

PUBLIC UTILITIES COMMISSION

SAN FRANCISCO, CA 94102-3298



May 16, 2011

**Advice Letter 2514-E**

Akbar Jazayeri  
Vice President, Regulatory Operations  
Southern California Edison Company  
P O Box 800  
Rosemead, CA 91770

**Subject: Submission of Power Purchase and Sale Agreement for  
Procurement of Renewable Energy from SCE's 2010  
Solar Photovoltaic Program Solicitation**

Dear Mr. Jazayeri:

Advice Letter 2514-E is effective March 24, 2011 per Resolution E-4394.

Sincerely,

A handwritten signature in blue ink, appearing to read "Julie A. Fitch".

Julie A. Fitch, Director  
Energy Division

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September 24, 2010

**ADVICE 2514-E**  
**(U 338-E)**

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA  
ENERGY DIVISION

**SUBJECT:** Submission of Power Purchase and Sale Agreement for  
Procurement of Renewable Energy from SCE's 2010 Solar  
Photovoltaic Program Solicitation

**I. INTRODUCTION**

**A. Purpose of the Advice Letter**

Southern California Edison Company ("SCE") submits this Advice Letter in compliance with California Public Utilities Code Section 399.11 *et seq.* ("RPS Legislation") seeking approval of a power purchase and sale agreement ("PPA") between SCE and Cascade Solar LLC ("Cascade"), that was executed as a result of SCE's Solar Photovoltaic Program ("SPVP") 2010 solicitation. The Solar Photovoltaic Program Power Purchase and Sale Agreement between Southern California Edison Company and Cascade shall be referred to as the "Cascade PPA."

A table summarizing the Cascade PPA is as follows:

Seller	Generation Type	Gross Power Rating; Net Power Rating	Estimated Annual Energy	Term Start Date or Commercial Operation Date (COD)	Term of Agreement (Years)
Cascade Solar LLC	Solar PV	10.00 MW DC; 8.78 MW AC	18.84 GWh	December 31, 2011	20

SCE requests that the California Public Utilities Commission ("Commission" or "CPUC") issue a resolution containing findings in the form requested in this Advice Letter no later than March 24, 2011.

In accordance with General Order ("GO") 96-B, the confidentiality of information included in this Advice Letter is described below. This Advice Letter contains both confidential and public appendices as listed below:

- Confidential Appendix A: Consistency with Commission Decisions and Rules and Project Development Status
- Confidential Appendix B: 2010 SPVP Solicitation Overview and Workpapers
- Confidential Appendix C: Contract Summary
- Confidential Appendix D: Comparison of Cascade PPA with SCE's SPVP Pro Forma PPA
- Confidential Appendix E: Cascade PPA
- Confidential Appendix F: Cascade PPA's Contribution toward RPS Goals
- Confidential Appendix G: AMF Calculator for the Cascade PPA
- Confidential Appendix H: Rate Impact Information
- Confidential and Public  
Versions of Appendix I: Independent Evaluator Report
- Appendix J: Confidentiality Declaration
- Appendix K: Proposed Protective Order

**B. Subject of the Advice Letter**

The SPVP is a five-year program adopted by the Commission in Decision ("D.") 09-06-049 to spur the development of distributed solar photovoltaic ("PV") projects in SCE's service territory, primarily commercial rooftop projects in the 1 to 2 megawatt ("MW") range. Half of the 500 MW SPVP is being developed by SCE as utility-owned generation, while the other half is administered by SCE and developed by independent power producers ("IPPs") through a competitive procurement process. In Resolution E-4299, the Commission approved the implementation of the SPVP. This Advice Letter

concerns the Cascade PPA, which was executed with an IPP as a result of SCE's 2010 SPVP solicitation.<sup>1</sup>

The Cascade PPA is for a proposed solar PV facility to be located in Joshua Tree in San Bernardino County, California (the "Cascade Project"). The Cascade Project is a 10.00 MW DC (8.78 MW AC) ground-mounted project that is expected to begin commercial operation on December 31, 2011. The Cascade Project will deliver approximately 18.84 GWh of electric power to SCE on an annual basis and will not require any transmission level upgrades to interconnect the generating facilities. The seller under the Cascade PPA is Cascade, a California limited liability company.

The Cascade Project will use conventional polycrystalline PV panels mounted on single-axis trackers. The DC output from the PV panels will flow through twenty 500 kW inverters and twenty 34.5 kV/208 V transformers to the interconnection point where the AC output will be tapped into the Himo 33 kV distribution line at Devers Substation.

The Generating Facility will be built on a privately owned, 157-acre parcel in an unincorporated area of San Bernardino County, at Cascade Road and 4<sup>th</sup> Street South, Joshua Tree, California 92252.

### **C. General Project Description**

Project Name	Cascade Solar LLC
Technology	Solar PV
Gross Power Rating (MW DC)	10.00
Net Power Rating (MW AC)	8.78
Capacity Factor	24.5%
Expected Generation (GWh/Year)	18.84 GWh/Year
Initial Commercial Operation Date	December 31, 2011
Date contract Delivery Term begins	Commercial Operation Date ("COD") or Term Start Date
Delivery Term (Years)	20
Vintage (New/Existing/Repower)	New

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<sup>1</sup> Thirty-five other contracts were executed as part of the SPVP. Seven of them were terminated in September 2010. The remaining contracts are the subject of a separate Tier 2 advice letter being filed with the Commission.

Location (city and state)	Joshua Tree, CA
Control Area (e.g., CAISO, BPA)	California Independent System Operator ("CAISO")
Nearest Competitive Renewable Energy Zone (CREZ) as identified by the Renewable Energy Transmission Initiative (RETI)	Twentynine Palms CREZ
Type of cooling, if applicable	None
Price relative to MPR (i.e., above/below)	Above

**D. General Deal Structure**

Because this PPA deviates from the pro forma SPVP PPA, this PPA is being filed as a Tier 3 Advice Letter. For every Term Year, Cascade must deliver to SCE at least 90% of the expected term year energy production. The delivery point is the Devers substation. Additional information regarding the deal structure of the Cascade PPA is provided in Appendix C.

**E. RPS Statutory Goals**

By providing renewable energy from an eligible renewable energy resource ("ERR") as defined under the RPS Legislation, the Cascade PPA is consistent with, and contributes toward, the RPS program's statutory goals. Among other things, by supporting a new solar PV generation project in California, the Cascade PPA helps to ensure stable electricity prices, protect public health, improve environmental quality, stimulate economic development, and create new employment opportunities.

**F. Confidentiality**

SCE is requesting confidential treatment of Appendices A through H, as well as the confidential version of Appendix I to this Advice Letter. The information for which SCE is seeking confidential treatment is identified in Appendix J hereto. The confidential version of this Advice Letter will be made available to appropriate parties (in accordance with SCE's Proposed Protective Order, as discussed below) upon execution of the required non-disclosure agreement. Parties wishing to obtain access to the confidential version of this Advice Letter may contact Nancy Allred in SCE's Law Department at [Nancy.Allred@sce.com](mailto:Nancy.Allred@sce.com) or (626) 302-3102 to obtain a non-disclosure agreement. In accordance with GO 96-B, a copy of SCE's Proposed Protective Order is attached hereto as Appendix K. It is appropriate to accord confidential treatment to the information for which SCE requests confidential treatment in the first instance in the

advice letter process because such information is entitled to confidentiality protection pursuant to D.06-06-066 and is required to be filed by advice letter as part of the process for obtaining Commission approval of RPS PPAs. SCE would object if the information were disclosed in an aggregated format.

The information in this Advice Letter for which SCE requests confidential treatment, the pages on which the information appears, and the length of time for which the information should remain confidential are provided in Appendix J. This information is entitled to confidentiality protection pursuant to D.06-06-066 (as provided in the IOU Matrix). The specific provisions of the IOU Matrix that apply to the confidential information in this Advice Letter are identified in Appendix J.

