

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

**ENERGY DIVISION**

**RESOLUTION E-4394  
March 24, 2011**

**REDACTED**

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

Resolution E-4394. Southern California Edison (SCE) requests approval of the Cascade Solar LLC renewable power purchase agreement resulting from SCE’s Solar Photovoltaic Program (SPVP).

PROPOSED OUTCOME: This Resolution approves SCE’s request for cost recovery of a renewable energy power purchase agreement (PPA) with Cascade Solar LLC. The PPA is approved with modification.

ESTIMATED COST: The costs of this contract are confidential at this time. Pursuant to E-4299, SPVP PPAs cannot exceed \$260/MWh.

By Advice Letter 2514-E filed on September 24, 2010

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**SUMMARY**

**SCE’s proposed PPA with Cascade Solar LLC complies with the Solar Photovoltaic Program (SPVP) procurement guidelines and is approved.**

SCE filed Advice Letter (AL) 2514-E on September 24, 2010 requesting Commission review and approval of a renewable energy PPA executed with Cascade Solar LLC (Cascade). This PPA is the result of SCE’s 2010 SPVP solicitation.

The following table summarizes the agreement:

<b>Generating Facility</b>	<b>Technology Type</b>	<b>Term (Years)</b>	<b>Minimum Capacity (MW)</b>	<b>Energy (GWh/year)</b>	<b>Online Date</b>	<b>Location</b>
Cascade Solar LLC	Solar PV, new, ground-mounted	20	10	18.84	December 31, 2011	Joshua Tree, CA

SCE shall modify the Cascade LLC PPA to include the relevant non-modifiable standard terms and conditions required for bundled RPS contracts pursuant to D.10-02-031.

The Commission approves the proposed PPA with modification because it is consistent with Commission decisions and the SPVP procurement guidelines. Deliveries under the PPA are fully recoverable in rates over the life of the PPA, subject to Commission review of SCE's administration of the PPA.

**NOTICE**

Notice of AL 2514-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.

**BACKGROUND**

**Overview of SCE's Solar Photovoltaic (SPVP) Program**

Decision (D.) 09-06-049 authorized a five-year solar PV program for SCE to develop up to 500 MW of primarily rooftop solar PV facilities in the range of 1 to 2 MW in its service area. Under the program, SCE is authorized to build and own 250 megawatts of utility-owned solar photovoltaic capacity and to execute contracts up to 250 MW for generation from similar facilities owned and maintained by independent power producers (IPPs). D.09-06-049 authorized SCE to procure ground-mounted projects for up to 10% of the program. On January 21, 2010 the Commission adopted Resolution E-4299, which

implemented the IPP portion of the program and adopted a standard PPA for projects less than 5 MW.

## **PROTESTS**

AL 2514-E was not protested.

## **DISCUSSION**

### **SCE requests approval of a renewable energy contract with Cascade**

On September 24, 2010, SCE filed AL 2514-E requesting Commission approval of a renewable PPA with Cascade. The Cascade PPA resulted from SCE's 2010 SPVP solicitation. Resolution E-4299 adopted a standard PPA for SPVP projects less than 5 MW and a process for these projects to be approved via a Tier 2 advice letter filing. Twenty-eight of the 29 projects selected in the 2010 SPVP solicitation were approved in AL 2513-E, a Tier 2 advice letter. Four of the 28 projects were ground-mounted and under 5 MW. Those projects used the standard PPA and were approved as part of AL 2513-E. Because the Cascade PPA is for a facility greater than 5 MW, the PPA was filed under a Tier 3 advice letter and does not use the standard PPA adopted in the program. The terms of the PPA were negotiated between SCE and the developer of the Cascade project.

Procurement pursuant to the PPA is expected to contribute a minimum of 18.84 gigawatt-hours (GWh) annually towards SCE's Annual Procurement Target (APT).

SCE requests the Commission to issue a Resolution including:

1. Approval of the Cascade PPA in its entirety;
2. A finding that any electric energy sold or dedicated to SCE pursuant to the Cascade PPA constitutes procurement by SCE from an eligible renewable resource (ERR) for the purpose of determining SCE's compliance with 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 Cascade PPA counts, in full and without condition, toward any annual procurement target established by the RPS Legislation or the Commission that is applicable to SCE;

4. A finding that all procurement under the Cascade PPA counts, in full and without condition, toward any incremental procurement target established by the RPS Legislation or the Commission that is applicable to SCE;
5. A finding that all procurement under the Cascade PPA counts, in full and without condition, toward 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 Cascade PPA, and SCE's entry into the Cascade PPA, are reasonable and prudent for all purposes, including, but not limited to, recovery in rates of payments made pursuant to the Cascade PPA, subject only to further review with respect to the reasonableness of SCE's administration of the Cascade PPA; and
7. Any other and further relief as the Commission finds just and reasonable.

