

DRAFT

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ITEM # 25

I.D. # 11458

ENERGY DIVISION

RESOLUTION E-4513

August 2, 2012

(REDACTED)

R E S O L U T I O N

Resolution E-4513. Southern California Edison Company requests approval of deviations in (1) its CREST Excess Sales Agreement (Form 14-785) for the United States Forest Service and (2) Interconnection Agreements (Forms 14-773 and 14-744) for Federal Agencies.

PROPOSED OUTCOME: This Resolution approves one-time modifications to Southern California Edison's CREST Excess Sales Agreement for the United States Forest Service and changes to Interconnection Agreements for Federal Agencies.

ESTIMATED COST: There are no expected costs associated with these modifications.

By Advice Letter 2716-E filed on April 13, 2012.

SUMMARY

Southern California Edison Company's request for a one-time modification to its California Renewable Energy Small Tariff (CREST) Excess Sales Agreement (Form 14-785) for the United States Forest Service and for modifications to two interconnection agreements for Federal Agencies is approved.

Southern California Edison Company (SCE) is requesting approval of a one-time modification of its CREST power purchase agreement (PPA) for the U.S. Forest Service to interconnect a 300 kW solar photovoltaic (PV) system. SCE is also requesting modifications to two interconnection agreements—its Generating Facility Interconnection Agreement (GFIA) and its Customer Generation Agreement (CGA)—as offered to federal agencies.

The Commission approves both of these requested modifications on the basis of SCE's authority to deviate from its standard tariffs when providing service to federal agencies combined with the reasonableness of these deviations to ratepayers.

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, SB 1036, and SB 2 (1X).¹ The RPS program is codified in Pub. Util. Code §§ 399.11-399.31.² Under SB 2 (1X), the RPS program administered by the Commission requires each retail seller to procure eligible renewable energy resources so that the amount of electricity generated from eligible renewable resources be an amount that equals an average of 20 percent of the total electricity sold to retail customers in California for compliance period 2011-2013; 25 percent of retail sales by December 31, 2016; and 33 percent of retail sales by December 31, 2020.³

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>.

Overview of the Feed-in Tariff (FIT) Program

The specific code section relevant to today's resolution, § 399.20, was added to the Pub. Util. Code by Assembly Bill (AB) 1969 (Yee, Stats. 2006, ch. 731), to be effective on January 1, 2007. The provisions of § 399.20 are part of the RPS Program and, importantly, every kilowatt hour (kWh) of electricity purchased from an eligible renewable resource pursuant to § 399.20 counts toward meeting

¹ SB 1078 (Sher, Chapter 516, Statutes of 2002); SB 107 (Simitian, Chapter 464, Statutes of 2006); SB 1036 (Perata, Chapter 685, Statutes of 2007); SB 2 (1X) (Simitian, Chapter 1, Statutes of 2011, First Extraordinary Session).

² All further references to sections refer to Public Utilities Code unless otherwise specified.

³ D.11-12-020 established a methodology to calculate procurement requirement quantities for the three different compliance periods covered in SB 2 (1X) (2011-2013, 2014-2016, and 2017-2020).

an electric corporations' RPS Program procurement quantity requirements under SB 2 (1X).

The Commission approved Resolution E-4137 on February 14, 2008, authorizing Southern California Edison's (SCE) California Renewable Energy Small Tariff (CREST). This implemented Commission Decision (D.) 07-07-027 and created SCE's § 399.20 Feed-in Tariff program.

Additional background information about the Commission's Feed-in Tariff program, including links to relevant laws and Commission decisions, is available at <http://www.cpuc.ca.gov/PUC/energy/Renewables/hot/feedintariffs.htm> .

NOTICE

Notice of AL 2716-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.

PROTESTS

No protests were received to this advice letter.

DISCUSSION

SCE requests Commission approval of a one-time modification to its standard California Renewable Energy Small Tariff (CREST) power purchase agreement (PPA) for the United States Forest Service (USFS), and general modifications to two interconnection agreements as offered to federal agencies only.

The USFS seeks to participate in the CREST program, as established by Decision (D.) 07-07-027 and implemented by Resolution E-4137, to interconnect its solar photovoltaic (PV) system at its San Dimas, California office. The USFS informed SCE that it could not, as a federal agency, legally sign the standard CREST PPA. Specifically, the USFS contends that it would be in violation of the federal Anti-Deficiency Act (ADA), prohibiting federal government agencies from indemnifying counterparties, if it were to sign the indemnity clause found in the standard CREST PPA. As such, SCE seeks to modify that indemnity clause.