## **II. CONSISTENCY WITH COMMISSION DECISIONS**

### **A. SCE's SPVP**

#### **1. SCE's SPVP Was Approved by the Commission and SCE Adhered to Commission Guidelines**

In D.09-06-049, the Commission adopted the SPVP for the installation of 500 MW of solar PV on existing commercial rooftops in SCE's service territory. Under the adopted program, SCE will own, install, operate, and maintain 250 MW of distributed solar PV projects primarily in the 1 to 2 MW range. SCE will seek competitive bids for PPAs for another 250 MW of solar PV projects that are owned, installed, operated, and maintained by IPPs. The SPVP was adopted, in part, to address the gap in the development of 1 to 2 MW wholesale distributed solar projects due to the focus of other existing programs. In Resolution E-4299, the Commission initiated the implementation of the SPVP and set forth a framework for SCE to conduct the IPP solicitation.

#### **2. Summary of SCE's 2010 SPVP's Assessment of Portfolio Needs and Requested Proposal Characteristics**

SCE's 2010 SPVP Request for Offers ("RFO") indicated that SCE intended to seek solar PV resources on either rooftop installations or ground-mounted installations.<sup>2</sup> SCE held sellers to strict eligibility criteria in order to ensure that only the most viable projects made it on to the short list. Accordingly, all bids had to adhere to the following requirements: (1) be a solar PV facility; (2) be located in SCE's service territory; (3) be located on a rooftop or ground-mount site, subject to the 10 percent cap; (4) have a Gross Power Rating of not less than 500 kW DC and not more than 10 MW DC; (5) have a term of 20 years; and (6) not trigger transmission network upgrades. Projects were required to have commercial operation dates within 18 months of CPUC approval. Additionally, project teams were required to meet minimum development experience criteria.

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<sup>2</sup> Per D.09-06-049, ground-mount installations cannot exceed 10 percent of the SPVP's 250 MW cap.

### **3. The Cascade PPA Conforms to SCE's Portfolio Needs**

The Cascade PPA falls within the criteria identified in the SPVP RFO and is expected to contribute significantly toward the achievement of SCE's RPS procurement goals. Specifically, the Cascade Project satisfies SCE's need for eligible renewable energy with a gross power rating of 10.00 MW DC over a 20-year term. Moreover, the Cascade PPA satisfies SCE's locational preferences and other requirements for the SPVP RFO.

#### **B. SCE's 2010 SPVP Solicitation**

##### **1. SCE's 2010 SPVP Solicitation Was Consistent with SCE's Commission-Approved 2010 RFO Protocol**

The Cascade PPA was solicited, negotiated, and executed in a manner consistent with SCE's SPVP RFO protocol, which was approved by the Commission in Resolution E-4299 as part of the SPVP. SCE's RFO package included a procurement protocol ("RFO Participant Instructions"), which set forth the terms and conditions of the RFO, including the requirement that the proposed facility be an ERR and other eligibility requirements for participants, requirements for proposals, selection procedures, approval procedures, the RFO schedule, and other terms and conditions of the RFO.

The RFO did not establish a limit on the amount of renewable energy sought by SCE. However, SCE was mindful of the Commission's suggestion for an annual target of approximately 20 percent of the 250 MW cap. SCE sought resources that would provide maximum benefit to customers and count toward the RPS program. SCE solicited proposals for PPAs with standard delivery terms of 20 years. The protocol requested that proposals provide complete, accurate, and timely information concerning the participating supplier, the generating facility from which the participant proposed to provide electric energy to SCE, and information pertaining to the commercial terms and pricing details of the proposal.

The protocol required that participating facilities be new. SCE stated in the RFO protocol that it would evaluate proposals based on criteria intended to achieve the lowest customer cost for those renewable resources that best fit SCE's customers' current portfolio and projected needs.

On the release date of the 2010 SPVP RFO solicitation, SCE placed its RFO package on its website and issued an email announcement to approximately 1,100 industry participants, independent power companies, trade associations, law firms, energy consultants, and regulatory agencies. In addition, SCE held an RFO conference on April 1, 2010, at the Renaissance Los Angeles Hotel in Los Angeles, California. Approximately 350 individuals attended the conference in person or remotely. SCE responded to written questions from individual parties by providing each question and response to interested parties via e-mail.

Additional information regarding SCE's SPVP RFO is provided in Appendices B and C.

## **2. The Cascade PPA Offer Conformed to SCE's RFO Protocol**

The Cascade non-binding offer conformed to SCE's RFO protocol; that is, it offered power from an ERR, submitted the standard forms, and agreed to be bound by the protocol. By submitting a non-binding offer, Cascade agreed to be bound by Article Eight of the RFO Instructions regarding confidentiality. The proposals were evaluated and scored in the manner prescribed in the protocol and successful proposals were placed on SCE's short list. Eventually, negotiations led to the execution of the Cascade PPA. The Cascade PPA did not use the pro forma SPVP PPA because the Cascade Project is greater than 5 MW. All projects greater than 5 MW were required to use the >5 MW PPA, which included additional terms and conditions.

## **C. Evaluation Methodology**

### **1. SCE's Evaluation Methodology for the 2010 SPVP RFO**

SCE required participants in the SPVP RFO to submit non-binding offers consisting of an indicative price per MWh, in addition to information and attachments demonstrating the offeror's compliance with the eligibility criteria. Following a screening evaluation, SCE advised offerors as to the status of their offers relative to SCE's short list. Offerors were then required to submit interconnection applications and submit proof that interconnection screens had been passed or studies completed, demonstrating that projects did not trigger network upgrades. Subsequently, offerors submitted binding offers, SCE selected the lowest-priced offers, and PPAs were executed.

The eligibility requirements for the SPVP RFO were as follows:

- The Generating Facility must be a photovoltaic electric energy generating facility
- The Site on which Offeror's Generating Facility is located must be within SCE's service territory
- The Generating Facility must be located on a rooftop, provided that SCE may accept Offers from Offerors with solar photovoltaic ground-mounted Generating Facilities, subject to the ten percent (10%) maximum limitation on the total capacity of ground-mounted projects
- The Generating Facility must have a Gross Power Rating of no less than 500 kW DC and no more than 10 MW DC
- A single Offer may be comprised of the aggregation of multiple Generating Facilities delivering the Product to the same PNode (as defined in the CAISO Tariff), provided that each Generating Facility has a Gross Power Rating of at least 500 kW DC

- The Offeror of a Generating Facility with a Gross Power Rating of more than 5 MW DC must execute the >5 MW DC PPA (Cascade Solar LLC was the only such PPA, and is covered in a separate Tier 3 advice letter)
- The Offeror must provide proof of site control
- The rooftop owner or land owner must sign a letter acknowledging its non-participation in the California Solar Initiative ("CSI") or Net Energy Metering ("NEM") programs
- The Offeror's team must have completed two or more projects of similar technology and developed projects of cumulative capacity equal to one megawatt
- The Offeror must provide data so that SCE could verify that the technology employed is commercially proven

Non-binding offers included the following documents, submitted electronically as e-mail attachments:

- Offer Template, including details regarding the generating facility and an indicative product price
- Photograph of the roof or site
- Interconnection status
- Demonstration of site control
- Owner's acknowledgement letter regarding the CSI and NEM programs
- Summary of developer experience
- Standard PPA populated with project-specific information

On May 24, short-listed offerors were required to submit evidence that interconnection applications were submitted. Offerors who met that deadline then needed to submit evidence that the July 12 interconnection requirements had been met. To meet the July 12 interconnection requirement, offerors were required to demonstrate that their projects did not trigger network upgrades. Offerors who met the July 12 interconnection requirement were then eligible to submit binding offers. Binding offers included a binding product price and a final, executable form of the PPA. SCE accepted the successful offers and countersigned the two originals of the PPAs executed by the offerors.

Because the SPVP eligibility criteria were so detailed (as set forth above), and because the PPAs were non-negotiable, the SPVP evaluation was based strictly on price. SCE

selected offers with the lowest binding product prices on a \$/MWh basis for execution of PPAs.

