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December 9, 2008

Commissioner Karen Douglas
 Commissioner Jackalyne Pfannenstiel
 Commissioner Jeffrey D. Byron
 California Energy Commission
 1516 North Street
 Sacramento, CA 95814

RE: Comments of Solutions For Utilities on Dockets 09-IEP-1G,
 03-RPS-1078 and 2009 IEPR-Feed-in Tariffs

Dear Commissioners and Commission,

Thank you for the opportunity to comment on these two docket items, and the CEC Renewable Energy Feed-In Tariff Workshop held on December 1, 2008, and the KEMA Consultants' Reports. We would comment on two issues, Feed-In Tariff Prices and the Standard Tariff Contract (STC) for Purchase of Renewable Energy.

We would preface these comments with a quote from AJL Simon at CPUC Rulemaking 06-02-012, Decision 08-08-028, Issued on 8/22/08, page 3 of 3, Decision on Definition and Attributes of Renewable Energy Credits for Compliance with the CA RPS. Quote:

"We believe that in order for a market to function correctly, participating entities must have a clear and consistent understanding of what, exactly, they are buying and selling."

Feed-In Tariff Prices:

It would be most revealing if the KEMA Consultants or Staff could prepare EXCEL spreadsheets for the Commission showing the economic analysis of, for example, among other types and sizes of renewable generating facilities, a 1-MW solar generating facility, which would demonstrate that the MPR pricing does not work.

In considering the initial expense for labor, materials and equipment to build a 1-MW solar park, a published cost¹ would be:

\$6.50/Watt for a fixed solar system;
 \$6.75/Watt for a single-axis solar system; and
 \$7.00/Watt for a dual-axis solar system.

¹ www.etsolar.com

The single-axis solar system installation expense could be \$6,750,000 for a 1-MW solar park. This does not include the purchase cost of the land, nor does this \$6,750,000 include the yearly operating and maintenance (O&M) costs, debt costs, property, state and Federal taxes nor depreciation. These yearly costs must be added to the EXCEL spreadsheets prepared for this Cost Analysis, starting at year one. These costs are identified in the format of the CalWea EXCEL spreadsheet titled "CalWEA-et-al-Jun-08-Proposed-Changes-for-the-2008-MPR-Model.xls" and found at www.calwea.org/publicFilings.html. On-site security personnel and equipment may or may not be included in those operating costs listed by CalWea.

This spreadsheet is referenced only for the format used therein of taking the Market Price Referent (MPR) multiplied by the Allocation Factor multiplied by the Time-Of-Use rate to arrive at the payment due to the renewable energy generator. This is also influenced by when the renewable energy generator's site comes on-line versus the date of signing the Standard Contract.

Estimating the annual income for a 1-MW solar farm using the 2008 MPR and the calculation cited above, initial estimates based on information at this time is \$461,000 per year. This would be a site in Daggett, CA, which has the highest solar radiation in California. This also estimates using a single-axis tracker.

A base cost, as described above, of \$6,750,000 with a yearly income of \$475,500 would be **14.64 years** of payback period, minimum considering only this installation cost, without the other expense items cited above. This vividly demonstrates that the current payment structure to Producers is not working.

The Federal Tax Credit for electricity produced from certain renewable resources, Title 26, Subtitle A, Chapter 1, Subchapter A, Part IV, Subpart D, Section 45 has limitations and adjustments. On the 1-MW solar generating park that credit might be estimated at \$67,571 per year. This credit is not the 30% that is offered for when a solar system is installed on a residence or commercial structure.

During the CPUC 12-1-08 workshop, it was stated that Wisconsin's Governor's Task Force on Global Warming is considering tariff payments for producers less than 15-MW that are "based on special production cost plus profit equal to utility companies' profits" and also that Spain has used a payment schedule of 70% of retail value. Hawaii's Clean Air Initiative is considering tariff payments of \$.45 to \$.70 per kWh.