The other changes that SCE has requested to the CREST PPA include:

(1) modifications to clarify that federal agencies may accept electrical services pursuant to SCE's CPUC-approved contract, but that the agency may not be subject to any state law where that law has been pre-empted by federal law, and (2) a modification to clarify that the CPUC maintains its authority to interpret its own rules and tariffs as related to CREST contracts.

A detailed summary of the proposed modifications to the CREST PPA, as offered to the U.S. Forest Service, are found in Confidential Appendix A of this resolution.

Additionally, SCE seeks modifications to the Generating Facility Interconnection Agreement (GFIA) and the Customer Generation Agreement (CGA) as offered to federal agencies. SCE seeks to clarify in both agreements that tariffed electric services pursuant to these agreements are subject to the jurisdiction and regulation of the Commission. Furthermore, SCE seeks to include a reference in both agreements to the GSA Areawide Agreement, made effective by the Commission on March 26, 2012, and reduce the agreement term to 10 years given restrictions on federal agencies from entering contracts with a term greater than 10 years.

A detailed summary of the proposed modifications to the GFIA and the CGA, as offered to all federal agencies, is found in Appendix B of this resolution.

SCE requests that the Commission issue a resolution containing:

1. Approval of the modified USFS CREST Agreement in its entirety;
2. A finding that the modified USFS CREST Agreement is consistent with SCE's CREST Program;
3. A finding that any procurement pursuant to the modified USFS CREST Agreement is procurement from an eligible renewable resource for purposes of determining SCE's compliance with any obligation that it may have to procure eligible renewable resources pursuant to the California Renewables Portfolio Standard (Pub. Util. Code § 399.11 et seq.), Decision (D.) 03-06-071, or other applicable law;
4. A finding that the modified USFS CREST Agreement, and SCE's entry into it, is reasonable and prudent for all purposes, including, but not limited to, recovery in rates of payments made pursuant to the modified USFS CREST

Agreement and administrative costs associated with the modified USFS CREST Agreement, subject only to further review with respect to the reasonableness of SCE's administration of the modified USFS CREST Agreement;

5. A finding that the capacity from the modified USFS CREST Agreement shall count towards SCE's CREST capacity targets; and
6. Any other and further relief as the Commission finds just and reasonable.

Energy Division Evaluated the Requested Modifications on the Following Grounds:

- Consistency with Commission Decisions authorizing and implementing the CREST program
- Consistency with previous Commission orders
- Fairness and reasonableness to ratepayers

Consistency with Commission Decisions authorizing and implementing the CREST program

The Commission evaluated these proposed modifications for consistency with prior Commission Decisions authorizing and implementing the CREST program for SCE. The issue before the Commission is whether these previous Decisions authorized the use of the Commission's Resolution process to modify these decisions and allow SCE to modify its CREST PPA as requested.

The methods used by the Commission to evaluate these modifications should be narrowly construed as applying only to this specific set of facts as applied to federal agencies.

D.07-07-027

D.07-07-027 implemented the Commission's FIT program pursuant to AB 1969. Section 3.2 of that Decision addressed the standardization of the FIT contract, concluding that the contract should be offered by the utilities on a strict "take it or leave it" basis.⁴

⁴ Section 3.2 "Standard Contract," D.07-07-027. pp 7-8.

The decision continued: “A seller may elect to engage in negotiations [over specific terms in the contract], but the resulting deal would then be a bilateral or other type of contract, and outside the scope of the Section 399.20 tariff/standard contract program.”⁵

The language of this decision is clear. D.07-07-027 did not intend for sellers to negotiate special treatment of contract terms under the Section 399.20 FIT program.

Resolution E-4137

Resolution E-4137 approved with modification SCE’s AL 2148-E, creating the CREST Excess Sales Agreement to implement D.07-07-027 and the Commission’s FIT program.

That resolution interpreted D.07-07-027 as requiring a “separate Tariff/Standard Contract available to other eligible renewable energy generation facilities in PG&E and SCE service territories.”

The language of this resolution is consistent with D.07-07-027 in requiring a “standard” contract for eligible renewable generation facilities. The Commission’s stated preference for a standard contract here does not suggest that the Commission envisioned in Resolution E-4137 the types of modifications proposed by SCE in AL 2716-E.

