Decision 11-11-012 November 10, 2011

BEFORE THE PUBLIC COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Continue Implementation and Administration of California Renewables Portfolio Standard Program.	Rulemaking 11-05-005 (Filed May 5, 2011)

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

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

1. Summary

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

2. Background

Pub. Util. Code §§ 399.11-399.22, the California Renewables Portfolio Standard Program (RPS),[2] enacted in 2002 by Senate Bill (SB) 1078 (Sher) and

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

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

amended in 2006 by SB 107 (Simitian), requires retail electricity sellers regulated by the Commission to procure an additional 1% of retail sales per year from eligible renewable sources until 20% is reached, no later than 2010. In 2011, SB 2 1X[3] of the 2011-2012 First Extraordinary Session (Simitian) amended §§ 399.11-399.22 to increase the renewable target to 33% by 2020 and also require publicly-owned utilities to achieve the 33% renewables goal.

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

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

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

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

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

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

[4] D.07-07-027 directed the IOUs to file standard contracts and tariffs under § 399.20. SCE filed the CREST PPA to comply with the decision.

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

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

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

Lenders and investors, however, often require producers and developers to execute a PPA with the utility, such as SCE, before they consider the project sufficiently credit worthy for financing purposes. The SCE process contained many barriers to obtaining an acceptable PPA. Among others, the SCE process required a producer or developer to participate in an extended interconnection study process and have an executed interconnection agreement before obtaining a PPA. Further, and as discussed in more detail below, SCE's CREST PPA includes several terms and conditions which are not consistent with the terms and conditions in PPAs more recently approved by the Commission and which

significantly limit the ability of developers and producers to obtain financing for CREST projects. Besides San Diego Gas & Electric's (SDG&E) § 399.20 Feed-in Tariff contract, which was modeled after SCE's CREST PPA, these CREST PPA terms and conditions are not included in other utilities' programs that are similar to the CREST program. Consequently, the informal discussions focused on timely progress toward successful interconnection and modification of problematic SCE CREST PPA provisions.

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

> Notice to all interested parties: On May 19, 2011, Southern California Edison Company ("SCE") launched a stakeholder process to reform SCE's pro forma CREST PPA ("CREST PPA"). SCE received and has been reviewing stakeholder feedback on SCE's proposed new pro forma CREST PPA. Originally, SCE had targeted July 22, 2011 for the distribution of the revised CREST PPA. However, in light of the California Public Utilities Commission's ("CPUC") current implementation of SB 32, which would replace the existing CREST program with a new Feed-in Tariff, SCE is suspending the stakeholder process until further notice. SCE will consider comments it has received in this stakeholder process in the implementation of SB 32.[5]

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

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

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

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

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

3. Jurisdiction

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

4. SCE Opposition to Clean Coalition Motion

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

SCE claims that Clean Coalition overstates the urgency of the contract modifications. We disagree. The federal cash grants expire at the end of the

year. Prompt modification is needed to enable producers to ensure they qualify for these grants.

SCE also claims that Clean Coalition wants to help producers to lock into an above-market price for projects rather than wait for the Commission in this proceeding to determine pricing reform. We disagree. In D.07-07-027, the Commission ordered the IOUs to offer standard tariffs and contracts to all customers at the Market Price Referent (MPR) and determined that the MPR was a reasonable price to pay the Feed-in Tariff producers. Under D.07-07-027, the IOUs are required to offer the Feed-in Tariff under the MPR until their allocated capacity is fully subscribed or until the Commission modifies the program through another decision.[6] Neither has occurred.

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

We disagree with SCE that a petition for modification must be filed. A petition for modification would be an appropriate procedural vehicle, but other

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[6] While SCE sought rehearing of D.07-07-027 on several matters, it did not challenge the Market Price Referent (MPR) determination in that decision. *See* D.08-02-010, *Order*

Footnote continued on next page

appropriate processes exist as well, including today's decision. Today's decision relies on the record evidence from this proceeding. Moreover, we have notified all interested parties related to Resolution E-4137 of our intention to consider modifications to the CREST PPA. This notice was provided in the Assigned Commissioner's Ruling dated September 12, 2011, and notice was provided in conjunction with the service of the proposed decision herein.[7] In short, all potential interested parties have had notice of our intention to act on this matter and have had the opportunity to be heard. We also considered the comments and reply comments received on the proposed decision mailed on October 11, 2011.

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

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

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

(1) Modify Section 2.8 (Date of Initial Operation) and Section 4.2(d)(3) (Term and Termination);

(2) Modify Section 4 (Term and Termination);

(3) Modify Section 12 (Assignment);

Modifying Decision (D.) 07-07-027 and Denying Rehearing of the Decision, as Modified (February 14, 2008).

[7] Service of this decision will be provided to the electronic service list for General Order 96-B, attached hereto as Attachment A, and the electronic service list for this proceeding. Entities on the General Order 96-B service list that seek future notices relevant to this issue must formally place their name on the service list for R.11-05-005.

(4) Remove Sections 14.2 (future modifications) and 14.4 (application for modifications);

(5) Add two new contract sections, Force Majeure and Indemnification; and

(6) Modify the CREST PPA to provide more options for interconnection agreements.

We address the merits of each request separately below. We also address additional clarifications suggested by other parties in comments on the proposed decision, such as, the execution date of the PPA, curtailment provisions, and collateral requirements.