The Commission established a cap in which average annual costs to SCE, including energy payment allocation factors for the time-of-delivery ("TOD") periods, are not to exceed \$260/MWh AC, which is the levelized cost of electricity for SCE's utility-owned solar photovoltaic program's generation. SCE estimates that, over the term of the PPA, and including the energy payment allocation factors for the TOD periods, a \$192.50/MWh AC Binding Product Price will result in annual average costs equal to \$260/MWh AC (*i.e.*,  $\$192.50 \times 1.35$ ). The estimated difference between the average annual costs of \$260/MWh AC and the \$192.50/MWh AC is a result of solar PV projects delivering the majority of their energy during peak periods.

The Cascade PPA met all of the SPVP RFO's screening requirements at an acceptable price to SCE. More information on the evaluation of the Cascade Project is included in Appendices A and B.

#### **D. Compliance with Standard Terms and Conditions**

In D.04-06-014, the Commission established a number of "modifiable" and "non-modifiable" standard terms and conditions to be used by load-serving entities ("LSEs") when contracting for RPS-eligible resources. In D.07-11-025, the Commission reduced the number of "non-modifiable" terms to the following four terms: (1) "CPUC Approval;" (2) "RECs and Green Attributes;" (3) "Eligibility;" and (4) "Applicable Law." The remaining "non-modifiable" terms were converted to "modifiable." In D.08-04-009, the Commission compiled the standard terms and conditions in one document and deleted the "modifiable" standard term and condition on supplemental energy payments from the standard terms and conditions. In D.08-08-028, the Commission revised the "non-modifiable" "RECs and Green Attributes" standard term and condition.

The Cascade PPA includes the four "non-modifiable" terms identified above without change. The "CPUC Approval" term is located on page 32 of Appendix A to the Cascade PPA. The "Green Attributes" terms can be found on page 5, section 3.02 of the Cascade PPA, and page 42 of Appendix A to the Cascade PPA. The "Eligibility" term is located on page 26, section 10.02 to the Cascade PPA. Finally, the "Applicable Law" term is located on page 29, section 10.06 to the Cascade PPA.

In addition, as permitted by D.04-06-014, D.07-11-025, and D.08-04-009, SCE modified most if not all of the "modifiable" terms. These modifications, however, include the same principles and serve the same purpose as the standard terms, and are consistent with the law and government regulations. Thus, the modifications contained in the Cascade PPA are permissible.

A comparison of the Cascade PPA against SCE's SPVP pro forma PPA is included as Appendix D.

**E. Unbundled Renewable Energy Credit (“REC”) Transactions**

SCE is purchasing bundled RPS-eligible energy and green attributes under the Cascade PPA. Accordingly, the Cascade PPA is not an unbundled REC transaction under D.06-10-019.

**F. Minimum Quantity**

In D.07-05-028, the Commission held that, beginning in 2007, each LSE obligated under the RPS program must enter into long-term contracts<sup>3</sup> or short-term contracts with new facilities<sup>4</sup> for energy deliveries equivalent to 0.25 percent of that LSE's prior year's retail sales in order to be able to count for RPS compliance energy deliveries from short-term contracts with existing facilities. The Commission also ruled that RPS-obligated LSEs may carry forward contracted energy in long-term contracts and short-term contracts with new facilities that is in excess of the 0.25 percent requirement in the year that such contracts are signed to be used for compliance for the minimum quantity requirement in future years.

The Cascade PPA is a long-term contract associated with a new generation facility. Therefore, the minimum quantity requirement does not apply.

**G. MPR and Above-Market Funds (“AMFs”)**

The AMF Calculator for the Cascade PPA is provided in Appendix G.

**H. Interim Emissions Performance Standard**

The California Legislature passed Senate Bill (“SB”) 1368 on August 31, 2006, and Governor Schwarzenegger signed the bill into law on September 29, 2006. Section 2 of SB 1368 adds California Public Utilities Code Section 8341(a), which provides: “No load-serving entity or local publicly owned electric utility may enter into a long-term financial commitment unless any baseload generation supplied under the long-term financial commitment complies with the greenhouse gases emission performance standard established by the commission, pursuant to subdivision (d).”<sup>5</sup>

In order to institute the provisions of SB 1368, the Commission instituted Rulemaking 06-04-009. That proceeding resulted in the establishment of a greenhouse gas (“GHG”) emissions performance standard (“EPS”) for carbon dioxide (“CO<sub>2</sub>”). The Commission noted, “SB 1368 establishes a minimum performance requirement for any long-term financial commitment for baseload generation that will be supplying power to California ratepayers. The new law establishes that the GHG emissions rates for these facilities

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<sup>3</sup> Long-term contracts are contracts of at least 10 years duration.

<sup>4</sup> New facilities are facilities that commenced commercial operations on or after January 1, 2005.

<sup>5</sup> Cal. Pub. Util. Code section 8341(a).

must be no higher than the GHG emissions rate of a combined-cycle gas turbine (CCGT) power plant.”<sup>6</sup>

The decision further explains:

SB 1368 describes what types of generation and financial commitments will be subject to the EPS (“covered procurements”). Under SB 1368, the EPS applies to “baseload generation,” but the requirement to comply with it is triggered only if there is a “long-term financial commitment” by an LSE. The statute defines baseload generation as “electricity generation from a powerplant that is designed and intended to provide electricity at an annualized plant capacity factor of at least 60%.” . . . For baseload generation procured under contract, there is a long-term commitment when the LSE enters into “a new or renewed contract with a term of five or more years.”<sup>7</sup>

By this Advice Letter filing, SCE requests that the Commission approve the long-term Cascade PPA. Although, in general, this new contract with a term of five or more years would be subject to the EPS, the Cascade PPA is exempt from such regulations. The Cascade PPAs has an expected annualized capacity factor of 24.5 percent, which is well below the threshold baseload capacity factor of 60 percent, above which the EPS rules would apply.

#### **I. Procurement Review Group (“PRG”) Participation**

SCE’s PRG was formed on or around September 10, 2002. Participants include representatives from the Commission’s Energy and Legal Divisions, the Division of Ratepayer Advocates, The Utility Reform Network, the Natural Resources Defense Council, California Utility Employees, the Union of Concerned Scientists, and the California Department of Water Resources.

SCE consulted with its PRG during each step of the SPVP procurement process. Among other things, SCE informed the PRG of the initial results of its RFO, explained the evaluation process, and updated the PRG periodically concerning the status of contract formation.

On May 7, 2010, SCE advised the PRG of its proposed short list of offers for its SPVP RFO. On July 22, 2010, SCE advised the PRG of its final selection of offers for execution of PPAs.

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<sup>6</sup> D.07-01-039 at 2-3.

<sup>7</sup> *Id.* at p. 4.

#### **J. Independent Evaluator (IE)**

The use of an IE in the IPP portion of the SPVP is required by D.09-06-049 and Resolution E-4299. The IE for the 2010 SPVP RFO was Merrimack Energy Group Inc., led by Wayne Oliver.

The IE participated in all communications and meetings between SCE and offerors. The IE also provided input to SCE on processes and the application of criteria during the RFO, and participated in all PRG calls.

The public version of the IE Report is attached as the public version of Appendix I.

#### **III. PROJECT DEVELOPMENT STATUS**

The Cascade Project passed all of the eligibility criteria and short-listing screens, which were designed to assure that all binding offers were submitted for viable projects. The project has firm site control in the form of an offer to purchase the parcel on which the site will be located. The technology is proven, commercial PV technology. Interconnection studies have been completed, and based on a System Impact Study completed in April 2010, the Cascade Project is not expected to trigger any network upgrades on the transmission grid.

The developer (Axio Power Holdings, LLC) has broad experience in renewable energy project development and operation. This includes development and operation of four solar PV projects ranging in size from 0.9 to 2.0 MW.

#### **IV. CONTINGENCIES AND MILESTONES**

##### **A. Major Performance Criteria and Guaranteed Milestones**

The Cascade Project is expected to commence deliveries on December 31, 2011. The Term Start Date (Commercial Operation Date) must occur within 18 months of CPUC approval, subject to any extension as a result of force majeure.