Resolution E-4137, implementing SCE’s CREST program, envisioned standard, non-negotiable contract terms.

D.11-11-012

In D.11-11-012, the Commission ordered SCE to make uniform modifications to its CREST PPA, as offered to all sellers, in response to a motion⁶ from the Clean Coalition seeking amendments to D.07-07-027. In its motion, Clean Coalition requested that the Commission order SCE to file a Tier 1 Advice Letter to modify the CREST PPA in a timely manner. The motion focused on modifying the terms

⁵ *Id.*

⁶ *See*, “Clean Coalition Motion for Immediate Amendments of AB 1969 CREST Power Purchase Agreement.” Filed pursuant to Rulemaking 11-05-005 on August 15, 2011.

of the PPA that Clean Coalition believed were preventing CREST projects from obtaining financing.

In its reply to the motion, SCE argued that the “request [was] procedurally flawed” because of Clean Coalition’s insistence that Commission staff modify the standard CREST PPA, rather than requiring an act of the full Commission. In D.11-11-012, the Commission agreed with SCE and held that the CREST PPA “must be modified via an action by the full Commission.”⁷

D.11-11-012 required that any modification to the terms and conditions of the standard CREST PPA occur via an action by the full Commission.

Consistency with Previous Commission Orders

General Order 96-B

The Commission has adopted General Order (GO) 96-B⁸, establishing rules that govern advice letter and informational filings by regulated utilities. The issue before the Commission, in the absence of authorization grounded in the Decisions and Resolution cited above, is whether GO 96-B provides an alternative basis of authorization for SCE to make these modifications.

General Rule 8.2.3 of GO 96-B is on point in this matter:

“At all times, a utility other than a telephone corporation may provide service (other than resale service) to a government agency for free, or at reduced rates and changes, or under terms and conditions otherwise deviating from its tariffs then in effect. The utility may begin such service without prior Commission approval, but the utility shall promptly submit an advice letter to the appropriate Industry Division to notify the Commission of the utility’s provision of such service and of the rates, charges, terms and conditions under which the service is provided. Although the advice letter may be effective pending disposition under

⁷ D.11-11-012, Section 4, “SCE Opposition to Clean Coalition Motion.” Page 8.

⁸ Visited on June 21, 2012. General Order 96-B.
http://docs.cpuc.ca.gov/PUBLISHED/GENERAL_ORDER/164747.htm.

General Rule 7.5.3, the Commission may determine, in an appropriate proceeding, the reasonableness of such service.”⁹

Despite the standardization of the CREST program and the Commission’s intention to prevent one-off modifications of the PPA, as outlined in the previous section, GO 96-B creates a broad exception for utilities to modify existing agreements when providing service to federal agencies.

Therefore, General Rule 8.2.3 gives SCE the authority to provide service to federal government agencies in deviation from its existing CREST tariff and PPA, as well as the GFIA and CGA interconnection agreements, provided that SCE notifies the Commission of such deviations via a promptly filed advice letter.

SCE promptly filed AL 2716-E to notify the Commission of its intention to provide service to the USFS that deviates from SCE’s standard CREST tariff and PPA currently in effect, and service to federal government agencies that deviates from SCE’s interconnection agreements currently in effect.

Fairness and Reasonableness to Ratepayers

General Rule 8.2.3 of GO 96-B authorizes a utility to offer service to a federal government agency that deviates from its tariff then in effect, provided that the utility notifies the Commission of the deviation via a promptly filed advice letter. The Commission is then required to make a determination of the reasonableness of the deviation.

The proposed modifications to the CREST PPA, as outlined above, would remove standard indemnity language, clarify that the CPUC retains its authority to interpret its own rules and tariffs except in instances where pre-empted by federal law, and limit the term length of the agreement to ten years. These modifications are not expected to have a substantive impact on the cost to ratepayers of service under the PPA.

Furthermore, the proposed changes to the GFIA and CGA are technical in nature:

- (a.) Section 13.1 of the modified GFIA and Section 10.1 of the modified CGA contain language indicating that tariffed electric services are subject to the

⁹ Visited on June 21, 2012. General Rule 8.2.3.
http://docs.cpuc.ca.gov/PUBLISHED/GENERAL_ORDER/164747.htm#P653_67014.

jurisdiction and regulation by the CPUC, instead of language stating that the agreement is governed by the laws of the State of California.