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

Clean Coalition requests that the Commission direct SCE to add contract language to the CREST PPA at Section 2.8 (Date of Initial Operation) and modify Section 4.2(d)(3) (Term and Termination) to provide additional protections to the producers and developer in the event that SCE is responsible for delays in the interconnection process. Clean Coalition claims that, as currently written, SCE may elect to terminate the PPA regardless of whether a delay is caused by SCE or the developer. The specific language requested by Clean Coalition is set forth in Appendix A to Clean Coalition's motion and, essentially, seeks to prevent termination of the PPA for an unspecified period of time in the event the delay is caused by SCE.

SCE objects to Clean Coalition's request on a number of grounds. SCE claims that the contract modification proposed by Clean Coalition is vague and ambiguous. The Commission, SCE explains, cannot extend the date by which a generation project can begin operations indefinitely, even if those delays are caused by SCE, and SCE says that limits on these extensions need to be provided.

SCE also expresses concern that, if the Commission adopts the suggested contract modifications, producers and developers may potentially fill the capacity cap for the § 399.20 program indefinitely, with non-viable projects.

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

The contract language proposed by Clean Coalition provides for an extension to the Initial Operations date, set forth in Section 2.8, but lacks, as SCE points out, sufficient definition. Clean Coalition fails to provide a specific time period for any additional extension. The Commission recently addressed a very similar issue in D.10-12-048, the Renewable Auction Mechanism (RAM) decision. D.10-12-048 directs IOUs to require an 18-month online date plus one 6-month extension for regulatory delays, such as interconnection for the RPS contracts approved therein. In adopting this contract provision, the Commission reasoned in D.10-12-048 that a defined period of time, such as the 18 months, is preferable because it imposes strict time limits on processing and, in turn, attracts the most viable projects. The Commission in D.10-12-048 also recognized that "legitimate delays can occur relative to any timeline." (D.10-12-048 at 50.)

We similarly find, as discussed in D.10-12-048, that language providing for an 18-month online date plus one 6-month extension for regulatory delays should be incorporated into the CREST PPA. In modifying the existing PPA to

provide for a 6-month extension of time, we likewise recognize that legitimate delays can occur relative to any timeline.

In comments to the proposed decision, SCE notes that additional clarification is needed on the contract term start date for purposes of the newly adopted timeframe of 18-months online date plus one 6-month extension. We agree. We therefore clarify that the contract term start date is the Effective Date, per Section 17 of the CREST PPA, or the last date signed by all contracting parties. In comments to the proposed decision, Silverado Power LLC[8] and Clean Coalition suggested that the Effective Date be calculated from the date an interconnection agreement, not a PPA, is entered between the parties. We see benefits to this suggestion and urge Silverado Power LLC and Clean Coalition to raise this issue as the Commission implements § 399.20.

Accordingly, within 10 days of the effective date of this decision, SCE shall file a Tier 1 advice letter, effective immediately, incorporating into the CREST PPA the same language required by D.10-12-048[9] and as set forth below, with non-substantive changes as needed to align internal references.

> 1.04 Commercial Operation Deadline.
>
> (a) Subject to any extensions made pursuant to Sections 1.04(b), 1.04(c), 3.06(c) or 5.03, and further subject to Section 1.04(d), the

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[8] Silverado Power LLC describes itself as having over 2,000 mw of projects currently under development in California and the western United States, including projects that are attempting to make their way through the SCE CREST interconnection queue. It states that these projects will be directly impacted by the modifications to the existing CREST program set forth in the proposed decision.

[9] The language adopted in D.10-12-048 has been slightly modified to reflect the fact that, while RAM contracts require Commission approval, SCE's CREST PPA contracts do not.

Commercial Operation Date must be no later than the earlier of (i) *[sixty (60) days] {for Baseload} [one hundred twenty (120) days] {for Intermittent}* from the Initial Synchronization Date, and (ii) eighteen (18) months from the PPA Effective Date ("Commercial Operation Deadline").

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

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

> (d) Notwithstanding anything in this Agreement to the contrary, the Commercial Operation Deadline may not be later than twenty-four (24) months from the PPA Effective Date.

5.2. Section 4 (Term and Termination) of the CREST PPA

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

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

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

Clean Coalition's recommendation reasonable to replace Section 4 of the existing CREST PPA with Section 6 of the 2010 SPVP contract.

In adopting the 2010 SPVP contract, the Commission relied upon the already existing CREST PPA. Section 6 of the SPVP was not sufficiently controversial to warrant discussion when the Commission approved the 2010 SPVP contract via Resolution E-4299 on January 21, 2010. However, due to the similarity between the two contracts, Section 6 of the 2010 SPVP contract can essentially be described as a more refined version of Section 4 of the CREST PPA. Since the Commission's initial approval of Section 4 of the SCE CREST PPA on February 18, 2008 through Resolution E-4137, we have gained a better understanding of the contract terms and conditions that balance the utility's, ratepayer's, and producer's interests. More specifically, we understand the need for lenders to obtain a sufficient level of stability in the terms and conditions of a Commission-approved PPA and for a process to resolve potential changes to existing PPAs by the Commission. As a result, we find it reasonable to replace Section 4 of the CREST PPA (Term and Termination) with language from Section 6 of the SPVP contract.

Accordingly, within 10 days of the effective date of this decision, SCE shall file a Tier 1 advice letter, effective immediately, removing Section 4 of the existing CREST PPA and inserting the below noted language, Section 6 of the 2010 SPVP, with non-substantive changes as needed to align internal references and to delete references to "photovoltaic."