### **Energy Division review of the proposed PPA**

Energy Division evaluated the PPA according to the following criteria:

- Consistency with SCE's 2010 SPVP Solicitation Protocol
- Consistency with SCE's Evaluation Methodology for the 2010 SPVP RFO
- Consistency with RPS standard terms and conditions (STC)
- Compliance with the minimum quantity requirement
- Compliance with the Interim Emissions Performance Standard
- Procurement Review Group (PRG) participation
- Independent Evaluator review

### **Consistency with SCE's 2010 SPVP Solicitation Protocol**

Pursuant to Resolution E-4299 which implemented the IPP portion of SPVP, SCE's 2010 SPVP solicitation protocol requires the following:

- Projects must be located within SCE's service territory
- Projects are primarily rooftop projects in the 1 to 2 MW range
- Proposed projects must demonstrate site control

- The company and/or the development team must have completed two or more projects of similar technology and must have developed projects of cumulative capacity equal to one megawatt
- Seller must have a complete interconnection application filed with SCE within ten business days of a shortlist notification
- Projects must use a commercially proven solar PV system and use Underwriter Laboratories (UL) rated components
- Levelized cost cannot exceed \$260/MWh for any project
- Projects delivering under the SPVP must not participate in the CSI or net energy metering programs
- Projects must be scheduled to begin initial operation within 18 months of PPA execution
- Each site must have a Gross Power Rating of at least 500 kW DC
- Developers may aggregate multiple projects within a single P-node
- Projects must have a Gross Power Rating of not more than 10 MW DC
- PPAs must have a term of 20 years
- Projects must not trigger transmission network upgrades.

The PPA is consistent with SCE's 2010 SPVP Solicitation Protocol.

In addition, D.09-06-049 limited SCE's procurement of ground-mounted projects to no more than 10% of the overall program capacity.<sup>1</sup> The Cascade project contributes 10 MW to the ground-mounted limit. Including Cascade, SCE has executed 22.38 MW of the allowed 25 MW of IPP ground-mounted projects; therefore, SCE has not exceeded the IPP portion of the Solar PV Program ground-mounted project cap.

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<sup>1</sup> Footnote 48 on page 40.

### **Consistency with SCE's Evaluation Methodology for the 2010 SPVP RFO**

Participants submitted non-binding offers containing information sufficient for SCE to determine that the projects met the eligibility criteria listed above. Once offers were screened, SCE notified participants if they were on the shortlist. Once on the shortlist, participants were required to submit interconnection applications and proof that interconnection screens had been passed or studies completed, demonstrating that projects did not trigger network upgrades. If the project did not trigger network upgrades, participants submitted binding offers and SCE selected the lowest-price offers. See Appendix A for specific bid selection.

The PPA was evaluated consistent with the evaluation methodology identified in SCE's SPVP program.

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

The Commission adopted a set of standard terms and conditions (STCs) required in renewable contracts that count toward the RPS Program, several of which are considered "non-modifiable." The STCs were compiled in D.08-04-009 and subsequently amended in D.08-08-028 and D.10-03-021. SCE negotiated the terms of the PPA with Cascade and did not use the standard SPVP pro forma.

While the terms and conditions of the Cascade PPA conformed to the Commission's decisions requiring STCs for RPS contracts at the time the PPA was executed and filed for approval, on January 13, 2011 the Commission lifted the stay on D.10-03-021 which established new and revised standard terms and conditions for bundled RPS contracts. As a result, the Cascade PPA did not include the Commission adopted RPS "non modifiable standard terms and conditions" for bundled RPS contracts.

Thus, Commission approval of the Cascade PPA is conditioned upon SCE modifying the PPA to include the new non-modifiable standard terms and conditions as required in D.10-03-021. Within 30 days from the effective date of this Resolution SCE shall file a Tier 1 advice letter compliance filing demonstrating that the Cascade PPA includes all of the relevant non-modifiable standard terms and conditions.

### **Compliance with the Minimum Quantity Requirement**

D.07-05-028 established a "minimum quantity" requirement on the ability of utilities to count an eligible short-term contract with an existing facility for compliance with the RPS program.<sup>2</sup> In the calendar year that a short-term contract with an existing facility is executed, the utility must also enter into long-term contract(s) or contract(s) with new facilities equivalent to at least 0.25% of the utility's previous year's retail sales.

The PPA is considered a new, long-term contract because it is more than 10 years in length and the facility will begin operation after January 1, 2005. Therefore, the PPA will contribute to SCE's minimum quantity requirement established in D.07-05-028.

### **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>3</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>4</sup>

The PPA meets the conditions for EPS compliance because the Cascade Solar PV facility is one of the pre-approved renewable energy technologies listed in D.07-01-039 that is deemed EPS compliant.

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<sup>2</sup> For purposes of D.07-05-028, contracts of less than 10 years duration are considered "short-term," and facilities that commenced commercial operations on or after January 1, 2005 are considered "new."

