

DRAFT

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

ID #10945

RESOLUTION E-4453

February 1, 2012

R E S O L U T I O N

Resolution E-4453. Southern California Edison Company.

PROPOSED OUTCOME: This Resolution approves with modifications various changes to Southern California Edison Company's Solar Photovoltaic Program.

ESTIMATED COST: Actual costs are unknown at this time.

By Advice Letter 2571-E filed on April 5, 2011 and Advice Letter 2571-E-A filed on December 9, 2011.

SUMMARY

This Resolution implements changes to Southern California Edison Company's (SCE) Solar Photovoltaic Program (SPVP or Program). The SPVP is a five-year program adopted by the California Public Utilities Commission (Commission) in Decision (D.) 09-06-049 to spur the development of distributed solar photovoltaic (PV) projects in SCE's service territory. The Program primarily consists of commercial rooftop projects in the one to two megawatt (MW) range. Specifically, D.09-06-049 authorized Independent Power Producer (IPP) solicitations and a Utility-Owned Generation (UOG) program, with an overall program cap of 500 MW.

SCE submitted Advice Letter (AL) 2571-E on April 5, 2011, requesting that the Commission approve changes to the following documents used in its SPVP Request for Offers (RFO) process: the 2011 RFO Participant Instructions, the 2011 standard Power Purchase Agreement (PPA) for contracts 5 MW or less, and the standard PPA for projects greater than 5 MW but less than 10 MW. The 2011

RFO Participant Instructions and standard PPAs will replace documents currently being used as part of the IPP portion of the SPVP.

On April 7, 2011, SCE filed substitute sheets, which corrected non-substantive errors in AL 2571-E. On April 13, 2011, SCE filed additional substitute sheets, which included minor revisions to the confidentiality provision in the PPA for projects 5 MW or less. On December 9, 2011, SCE filed supplemental AL 2571-E-A, which corrected several errors in the standard PPA for projects 5 MW or less.

This Resolution approves the majority of changes SCE has proposed to its Participant Instructions and Standard PPAs because they are consistent with D.09-06-049 and Resolution E-4299. This Resolution also responds to a party's protest, rejects some of SCE's requested changes, and accepts some changes with modifications. In order to make the standard SPVP consistent with other recently approved standard contracts for renewable resources, this Resolution makes additional changes beyond those proposed by SCE. Once this Resolution is effective, SCE may proceed with its next SPVP RFO.

The following list is a summary of changes to the 2011 standard PPA for contracts 5 MW or less:

- The producer may either own and operate or control the generating facility (§ 1.1 and Throughout).
- The producer shall cooperate with SCE in good faith to assure that SCE is authorized as the Scheduling Coordinator prior to the date the facility first produces the product and no later than any deadline established by CAISO (§ 2.8).
- The producer may change the term start date by providing notice to SCE at least thirty days before the term start date (§ 3.2).
- The producer must submit annual reports listing the race, ethnicity, and gender of producer's senior officers, and all Women, Minority, Disabled Veteran Business Enterprise (WMDVBE) vendors that supply goods or services to Producer (§ 3.4).

- The producer must post and maintain the collateral requirement with SCE until producer has satisfied its obligations under the PPA (§ 4.2 & 4.3).
- The producer shall forfeit, and SCE has the right to retain, a portion of the collateral requirement and Gross Power Rating if, on the term start date, the producer has installed only a portion of the equipment or devices necessary for a facility to satisfy the Gross Power Rating (§ 4.3.2).
- SCE may terminate the agreement if the term does not commence within 18 months of Commission approval; a one-time six month extension allowed for regulatory delay (§ 6.1.2).
- Either party may terminate the PPA in the event that the other party becomes bankrupt or if Commission approval is not obtained (§ 6.2.4 & 6.2.6).
- SCE may retain the collateral requirement if SCE terminates the PPA for reasons other than a force majeure occurs, the electrical output ceases for 12 months, or Commission approval is not obtained (§ 6.4).
- The producer is not required to install a Telemetry System (§ 7.10 & 7.11).
- SCE is not required to purchase energy that is not or cannot be delivered because of an outage, force majeure, or a reduction or curtailment of energy, except as provided for elsewhere requiring payment for curtailment (§ 8.1).
- The producer is required to issue an invoice to SCE and requires SCE to pay via wire transfer Invoices (§ 8.5).
- SCE may curtail the producer's energy production for emergencies, as instructed by CAISO or the transmission provider, on a take or pay basis (§ 9).
- The producer agrees that the facility is subject to the terms of the Availability Standards, Non-Availability Charges, and Availability Incentive Payments as contemplated under Section 40.9 of the CAISO Tariff. The Parties agree that any Availability Incentive Payments are for the benefit of the Seller and for Seller's account and that any Non-Availability Charges are the responsibility of the Seller and for Seller's account (§ 16.7).

- SCE may terminate the contract if the producer fails to post or maintain the collateral requirement, subject to a modification allowing for a reasonable cure period (§ 6.1.5).
- A definition of WMDBVE is added (Appendix A).
- The definition of Gross Power Rating and Net Power Rating is modified (Appendix A).
- Energy forecasting and capacity forecasting is required to be conducted by the producer (Appendix D).