6. TERMINATION; REMEDIES

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

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

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

6.1.3. Producer abandons any Generating Facility;

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

6.1.5. The Term does not commence within eighteen (18) months of the -- PPA Effective Date, subject to any extensions herein as to which Producer is the Claiming Party);

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

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

6.2. A Party may terminate this Agreement:

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

6.2.2. Except for an obligation to make payment when due, if there is a failure of the other Part to perform any material covenant or obligation set forth in this Agreement (except to the extent such failure provides a separate termination right for the non-breaching

> Party or to the extent excused by Force Majeure), if such failure is not remedied within thirty (30) days after Notice thereof from the non-breaching Party to the breaching Party;
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> 6.2.3. If the other Party fails to make any payment due and owing under this Agreement, if such failure is not cured within five (5) Business Days after Notice thereof from the non-breaching Party to the breaching Party; or
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> 6.2.4. In accordance with Section 9.4.
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> 6.3. This Agreement automatically terminates on the Term End Date.
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> 6.4. If a Party terminates this Agreement in accordance with Section 6, such Party will have the right to immediately suspend performance under this Agreement and pursue all remedies available at law or in equity against the other Party (including seeking monetary damages).

5.3. Section 12 (Assignment) of the CREST PPA

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

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

We find Clean Coalition's recommendation reasonable to replace Section 12 of the existing CREST PPA with Section 18 of the 2010 SPVP contract. As we previously stated, in creating the 2010 SPVP contract, SCE modified the CREST PPA but made modifications to update the terms and conditions to reflect a better understanding of the terms and conditions that balance the utility's and producer's interests. As a result, the 2010 SPVP contract essentially represents a more refined version of the CREST PPA. When SCE filed Advice Letter 2364-E seeking approval of its 2010 SPVP contract, some parties protested Section 18 (Assignment) on the basis that Section 18 could potentially hinder project financing. As a result of these protests, SCE agreed to modify Section 18. When the Commission approved the 2010 SPVP contract via Resolution E-4299 on January 21, 2010, the Commission recognized the need of lenders for more flexibility in the terms and conditions related to assignment. Therefore, the Commission incorporated more flexibility into Section 18 (Assignment) of the SPVP contract. As a result, it is reasonable to replace Section 12 of the CREST contract (Assignment) with language from Section 18 of the SPVP contract.

Accordingly, within 10 days of the effective date of this decision, SCE shall file a Tier 1 advice letter, effective immediately, removing Section 12 of the existing CREST PPA and inserting the below noted language, Section 18 of the 2010 SPVP, with non-substantive changes as needed to align internal references.

> **18. ASSIGNMENT**
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> Producer may not assign this Agreement or its rights or obligations under this Agreement without SCE's prior written consent, which consent will not be unreasonably withheld; provided, however, that

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

5.4. Sections 14.2 (Future Modification) and 14.4 (Application for Modifications) of the CREST PPA

Clean Coalition requests that the Commission direct SCE to change the contract language in the CREST PPA by removing the existing Sections 14.2 (Future Modifications) and 14.4 (Application for Modifications by SCE) of the CREST PPA.

Section 14.2 provides that the PPA "shall, at all times, be subject to such changes or modifications by the Commission as it may from time to time direct in the exercise of its jurisdiction." In support of its request to remove Section 14.2, Clean Coalition states that Section 14.2 hinders the developer from obtaining traditional financing because lenders are concerned that the Commission may unilaterally amend the PPA to materially change the economics of the contract and adversely impact the financial positions of the producer and lender. Clean Coalition suggests removing Section 14.2 from the CREST PPA to provide the required additional certainty to lenders that contracts will not be unexpectedly modified.

Section 14.4 provides that "Notwithstanding any other provision of this Agreement, SCE shall have the right to unilaterally file with the Commission an application for change in rates, charges, classification, service, Tariffs or any

agreement relating thereto; pursuant to the Commission's rules and regulations." In support of its request to remove Section 14.4, Clean Coalition states that Section 14.4 hinders the developer from obtaining traditional financing because lenders are concerned that SCE may unilaterally seek Commission permission to materially change the economics or governance provisions of the PPA and, as a result, adversely impact the financial positions of the producer or lender.

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

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

Accordingly, within 10 days of the effective date of this decision, SCE shall file a Tier 1 advice letter, effective immediately, removing Sections 14.2 and 14.4 of the existing CREST PPA.

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

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

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

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

Accordingly, within 10 days of the effective date of this decision, SCE shall file a Tier 1 advice letter, effective immediately, adding the language set forth in Sections 9 (Force Majeure) and 16 (Indemnification) of the 2010 SPVP, which is reproduced below, to the CREST PPA, with non-substantive changes as needed to align internal references.

9. FORCE MAJEURE

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

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

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

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

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

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

16. INDEMNIFICATION

16.1. Each Party as indemnitor shall defend, save harmless and indemnify the other Party and the directors, officers, employees, and agents of such other Party against and from any and all loss,

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

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

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

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

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

Clean Coalition requests that the Commission direct SCE to modify the CREST PPA contract language to (1) provide a producer or developer with the option of entering into a CREST PPA even if the project is potentially experiencing delays when undergoing a system impact interconnection study, and (2) provide a producer or developer with options for interconnection agreements in addition to the currently available interconnection agreement under SCE's Electric Tariff Rule 21, referred to as the Interconnection Facilities Financing and Ownership Agreement (IFFOA). In support of these requests, Clean Coalition generally states that SCE has unduly delayed the processing of interconnection requests by generators. Clean Coalition further states that these delays impact investment and eligibility for federal grants.