<sup>3</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>4</sup> D.07-01-039, Attachment 7, p. 4

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

The Procurement Review Group (PRG) process was initially established in D.02-08-071 as an advisory group to review and assess the details of the IOUs' overall procurement strategy, solicitations, specific proposed procurement contracts and other procurement processes prior to submitting filings to the Commission as an interim mechanism for procurement review.<sup>5</sup>

SCE provided its PRG with information of its proposed shortlist of offers for SPVP on May 7, 2010, and provided information on its final selection of offers for execution of PPAs on July 22, 2010. Pursuant to D.02-08-071, SCE's Procurement Review Group participated in the review of the PPAs.

### **Independent Evaluator (IE) review of SCE's SPVP Procurement Process**

The Commission requires the use of an IE to ensure that solicitation processes are undertaken in a consistent and objective manner so that projects selected for shortlisting and resulting in executed contracts are selected in a rational and equitable manner. Specifically, the IE's role is to review SCE's bid evaluation, monitor negotiations, and review the resulting PPA. SCE retained Merrimack Energy Group Inc. (Merrimack) as the IE for SCE's 2010 SPVP solicitation. SCE submitted an IE Report prepared by Merrimack with AL 2514-E.

According to the IE Report, Merrimack performed its duties overseeing the 2010 SPVP solicitation. In its IE Report, Merrimack asserts that SCE's bid evaluation methodology is reasonable and SCE conducted the solicitation in a fair and equitable manner. Merrimack also concludes that the PPA merits Commission approval.

Consistent with D.09-06-049, an independent evaluator (IE) oversaw SCE's SPVP procurement process.

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<sup>5</sup> SCE's PRG participants are: the Commission's Energy and Legal Divisions, the Division of Ratepayer Advocates, The Utility Reform Network, California Utility Employees, the Union of Concerned Scientists, and the California Department of Water Resources.

## **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 uses commercially reasonable efforts to maintain eligibility should there be a change in law affecting eligibility.<sup>6</sup>

The Commission requires a standard and non-modifiable clause in all renewable contracts that count toward the RPS 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>7</sup>

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 a 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

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

<sup>7</sup> See, e.g. D. 08-04-009 at Appendix A, STC 1, CPUC Approval.

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 § 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 on February 22, 2011.

No comments were filed.

### **FINDINGS AND CONCLUSIONS**

1. The power purchase agreement (PPA) is consistent with Southern California Edison's (SCE) 2010 Solar Photovoltaic Program (SPVP) Solicitation Protocol.
2. The PPA was evaluated consistent with the evaluation methodology identified in SCE's SPVP program.

3. SCE has executed 22.38 MW of the allowed 25 MW of IPP ground-mounted projects; therefore, SCE has not exceeded the IPP portion of the Solar PV Program ground-mounted project cap.
4. The PPA does not include the Commission adopted RPS "non-modifiable" standard terms and conditions, as set forth in D.08-04-009 and amended by D.08-08-028 and D.10-03-021
5. Commission approval of the PPA should be conditioned upon SCE modifying the PPA to include the new non-modifiable standard terms and conditions as required in D.10-03-021.
6. The PPA will contribute to SCE's minimum quantity requirement established in D.07-05-028.
7. The PPA meets the condition for Emissions Performance Standard compliance because the Cascade facility will use one of the pre-approved renewable energy technologies listed in D.07-01-039 that is deemed compliant.
8. Payments made by SCE under the PPA are fully recoverable in rates over the life of the PPA, subject to Commission review of SCE's administration of the PPA.
9. Pursuant to D.02-08-071, SCE's Procurement Review Group participated in the review of the PPA.
10. Consistent with D.09-06-049, an independent evaluator oversaw SCE's Solar PV Program procurement process.
11. Procurement pursuant to the PPA is procurement from an eligible renewable energy resource 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 (Public Utilities Code Section 399.11 et seq.), D.03-06-071 and D.06-10-050, or other applicable law.
12. The immediately preceding finding shall not be read to allow generation from a non-RPS eligible renewable energy resource under this PPA to count towards an RPS compliance obligation. Nor shall that finding absolve SCE of its obligation to enforce compliance with this PPA.
13. 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.
14. AL 2514-E should be approved with conditions.

**THEREFORE IT IS ORDERED THAT:**

1. The request of Southern California Edison Company for Commission review and approval of a power purchase agreement with Cascade Solar LLC, as requested in Advice Letter 2514-E, is approved with conditions.
2. Within 30 days from the effective date of this Resolution SCE shall file a Tier 1 advice letter compliance filing demonstrating that the Cascade PPA includes all of the relevant non-modifiable standard terms and conditions required by the Commission.

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 March 24, 2011; the following Commissioners voting favorably thereon:

/S/ PAUL CLANON  
PAUL CLANON  
Executive Director

MICHAEL R. PEEVEY  
President  
TIMOTHY ALAN SIMON  
MICHEL PETER FLORIO  
CATHERINE J.K. SANDOVAL  
MARK FERRON  
Commissioners

# **Confidential Appendix A**

## Summary of SPVP Bid Selection

**[REDACTED]**

## **Confidential Appendix B**

Summary of the Terms and Conditions of the Cascade  
PPA

**[REDACTED]**

# **Confidential Appendix C**

Independent Evaluator Report

**[REDACTED]**