BACKGROUND

Overview of the Solar Photovoltaic Program (SPVP)

On March 27, 2008, Southern California Edison (SCE) filed Application (A.) 08-03-015 seeking authorization for a five-year program to install, own, and operate up to 250 megawatts (MW) of one to two MW solar photovoltaic (PV) facilities on commercial rooftops in its service territory. On June 18, 2009, the Commission approved SCE's SPVP, with modifications, in Decision (D.) 09-06-049 (referred to herein as the SPVP Decision). The SPVP Decision established a 500 MW solar PV program divided equally between a utility owned generation (UOG) program and an Independent Power Producer (IPP) program. The UOG program approved SCE's request to own and operate up to 250 MW of rooftop solar PV facilities in its service territory. The SPVP Decision also authorized SCE to procure ground mounted facilities up to ten percent of the total SPVP program cap of 500 MW.

The IPP program authorized SCE to execute contracts for 250 MW of generation from facilities owned and maintained by IPPs through a competitive solicitation process and to file an advice letter, "...delineating the criteria for selection of the bids, and containing a draft standard 20-year PPA [power purchase agreement] contract" for the Program. Resolution E-4299 approved these program details.

Aiming to improve future SPVP solicitations, Resolution E-4299 also instructs SCE to hold a program forum within 60 days following each SPVP solicitation's closing date whereby market participants: can revisit elements of the SPVP

design, identify elements that are overly restrictive or blocking participation, and propose refinements to the solicitation process.¹ If SCE then seeks to make modifications to the SPVP or associated documents based on the results of each program forum, and in consultation with Energy Division, Resolution E-4299 directs SCE to file an advice letter.

SCE launched the 2010 SPVP request for offers (RFO) on March 18, 2010 and executed contracts on July 26, 2010. SCE filed and served the executed contracts with the Commission on September 24, 2010 through AL 2513-E, which the Commission approved with an effective date of October 25, 2010. Pursuant to Resolution E-4299, SCE held a program forum on December 2, 2010 and received input from the market participants for the next IPP SPVP RFO. By AL 2571-E and AL 2571-E-A, SCE now seeks Commission approval of changes to the IPP portion of the SPVP RFO instructions and PPAs based on SCE's experience and the feedback SCE received in the program forum.

NOTICE

Notice of AL 2571-E and AL 2571-E-A 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 IV of General Order 96-B.

PROTESTS

Commercial Solar Solutions (CSS) served a timely protest of AL 2571-E on April 25, 2011. SCE replied to CSS's protest on May 2, 2011.

¹ Resolution E-4299, page 3-4. For example, a program forum may address whether the level of development security required and the frequency of solicitations should be refined.

DISCUSSION

Energy Division evaluated the requested changes in AL 2571-E using the following criteria:

- Consistency with the Commission approved Request for Offers schedule.
- Consistency with prior Commission Decisions and Resolutions on Southern California Edison's Solar Photo Voltaic Program.
- Consistency with other Commission Decisions addressing similar renewable programs.

SPVP Solicitation Framework

Request for Offers (RFO) Schedule

In adopting SCE's SPVP, the Commission ordered SCE to hold at least one IPP solicitation every year for five years for approximately 50 MW. Pursuant to this direction, SCE launched its 2010 SPVP RFO on March 18, 2010, and executed contracts on July 26, 2010. SCE submitted the executed contracts in September 2010, which staff approved in October 2010. SCE is required hold a program forum within 60 days of the close of the solicitation, which SCE has defined as the date that SCE receives approval for its executed contracts. SCE held the program forum on December 2, 2010 and submitted Advice Letter 2571-E to modify the standard contract on April 5, 2011.

In its protest to AL 2571-E, California Solar Solutions (CSS) states that SCE did not comply with the timeframe established for the SPVP solicitation. According to CSS, SCE failed to hold its program forum within 60 days of the closing of its solicitation and took over four months after the program forum to file an advice letter seeking changes to the program. CSS also contends that the language in Resolution E-4299 requiring SCE to hold "at least one IPP solicitation . . . per year," means that SCE must hold at least one IPP solicitation every 12 months, not every calendar year.

In response to CSS' protest, SCE notes that CSS has not cited any Commission authority in support of its contention that the second RFO should have been scheduled within 12 months of the first solicitation. SCE also states that its

proposed RFO schedule takes into account the time needed for Commission staff to review and approve the proposed SPVP refinements and the time required to complete interconnection studies. Specifically, SCE would accept offers in the second SPVP solicitation two weeks after CAISO Cluster 4 Phase I interconnection studies have been completed, or four months after the launch of the RFO, whichever is later. SCE states that completion of interconnection studies is useful information that can be incorporated into offers submitted to the RFO, and will significantly increase the potential pool of projects.

The Commission finds that SCE complied with the schedule established in D.09-06-049. SCE submitted the executed contracts in September 2010, which staff approved in October 2010. SCE reasonably defined the close of its solicitation as the date it received approval of its executed contracts, and held its program forum within 60 days of that date. SCE held the program forum on December 2, 2010 and submitted Advice Letter 2571-E to modify the standard contract on April 5, 2011. Since SCE held the program forum within 60 days of the close of the solicitation, SCE is in compliance with Resolution E-4299.

Regarding CSS' second contention that SCE failed to hold the 2010 and 2011 solicitations within 12 months of each other, neither the SPVP Decision nor the Resolution require a solicitation every 12 months, but rather every year. CSS's argument that SCE failed to comply with the Commission approved SPVP schedule and that SCE must hold at least one IPP solicitation every 12 months is denied. However, CSS' underlying concern that the solicitation process can be long and arduous for small developers has merit. Because it took SCE a year from the first solicitation to file the advice letter requesting approval of changes to the standard contracts and because of limited Commission staff resources to review the advice letter, SCE did not hold a solicitation in 2011. In order to prevent delay in the future, SCE should streamline its schedule so that if an advice letter is to be filed, it is filed sooner than a year from the close of the solicitation.