These might be put into a spreadsheet and compared to the cost of construction for a 1-MW solar farm.

Implementing a tariff payment of 70% of retail immediately could significantly shorten the time before producers would be signing up and fulfilling the goals of bringing renewable energy online.

Standard Contract Clarifications Requested:

SDG&E, SCE and PG&E have filed with the CPUC on 12/2 and 12/5/08, respectively, per Rulemaking 08-08-009 their "Draft Revised Tariffs Based on SB380." When compared side by side, they are not "standardized". Each one is different than the other.

The guidance of the CEC and the CPUC to review the paragraphs in the "standard" contract is requested for a complete and transparent understanding of the contract document and terms.

We are referencing "SCE's Redlined Draft Proposed CREST Excess Power Purchase Agreement," as filed in R.08-08-009 on 12-2-08 attached to "Southern California Edison Company's (U 338-E) Response to Ruling Requiring Draft Revised Tariffs Based on SB 380". The proposed clarifications are highlighted in green to differentiate from SCE's redlines.

At page 3, after Item 9, that document states, quote, "The changes to the draft proposed CREST EXCESS Power Purchase Agreement are identical to the changes to the CREST Full Buy/Sell Power Purchase Agreement except for the following: 1. On page 9, section 14.5, the term WATER has been deleted and replaced with CREST."

Clarification is requested for the following:

1. On page 3, Section 4.1(c) currently states, quote:

"4. TERM AND TERMINATION

"4.1 This Agreement shall become effective on the Effective Date. The Agreement shall continue in full force and effect until the earliest date that one of the following events occurs:

"4.1(c) At 12:01 A.M on the day following the completion of: (Check one) ___10/ ___ 15/ ___20 Term Years from Initial Operation ~~per Section 2.8~~ per Section 1 of Appendix H."

Comment: "Section 2.8" is an estimate of the Initial Operation Date; whereas, "Section 1" of Appendix H is the Actual Initial Operation Date. The term of 10, 15 or 20

years should end that many years after the Actual Initial Operation Date, not after the *estimated* generation online date in 2.8.

2. On page 3, section 4.2(a), currently states, quote:

4.2 "SCE may elect to terminate this Agreement at 12:01 A.M. on the 61st day after SCE PROVIDES WRITTEN Notice pursuant to Section 10 of this Agreement to the Producer of SCE's intent to terminate this Agreement for one or more of the following reasons:

~~(a) "A change in applicable Tariffs as approved 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 this Agreement;"~~

Comment: From a producer's perspective, any tariff change in 20 years that SCE decides "materially alters or otherwise materially affects SCE..." could cause a 60-day notice of cancellation to the producer. As described above, investment in excess of \$6.5 million, at a very minimum, is not appealing if the utility company can unilaterally cancel the contract with just a letter. This Section 4.2(a) is too vague. Also, does the producer then need to have a full-time staff person to review, for 20 years, all laws at the commission, local, state or federal levels that could potentially "alter or otherwise materially affect SCE's ability..."? That does not seem reasonable.

From the Producer's perspective, only a neutral third party could determine if there has or has not been a change that materially alters or otherwise materially affects SCE; perhaps an arbitrator that makes a finding of fact decision.

3. On page 3, Section 4.2(b), currently states, quote:

"Producer fails to take all corrective actions specified in any SCE Notice, within the time frame set forth in such Notice, that Producer's Renewable Generating Facility **is out of compliance with the terms of this Agreement** ~~excepting when Producer provides a substantive response detailing the reason for the delay which is controlled by a third party, such as a city or county planning or permitting department, a manufacturer or supplier of equipment or materials to be used at the facility, or any other third party over which Producer has no control."~~

Comment: The submission by SCE does not include a listing of time frames that are to be published in their Notices. From a practical standpoint, we have found that six weeks for delivery of parts is not uncommon. As currently stated, in reality, if SCE gave the Producer 10 or 15 days to take corrective actions, but parts are not available

for six weeks out, SCE could terminate this contract. Guidance is requested to make this contract language amenable to both parties.