Specific information regarding the terms of the Cascade PPA is provided in Appendices C and E.

#### **V. REQUEST FOR COMMISSION APPROVAL**

The terms of the Cascade PPA are conditioned on the occurrence of "CPUC Approval," as it is defined in the Cascade PPA. In order to satisfy that condition with respect to the Cascade PPA, SCE requests that the Commission issue a resolution no later than March 24, 2011, containing:

1. Approval of the Cascade PPA in its entirety;

2. A finding that any electric energy sold or dedicated to SCE pursuant to the Cascade PPA constitutes procurement by SCE from an ERR for the purpose of determining SCE's compliance with the RPS Legislation or other applicable law concerning the procurement of electric energy from renewable energy resources;
3. A finding that all procurement under the Cascade PPA counts, in full and without condition, toward any annual procurement target established by the RPS Legislation or the Commission that is applicable to SCE;
4. A finding that all procurement under the Cascade PPA counts, in full and without condition, toward any incremental procurement target established by the RPS Legislation or the Commission that is applicable to SCE;
5. A finding that all procurement under the Cascade PPA counts, in full and without condition, toward the requirement in the RPS Legislation that SCE procure 20 percent (or such other percentage as may be established by law) of its retail sales from ERRs by 2010 (or such other date as may be established by law);
6. A finding that the Cascade PPA, and SCE's entry into the Cascade PPA, are reasonable and prudent for all purposes, including, but not limited to, recovery in rates of payments made pursuant to the Cascade PPA, subject only to further review with respect to the reasonableness of SCE's administration of the Cascade PPA; and
7. Any other and further relief as the Commission finds just and reasonable.

**VI. TIER DESIGNATION**

Pursuant to D.07-01-024, Energy Industry Rule 5.3, SCE submits this Advice Letter with a Tier 3 designation (effective after Commission approval).

**VII. EFFECTIVE DATE**

This Advice Letter will become effective March 24, 2011.

**VIII. NOTICE**

Anyone wishing to protest this Advice Letter may do so by letter via U.S. Mail, facsimile or electronically, any of which must be received by the Energy Division and SCE no later than 20 days after the date of this Advice Letter. Protests should be mailed to:

Akbar Jazayeri  
Vice President of Regulatory Operations  
Southern California Edison Company  
2244 Walnut Grove Avenue, Quad 3D  
Rosemead, California 91770

Facsimile: (626) 302-4829  
E-mail: [AdviceTariffManager@sce.com](mailto:AdviceTariffManager@sce.com)

Bruce Foster  
Senior Vice President, Regulatory Affairs  
c/o Karyn Gansecki  
601 Van Ness Avenue, Suite 2030  
San Francisco, California 94102  
Facsimile: (415) 673-1116  
E-mail: [Karyn.Gansecki@sce.com](mailto:Karyn.Gansecki@sce.com)

Marc Ulrich  
Vice President of Renewable and Alternative Power  
c/o Mike Marelli  
Southern California Edison Company  
2244 Walnut Grove Avenue, Quad 4D  
Rosemead, CA 91770  
Facsimile: (626) 302-1103  
E-mail: [Mike.Marelli@sce.com](mailto:Mike.Marelli@sce.com)

With a copy to:

Nancy Allred  
Attorney  
Southern California Edison Company  
2244 Walnut Grove Avenue, 3<sup>rd</sup> Floor  
Rosemead, CA 91770  
Facsimile: (626) 302-3990  
E-mail: [Nancy.Allred@sce.com](mailto:Nancy.Allred@sce.com)

There are no restrictions on who may file a protest, but the protest shall set forth specifically the grounds upon which it is based and shall be submitted expeditiously.

In accordance with Section 4 of GO 96-B, SCE is furnishing copies of this Advice Letter to the interested parties shown on the attached R.08-08-009, R.06-02-012, and GO 96-B service lists. Address change requests to the GO 96-B service list should be directed to [AdviceTariffManager@sce.com](mailto:AdviceTariffManager@sce.com) or (626) 302-4039. For changes to any other service list, please contact the Commission's Process Office at [ProcessOffice@cpuc.ca.gov](mailto:ProcessOffice@cpuc.ca.gov) or (415) 703-2021.

Further, in accordance with Public Utilities Code section 491, notice to the public is hereby given by filing and keeping this Advice Letter at SCE's corporate headquarters. To view other SCE advice letters filed with the Commission, log on to SCE's web site at <http://www.sce.com/AboutSCE/Regulatory/adviceletters/>.

All questions concerning this Advice Letter should be directed to Laura Genao at [Laura.Genao@sce.com](mailto:Laura.Genao@sce.com) or (626) 302-6842.

**Southern California Edison Company**

Akbar Jazayeri

AJ/lg  
Enclosures

# CALIFORNIA PUBLIC UTILITIES COMMISSION

## ADVICE LETTER FILING SUMMARY ENERGY UTILITY

MUST BE COMPLETED BY UTILITY (Attach additional pages as needed)

Company name/CPUC Utility No.: Southern California Edison Company (U 338-E)

Utility type:

☒ ELC      ☐ GAS  
☐ PLC      ☐ HEAT      ☐ WATER

Contact Person: James Yee

Phone #: (626) 302-2509

E-mail: [James.Yee@sce.com](mailto:James.Yee@sce.com)

E-mail Disposition Notice to: [AdviceTariffManager@sce.com](mailto:AdviceTariffManager@sce.com)

### EXPLANATION OF UTILITY TYPE

ELC = Electric      GAS = Gas  
PLC = Pipeline      HEAT = Heat      WATER = Water

(Date Filed/ Received Stamp by CPUC)

Advice Letter (AL) #: 2514-E

Tier Designation: 3

Subject of AL: Submission of Power Purchase and Sale Agreement for Procurement of Renewable Energy from SCE's 2010 Solar Photovoltaic Program Solicitation

Keywords (choose from CPUC listing): Compliance, Contracts, Procurement

AL filing type: ☐ Monthly ☐ Quarterly ☐ Annual ☒ One-Time ☐ Other

If AL filed in compliance with a Commission order, indicate relevant Decision/Resolution #:

Does AL replace a withdrawn or rejected AL? If so, identify the prior AL: \_\_\_\_\_

Summarize differences between the AL and the prior withdrawn or rejected AL<sup>1</sup>: \_\_\_\_\_

Confidential treatment requested? ☒ Yes ☐ No

If yes, specification of confidential information: See Appendix J.

Confidential information will be made available to appropriate parties who execute a nondisclosure agreement.

Name and contact information to request nondisclosure agreement/access to confidential information:

Nancy Chung Allred, Law Department, at (626) 302-3102 or [Nancy.Allred@sce.com](mailto:Nancy.Allred@sce.com).

Resolution Required? ☒ Yes ☐ No

Requested effective date: 3/24/11

No. of tariff sheets: -0-

Estimated system annual revenue effect: (%): \_\_\_\_\_

Estimated system average rate effect (%): \_\_\_\_\_

When rates are affected by AL, include attachment in AL showing average rate effects on customer classes (residential, small commercial, large C/I, agricultural, lighting).

Tariff schedules affected: None

Service affected and changes proposed<sup>1</sup>: \_\_\_\_\_

Pending advice letters that revise the same tariff sheets: \_\_\_\_\_

<sup>1</sup> Discuss in AL if more space is needed.

