and restated PPAs comply with the Emissions Performance Standard (EPS) established in D.07-01-039 because the Calico solar thermal facility is one of the pre-approved renewable energy technologies listed in D.07-01-039 that is deemed EPS compliant.
8. Pursuant to D.02-08-071, SCE briefed its Procurement Review Group on the amended and restated PPAs.
9. In AL 2502-E, SCE asserts that the amended and restated PPAs are viable and Calico will meet the terms and conditions in the amended and restated PPAs.
10. Procurement pursuant to the PPAs is procurement from eligible renewable energy resources for purposes of determining SCE's compliance with any obligation that it may have to procure eligible renewable energy resources

pursuant to the California Renewables Portfolio Standard (RPS) (Public Utilities Code Section 399.11 et seq.), D.03-06-071 and D.06-10-050, or other applicable law.

11. The immediately preceding finding shall not be read to allow generation from a non-RPS-eligible-renewable energy resource under these PPAs to count towards an RPS compliance obligation. Nor shall that finding absolve SCE of its obligation to enforce compliance with these PPAs.
12. The confidential appendices, marked "[REDACTED]" in the public copy of this resolution, as well as the confidential portions of the advice letter, should remain confidential at this time.
13. AL 2502-E should be approved effective today without modification.

**THEREFORE IT IS ORDERED THAT:**

1. The request of Southern California Edison Company for Commission review and approval of two amended and restated power purchase and sale agreement with Calico Solar, LLC as requested in Advice Letter 2502-E, is approved.

This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on December 2, 2010; the following Commissioners voting favorably thereon:

\_\_\_\_\_  
PAUL CLANON  
Executive Director

## **Confidential Appendix A**

### **Summary of Contract Amendment Request**

[Redacted]

## **Confidential Appendix B**

### **Evaluation Summary of Amended and Restated Calico PPAs**

[Redacted]

## **Confidential Appendix C**

### Summary of PPA Terms and Conditions

[Redacted]

## **Confidential Appendix D**

### **Excerpt of Independent Evaluator Report<sup>25</sup>**

[Redacted]

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<sup>25</sup> Independent Evaluator: Amendment and Restatement of the Power Purchase and Sale Agreement Between Southern California Edison Company and Calico Solar, LLC (Merrimack Energy Group, Inc.), August 20, 2010, pps. 9-23, submitted with SCE AL 2502-E