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

Regarding its second request, Clean Coalition states that, as a result of existing delays in processing interconnection requests under the CREST PPA, producers and developers would like to be able to pursue other existing SCE interconnection agreements, not only the IFFOA, so that they can determine (1) if

the processing time under other interconnection agreements is shorter than under the IFFOA and (2) how other interconnection agreements balance the risks between the producer or developer and SCE.

In its response to Clean Coalition's Motion, SCE appears to generally object to Clean Coalition's first request but does not offer any specific arguments in opposition to this proposal. SCE claims that Clean Coalition's second request is vague and ambiguous because the request does not identify any relevant interconnection agreements

In its comments on the October 11, 2011 proposed decision SCE clarifies that "[T]he IFFOA is not an IA [interconnection agreement] – it is merely a document listing the charges for electrical facilities necessary to interconnect the customer. It was written to be an attachment to the primary agreement."[10] SCE goes on to explain that the CREST PPA is "a combination PPA/IA, with the IFFOA as an appendix."[11] These SCE clarifications inform our decisions on these interconnection matters.

Based on the Commission's experience with the RPS program and related contracts, we find merit in Clean Coalition's request that it be able to execute a CREST PPA before its interconnection studies are completed and an IFFOA is executed. Appendix B of the CREST PPA requires a producer to have a completed interconnection study and IFFOA before the producers or developers can enter into the CREST PPA.

[10] SCE opening comments at 9.

[11] SCE opening comments, footnote 24.

Notably, with the exception of the CREST PPA and SDG&E standard tariff and contract, other IOU renewable programs or contracts do not require producers or developers to have progressed so far toward completing the interconnection process before being eligible for a PPA. Based on our review of other RPS-related contracts, including the SPVP contract and the RAM contract, we understand that producers and developers need to execute a contract at some point during the project development process rather than at the end of the process. The timing is critical because producers and developers need a guaranteed buyer for the electricity before investing a significant amount of capital in the project. An executed contract is a key to reduce uncertainty and obtain financing.

Interestingly, those Feed-in Tariff programs that require significant progress toward a completed interconnection study before executing a PPA have smaller programs. Since the CREST program began in February 2008, SCE has executed three contracts: one with an existing facility and two with new solar PV facilities.[12] SDG&E has a similar requirement as SCE and has not executed a Feed-in Tariff contract with any new project.[13] In contrast, PG&E does not require any interconnection milestones prior to contract execution and currently has 95 executed contracts.[14]

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[12] *See* SCE's CREST program webpage, which reflects that SCE has executed contracts with 3.35 MW: http://www.sce.com/EnergyProcurement/renewables/crest.htm.

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

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

We find that SCE's existing requirement that a producer or developer have completed all interconnection studies and have an IFFOA before a PPA is executed hinders investment and contract execution. We recently addressed interconnection requirements in the context of small renewable generation in Resolution E-4414, which the Commission approved on August 18, 2011. This resolution represents the latest Commission direction on interconnection requirements and requires a producer or developer to have completed the System Impact Study, or the Phase I Cluster Study, passed the Fast Track screens in order to be eligible for the RAM program.[15] SCE's SPVP program has the same requirements as the RAM program.

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

With regard to Clean Coalition's second requested modification that producers and developers be given the option to execute alternative existing SCE

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

interconnection agreements in lieu of the IFFOA, some clarification is necessary. First, SCE is correct that Clean Coalition's motion does not identify a specific interconnection agreement it would want in lieu of the IFFOA.

Second, as explained above, SCE's comments clarified that the IFFOA is *not* an interconnection agreement, and that for CREST participants, the interconnection agreement is contained in the PPA. The IFFOA is generator-specific and contains technical and cost information relevant to that specific interconnection.

Third, existing alternative stand-alone SCE interconnection agreements include three agreements available to generators interconnecting through SCE's FERC-jurisdictional Wholesale Distribution Access Tariff (WDAT). The interconnection agreement executed under WDAT is dependent upon the WDAT study process applied to the generator. There is one for the Fast Track process, another for the Independent Study Process, and another if the generator is studied through a cluster process.

Fourth, to our knowledge, there are limited interconnection agreements available through SCE's Rule 21 process. Historically, interconnection terms have been included within PPAs, as is the case here.

Fifth, the utilities and other interested parties are currently engaged in a Rule 21 settlement process under the auspices of the Commission's R.11-09-011. We anticipate that Rule 21 reform will include development and approval of stand alone Rule 21 interconnection agreements.

Given these clarifications, we find that using the CREST PPA (which includes the interconnection agreement) is appropriate for the interim, understanding that, as explained above, SCE will provide a producer or developer with the option of entering into a CREST PPA (including the

interconnection agreement) when that producer or developer has completed the System Impact Study, or the Phase 1 Cluster Study, or passed the Fast Track screens. The Appendix B to the IFFOA would be added to the CREST PPA once the interconnection study is completed and the relevant details have been agreed to between the parties.

However, once alternative Rule 21 interconnection agreements become available through the Rule 21 settlement or rulemaking process, generators who do not already have an IFFOA may elect to execute one of those stand alone agreements in lieu of applying the interconnection terms in the CREST PPA.[16]

Also, to the extent that an executed CREST PPA containing a generator's interconnection agreement is terminated, for whatever reason, but a generator still seeks interconnection with SCE, the Commission expects SCE to work cooperatively with the generator to transition the generator onto an alternative interconnection agreement which essentially preserves the benefit of the bargain struck in the initial interconnection agreement. Among other things, we would expect that the transaction should not trigger additional technical study or upgrades, even if the generator is not yet interconnected. The transition should be a "paper transaction" to the greatest extent possible. To this end, under no circumstances would we expect for an interconnected generator to be required to disconnect and reapply for interconnection simply because a CREST PPA (or any other PPA) has been terminated.