**Protests and all other correspondence regarding this AL are due no later than 20 days after the date of this filing, unless otherwise authorized by the Commission, and shall be sent to:**

CPUC, Energy Division  
Attention: Tariff Unit  
505 Van Ness Ave.,  
San Francisco, CA 94102  
[inj@cpuc.ca.gov](mailto:inj@cpuc.ca.gov) and [mas@cpuc.ca.gov](mailto:mas@cpuc.ca.gov)

Akbar Jazayeri  
Vice President of Regulatory Operations  
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Facsimile: (626) 302-4829  
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Bruce Foster  
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With a copy to:

Nancy Chung Allred  
Attorney  
Southern California Edison Company  
2244 Walnut Grove Avenue, 3<sup>rd</sup> Floor  
Rosemead, California 91770  
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E-mail: [Nancy.Allred@sce.com](mailto:Nancy.Allred@sce.com)

**Confidential Appendix A**

**Consistency with Commission Decisions and Rules and Project Development**

**Status**

**Confidential Protected Materials – Public Disclosure Prohibited**

**Confidential Appendix B**

**2010 SPVP Solicitation Overview and Workpapers**

**Confidential Protected Materials – Public Disclosure Prohibited**

**Confidential Appendix C**

**Contract Summary**

**Protected Materials – Public Disclosure Prohibited**

**Confidential Appendix D**  
**Comparison of Cascade PPA**  
**with SCE's SPVP Pro Forma PPA**

**Confidential Protected Materials – Public Disclosure Prohibited**

**Confidential Appendix E**

**Cascade PPA**

**Confidential Protected Materials – Public Disclosure Prohibited**

**Confidential Appendix F**

**Cascade PPA's Contribution toward RPS Goals**

**Confidential Protected Materials – Public Disclosure Prohibited**

**Confidential Appendix G**

**AMF Calculator for the Cascade PPA**

**Confidential Protected Materials – Public Disclosure Prohibited**

**Confidential Appendix H**

**Rate Impact Information**

**Confidential Protected Materials – Public Disclosure Prohibited**

**Public Appendix I**  
**Independent Evaluator Report**

***Southern California Edison Company***  
***2010 Request for Offers from Independent Power***  
***Producers for the Solar Photovoltaic Program***

***Independent Evaluator***  
***Bid Evaluation and Selection Process***  
**Final Report**  
**Cascade Solar LLC PPA**  
***September, 2010***

***Prepared by***  
***Merrimack Energy Group, Inc.***



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Confidential Appendix A

## **I. Introduction**

### **A. Overview**

Southern California Edison Company (“SCE”) is seeking approval of an approximately 10 MW power purchase agreement (“PPA”) with Cascade Solar LLC, a California limited liability company.<sup>1</sup>

On March 18, 2010, SCE issued its 2010 Request for Offers from Independent Power Producers for the Solar Photovoltaic Program (“2010 SPVP RFO”).<sup>2</sup> SCE solicited offers from owners of eligible solar photovoltaic generating facilities to supply the requested product. The product requested via the solicitation includes all solar photovoltaic electric energy produced by the generating facility, net of station use, plus all green attributes, capacity attributes, and resource adequacy benefits. The program is designed largely to encourage the development of distributed generation (“DG”) projects that do not require transmission upgrades.

SCE’s goal with respect to the Solar PV Program (“SPVP”) is to procure, over a five (5) year period, the product from solar photovoltaic generating facilities using a standard Power Purchase and Sale Agreement (“PPA”) with a 20-year contract term. The total of the gross power ratings of the generating facilities will be 250 MW expressed in units of direct current (“DC”). The generating facilities will be primarily in the range of 1 to 2 MW DC and built on rooftops. However, SCE will procure the product from ground-mounted generating facilities as long as the total of the gross power ratings of all such ground-mounted generating facilities does not exceed ten percent (10%) of the total SPVP goal of 250 MW DC, or 25 MW.

Subject to the restrictions set forth in the RFO Instructions, SCE will also procure the product from generating facilities with gross power ratings of less than 1 MW DC and greater than 2 MW DC, provided that in no instance will SCE accept any offers for generating facilities with gross power ratings of less than 500 kW DC or greater than 10 MW DC.

Pursuant to regulatory requirements of the California Public Utilities Commission (“CPUC” or “Commission”), SCE retained Merrimack Energy Group, Inc. (“Merrimack Energy”) as the Independent Evaluator (“IE”) for the IPP portion of the SPVP program procurement process.<sup>3</sup>

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<sup>1</sup> SCE is seeking approval for the purchase of approximately 51 MW on installed capacity from solar photovoltaic projects under SCE’s Solar Photovoltaic Program, including the 10 MW Cascade Solar project. SCE initially reported to have contracted with a total of 31 rooftop solar PV projects with a total capacity of approximately 37.2 MW and 5 ground-mounted projects with a total capacity of 22.4 MW. However, 7 contracts with one seller for a total of 8.58 MW in the roof-top solar category were terminated.

<sup>2</sup> SCE’s Solar PV Program consists of two components: (1) 250 MW DC owned and maintained by SCE (“UOG”) and (2) 250 MW DC owned and maintained by Independent Power Producers (“IPPs”).

<sup>3</sup> The CPUC authorized that the program include both a utility-owned generation (UOG) component and an independent power producer component that will be administered by SCE through a competitive procurement process. There is no IE associated with the UOG portion of the program.

This IE report is submitted in conformance to the requirements of the CPUC and is designed to be consistent with the requirements outlined in the CPUC's IE Report Template, subject to adjustments in requirements to reflect the unique nature of this solicitation.

## **B. Program Background**

SCE filed an application with the CPUC on March 27, 2008, seeking authorization of its Solar Photovoltaic Program ("SPVP") and associated cost recovery. The proposed program would be a five-year program to install up to 250 MW of one to two MW solar PV facilities within SCE's service territory. SCE proposed to lease commercial rooftops for the program and to install, own, operate and maintain these facilities. SCE also provided estimated cost information for the projects. In its application, SCE stated that the SPVP complements the existing California Solar Energy Initiative ("CSI") and the Renewable Portfolio Standard ("RPS"), will contribute to both program goals, and will assist in meeting California's million solar rooftop goal.

## **C. Regulatory Decisions**

On June 18, 2009, the Commission approved SCE's SPVP, with modifications, in Decision ("D.") 09-06-049. The Commission determined that SCE's SPVP would complement current programs and initiatives, "to advance the state's renewable energy goals and help lower the cost of solar energy." In D.09-06-049, the Commission authorized SCE to build, own, and operate 250 MW of one to two MW solar PV facilities on commercial rooftops in its service territory (the Utility-Owned Generation or "UOG" program). The decision also ordered SCE to execute contracts for 250 MW of generation from similar facilities owned and maintained by IPPs through a competitive solicitation process (the IPP program). D.09-06-049 ordered SCE to file an advice letter, "delineating the criteria for selection of the bids, and containing a draft standard 20-year PPA contract" for the IPP Program.

In D.09-06-049, the Commission modified SCE's original proposal in several areas, including:

1. The program will consist of two components. One component (250 MW) will be utility-owned generation (about 50 MW annually). For this component of the program, SCE will own, install, operate, and maintain distributed solar projects primarily in the one to two megawatt range, located in SCE's service territory on existing commercial rooftops. The project cost target is \$3.50/watt with a 10% contingency. The second component of the program will be 250 MW of distributed generation owned by independent power producers (about 50 MW annually) to be solicited at least once per year. The allowable bid prices will be capped at SCE's levelized cost of electricity;

2. An Independent Evaluator should be secured to oversee the solicitation for the first two years of the program and thereafter if a utility affiliate participates in that process;
3. Contracts will be based on standard 20-year power purchase agreement contracts;
4. The program will be a five-year program;
5. Utility-owned generation projects will be subject to cost of service treatment;
6. Within 30 days of the effective date of this decision, SCE shall file an Advice Letter with the Energy Division delineating the criteria and process for evaluating offers received and containing a draft standard 20-year power purchase agreement contract for use in the request for offer.

On July 20, 2009 SCE filed AL 2365-E. In AL 2364-E, SCE requested that the Commission issue a resolution approving the process and criteria for evaluating offers received pursuant to competitive solicitations and a standard 20-year power purchase agreement (PPA). On July 31, 2009, Energy Division staff held a workshop where SCE presented a description of the proposed competitive solicitation process and draft standard PPA outlined in AL 2365-E.