4. On page 4, Section 4.2(d)(3) currently states, quote:

4.2(d) "SCE shall deem the Renewable Generating Facility to be abandoned if SCE provides a Notice to Producer Advising Producer of SCE's determination, in its reasonable discretion, that the Renewable Generating Facility is non-operations for any of the following reasons:"...

(3) "Producer fails to achieve Initial operation within 18 months of the Effective Date; and Producer does not provide a substantive response to such Notice affirming producer's intent and ability to commence or to continue to Operate the Renewable Generating Facility within 15 days of such Notice" **except when Producer provides a Substantive Response detailing the reason for the delay in commencing or continuing operation which is controlled by a third party, such as a city or county planning or permitting department, a manufacturer or supplier of equipment or materials to be used at the renewable generating facility, or any other third party over which Producer has no control."**

Comment: The Producer cannot control securing necessary parts, equipment or personnel within 15 days, due to outside parties' timetables.

5. On page 4, Section 6.1, currently states, quote:

"The amount of energy purchased under this Agreement shall be determined by electrical meters and equipment owned, Operated, and maintained by SCE. Producer has the right to also have metering equipment owned, operated and maintained by Producer.

6. Comment: On page 4, Section 6.2, regarding the Product Price using the Market Price Referent ("MPR") could be subject to change in these two docket numbered proceedings or other proceedings at the CEC, or CPUC proceedings such as Rulemaking 08-08-009, and/or the Governor's Orders.

7. On page 5, Section 6.3, currently states, quote:

"Producer agrees to sell all Excess electric energy produced by the Renewable Generating Facility as specified herein in Section 6.4 below and all Green Attributes, Capacity Attributes and Resource Adequacy Benefits (collectively, the "Attributes") associated with the energy sold to SCE."

And Section 6.4, currently states, quote:

"SCE shall pay Producer for all Attributes and all Excess electric energy measured by the SCE Meter located as shown on the Single-Line Diagram of Appendix A."

Comments: Clarification is requested. Producer must retain the rights to trade RECs. This is a potential estimated income to the Producer of \$283,056 per year for carbon dioxide futures² (initial estimate based on information at this time). As indicated above, the MPR multiplier calculation and the yearly tax credit are not sufficient to induce anyone to make this investment. If California is serious about creating 500 MW of renewable energy-generating facilities, the price paid to the Producer must be realistic. Tradable futures and other monetary value must flow to the Producer. The RECs for Renewable Portfolio Standard obligations of the utility companies could flow to utility companies separately, i.e. unbundled.

On August 21, 2008, ALJ Simon's Decision 8-08-028, in Rulemaking 06-02-012 at Section 4.1.2.3.4., "Other Exclusions", States, quote:

"In addition to the statutory exclusions, there are other Common aspects of renewable energy transactions that **should not** be part of the REC. These elements are **excluded** from the Green Attributes set out in STC 2 and should likewise be excluded from a REC:

- Energy, capacity, reliability or other power attributes;
- Production tax credits and other tax incentives;
- Fuel-related subsidies or "tipping fees" or subsidies For promoting local environmental benefits; and
- Any emission reduction credits, other than those Issued pursuant to Sec. 40709 of the Health and Safety Code which are already excluded by statute), Encumbered or used for compliance with operating And/or air quality permits."

In that same Decision at Section 4.1.2.3.3., "Exclusions," 4.1.2.3.1.1., "Emissions Reduction Credits", quote,

"Section 399.12(h)2) expressly **excludes** from the attributes of a REC 'an emission reduction credit issued pursuant to Section 40709 of the Health and Safety Code.'"

It appears that there are exclusions to the attributes and that the Agreement is not recognizing any exclusions. Clarification is requested.