[16] In developing the Rule 21 interconnection agreement(s), parties may need to consider revisions to the CREST PPA interconnection terms to address this issue.

6. Additional Modifications to the CREST PPA

In response to comments and reply comments to the proposed decision, parties raised several issuing deserving clarification in today's decision. As a result, we clarify the following issues: (1) the execution date of the PPA, (2) curtailment under the PPA, and (3) collateral requirements.

6.1. Execution Date of the CREST PPA for Purposes of Determining Rate

In comments, Clean Coalition notes that clarification of the execution date of the CREST PPA is needed for proper application of the contract modifications adopted herein, such as the modifications to Section 2.8, Date of Initial Operation. SCE agreed.

We briefly addressed the term execution date in D.07-07-027. In that decision, we found that "Execution of the contract here means when signed by the customer, since this is a standard contract made available by the utility."[17] Furthermore, in that decision, Conclusion of Law 15 states: "The tariff/standard contract should specify that the applicable table of rates is determined by the date of contract execution."[18]

We clarify today that, in the above statement, we use the term "execution" to mean the date the rate is determined, which currently is the MPR. The term "execution" does not have the same meaning as Effective Date.

6.2. Curtailment under the CREST PPA

In comments to the proposed decision, SCE notes that the CREST PPA, as modified herein, does not clearly provide for curtailment in the case of a system

[17] D.07-07-027 at 12.

[18] D.07-07-027 at 59.

emergency. SCE does note, however, that its interconnection tariffs do provide for curtailment in the case of a system emergency. SCE suggests that now is the appropriate time to clarify this issue. Because this matter involves reliability of the electric system, we agree that now is the appropriate time to clarify this matter. In reply comments, Silverado Power LLC and SunEdison LLC agreed with the need for clarification regarding curtailment.

For curtailment during an emergency, a potential exists for disputes to arise without clear provisions governing the producer's obligation to curtail under the California Independent System Operator's (CAISO) or interconnecting utility's tariffs under which the producer has obtained its interconnection rights. The CREST PPA is not clear about how such emergency curtailment should work, under exactly what circumstances it is allowed, and who bears the economic costs when it occurs. By detailing as many of those issues from the outset, all parties are more likely to avoid such disputes. Below we adopt language that represents a simplified version of the language regarding curtailment adopted in D.11-04-030 (decision conditionally accepting 2011 RPS Procurement Plans).

Accordingly, within 10 days of the effective date of this decision, SCE shall file a Tier 1 advice letter, effective immediately, making the following changes to the CREST PPA regarding curtailment, with non-substantive changes as needed to align internal references.

CURTAILMENT

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; or (iv) if SCE issues an OSGC Order.

2. For each day of the Term, if no Schedule is awarded for the Forecasted energy in both the Day-Ahead Market and Real-Time Market for such day, and the Generating Facility has not been curtailed pursuant to Section 1(i), (ii) or (iii), then, so long as Producer's actual availability establishes that the Generating Facility would have been able to deliver but for the fact a Schedule was not awarded, SCE shall pay Producer the Product Price, as adjusted by Exhibit G, for the amount of energy Producer would have been able to deliver but for the fact that Producer did not receive a Schedule. The amount of energy that could have been delivered will be determined in accordance with Section 4.

3. If SCE bids the energy from the Generating Facility into the Day-Ahead Market or Real-Time Market and the CAISO awards a Schedule as a result of that bid, SCE shall have the right, but not the obligation, to order Producer to curtail the delivery of energy (an "Over-Schedule Generation Curtailment Order" or "OSGC Order") in excess of a Schedule awarded pursuant to this Section 3 (the "Over-Schedule Generation Curtailment Quantity" or "OSGC Quantity"). SCE shall pay Producer the Product Price, as adjusted by Exhibit G, for the OSGC Quantity Producer would have been able to deliver but for the fact that SCE issued an OSGC Order. The amount of energy that could have been delivered will be determined in accordance with Section 4.

4. SCE shall estimate the amount of energy the Generating Facility would have been able to deliver under Sections 2 and 3. SCE shall apply accepted industry standards in making such an estimate and take into consideration the actual availability of the Photovoltaic Modules, past performance of the Generating Facility, meteorological data, solar irradiance data, and any other relevant information. Producer shall cooperate with SCE's requests for information associated with any estimate made hereunder. SCE's estimates under this Section 4 for the amount of energy that the Generating Facility would have been able to deliver under Sections 2 and 3 will be determined in SCE's sole discretion.

6.3. Collateral Requirement for the CREST PPA

In comments to the proposed decision, SCE notes that now would be an appropriate time to include a project collateral requirement, which is designed to ensure the viability of contracted projects and to more adequately mitigate costs to customers in the event SCE's contracts fail to deliver. SunEdison agreed with this recommendation.