- (b.) Section 15 of the modified GFIA and Section 11 of the modified CGA reference Exhibit D of the recently modified Areawide Agreement between the General Services Administration and SCE, which was made effective on March 26, 2012 through Commission approval of SCE Advice Letter 2703-E. The Areawide Agreement is the umbrella contractual agreement under which federal agencies may contract for utility services as provided by SCE.
- (c.) Section 4.1 of the modified GFIA and Section 4.1 of the modified CGA are modified to note that the term of the agreement will not extend beyond 10 years, because of contract term limits for federal agencies.

The creation of new GFIA and CGA forms with these technical modifications are not expected to unfairly advantage federal agency customers nor are they expected to have a substantive impact on ratepayers. For these reasons, we approve the requested modifications to the GFIA and CGA.

The deviations to the CREST PPA, and modifications to the two interconnection agreements, are fair and reasonable to ratepayers.

CONFIDENTIAL INFORMATION

The Commission, in implementing Pub. Util. 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, including 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.

RPS ELIGIBILITY AND CPUC APPROVAL

Pursuant to Pub. Util. 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.¹⁰

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.), D.11-12-020 and D.11-12-052, or other applicable law.”¹¹

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 utilities’ administration of such contracts.

¹⁰ See, e.g. D. 08-04-009 at Appendix A, STC 6, Eligibility.

¹¹ See, e.g. D. 08-04-009 at Appendix A, STC 1, CPUC Approval.

COMMENTS

This is an uncontested matter in which the resolution grants the relief requested. Accordingly, pursuant to Pub. Util. Code § 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

FINDINGS AND CONCLUSIONS

1. D.07-07-027 did not intend for sellers to negotiate special treatment of contract terms under the Section 399.20 FIT program.
2. Resolution E-4137, implementing SCE's CREST program, envisioned standard, non-negotiable contract terms.
3. D.11-11-012 required that any modification to the terms and conditions of the standard CREST PPA occur via an action by the full Commission.
4. General Rule 8.2.3 gives SCE the authority to provide service to federal government agencies in deviation from its existing CREST tariff and PPA, and the GFIA and CGA interconnection agreements, provided that the IOU notifies the Commission of such deviations via a promptly filed advice letter.
5. SCE promptly filed AL 2716-E to notify the Commission of its intention to provide service to federal government agencies that deviates from its standard CREST tariff and PPA, and its two interconnection agreements, currently in effect.
6. The deviations to the CREST PPA, and modifications to the two interconnection agreements, are fair and reasonable to ratepayers.
7. 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.
8. 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.*), D.11-12-020 and D.11-12-052, or other applicable law.

9. The previous 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.
10. Advice Letter 2716-E should be approved effective today without modification.

THEREFORE IT IS ORDERED THAT:

1. Southern California Edison's request for one-time modifications to the California Renewable Energy Small Tariff power purchase agreement and SCE's entry into the modified CREST PPA with the U.S. Forest Service is approved.
2. Southern California Edison's request for modifications to its Generating Facility Interconnection Agreement and its Customer Generation Agreement, as offered to federal agencies only, 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 August 2, 2012; the following Commissioners voting favorably thereon:

PAUL CLANON
Executive Director

Confidential Appendix A

Matrix of Revisions to USFS CREST Agreement

[REDACTED]

Appendix B

Matrix of Revisions to Interconnection Agreements (GFIA and CGA) for Federal Agencies