ADDITIONAL COMMENT: Any changes made at 6.3 and 6.4 would then potentially cause changes to be required at **Appendix F, "Definitions," Numbers 2, 4, 18, 38(b), 43, 45, 46.**

² 11/20/08 Bloomberg News Online, "U.S. Carbon Futures Trade as low as \$11.75/Ton"

8. Also in Section 6.4, "SCE shall pay Producer **within 30 days after each monthly meter reading date, provided the amount due to Producer is \$1,000 or more,** for all Attributes and all Excess electric energy measured by the SCE Meter located as shown on the Single-Line Diagram of Appendix A."

9. On Page 5, Section 6.5, this method of calculating monthly payments could be subject to change in these two docket numbered proceedings or other proceedings at the CEC, CPUC proceedings such as Rulemaking 08-08-009, and/or the Governor's Orders.

10. On Page 5, Section 6.6, currently reads, quote,
"SCE shall determine the amount of energy received by SCE pursuant to this Agreement for each monthly period and provide a statement **and payment** to Producer approximately thirty (30) days after each monthly meter reading date."

11. On Page 9, Section 14.1, the last sentence reads, quote:

~~... "Each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Agreement."~~

Comment: Producer does not waive this right, especially when an agreed-upon resolution mechanism is not detailed in the Agreement.

12. On Page 9, Section 14.2, currently reads, quote:

"This Agreement 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."

Comment: Referencing this pp. 14.2 to the Appendix F, "Definitions," No. 53, "Schedule Crest," the last sentence, quote, "This Tariff is subject to such changes or modifications by the Commission as it may from time to time direct in the exercise of its jurisdiction." So this Agreement may change many times during its term; is that correct? Put another way, the Agreement signed today is not the agreement for the entire term, if the Commission makes changes during the term; is that correct?

Clarification is requested, please. How will this work? If the Commission in later years makes a ruling favorable to the utility company, the utility company can file an application with the Commission to change our executed Agreement at that time? Because pp 14.4 of the Agreement states, quote:

"Notwithstanding any other provisions 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 the alternative, if the Commission makes a ruling favorable to the Producer, for example a tariff payment increase, will it be up to the Producer to file an application with the Commission to change our executed Agreement?

And these changes could go back and forth for the 10-, 15- or 20-year contract term?

13. On Page 9, Section 14.3, reads, quote:

~~"The Interconnection and services provided under this Agreement shall at all times be subject to the terms and conditions set forth in the Tariffs applicable to the electric service provided by SCE. Copies of such Tariffs are available at www.sce.com or by request to SCE and are incorporated by reference into this Agreement."~~

Comment: This Section 14.3 appears to be relating to SCE providing service to the Producer and Tariffs applicable to when SCE provides service to the Producer. The Renewable Power Agreement being executed clearly states a separate agreement is required for SCE providing retail electric service to the Producer's site. This is evidenced at Page 1 of this agreement, Section 1.1, "RECITALS," quote:

"This Agreement requires the Producer to be a retail customer and to obtain retail electrical service from SCE to serve all the electric loads, net of the Renewable Generating Facility, at the Premises identified in Appendix A."

and

"This Agreement does not constitute an agreement by SCE to provide retail electrical service to Producer. Such arrangements must be made separately between SCE and Producer."

Further, Section 1.1, as quoted above, describes that the renewable energy being purchased is that "identified in Appendix A," which is separate and apart from SCE providing service to the site. Therefore, all of Section 14.3 should be deleted.

14. On Page 9, Section 14.4, reads, quote:

"Notwithstanding any other provisions 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...."

Comments: Same as described above at 14.2.

15. On Page 9, Section 16, "ENTIRE AGREEMENT," reads, quote:

This Agreement, including **Appendixes A through H, and** any incorporated Tariffs and Rules, contains the entire agreement and understanding between the Parties, their agents, and employees as to the subject matter of this Agreement. Each Party also represents that in entering into this Agreement, it has not relied on any promise, inducement, representation, warranty, agreement or other statement not set forth in this Agreement, **including Appendixes A through H or in the** incorporated Tariffs and Rules."