We agree that, given the possibility that new contracts may be entered into based on the contract modification made by this decision, that now is the appropriate time to consider including a project collateral requirement. A project collateral requirement performs the function of dissuading parties with non-viable projects from occupying a spot in the program that a more viable project could otherwise fill. Given the limited nature of this program, we do not seek to encourage otherwise non-viable project. The collateral requirement would function as a development security deposited with SCE until the project meets commercial operation. To achieve these goals, SCE suggestion a collateral requirement of $50/kW. SunEdison points out that we adopted a lower amount in D.10-12-048 (Decision Adopting Renewable Auction Mechanism) for projects less than 5 MW. We adopt a lower amount consistent with D.10-12-048 and the provision in the 2010 SPVP of $20/kW. The below noted language from the 2010 SPVP is adopted.

Accordingly, within 10 days of the effective date of this decision, SCE shall file a Tier 1 advice letter, effective immediately, making the following changes to the CREST PPA including a collateral requirement of $20/kW, with non-substantive changes as needed to align internal references.

4. DEVELOPMENT SECURITY

4.1. On or before the thirtieth (30th day following the Effective Date, Producer shall post and thereafter maintain a development fee (the "Development Security") equal to twenty dollars ($20) for each kilowatt of the Gross Power Rating. The Development Security will be held by SCE and must be in the form of either a cash deposit or the Letter of Credit. If Producer establishes the Development Security in the form of a cash deposit, SCE shall make monthly Simple Interest Payments to Producer in accordance with the terms of this Agreement.

4.2. If, on or before the Term Start Date, Producer:

4.2.1. Demonstrates to SCE's satisfaction that Producer has installed all of the equipment or devices necessary for the Generating Facility to satisfy the Gross Power Rating of such Generating Facility, SCE shall return the Development Security to Producer within thirty (30) days of the Term Start Date;

4.2.2. Has not installed any of the equipment or devices necessary for any Generating Facility to satisfy any of the Gross Power Rating, Producer shall forfeit, and SCE shall have the right to retain, the entire Development Security and terminate this Agreement; or

4.2.3. Has installed only a portion of the equipment or devices necessary for a Generating Facility to satisfy the Gross Power Rating of such Generating Facility, SCE shall return, within thirty (30) days of the Term Start Date, only the portion of the Development Security equal to the product of twenty dollars ($20) per kW DC of the portion of the Gross Power Rating available to deliver the Product to SCE at the Delivery Point. This Section 4.2 is subject to Producer's right to extend the Term Start Date as a result of a Force Majeure as to which Producer is the Claiming Party (subject to Section 9.4).

7. Comments on Proposed Decision

The proposed decision in this matter was mailed to the parties in accordance with § 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on October 31, 2011 by Clean Coalition and SCE, and reply

comments were filed on November 7, 2011 by Clean Coalition, SCE, SunEdison LLC, and Silverado Power LLC. To the extent warranted, revisions have been incorporated into this decision to reflect the substance of these comments.

One issue raised by SCE in its opening comments is addressed here. SCE's opening comments on the proposed decision suggest an alternative CREST pricing mechanisms and claim that the current pricing mechanism is unlawful. These SCE comments are outside the scope of the issues addressed in this decision, which is narrowly focused on urgently needed CREST program changes what will facilitate project financing and qualify developers for expiring federal cash grants. The changes we adopt here to address these concerns are based on more current contract language approved by the Commission and used in current renewable programs, and are therefore appropriate updates to a program that is over three years old. SCE improperly seeks to collaterally attack Commission decisions regarding CREST pricing that are not at issue here. Consequently, we give no weight to SCE's comments on these issues.

In contrast, we find SCE's opening comments on the interconnection agreements raised by the Clean Coalition to be helpful, and we have modified the proposed decision to address them here.

8. Assignment of Proceeding

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

Findings of Fact

1. SCE has an existing backlog in completing interconnection studies that is impacting CREST project ability to come online in a timely manner.

2. SCE, producers and developers were engaged in an informal process to address hurdles experienced by developers and producers in obtaining the financing needed to develop small scale renewable generation for interconnection to SCE's distribution system.

3. SCE suspended this informal process on July 21, 2011.

4. If allowed to proceed without modification, SCE's management of its CREST program may render certain small renewable generators ineligible for certain federal cash grants under § 1603 of the American Recovery and Reinvestment Tax Act, which expire at the end of 2011.

5. Obtaining an executed PPA with SCE continues to be a lengthy process, in part because SCE requires all interconnection studies to be complete before a CREST PPA is executed.

6. SCE's CREST PPA has several terms and conditions which are not consistent with the terms and conditions in PPAs more recently approved by the Commission, and which significantly limit the ability of developers and producers to obtain financing for CREST projects.

7. These CREST PPA terms and conditions are not included in other utilities' programs that are similar to the CREST program.

8. The Commission recently addressed a contract extension issue in D.10-12-048, the RAM decision.

9. In D.10-12-048 and D.07-07-027, the Commission found that a defined period of time for small renewable projects to come online, such as the 18-month provision, is appropriate because it imposes strict time limits on processing and, in turn, attracts the most viable projects.

10. In D.10-12-048, the Commission also recognized that "legitimate delays can occur relative to any timeline."

11. Section 4 of the CREST PPA provides SCE with excessive control over termination of the PPA in the event of changes.

12. Contract language approved by the Commission for other standard Renewable Portfolio Standard contracts, such as SCE's 2010 SPVP contract, provides a process to resolve issues associated with potential changes in the law governing the contract.

13. SCE's 2010 SPVP contract in general, and Section 6 of the 2010 SPVP contract in particular, can essentially be described as a more updated and refined version of Section 4 of the CREST PPA.

14. Since the Commission's initial approval of Section 4 of the SCE CREST PPA on February 18, 2008 through Resolution E-4137, we have gained a better understanding of the contract terms and conditions that balance the utility's, ratepayer's, and producer's interests.