On January 21, 2010, the CPUC through Resolution E-4299 initiated the implementation of SCE's Solar Photovoltaic Program ("SPVP" or "Program"). The SPVP is a five-year program adopted by the CPUC in D.09-06-049 to spur the development of distributed solar photovoltaic (PV) projects in SCE's service territory, primarily commercial rooftop projects in the one to two megawatt (MW) range. While the Resolution indicated that it primarily addressed the competitively bid or IPP portion of the program, it also addressed some aspects of the UOG portion of the program as well. The Resolution adopts a competitive solicitation process, eligibility criteria, administration protocols and a standard power purchase agreement for the IPP Program. This resolution also establishes a process to facilitate Program refinements throughout the Program period.

#### **D. Procurement Protocol**

On March 18, 2010, SCE launched the RFO and posted the RFO Participation Instructions document on its website. In the RFO Participation Instructions (i.e. "Procurement Protocol"), SCE listed a number of requirements and preferences to inform prospective Offerors of the requirements for competing in the procurement process. These included:

- The generating facility must be a photovoltaic electric energy generating facility;
- The site on which the Offeror's generating facility is located must be within SCE's service territory;

- A single offer may be comprised of the aggregation of multiple generating facilities delivering the products to the same PNode provided that each generating facility has a gross power rating of at least 500 kW DC;
- The Offeror of a generating facility with a gross power rating of more than 5 MW DC must execute the >5 MW DC PPA;
- The generating facility must be scheduled to commence operation on the term sheet start date, which must occur within 18 months of CPUC approval;
- All generating facilities must be interconnected to SCE's electric system. The delivery point for a generating facility will be the PNode for the generating facility. In no instance will SCE accept any offer that proposes a generating facility whose interconnection would require any network upgrades;
- SCE is using a two-step evaluation process:
  - In Step 1, SCE will receive indicative or non-binding offers, evaluate indicative offers and create a short-list;
  - In Step 2, SCE will receive binding price offers from eligible Offerors;
- Short-listed Offerors must meet the following conditions to continue to participate in the RFO:
  - Within ten (10) business days after short-list selection, the Offeror must file an interconnection application and a distribution service application with SCE or file an interconnection application with the California Independent System Operator ("CAISO") if applicable;
  - On or before July 12, 2010 (i.e. one week before the due date for submission of the binding offer), an Offeror that has had its offer short-listed must submit documentation to SCE and the Independent Evaluator ("IE") evidencing that it has passed the first nine (9) screens in the Fast Track process, or received a completed system impact study or phase one interconnection study identifying that no network upgrades are required to interconnect the generating facility;
  - On or before July 12, 2010 (i.e. one week before the due date for submission of the binding offer), an Offeror that has had its offer short-listed must submit a fully completed, executable final form of the PPA to SCE and the IE;
- The Offeror must include the IE in all email communications with SCE related to the RFO;
- The Offeror must demonstrate site control at the time it submits its non-binding offer. According to the RFO, site control can be demonstrated by owning the site, leasing the site under a lease, or holding a right-of-way grant or similar instrument with respect to the site, and must adhere to the site control requirements under Offeror's interconnection application;

- Neither the Offeror nor the owner of the site may participate in the California Solar Initiative Program (“CSI”) or net energy metering tariff (“NEM”), and the owner of the site will be required to sign the letter acknowledging familiarity with CSI and NEM, and a commitment not to apply for either program;
- The Offeror must have a “minimum level of developer experience” with large commercial and industrial roof-mounted solar photovoltaic installations;
- The generating facility must be a commercially proven solar photovoltaic generating facility and use Underwriters Laboratory rated components;
- The indicative and binding product price shall not be greater than \$192.50/MWh AC;
- The Offeror is required to post development security equal to \$20/kW DC of the gross power rating.

In addition to the above information, Offerors were required to submit an Offer Template, which contained information about the offer, including the proposed price, with both the non-binding and binding offer.

In addition, the RFO document provides a reference to SCE’s SPVP website that provides a list of areas within SCE’s service territory where generating capacity appears to be available. The list of areas is intended to assist Offerors in identifying sites that may require minimal upgrades in order to interconnect to SCE’s electric system. The RFO also includes detailed information on interconnection requirements and references for tariffs and other documents.

The RFO also includes a description of the confidentiality provisions applied to the SPVP project team and the Project Development Division.

The schedule identified for the process includes the two stages (i.e. non-binding offer and binding offer) and encompassed approximately four months from issuance of the RFO to execution of the final agreements.

## **E. Issues Addressed in This Report**

This report addresses Merrimack Energy’s assessment and conclusions regarding the following seven issues identified in the CPUC’s IE Report Template:

1. Describe the role of the IE.
2. Evaluate the fairness of the investor-owned utility’s (“IOU’s”) bidding and selection process (i.e. quantitative and qualitative methodology used

to evaluate and select offers, consistency of evaluation and selection methods with criteria specified in bid documents, etc.).

3. How did the IOU conduct outreach to bidders? Was the solicitation robust?
4. Describe the IOU's Least Cost Best Fit ("LCBF") methodology (or provide the IOU's own description). Evaluate the strengths and weaknesses of the IOU's LCBF methodology.<sup>4</sup>
5. Describe project specific negotiations. Highlight any areas of concern including unique terms and conditions.
6. If applicable, describe safeguards and methodologies employed by the IOU to compare affiliate bids or utility-owned generation ownership offers.
7. Do you agree with the IOU that the contract(s) merit CPUC approval? Explain.

All these issues are addressed in this report.

## **II. Description of the Role of the IE**

### **A. Regulatory Requirements For the IE**

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<sup>4</sup> The nature of this process was designed to rank offers based on the levelized price of the offer subject to a price cap established in the Protocol. The traditional IOU Least Cost Best Fit methodology was therefore not applicable. However, the IE will draft a description of the methodology used to evaluate and rank offers as well as the strengths and weaknesses of the methodology.

The requirements for participation by an IE in RPS solicitations are outlined in Decisions (“D”).04-12-048 (Findings of Fact 94-95, Ordering Paragraph 28), D.06-05-039 (Finding of Fact 20, Conclusion of Law 3, Ordering Paragraph 8) of the CPUC, and D.09-06-050.

In D.04-12-048 (December 16, 2004), the CPUC required the use of an IE by investor-owned utilities (IOUs) in resource solicitations where there is an affiliated bidder or bidders, or where the utility proposed to build a project or where a bidder proposed to sell a project or build a project under a turnkey contract that would ultimately be owned by a utility. The CPUC generally endorsed the guidelines issued by the Federal Energy Regulatory Commission (“FERC”) for independent evaluation where an affiliate of the purchaser is a bidder in a competitive solicitation, but stated that the role of the IE would not be to make binding decisions on behalf of the utilities or administer the entire process.<sup>5</sup> Instead, the IE would be consulted by the IOU, along with the Procurement Review Group (“PRG”) on the design, administration, and evaluation aspects of the Request for Proposals (“RFP”). The Decision identifies the technical expertise and experience of the IE with regard to industry contracts, quantitative evaluation methodologies, power market derivatives, and other aspects of power project development. From a process standpoint, the IOU could contract directly with the IE, in consultation with its PRG, but the IE would coordinate with the Energy Division.

In D.06-05-039 (May 25, 2006), the CPUC required each IOU to employ an IE regarding all RFPs issued pursuant to the RPS, regardless of whether there are any utility-owned or affiliate-owned projects under consideration. In addition, the CPUC directed the IE for each RFP to provide separate reports (a preliminary report with the shortlist and final reports with IOU advice letters to approve contracts) on the entire bid, solicitation, evaluation and selection process, with the reports submitted to the utility, PRG, and CPUC and made available to the public (subject to confidential treatment of protected information). The IE would also make periodic presentations regarding its findings to the utility and the utility’s PRG consistent with preserving the independence of the IE by ensuring free and unfettered communication between the IE and the CPUC’s Energy Division, and an open, fair, and transparent process that the PRG could confirm.

In D.09-06-050 issued on June 18, 2009 in Rulemaking 08-08-009, Order Instituting Rulemaking to Continue Implementation and Administration of California Renewables Portfolio Standard Program,<sup>6</sup> the CPUC required that bilateral contracts should be reviewed according to the same processes and standards as contracts that come through a solicitation. This includes review by the utility’s PRG and its IE, including a report filed by the IE.