In addition, when requesting changes to the SPVP contract or Program, SCE should file a Tier 2 advice letter, which would go into affect 30 days from filing unless staff suspends the advice letter. SCE filed the advice letter at issue with a Tier 3 designation. Resolution E-4299 ordered SCE to file a Tier 2 advice letter

when seeking Commission approval of SPVP projects executed using the Commission approved standard SPVP PPA.² Resolution E-4299 also ordered SCE to file an advice letter when seeking changes to the standard SPVP PPA, but did not specifically state what Tier designation should be used.³ D.09-06-049 also did not specify what Tier advice letter should be filed in this instance, but “encourage[d] SCE to include in its proposed RFO process a means for expediting Commission review and approval of the resulting contracts, such as the use of Tier 2 advice letters.”⁴ Requiring a Tier 2 advice letter comports with the Commission’s General Order 96-B on advice letter filings, which allows utilities to file Tier 1 or Tier 2 advice letters that conform to Commission orders authorizing a contract or program. Specifically, General Rule 5.2 provides that utilities may file a Tier 2 advice letter when seeking a change consistent with the authority the Commission has previously granted to it.⁵

Because an advice letter seeking changes to standard PPA documents for the SPVP will be changes consistent with the authority previously granted to it by the Commission, SCE should file a Tier 2 advice letter.

SCE should streamline its RFO schedule in order to decrease the time between the second and third solicitations; SCE should file a Tier 2 advice letter for future advice letters requesting changes to the SPVP. In addition, SCE’s requested schedule to wait for Cluster Study 4 Phase I interconnection study results, or four months after the launch of the RFO, whichever is later, is granted.

SPVP Standard PPA Terms and Conditions for Contracts 5 MW or Less

Table 1 below summarizes the proposed changes between the 2010 SPVP PPA and the 2011 SPVP PPA for projects of 5 MW or less.

² Resolution E-4229, page 21.

³ Resolution E-4229, pages 4, 28.

⁴ D.09-06-049, pages 43.

⁵ General Order 96-B, General Rule 5.2 (2).

Table 1. Proposed Changes Between the 2010 SPVP PPA and the 2011 SPVP PPA, for Contracts 5 MW or Less

#	PPA Section	2010 SPVP PPA	2011 SPVP PPA	Accepted, Rejected, or Modified	SCE or Commission Proposed Change
1	Producer must own and operate the generating facility (§ 1.1 and Throughout)	Requires the producer to own the generating facility.	Same provision included.	Modified to allow the developer or producer to either own or control the facility.	Commission modification.
2	Producer must assure that SCE is authorized as the Scheduling Coordinator (§ 2.8)	Requires producer to cooperate in good faith to assure that SCE is authorized as the Scheduling Coordinator.	Establishes a timeline by which Producer must assure that SCE is authorized to act as the Scheduling Coordinator.	Accepted without modification.	SCE suggested change.
3	Changes to Term Start Date (§ 3.2)	Allows producer to change the term start date by providing at least three days notice to SCE before the term start date.	Allows producer to change the term start date by providing at least thirty days notice to SCE before the term start date.	Accepted without modification.	SCE suggested change.
4	Women, Minority, Disabled Veteran Business	Not included.	Requires annual reporting listing the race, ethnicity, and gender of Producer's senior	Accepted without modification.	SCE suggested change.

	Enterprise (WMDVBE) Reporting Requirements (§ 3.4)		officers, and all WMDVBEs that supply goods/services to Producer during previous calendar year.		
5	Development Security/Collateral Requirement (§ 4)	Requires \$20/kW in development security.	Requires \$50/kW in development security.	Rejected.	SCE suggested change.
6	Posting and Return of Development Security/Collateral Requirement (§ 4.2 & 4.3)	Requires Producer to post the development security to SCE and maintain it until installation of necessary equipment/devices; SCE must return upon installation.	Requires Producer to post the collateral requirement to SCE and maintain it until Producer has satisfied all monetary obligations under the PPA that survive any termination, not to exceed one year following the end of term.	Accepted without modification.	SCE suggested change.
7	Term Start Date; Necessary Equipment/Devices (§ 4.3.2)	If by the term start date, producer has only installed a portion of the necessary equipment and devices, SCE shall return	If by the term start date, producer has only installed a portion of the necessary equipment and devices, producer shall forfeit, and SCE shall have	Accepted without modification.	SCE suggested change.

		within thirty days, a portion of the development security equal to the product of \$20/kW of the portion of the Gross Power Rating.	the right to retain, a portion of the collateral requirement equal to the product of \$50/kW and the Gross Power Rating.		
8	Termination; Operation Deadline (§ 6.1.2)	SCE may terminate the agreement if the term does not commence within 18 months of Commission approval.	Same provision included.	Modified to allow for a one-time six month extension due to regulatory delay.	Commission modification.
9	SCE's Termination Right (§ 6.1.5)	Not included.	SCE can terminate if Producer fails to post/maintain collateral requirement.	Accepted with modifications requiring a reasonable cure period.	SCE suggested change.
10	Mutual Termination Rights (§ 6.2.4 & 6.2.6)	Not included	Allows either party to terminate the PPA in the event that the other party becomes bankrupt or if Commission approval is not obtained.	Accepted without modification.	SCE suggested change.
11	Effect of Certain Terminations on the	Not included.	SCE can retain collateral requirement if SCE terminates	Accepted without modification.	SCE suggested change.