15. Lenders need sufficient stability in the terms and conditions of a Commission-approved PPA and a process to resolve potential Commission changes.

16. SCE's CREST PPA contains restrictions on assignment of the PPA that are more burdensome than other more recently-approved renewable contracts.

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

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

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

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

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

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

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

24. SCE's delays in the processing of interconnection requests are impacting generators' investment decisions and eligibility for federal grants under § 1603 of the American Recovery and Reinvestment Tax Act.

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

26. Resolution E-4414, which the Commission approved on August 18, 2011, represents the latest Commission direction on interconnection requirements and

requires a producer or developer to have completed the System Impact Study, or the Phase I Cluster Study, passed the Fast Track screens, in order to be eligible for the RAM program. SCE's SPVP program has the same requirement as Resolution E-4414.

27. SCE has represented that the CREST PPA is a combined PPA and interconnection agreement.

28. It is reasonable to require SCE to allow producers and developers to execute the combined PPA and interconnection agreement once they have completed the System Impact Study, or the Phase I Cluster Study, have passed the Fast Track screens, or passed the Supplemental Review.

29. The execution of the IFFOA, which is included as Appendix B to the CREST PPA, should occur some time after execution of the CREST PPA, once the interconnection studies are complete.

30. Producers and developers who do not yet have an IFFOA should be allowed to choose an alternative Rule 21 interconnection agreement once such alternative are available.

31. The contract term start date requires clarification for purposes of calculating the newly adopted 18-month timeline.

32. The term "execution" as used in D.07-07-027 requires clarification to mean the date signed by the seller.

33. Conclusion of Law 15 in D.07-07-027 is clarified to mean that the applicable rate (Market Price Referent) is determined by the execution date of the contract or the date signed by the seller.

34. The CREST PPA requires clear provisions governing producer's obligations during a curtailment, including how such an emergency curtailment

should work, under exactly what circumstances it is allowed, and who bears the economic costs when it occurs.

35. Given the possibility that new contracts may be entered into based on today's contract modifications, now is the appropriate time to also consider incorporating a collateral requirement into the CREST PPA for the purpose of, among other things, discouraging nonviable projects.

Conclusions of Law

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

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

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

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

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

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

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

8. In D.07-07-027, the Commission intended for the term "execution" as the date the seller signs the CREST PPA.

9. In D.07-07-027, the Commission intended for the rate for the CREST PPA to be determined by the execution date, the date signed by the seller.

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

11. It is reasonable to add language to the CREST PPA regarding curtailment as such language will assist with ensuring the reliability of the electric grid.

12. It is reasonable to adopt a collateral requirement of $20/kW consistent with the Commission's treatment of projects less than 5 MW in D.10-12-048 (the Renewable Auction Mechanism) to discourage non-viable projects.

O R D E R

IT IS ORDERED that:

1. Within 10 days of the effective date of this decision, Southern California Edison Company shall file a Tier 1 advice letter, effective immediately, incorporating into its California Renewable Energy Small Tariff Power Purchase Agreement the language set forth below, including any non-substantive changes to align internal references.

1.04 Commercial Operation Deadline.

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

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

ensure timely completion and operation of such interconnection facilities, transmission upgrades and new transmission facilities.

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

(d) Notwithstanding anything in this Agreement to the contrary, the Commercial Operation Deadline may not be later than twenty-four (24) months from the PPA Effective Date.

2. Within 10 days of the effective date of this decision, Southern California Edison Company shall file a Tier 1 advice letter, effective immediately, removing Section 4 of the existing California Renewable Energy Small Tariff Power Purchase Agreement and inserting the below noted language, Section 6 of the 2010 Solar Photovoltaic Program contract, including any non-substance changes needed to align internal references and to delete references to "photovoltaic."

6. TERMINATION; REMEDIES

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

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

6.1.2. Producer fails to interconnect and Operate a Photovoltaic Module within any Generating Facility, in accordance with the terms of this Agreement, within one hundred twenty (120) days

after SCE delivers electric energy to such Generating Facility for Station Use;

6.1.3. Producer abandons any Generating Facility;

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

6.1.5. The Term does not commence within eighteen (18) months of the Effective Date, subject to any extensions herein as to which Producer is the Claiming Party;

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

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

6.2. A Party may terminate this Agreement:

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

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

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

6.2.4. In accordance with Section 9.4.

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

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

3. Within 10 days of the effective date of this decision, Southern California Edison Company shall file a Tier 1 advice letter, effective immediately, removing Section 12 of its existing California Renewable Energy Small Tariff Power Purchase Agreement and inserting the below noted language, Section 18 of the 2010 Solar Photovoltaic Program contract, including any non-substance changes needed to align internal references.

18. ASSIGNMENT

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

4. Within 10 days of the effective date of this decision, Southern California Edison Company shall file a Tier 1 advice letter, effective immediately, removing Sections 14.2 and 14.4 of the existing California Renewable Energy Small Tariff Power Purchase Agreement.

5. Within 10 days of the effective date of this decision, Southern California Edison Company shall file a Tier 1 advice letter, effective immediately, adding the language set forth in Sections 9 (Force Majeure) and 16 (Indemnification) of its 2010 Solar Photovoltaic Program contract, which is reproduced below, to the California Renewable Energy Small Tariff Power Purchase Agreement, including any non-substantive changes needed to align internal references.