Matrix of GFIA and CGA Revisions

Section	Change in GFIA	Change in CGA	Summary
4.1 of GFIA and CGA	<p>TERM AND TERMINATION</p> <p>4.1 This Agreement shall become effective as of the last date entered in Section 16 of this Agreement (herein, Effective Date). This Agreement shall continue in full force and effect until the earliest date that one of the following events occurs:</p> <p>(a) The Parties agree in writing to terminate the Agreement; or</p> <p>(b) Unless otherwise agreed in writing by the Parties, at 12:01 A.M. on the day following the date the electric service account through which Producer's Generating Facility is interconnected to SCE's Distribution System is closed or terminated; or</p> <p>(c) At 12:01 A.M. on the 61st day after Producer or SCE provides written Notice pursuant to Section 9 of this Agreement to the other Party of Producer's or SCE's intent to terminate this Agreement; <u>or</u></p> <p><u>(d) On the tenth anniversary of the Effective Date provided that written notice is given 30 days before this date.</u></p>	<p>TERM AND TERMINATION</p> <p>4.1 This Agreement shall become effective as of the last date entered in Section 13 below (herein, Effective Date). The Agreement shall continue in full force and effect until the earliest date that one of the following events occurs:</p> <p>(a) The Parties agree in writing to terminate the Agreement, or</p> <p>(b) Unless otherwise agreed in writing by the Parties, at 12:01 A.M. on the day following the date the Customer's electric Service Account through which the Generating Facility is Interconnected to SCE's Distribution System is closed or terminated, or</p> <p>(c) Unless otherwise agreed in writing by the Parties, at 12:01 A.M. on the 31st day following the date the Generation Interconnection and Operating Arrangements are terminated, unless the responsibility for such Generation Interconnection and Operating Arrangements is assigned to or replaced by a subsequent Producer. The Parties shall cooperate in obtaining an assignment or replacement agreement, or</p>	<p>This provision is modified to note that the term of the Agreement will not extend beyond 10 years, because federal agencies may be restricted from entering into contracts with a term greater than 10 years.</p>

		<p>(d) At 12:01 A.M. on the 61st day after Customer or SCE provides written Notice pursuant to Section 6 below to the other Party of the Customer or SCE's intent to terminate this Agreement; <u>or</u></p> <p><u>(e) On the tenth anniversary of the Effective Date provided that written notice is given 30 days before this date.</u></p>	
13.1 of GFIA and 10.1 of CGA	<p>GOVERNING LAW, JURISDICTION OF COMMISSION, INCLUSION OF SCE's TARIFF SCHEDULES, DEFINED TERMS</p> <p>13.1 <u>Matters involving the interpretation of tariffed retail rates, tariff rate schedules, and tariffed terms provided under this Agreement are subject to the jurisdiction and regulation of the California Public Utilities Commission except to the extent that same are determined to be preempted by Federal law.</u></p> <p>This Agreement shall be interpreted, governed, and construed under the laws of the State of California as if executed and to be performed wholly within the State of California without giving effect to choice of law provisions that might apply to the law of a different jurisdiction.</p>	<p>GOVERNING LAW, JURISDICTION OF COMMISSION, INCLUSION OF SCE's TARIFFS, DEFINED TERMS</p> <p><u>10.1—Matters involving the interpretation of tariffed retail rates, tariff rate schedules, and tariffed terms provided under this Agreement are subject to the jurisdiction and regulation of the California Public Utilities Commission except to the extent that same are determined to be preempted by Federal law.</u></p> <p>This Agreement shall be interpreted, governed, and construed under the laws of the State of California as if executed and to be performed wholly within the State of California without giving effect to choice of law provisions that might apply to the law of a different jurisdiction.</p>	<p>This provision replaces the governing law language to reflect that tariffed electric services are subject to the jurisdiction and regulation by the CPUC.</p>
15 of GFIA and 11 of CGA	<p>ENTIRE AGREEMENT</p> <p><u>This Agreement, and Exhibit D of the GSA Areawide Agreement, where Exhibit D is used by the Customer, contain the entire agreement and understanding between the Parties, their agents, and employees as to the subject matter</u></p>	<p>AMENDMENTS AND MODIFICATION</p> <p><u>11.1</u> This Agreement can only be amended or modified by a written agreement signed by both Parties. SCE shall determine in its sole discretion whether prior commission approval is required for such amendments or modifications.</p>	<p>This provision is modified to include a reference to a new Exhibit D added to the revised GSA Areawide Agreement.</p>

	<p><u>of this Agreement. Each party also represents that in entering into this Agreement, it has not relied on any promise, inducement, representation, warranty, agreement or other statement not set forth in this Agreement.</u></p> <p>This Agreement, including any incorporated tariff schedules and rules, contains the entire agreement and understanding between the Parties, their agents, and employees as to the subject matter of this Agreement. Each party also represents that in entering into this Agreement, it has not relied on any promise, inducement, representation, warranty, agreement or other statement not set forth in this Agreement or in the incorporated tariff schedules and rules.</p>	<p><u>11.2 This Agreement, and Exhibit D of the GSA Areawide Agreement, where Exhibit D is used by the Customer, contain the entire agreement and understanding between the Parties, their agents, and employees as to the subject matter of this Agreement. Each party also represents that in entering into this Agreement, it has not relied on any promise, inducement, representation, warranty, agreement or other statement not set forth in this Agreement.</u></p>	
--	--	---	--