	Collateral Requirement (§ 6.4)		the PPA other than because electrical output ceases for 12 months, a force majeure occurs, or Commission approval is not obtained.		
12	Full Capacity Deliverability (§ 7.1)	Not included.	Requires Producer to demonstrate that is has obtained Full Capacity Deliverability Status before the Term Start Date.	Rejected.	SCE suggested change.
13	Producer's Obligations (§ 7.10 & 7.11)	Requires producer to install a Telemetering System.	Same provision included.	Modified to delete provision requiring a Telemetering System.	SCE suggested change.
14	No Requirements to Purchase Undelivered Energy (§ 8.1)	Not included.	SCE will not be required to purchase energy that is not or cannot be delivered because of an outage, force majeure, or a reduction or curtailment of energy, except as provided for elsewhere requiring	Accepted without modification.	SCE suggested change.

			payment for curtailment.		
15	Invoices (§ 8.5)	Requires Producer to issue a payment statement to SCE and requires SCE to pay via check.	Requires Producer to issue an invoice to SCE and requires SCE to pay via wire transfer.	Accepted without modification.	SCE suggested change.
16	Curtailment (§ 9)	Not included.	Allows SCE to curtail Producer's energy production for emergencies, as instructed by CAISO or the transmission provider or on take or pay basis.	Accepted with modification.	SCE suggested change; Commission modification to suggested change.
17	Applicability of CAISO Availability Incentives (§ 16.7)	Not included.	States that Producer agrees that the Generating Facility is subject to the terms of the Availability Standards, Non-Availability Charges, and Availability Incentive Payments as contemplated under Section 40.9 of the CAISO Tariff and that the Parties agree that	Accepted without modification.	SCE suggested change.

			any Availability Incentive Payments are for the benefit of the Seller and for Seller's account and that any Non-Availability Charges are the responsibility of the Seller and for Seller's account.		
18	Appendix A	Not included.	Added definition of WMDBVE.	Accepted without modification.	SCE suggested change.
19	Appendix A	Defines Gross and Net Power Rating	Adds to the definition of Gross and Net Power Rating to provide that each may be adjusted pursuant to Section 4.3.2 of the standard PPA.	Accepted without modification.	SCE suggested change.
20	Appendix D	Only requires energy forecasting.	Requires energy forecasting and, at SCE's request, capacity forecasting.	Accepted without modification.	SCE suggested change.

The following discussion provides in more detail the significance of a proposed change to a contract term, whether a term was protested, or if staff recommends

modifying a term.⁶ In general, terms that are accepted without modifications or are not significant are not discussed below.

1. Requirement that the Producer Either Own or Control the Generating Facility (Throughout)

SCE's standard Program PPAs provide that the producer shall own and operate the generating facility.

Staff recommends modifying this requirement throughout the standard PPAs to allow the producer to either own or control the facility. This modification will help to accommodate different financing structures such as a sale-leaseback as opposed to outright ownership.

The standard PPAs are modified to allow a producer to either own or control the generating facility.

4. Women, Minority, Disabled Veteran-owned Business Enterprises (WMDVBEs) Reporting Requirements (§ 3.4)

Among the changes made to SCE's 2011 PPA is an added requirement that project developers annually file a report listing:

The race, ethnicity, and gender of the developer's senior officers, and members who are natural persons, if any; and . . . All WMDVBEs that supply goods or services to Producer during the previous calendar year, including any certifications or other documentation of such WMDVBEs' status.

This requirement was not included in SCE's prior 2010 SPVP PPA.

The Commission's General Order Number 156 requires utilities to track information relating to the number of women, minority, and disabled veteran

⁶ Paragraphs are numbered to correspond to Table 1.

owned business enterprises in utility contracting. This information must be filed in annual reports with the Commission. SCE's proposed change to its standard PPA will help SCE track this information and will thus help to comply with Commission orders. This change is also consistent with Resolution E-4299, which urged SCE "to ensure that its RFO is made widely available to all interested parties, including WMDVBE suppliers. . ."⁷

Appendix A has also been modified to add a definition of WMDVBE.

SCE's proposed requirement that developers file annual WMDVBE reports is reasonable, consistent with General Order 156, and is accepted without modification.

5. Development Security/Collateral Requirement (§ 4)

Resolution E-4299 required a development security in the amount of \$20/kilowatt (kW). SCE proposes to raise the development security requirement in its 2011 PPA to \$50/kW. SCE states this increase is being requested due to market feedback and in order to bring the PPA more in line with SCE's market risk exposure and industry standards.

CSS protests the \$50/kW security deposit increase, arguing that it presents a barrier for small developers. The IE, Accion Group, agrees with SCE that a \$50/kW development security is reasonable.

Security requirements have varied between the Commission's various renewable programs from roughly \$20/kW to \$60/kW for intermittent resources. In Resolution E-4299 implementing SPVP, staff revised the development security proposed in SCE's draft standard PPA from \$30/kW to \$20/kW. Similarly, in PG&E's solar PV program, the Commission adopted a security deposit of \$20/kW for projects less than 3 MW and \$35/kW for projects 3 MW or greater.⁸

⁷ Resolution E-4299, page 26.

⁸ The Commission adopted PG&E's Solar PV Program in D.10-04-052.