9. FORCE MAJEURE

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

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

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

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

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

9.4. The non-Claiming Party may terminate this Agreement on at least five (5) Business Days' prior Notice, in the event of Force

Majeure which materially interferes with such Party's ability to perform its obligations under this Agreement and which extends for more than 365 consecutive days, or for more than a total of 365 days in any consecutive 540-day period.

16. INDEMNIFICATION

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

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

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

14. Notwithstanding anything to the contrary in this Agreement, if Producer fails to comply with the provisions of Section 10, Producer shall, at its own cost, defend, save harmless and indemnify SCE, its directors, officers, employees, and agents, assigns, and successors in interest, from and against any and all loss, liability, damage, claim, cost, charge, demand, or expense of any kind or nature (including

any direct, indirect, or consequential loss, damage, claim, cost, charge, demand, or expense, including reasonable attorneys' fees and other costs of litigation), resulting from injury or death to any individual or damage to any property, including the personnel or property of SCE, to the extent that SCE would have been protected had Producer complied with all of the provisions of Section 10. The inclusion of this Section 16.3 is not intended to create any express or implied right in Producer to elect not to provide the insurance required under Section 10.

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

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

7. Southern California Edison Company shall determine the rate for purposes of the California Renewable Energy Small Tariff Power Purchase Agreement on the date the Agreement is executed, meaning the date the Agreement is signed by the seller.

8. Within 10 days of the effective date of this decision, Southern California Edison Company shall file a Tier 1 advice letter, effective immediately, adding the language set forth below, which is a simplified version of curtailment language approved in Decision 11-04-030 (the Decision conditionally accepting 2011 RPS Procurement Plans), to the California Renewable Energy Small Tariff Power Purchase Agreement, including any non-substantive changes needed to align internal references.

CURTAILMENT

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; or (iv) if SCE issues an OSGC Order.

2. For each day of the Term, if no Schedule is awarded for the Forecasted energy in both the Day-Ahead Market and Real-Time Market for such day, and the Generating Facility has not been curtailed pursuant to Section 1(i), (ii) or (iii), then, so long as Producer's actual availability establishes that the Generating Facility would have been able to deliver but for the fact a Schedule was not awarded, SCE shall pay Producer the Product Price, as adjusted by Exhibit G, for the amount of energy Producer would have been able to deliver but for the fact that Producer did not receive a Schedule. The amount of energy that could have been delivered will be determined in accordance with Section 4.

3. If SCE bids the energy from the Generating Facility into the Day-Ahead Market or Real-Time Market and the CAISO awards a Schedule as a result of that bid, SCE shall have the right, but not the obligation, to order Producer to curtail the delivery of energy (an "Over-Schedule Generation Curtailment Order" or "OSGC Order") in excess of a Schedule awarded pursuant to this Section 3 (the "Over-Schedule Generation Curtailment Quantity" or "OSGC Quantity"). SCE shall pay Producer the Product Price, as adjusted by Exhibit G, for the OSGC Quantity Producer would have been able to deliver but for the fact that SCE issued an OSGC Order. The amount of energy that could have been delivered will be determined in accordance with Section 4.

4. SCE shall estimate the amount of energy the Generating Facility would have been able to deliver under Sections 2 and 3. SCE shall apply accepted industry standards in making such an estimate and take into consideration the actual availability of the Photovoltaic Modules, past performance of the Generating Facility, meteorological data, solar irradiance data, and any other relevant information. Producer shall cooperate with SCE's requests for information associated with any estimate made hereunder. SCE's estimates under this Section 4 for the amount of energy that the

Generating Facility would have been able to deliver under Sections 2 and 3 will be determined in SCE's sole discretion.

9. Within 10 days of the effective date of this decision, Southern California Edison Company shall file a Tier 1 advice letter, effective immediately, adding collateral language set forth below, to the California Renewable Energy Small Tariff Power Purchase Agreement, including any non-substantive changes needed to align internal references.

4. DEVELOPMENT SECURITY

4.1. On or before the thirtieth (30'" day following the Effective Date, Producer shall post and thereafter maintain a development fee (the "Development Security") equal to twenty dollars ($20) for each kilowatt of the Gross Power Rating. The Development Security will be held by SCE and must be in the form of either a cash deposit or the Letter of Credit. If Producer establishes the Development Security in the form of a cash deposit, SCE shall make monthly Simple Interest Payments to Producer in accordance with the terms of this Agreement.

4.2. If, on or before the Term Start Date, Producer:

4.2.1. Demonstrates to SCE's satisfaction that Producer has installed all of the equipment or devices necessary for the Generating Facility to satisfy the Gross Power Rating of such Generating Facility, SCE shall return the Development Security to Producer within thirty (30) days of the Term Start Date;

4.2.2. Has not installed any of the equipment or devices necessary for any Generating Facility to satisfy any of the Gross Power Rating, Producer shall forfeit, and SCE shall have the right to retain, the entire Development Security and terminate this Agreement; or

4.2.3. Has installed only a portion of the equipment or devices necessary for a Generating Facility to satisfy the Gross Power Rating of such Generating Facility, SCE shall return, within thirty (30) days of the Term Start Date, only the portion of the Development Security equal to the product of twenty dollars ($20) per kW DC of the portion of the Gross Power Rating available to deliver the Product to

SCE at the Delivery Point. This Section 4.2 is subject to Producer's right to extend the Term Start Date as a result of a Force Majeure as to which Producer is the Claiming Party (subject to Section 9.4).

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

11. Rulemaking 11-05-005 remains open.

This order is effective today.

Dated November 10, 2011, at San Francisco, California.

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