## **B. Description of Key IE Roles**

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<sup>5</sup> Decision 04-12-048 at 129-37. The FERC guidelines are set forth in Ameren Energy Generating Company, 108 FERC ¶ 61,081 (June 29, 2004).

<sup>6</sup> Decision Establishing Price Benchmarks and Contract Review Processes for Short-Term and Bilateral Procurement Contracts for Compliance With the California Renewable Portfolio Standard.

In compliance with D.09-06-050 issued June 18, 2009, SCE selected Merrimack Energy to serve as IE for the Solar Photovoltaic Program Request for Offers in June 2009. The objective of the role of the IE is to ensure that the solicitation process is undertaken in a fair, consistent, unbiased, and objective manner and that the best resources are selected and acquired consistent with the solicitation requirements.

In addition to the requirements identified in CPUC Orders, the Purchase Order between Merrimack Energy and SCE clearly identifies the tasks to be performed by the IE. These include the following tasks:

- Consult with SCE on the design, administration, and evaluation of the competitive procurement solicitation process and protocols to ensure that no SCE affiliate has an undue advantage over non-affiliates in the solicitation;
- Ensure the solicitation process is open, transparent, and free from anti-competitive behavior;
- Provide recommendations concerning the precise definition of products sought and price and non-price evaluation criteria, so that all aspects of the products are clearly understood and all Sellers may effectively respond to the solicitation;
- Review the comprehensive quantitative and qualitative bid evaluation criteria and methodologies and assess whether these are applied to all bids in a fair and non-discriminatory manner;
- Assess whether SCE's final selection was fair and was not unduly influenced by its affiliate relationships;
- Provide periodic presentations as requested to SCE management and to the PRG concerning the IE's findings;
- Report on the outcome of the RFP to the CPUC using the appropriate CPUC Independent Evaluator Report Template.

With regard to the role of the IE, our objective is to ensure that the process is undertaken in a fair and equitable manner and that the results of the offer evaluation and selection are accurate, reasonable and consistent. This role generally involves a detailed review and assessment of the evaluation process and the results of the quantitative and qualitative (non-price) analysis.

This report provides an assessment of SCE's SPVP procurement process from development of the process through selection of the projects subject to contract approval. It is organized based on the template provided by the CPUC's Energy Division. This report addresses Merrimack Energy's assessment and conclusions with regard to the following questions:

1. Did SCE do adequate outreach to potential bidders and was the solicitation robust?
2. Was SCE's methodology designed such that all bids were fairly and reasonably evaluated?<sup>7</sup>
3. Was SCE's bid evaluation and selection process fairly administered?
4. Did SCE make reasonable and consistent choices regarding which offers were selected?

### **C. Description of IE Oversight Activities**

In performing its oversight role, the IE participated in and undertook a number of activities in connection with the solicitation including providing comments on the protocol documents, organizing and summarizing both the indicative bids or non-binding bids and binding bids submitted, reviewing evaluation results at each stage in the process, monitoring the status of short-listed offers, monitoring communications with bidders, participating in project team meetings, and meetings with the RMC and PRG. Merrimack Energy was retained by SCE prior to the development of the Procurement Protocol and therefore had the opportunity to participate in and assess the development and implementation of the process. A list of the activities of the IE during the procurement process is described below.

#### **1. Participated in Renewable and Alternative Power ("RAP") Committee Meetings**

SCE's management team invited the IE to participate in both bi-weekly RAP meetings and regularly scheduled meetings of the SPVP project team and management during the solicitation development and implementation phases of the process. This allowed the IE to monitor the major activities and issues that were being debated and assessed by SCE's SPVP project team, including development and implementation of the proposed process, eligibility requirements, information to provide to Offerors, evaluation criteria, contract discussions, and communications with prospective bidders.

#### **2. Submitted Comments on Protocol Design**

Merrimack Energy participated in several conference calls with SCE regarding development of the SPVP solicitation process and criteria and submitted comments on the draft solicitation process in early July 2009, prior to SCE's Advice Letter filing in late July 2009.

#### **3. Participated in Division Workshop**

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<sup>7</sup> While the IE Report Template prepared by the Division generally requests that the IE evaluate whether the Company's "Least Cost Best Fit" methodology was appropriately applied, the evaluation methodology in this solicitation was focused on levelized cost plus basic threshold or minimum requirements that Offerors were required to meet rather than a "full-blown" least cost best fit assessment.

The California Public Utilities Commission held a workshop on July 31, 2009 to discuss the provisions and components of the SPVP program. SCE presented its proposal for the implementation of the SPVP program, including a discussion of contract and interconnection requirements. The IE was present at and monitored the workshop, including the comments of prospective Offerors.

#### **4 Follow-up Comments**

The IE submitted follow-up comments to SCE on August 10, 2009 after the workshop on SCE's Advice Letter filing based on review of the filing and comments submitted by participants at the workshop. The comments addressed the solicitation process, criteria applied, and the standard contract. Merrimack Energy also drafted up a more detailed scope of work for the IE that reflected the fact that the IE function in this solicitation extended only to the IPP portion of the program. We also suggested that a written protocol should be developed that would be designed to prevent dissemination of confidential information between the UOG project team and the IPP project team. SCE included a section in the RFO Protocol identifying confidentiality requirements. SCE also established an internal audit function that monitored any information dissemination.

#### **5. Attendance at the Proposal Conference**

The IE attended the 2010 Solar PV RFO Conference held by SCE on April 1, 2010. The RFO Conference addressed the RFO instructions, pro forma standard PPA, proposal template and revenue calculator, interconnection service and requirements, and potential project locations based on specific areas identified within SCE's distribution system. Project team members from Renewable Contract Origination, Renewable Project Financial Analysis, Transmission/Distribution Grid Contracts, Transmission/Distribution Field Engineering, Legal, and Credit & Risk were present to lead sections of the presentation and answer questions from prospective bidders.

In addition, SCE offered prospective bidders an opportunity to meet with staff associated with project interconnection after the conference on a one-on-one basis to get an overall perspective of the interconnection process and possibly ask questions about their specific project. The IE attended a few of the sessions with prospective Offerors and SCE staff and found the sessions to be informative and valuable to Offerors.

One of the clear messages that resulted from the RFO conference was that an Offeror, who has not already started the interconnection process should do so immediately given the number of projects in the queue.

#### **6. Monitored Communication with Bidders**

Prospective Offerors had the opportunity to submit questions to SCE regarding the RFO via SCE's SPVP-IPP RFO website and through direct contact with SCE project team

members. The RFO required that the IE should be copied on all correspondence between SCE and the prospective Offeror. The IE reviewed the substantial amount of email traffic between SCE and Offerors to assess if any issues were emerging and whether all Offerors were treated fairly and equitably. Throughout the solicitation process there were hundreds of emails exchanged between the SCE project team and the Offerors. In addition, SCE posted 51 questions and answers on its website. In some cases, the IE suggested that SCE inform all Offerors about specific issues such as filing requirements, schedule, and application of the leveled cost methodology as well as suggesting clarifying responses in a few cases.

### **7. Project Team, RMC and PGR Meetings to Discuss Screening and Eligibility Process**

Between the RFO Conference and the receipt of offers, the SPVP project team focused their attention on developing the offer screening and eligibility process, the scheduling requirements, documentation process and protocols, and team assignments associated with review and assessment of offers received. During this period, the SPVP team made presentations to the RMC and the PRG regarding the above mentioned issues and sought RMC approval and PRG input on the proposed process to screen initial (non-binding) offers for eligibility to submit final (binding) offers to the SPVP. The IE participated in project team meeting and meetings with the RMC and PRG.