In D.10-12-048 (referred to herein as the RAM Decision), which adopted the RAM program, the Commission found “it reasonable to require a \$20/kW development security deposit for projects 5 MW and smaller, and a \$60/\$90 per kW deposit for intermittent and baseload resources, respectively, for projects greater than 5 MW and up to 20 MW in size.”⁹

The RAM Decision discussed the need to balance “the risk that if [development security is] set too high, we will exclude projects that might be reasonably viable but which lack the necessary capital to post a large security amount.”¹⁰ The Commission also noted multiple benefits of development security costs, including that a deposit subject to forfeiture provides an additional incentive for the developer to complete the project within the allotted timeframe, and helps filter out projects that investors believe have no chance of success.¹¹

Based on the RAM Decision, a \$20/kW security deposit is reasonable for projects up to 5 MW in size. Thus, SCE’s request to increase the security deposit from \$20/kW to \$50/kW for projects up to 5 MW is denied.

The security deposit for projects up to 5 MW should remain \$20/kW.

6. Posting and Return of Development Security/Collateral Requirement (§§ 4.2 & 4.3)

The 2010 SPVP PPA required the producer to post the development security to SCE and maintain it until installation of necessary equipment and devices. Upon installation of necessary equipment and devices, SCE was required to return the development security. The 2011 proposed PPA would require the producer to post the collateral requirement to SCE and maintain it until the producer has satisfied all monetary obligations under the PPA that survive any termination not to exceed one year following the end of the term. SCE states that it is

⁹ D.10-12-048, page 55.

¹⁰ D.10-12-048, page 54.

¹¹ D.10-12-048, page 54.

attempting to adopt the RAM program strategy of rolling the development security into ongoing performance assurance. This is a reasonable change since it is consistent with the RAM Decision.

Requiring the developer to post and maintain the collateral requirement to SCE until the developer has satisfied its obligations is reasonable.

9. SCE's Termination Rights (§ 6.1.5)

SCE requests a termination right in the 2011 RFO PPA if the producer fails to post or maintain its collateral requirement. This requirement was not included in SCE's 2010 PPA.

In the IE's evaluation of AL 2571-E, the IE stated that the failure to post or maintain collateral is a reasonable cause for contract termination. However, the IE also states that it is reasonable to provide some cure period for failure to maintain collateral, an opportunity that it is not explicitly given in the SPVP PPA.

SCE's proposed change is reasonable, subject to a modification whereby the energy producer is given a reasonable time to cure its failure to post or maintain collateral prior to contract termination. See Appendix C for sample contractual language regarding this cure period.

Allowing SCE to terminate the contract if the developer fails to post or maintain the agreed upon collateral requirement is reasonable, provided however, this change is approved subject to the modification that the standard PPA allow for a reasonable cure period prior to contract termination. SCE shall modify § 6.1.5 of the PPA for contracts up to 5 MW to allow for a minimum 15 day cure period.

10. Termination; Operation Deadline (§ 6.1.2)

SCE's 2010 PPA provides that SCE may terminate the agreement if the term start date does not commence within 18 months of Commission approval, subject to a force majeure extension. With the goal of having the SPVP PPA reflect more recent Commission approved standard contracts, this language should be modified to allow for a one-time six month extension if the developer can

successfully demonstrate the delay is due to regulatory processes outside of its control, such as permitting or interconnection delays not caused by the developer.¹² See Appendix A for the exact contract language used in the RAM contract.

SCE shall modify the SPVP PPA for contracts up to 5 MW so that a 6 month extension due to regulatory delays is allowed if the 18-month online date is not achieved.

SCE's Standard PPA for contracts 5 MW or less is modified to allow SCE to terminate the contract if the term does not commence within 18 months of Commission approval, with a one-time six month extension if the project can successfully demonstrate that the cause of delay is due to regulatory processes outside of its control. SCE should include the language in Appendix A with non-substantive revisions to align internal references.

11. Effect of Certain Termination on the Collateral Requirement

SCE proposes to add a provision in its standard PPA that allows it to retain the collateral requirement if SCE terminates the PPA other than because electrical output ceases for 12 months, a force majeure occurs, or Commission approval is not obtained.

SCE asserts that this change is being proposed in order to bring the SPVP PPA more in-line with SCE's market risk exposure and with industry standards, including the RAM PPA.

Allowing SCE to retain the collateral requirement should it terminate the PPA is a reasonable change given that the provision provides for exceptions for factors such as a force majeure. This change is also reasonable considering that this Resolution modifies other provisions regarding termination such as requiring a

¹² See e.g., D.10-12-048, page 50.

six-month extension to the 18 month online date, and a cure period for failure to post or maintain the collateral requirements.

Allowing SCE to retain the collateral requirement if it terminates that PPA for reasons other than because electrical output ceases for 12 months, a force majeure occurs, or Commission approval is not obtained is reasonable and accepted without modification.

12. Full Capacity Deliverability (§ 7.1)

One significant change SCE proposes to make to the 2011 PPA for both contracts is the requirement that the producer demonstrate that it has obtained Full Capacity Deliverability Status before the Term Start Date. This requirement was not included in the 2010 SPVP PPA.

The IE states that requiring a producer to demonstrate full capacity deliverability status is reasonable but that it would also be reasonable “to provide an explicit limited extension for specific events such as failure by the Transmission provider to complete Interconnection for the project or delay in receiving necessary permits due to actions or inactions of any Governmental Authority.”

The investor-owned utilities (IOUs) requested this type of provision in their RAM implementation advice letters, but the Commission rejected this request in Resolution E-4414.¹³ Specifically, the Commission rejected the IOUs’ request to require renewable generators to achieve Full Capacity Deliverability Status because the IOUs did not show a need for resource adequacy from small renewable generators. In addition, the IOUs did not compare the costs of procuring resource adequacy from a renewable generator to the costs of procuring resource adequacy from another non-renewable source. Because ratepayers bear the costs of deliverability network upgrades needed to qualify for resource adequacy, this type of economic analysis is an important factor in determining how to procure resource adequacy. In addition, achieving resource

¹³ Resolution E-4414, page 16.

adequacy can be an expensive and time consuming burden for small renewable projects and could cause undue risk and uncertainty.