Comment: Clarifying that the Appendixes A through H are included in the Agreement.

16. On page 10, Section 17, "Signatures," reads, quote:

"IN WITNESS WHEREOF, the Parties hereto have caused two originals of this Agreement to be executed by their duly authorized representatives. This Agreement is **effective executed** ("~~Effective~~**Executed** Date") as of the last date set forth below.

Comment: The "Effective Date" already has a very specific/detailed meaning at Section 6.2 on Page 4 of this Agreement, intertwined with the Appendix H. For clarity, "effective" should be replaced with "executed" to avoid misunderstanding.

If this change is made, it would also affect Appendix F, "Definitions," Section No. 9, quote, "'Effective Date' has the meaning set forth in Section 17." If "effective" is changed to "executed" then this Definition would need to be modified.

17. Appendix F, "Definitions," comments:

No. 2, quote, "'Attributes'" has the meaning set forth in Section 6.3." If Section 6.3 is modified, this Section No. 2 in the Appendix F might need to be modified.

No. 4, regarding "Capacity Attributes," same comment as No. 2.

No. 9, "Effective Date" comments are described at #16 above.

No. 18, same comment as No. 2.

No. 28, quote:

"'Market Price Referent'" or 'MPR' means the market price referent applicable to this Agreement as determined by the CPUC in accordance with California Public utilities Code Section 399.15(c) **subject to such changes or modifications by the Commission as it may from time to time direct in the exercise of its jurisdiction.**"

No. 38(b), same comment as No. 2.

No.s 43, 45 and 46, same comment as No. 2.

No. 53, "Schedule Crest," please see comment at #13 of this letter, which references page 9, pp. 14.2 of the Agreement.

Miscellaneous Comments:

A request is made for the Commission to take Official Notice of the CPUC Rulemaking 08-08-009 proceedings.

Regarding Notification Provisions: The utility companies have notification when the Application for Interconnection is submitted of the characteristics of the renewable generating facility. Because these are 1.5 MW or less, they are capable of interconnecting at the distribution level and, therefore, notice is appropriate for scheduling for the utility company.

Regarding Performance Guarantees: At the 1.5 MW or less, we feel it is important that the "Standard Contract" are left as is; that is, without requirements for performance guarantees. The producer wants the facility to come on line so that the money invested starts earning a return. Adding language that adds costs and/or penalties for this size facility will potentially be a deterrent to the exact entrepreneur that will build these facilities and fill up the queue with only the "large" companies.

Finally, with the 1.5 MW or less solar site, the cost to interconnect the generating facility is paid by the Producer to the utility company, per the STC. The cost of building the solar site is paid by the Producer. The tariff income paid to Producer by the Utility Company is less than retail value. Where is the burden on the ratepayers in this scenario? The time to bring the generating facility online is months versus years.

Respectfully submitted,

Mary C. Hoffman,
Solutions for Utilities

/S/MARY C. HOFFMAN
By: Mary C. Hoffman

December 9, 2008

CERTIFICATE OF SERVICE

I hereby certify that, pursuant to the Commission's Rules of Practice and Procedure, I have this day served a true copy of
COMMENTS OF SOLUTIONS FOR UTILITIES ON DOCKET NO. 09-IEP-1G AND DOCKET NO. 03-RPS-1078 by an electronic email to: docket@energy.state.ca.us

And U.S. Mail one original hard copy to:

California Energy Commission
Dockets Office, MS-4
Re: Docket No. 09-IEP-1G and No. 03-RPS-1078
1516 Ninth Street
Sacramento, CA 95814-5512 (Phone 916-654-5076)

Executed this 9th day of December, 2008, at Vista, California.

/S/MARY C. HOFFMAN
MARY C. HOFFMAN,
SOLUTIONS FOR UTILITIES

1192 Sunset Drive
Vista, CA 92081