As a result, the Commission rejects SCE's request to require Full Capacity Deliverability Status prior to commercial operation or at any point in the future for projects resulting from the SPVP. Instead, SCE should require the seller to apply for a deliverability study, as ordered in the RAM Resolution E-4414. The seller should only be required to achieve full deliverability status in instances where no additional upgrades for deliverability purposes are needed or if a seller can obtain full deliverability with no additional costs to the seller.

Note that this decision does not impact other provisions in the PPA providing that the producer will provide Resource Adequacy if available. Finally, since Resolution E-4299 requires SCE to select projects based on price only, SCE may not use a resource adequacy value when selecting or rejecting bids. SCE may only select or reject bids based on the bid price.

SCE's proposed change to require Full Capacity Deliverability Status is rejected. Instead, SCE should require the seller to apply for a deliverability study. A seller should only be required to achieve full deliverability status in the instances where no additional upgrades for deliverability purposes are needed or if a seller can obtain full deliverability with no additional costs to the seller. However, SCE may not use resource adequacy value when selecting or rejecting contracts.

13. Installation of a Telemetry System (§ 7.10 & 7.11)

Both the 2010 and 2011 standard PPAs require the producer to install a telemetry system in order to facilitate the remote collection of quality meter data. This requirement should be deleted from the standard PPA for smaller projects sized up to 5 MW.

While the collection of data from a telemetry system is useful information for SCE to obtain, it also presents an expensive and burdensome requirement for small producers. While the Commission did not expressly reject this

requirement in SCE's California Renewable Energy Small Tariff (CREST) PPA, it also did not approve SCE's request for use of telemetering.¹⁴ Modifying the SPVP PPA would align contractual requirements between these similarly sized renewable programs.¹⁵ Finally, SCE has the ability to require telemetering systems through its interconnection tariffs, which is an appropriate place to make this requirement. If SCE wishes to require remote collection of quality meter data, it should do so through the interconnection tariff where parties can negotiate the best technical solution to achieve this goal. Accordingly, the Commission modifies this aspect of the SPVP PPA.

The PPA for projects 5 MW or less should be modified to delete the requirement that the producer install a telemetering system.

16. Curtailment (§ 9)

The 2010 SPVP PPA for projects 5 MW or less did not contain language regarding curtailment. For its 2011 SPVP PPA, SCE has proposed curtailment language allowing it to curtail delivery, but requiring it to pay for the curtailed product.

CSS protests SCE's curtailment language, arguing that it does not go far enough in ensuring financing for renewable projects. CSS urges the Commission to adopt PG&E's curtailment policy, which pays the seller up to 5 percent of the project's expected annual generation, with PG&E paying the seller the contract price for curtailed energy.

In support of its argument, CSS cites the proposed decision accepting the utility's 2011 Renewable Portfolio Standard Procurement Plans in Rulemaking 08-08-009 requiring that "all three IOUs include economic curtailment provisions

¹⁴ See D.11-11-012.

¹⁵ The CREST program is available to all RPS-eligible technologies up to 1.5 MW and the SPVP is available to solar PV technologies generally between 1-2 MW.

equivalent to those proposed by PG&E.”¹⁶ However, as SCE notes in its response, D.11-04-030, the adopted decision in this proceeding, deleted this language, finding that the Commission would not pick one IOU’s curtailment approach over another and that “SCE may use its preferred approach.”¹⁷ Thus, D.11-04-030 does not support CSS’s contention that SCE must adopt PG&E’s curtailment language.

SCE’s proposed curtailment language in Section 9.1 of its standard PPA provides that the energy producer shall curtail production of the facility in several circumstances, including: (i) upon Notice from SCE that it has been instructed by California Independent System Operator (CAISO) or the transmission provider to curtail deliveries; (ii) upon notice that producer has been given a curtailment order in response to an emergency; and (iii) if no schedule was awarded in either the Day-Ahead or Real-Time Market.

Section 9.2 of the PPA also provides that if no schedule is awarded and the generating facility has not been curtailed, then as long as a producer’s availability establishes that the facility would have been able to deliver but for not receiving a schedule, SCE must pay the producer for the amount of energy it would have been able to deliver. SCE’s supplemental filing, AL 2571-E-A, also corrected two typographic errors in the originally proposed curtailment provision.

In sum, the PPA allows SCE to curtail delivery, but requires SCE to pay for the curtailed product.

In reviewing the PPA, the Commission accepts SCE’s proposed curtailment language with one modification. SCE’s language as proposed would require the facility to curtail production if it does not receive a CAISO schedule. However, because the Commission has previously rejected the utility’s proposed telemetry

¹⁶ Proposed Decision of ALJ Mattson in R.08-08-009 (Feb. 11, 2011), page 14.

¹⁷ D.11-04-030, pages 17-18.

requirement, as does this Resolution, it is not possible for SCE to schedule these resources. Thus, this Resolution modifies SCE's curtailment provision to reflect the recommended rejection of a telemetry requirement by adding a provision requiring SCE to provide notice to the facility to curtail production. See Appendix B for the modification to the PPA's curtailment provision Section 9.

Because SCE's language is simpler and similar to what the Commission has previously approved for both SCE and PG&E, SCE's proposed curtailment language is reasonable and approved with the modification discussed above and contained in Appendix B.

SPVP Standard PPA Terms and Conditions for Contracts Greater than 5 MW and Less than 10 MW

Use of the 2011 RAM Pro Forma PPA

In AL 2571-E, SCE filed its 2011 RAM Pro Forma PPA as a basis to create the SPVP standard PPA for contracts between 5 and 10 MW.

Since SCE filed AL 2571-E in April of 2011, the Commission issued Resolution E-4414, which approved with modifications SCE's RAM PPA for contracts between 5-20 MW. The Resolution made multiple changes to contract terms that SCE proposed, and thus provides SCE with the most up to date Commission approved standard contracting terms and conditions on which to base its SPVP PPA.

SCE shall use the terms and conditions contained in the RAM PPA approved by Resolution E-4414 for contracts up to 20 MW to create the 2011 SPVP PPA for projects between 5 and 10 MW. SCE may make non-substantive edits in order to align internal references and may delete terms inapplicable to solar PV technology or inapplicable to the SPVP program.

Provision Regarding Electricians, Contractors, and Subcontractors (§ 3.30)

Resolution E-4299 approved language in SCE's proposed standard PPA for up to 5 MW projects requiring sellers to comply with the prevailing wage requirements established for public works projects under the California Labor code. Resolution E-4299 also requires that SCE "modify its original clause to clarify that sellers shall undertake reasonable efforts to pay the prevailing wage for electricians set pursuant to the cited Labor Code provisions. Nothing herein shall require sellers, its contractors and subcontractors to comply with, or assume liability created by other inapplicable provisions of the Labor Code."¹⁸

SCE has proposed to add a provision in its standard PPA for projects above 5 MW regarding the hiring of electricians, contractors, and subcontractors. Section 3.30 would require that the seller "use reasonable efforts to ensure that all Electricians hired by Seller and its contractors and subcontractors are paid wages at rates not less than those prevailing for Electricians performing similar work in the locality," for the construction, alteration, demolition, installation, and repair work of the generating facility, and that "[n]othing herein shall require Seller or its contractors or subcontractors to comply with, or assume liability created by other inapplicable provisions of the California Labor Code." Accordingly, the Commission accepts this additional provision in the standard PPA.

For the SPVP contract for projects greater than 5 MW and up to 10 MW, the provision requiring that sellers undertake reasonable efforts to comply with prevailing wage requirements under the California Labor Code for the hiring of electricians, contractors, and subcontractors is reasonable and is approved without modification.

COMMENTS

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

¹⁸ Resolution E-4429, page 21.

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 or 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. Southern California Edison's proposed changes to its 2011 RFO Participant Instructions and its 2011 standardized Power Purchase Agreements are reasonable, subject to the modifications in this Resolution.
2. CSS's protest that SCE failed to comply with the Commission approved SPVP schedule and that SCE must hold at least one IPP solicitation every 12 months is denied.
3. SCE should streamline its RFO schedule in order to decrease the time between the second and third solicitations; a Tier 2 advice letter for future advice letters requesting changes to the SPVP is reasonable since it may allow for more expedited approval. In addition, SCE's request to wait for Cluster Study 4 Phase I interconnection study results, or four months after the launch of the RFO, whichever is later, is granted.
4. The standard PPAs should be modified to allow a producer to either own or control the generating facility.
5. SCE's proposed requirement that developers file annual WMDVBE reports is a reasonable requirement, consistent with General Order 156, and should be approved without modification.
6. The security deposit for projects up to 5 MW should remain \$20/kW.
7. Requiring the developer to post the collateral requirement to SCE and maintain it until the developer has satisfied its obligations is reasonable.
8. Allowing SCE to terminate the contract if the developer fails to post or maintain the agreed upon collateral requirement is reasonable, however, a reasonable cure period prior to contract termination should be provided.

9. SCE's standard PPA for contracts 5 MW or less is modified to allow SCE to terminate the contract if the term start date does not commence within 18 months of Commission approval, with a one-time six month extension if the project can successfully demonstrate that the cause of delay is due to regulatory processes outside of its control.
10. Allowing SCE to retain the collateral requirement if it terminates that PPA for reasons other than because electrical output ceases for 12 months, a force majeure occurs, or Commission approval is not obtained, is reasonable and accepted without modification.
11. SCE's proposed change to require Full Capacity Deliverability Status is not reasonable. A seller should only be required to achieve full deliverability status in the instances where no additional upgrades for deliverability purposes are needed or if a seller can obtain full deliverability with no additional costs to the seller.
12. The PPA for projects 5 MW or less should be modified to delete the requirement that the producer install a telemetering system.
13. SCE's proposed curtailment language is reasonable and consistent with contract language previously approved, subject to one modification.
14. SCE shall use the terms and conditions of the RAM PPA for contracts up to 20 MW in the 2011 SPVP PPA for projects between 5 and 10 MW. SCE may make non-substantive edits in order to align internal references and may delete terms inapplicable to solar PV technology or inapplicable to the SPVP program.
15. For the SPVP contract for projects greater than 5 MW and up to 10 MW, the provision requiring that sellers undertake reasonable efforts to comply with prevailing wage requirements under the California Labor Code for the hiring of electricians, contractors, and subcontractors is reasonable.
16. Advice Letters 2571-E and 2571-E-A should be approved with the modifications discussed herein.

THEREFORE IT IS ORDERED THAT:

1. Southern California Edison Company's Advice Letters 2571-E and 2571-E-A, requesting changes to the Solar Photovoltaic Program Request for Offers documents, is approved with modifications.
2. Following its next Solar Photovoltaic Program Request for Offers, Southern California Edison shall submit a Tier 2 advice letter filing with any requests for changes to its standard Request for Offers documents or power purchase agreements.
3. The following changes to the 2011 Solar Photovoltaic Program standard Power Purchase Agreement for contracts 5 megawatts or less requested in Advice Letter 2571-E are adopted without modification. SCE is authorized to:
 - Require producer to assure that SCE is authorized as the Scheduling Coordinator prior to the date the facility first delivers electricity and no later than any deadline established by CAISO (§ 2.8).
 - Require thirty days notice of a changing start date (§ 3.2).
 - Require the developer to file annual Women, Minority and Disabled Veteran Owned Business Enterprises reports (§ 3.4).
 - Require the developer to post the collateral requirement to SCE and maintain it until the developer has satisfied all monetary obligations (§ 4.2 & 4.3).
 - Retain a portion of the collateral requirement and the Gross Power Rating if, by the term start date, the producer has only installed a portion of the necessary equipment and devices.
 - Allow either party to a PPA to terminate the contract in the event of bankruptcy or if the PPA is not approved by the Commission (§ 6.2.4 & 6.2.6).
 - Retain the entire collateral requirement should certain termination provisions in the contract be triggered (§ 6.4).
 - Refuse to purchase energy that is not or cannot be delivered because of an outage, force majeure, or a reduction or curtailment of energy. SCE is required to abide by the terms of the contract for curtailment payments.

- Require the producer to issue an invoice to SCE and to require SCE to pay via wire transfer (§ 8.5).
 - Require a generating facility be subject to the terms of the Availability Standards, Non-Availability Charges, and Availability Incentive Payments; and make clear that any Availability Incentive Payments are for the benefit of the Seller and any Non-Availability Charges are the responsibility of the Seller (§ 16.7).
4. The following modifications are made to provisions in SCE's 2011 standard Power Purchase Agreement for contracts of 5 MW or less. SCE shall:
- Allow a producer to either own or control the generating facility.
 - Require development security in the amount of \$20/kW.
 - Terminate the contract if the developer fails to post or maintain the agreed upon collateral requirement (§ 6.1.5). The standard PPA must allow for a reasonable cure period of a minimum of 15 days prior to contract termination.
 - Terminate the contract if the term does not commence within 18 months of Commission approval (§ 6.1.2). SCE must allow a one-time six month extension if the project can successfully demonstrate that the cause of delay is due to regulatory processes outside of its control.
 - Curtail producer's energy production under certain circumstances, and pay for energy that would have been produced but for the producer not receiving a schedule (§ 9). This provision is modified to delete a requirement achievable through telemetry.
5. The following proposed changes are rejected and shall not be included in the 2011 SPVP protocols for contracts for 5 MW or less:
- The requirement that producers install a telemetering system.
 - The requirement that the seller must obtain Full Capacity Deliverability Status (§ 7.1). Instead, SCE is authorized to require the seller to apply for a deliverability study. A seller should only be required to achieve full deliverability status in the instances where no additional upgrades for deliverability purposes are needed or if a seller can obtain full

deliverability with no additional costs to the seller. SCE may not use resource adequacy value when selecting or rejecting contracts.

6. SCE shall use the terms and conditions from its Commission approved RAM PPA for SPVP contracts greater than 5 MW but not greater than 10 MW. SCE is authorized to make the following changes to the SPVP PPA:
 - Deletion of terms inapplicable to solar PV technology or the SPVP program (throughout).
 - Require that seller undertake reasonable efforts to comply with prevailing wage requirements under the California Labor Code for the hiring of electricians, contractors, and subcontractors (§ 3.30).

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 February 1, 2012; the following Commissioners voting favorably thereon:

PAUL CLANON
Executive Director

Appendix A

Standard RAM Contract Language

RAM contract language regarding the 18 month deadline with a six month extension, as adopted in D.10-12-048 and modified in Resolution 4414, reads as follows:

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

The Term does not commence within 18 months of CPUC approval, with one 6-month extension for regulatory delays.¹⁹

D.10-12048 further elaborated that in adopting the six month extension, “[w]e expect the IOU to limit the reasons for an extension to regulatory delays outside of the developer’s control. In order to grant an extension due to regulatory delays, the project, for example, must show that it filed applications timely, paid fees timely, and is responsibly pursuing the necessary applications. An IOU should terminate a contract at the end of 18 months if the project fails to adequately demonstrate the merits of an extension.”²⁰

¹⁹ Resolution 4414, Attachment A, page 51.

²⁰ D.10-12-048, page 52.

Appendix B

Modified Curtailment Language

In order to address the telemetry issue in the PPA, staff proposes the following addition (underlined) to SCE's curtailment language:

9.1 Producer shall promptly curtail the production of the Generating Facility: (i) upon Notice from SCE that SCE has been instructed by the CAISO or the Transmission Provider to curtail energy deliveries; (ii) upon Notice that Producer has been given a curtailment order or similar instruction in order to respond to an Emergency; (iii) if no Schedule was awarded in either the Day-Ahead Market or the Real-Time Market, and SCE provides Notice to curtail the production of the Generating Facility; or (iv) if SCE issues an OSGC Order.

Appendix C

Cure Period for Failure to Maintain Collateral

Staff recommends the following addition (underlined) to the PPA provision regarding SCE's right to terminate following a failure to post or maintain collateral:

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:

6.1.5.1.1. Producer fails to post and maintain the Collateral Requirement pursuant to Section 4, for fifteen days after the same shall have become due and seller fails to cure such failure to post or maintain within fifteen days after receipt of written demand therefore from Buyer;