### **8. Receipt of Offeror's Proposal Templates and Required Information – Non-Binding Stage**

All indicative or non-binding offers were submitted by electronic mail to SCE and the IE on or before April 19, 2010. The IE established a spreadsheet matrix of information designed to track and summarize the offers received. The matrix also allowed SCE and the IE to compare “notes” to ensure that all offers were accounted for.<sup>8</sup> One issue which emerged during the receipt of offer process was that a few bidders had their offers rejected due to size constraints on the SCE computer system. Since the IE was able to receive the offers, we were able to inform SCE that a few of the offers were not originally submitted to SCE because of the size constraint. In addition to the Offer Template, Offerors were required to also submit the following information about their projects:

- Photograph of the roof or site
- Interconnection status (including a copy of the interconnection application and any studies, if available)
- Demonstration of site control, in accordance with Section 4.01(b)
- An acknowledgement letter executed by the owner of the site, regarding the CSI program and NEM tariff
- Summary of developer experience
- Redline of the PPA

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<sup>8</sup> After review of the offers received, Merrimack Energy had a record of a few offers that SCE had not accounted for. After comparing the list of offers received, SCE and Merrimack Energy were able to confirm all offers received.

## **9. Bid Deficiency and Clarification Process**

After the receipt and summary of offers received, the next step in the process was a review of the offers to ensure the Offerors provided complete and consistent information. SCE project team members were each provided with a list of offers to review. The IE reviewed SCE's assessment of the eligibility of the Offerors relative to the requirements identified in the RFO protocol.

The primary area of deficiency was the requirement for site control. A number of offers did not specifically conform to the requirements of site control as listed in the RFO and interpreted by SCE. Because of the issues and uncertainties associated with site control, SCE requested that an outside counsel review the information provided by the Offerors to meet site control and assess whether the information was adequate. Based on a sample of offers reviewed, the outside counsel concluded that a minority of the offers reviewed technically met the site control requirement.

Rather than classify the offers as non-conforming, SCE and the IE discussed the response of Offerors in light of the information requested and sought to achieve a solution that would be more inclusive for Offerors and not involve classifying a large number of offers as non-conforming. SCE suggested requiring Offerors to submit an attestation letter indicating that they had site control. The IE was in agreement with this suggestion. A large majority of the Offerors provided an attestation letter (site control acknowledgement letter) confirming they had site control.

SCE also made some revisions to the experience requirements by allowing Offerors to meet requirements if a member of the project team possessed the necessary experience requested.

Overall, the IE found SCE to be flexible in applying the eligibility criteria for this first solicitation and attempting to be more inclusive of offers and working with Offerors to allow such Offerors to meet solicitation requirements. The IE agreed with this approach.

## **10. Short List Selection**

The majority of the offers submitted were selected for the short list once the site control issue was resolved.<sup>9</sup> The reasons for failure of offers to be included on the short list included the following:

- The project was not located in SCE's service territory;
- The offer was withdrawn by the Offeror because it did not meet the site control requirements;
- The Offeror had no prior PV experience;
- The technology of the offer did not meet the technology requirements.

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<sup>9</sup> SCE did establish a provisional short list for ground-mount offers to provide the opportunity for offers that had some deficiencies the opportunity to cure the deficiency. Many Offerors were able to cure the deficiencies and were included on the short list.

In this stage, the offers that failed the screens or were withdrawn were obvious and did not involve any exceptions from the Offerors.

### **11. Monitor Offer Status**

After selection of the short list, the IE met with SCE's project team to discuss "lessons learned" through the indicative offer stage and to discuss the next phase of the process, with a focus on the status of interconnection requests. Based on the information provided by the interconnection group about the uncertainty of their ability to evaluate the large number of projects in the queue, the IE suggested that SCE's project team establish a mechanism to track the progress of eligible offers. The IE also attempted to track offer status through the process by monitoring email traffic between the Offeror and SCE.

### **12. Renewable and Alternative Power ("RAP") Meeting with the PRG June 16, 2010**

On June 16, 2010, SCE's RAP team provided an update to the PRG on all renewable procurement activities, including providing a status report on the SPVP program. The information presented included a summary of eligibility to date based on the status of the interconnection screens. Information was provided on specific offers as well as a summary of the offers.

### **13. Participate in Contract Negotiations**

Two offers that were expected to qualify for submission of a binding offer were larger than 5 MW and must execute the greater than 5 MW DC PPA, which contains additional terms and conditions, including additional credit and collateral obligations of the Offeror. The IE monitored contract negotiations with the two Offerors.<sup>10</sup> One issue which emerged was that SCE somewhat delayed in posting the >5 MW contract on its website. However, to the best of our knowledge, the delay in posting the contract did not appear to limit the number of offers.

### **14. Submission of Binding Offers**

The IE received all the binding offers as required and developed a summary of the offers submitted to ensure that SCE and the IE had accurately accounted for all pertinent information about each offer.

### **15. Selection of the Preferred Offers**

SCE prepared an assessment of the offers received in the roof-top and ground-mount categories and grouped the offers into three portfolio "options" for resource selection. SCE's approach involved a ranking of the offers based on the levelized price and the

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<sup>10</sup>One Offeror successfully negotiated the contract while the second Offeror decided to withdraw its offer and did not submit a binding offer.

development of options or offer groupings based on price “break points” or price spreads. During the initial meeting between the SCE project team and the IE, the IE suggested a fourth “option” for the ground-mount category. On July 22, 2010 the SCE project team made a presentation to the RMC based on the proposed “options”, including adding a fourth “option” as recommended by the IE. After significant review and discussion, the RMC agreed on a portfolio which consisted of 31 roof-top contracts and 5 ground-mount contracts. Also, on July 22, 2010 SCE presented the proposed portfolio of offers for final contract execution to the PRG.

### **III. Did SCE Do Adequate Outreach to Bidders and Was the Solicitation Robust?**

#### **A. Were the Solicitation Materials Clear and Concise to Ensure that the Information Required by the Utility to Conduct its Evaluation Was Provided by the Bidders?**

The IE had the opportunity to review the solicitation documents and materials prior to completion and provided comments. Our comments were designed to ensure the information was consistent and clear to Offerors. While there appeared to be a few areas that may have proven to be somewhat unclear to some Offerors (i.e. site control requirements, interconnection requirements, the timing to secure a decision or resolution on interconnection, the role of RFO team and the interconnection group in the interconnection process, and contract requirements), all issues were addressed in the RFO. Also, Offerors had the opportunity to ask follow-up questions to seek clarification and participate in the RFO Conference at which the above issues were addressed. Overall, however, the IE was of the opinion that the documents and follow-up information were reasonably clear and concise for Offerors.

In addition, SCE established a website for the program and provided a significant base of information which described the program and allowed the Offerors the opportunity to craft an effective and conforming proposal. The website contained the following documents:

- RFO Participation Instructions
- Pro Forma Agreements
- Offer Template
- Site Owner's Acknowledgement Letter
- Summary of Developers Experience Form
- TOU Periods and Energy Allocation Factors
- SCE's Transmission Ranking Cost Report
- Interconnection Information via SCE's Wholesale Distribution Access Tariff
- Revenue Calculator
- Access to CPUC Website with access to all filings and CPUC Decisions, workshop information, and protests/responses of parties to Advice Letter 2364-E
- Questions and Answers
- Google Maps or Google Earth with information on specific areas within the SCE's distribution system

In addition, SCE held a 2010 Solar PV RFO Conference on April 1, 2010 which was very well attended. As previously noted, SCE also provided the opportunity for Offerors who were interested to meet with representatives from the interconnection group. However, Offerors were not notified of this option until just prior to the conference and may not have had the opportunity to plan a meeting into their schedule. Also, the limited time established for such meetings may have also served to restrict participation.

The IE also found that SCE's project team was particularly responsive to the needs of prospective bidders throughout the process and also responded very quickly and thoroughly to bidder questions. The performance of the team in the communication function with Offerors was exemplary.

**B. Identify Guidelines Used to Determine Whether the IOU Did Adequate Outreach. Did the IOU Do Adequate Outreach? If Not, Explain How it Was Deficient**

There are several criteria generally applied for assessing the performance of the utility in its outreach and marketing activities:

- Did the utility contact a large number of prospective bidders?
- Were the utility's outreach efforts active or passive?
- Did the utility adequately market the solicitation?
- Could prospective bidders easily access information about the RFP?
- Did any prospective bidders complain about the process or access to information?

Outreach activities are important to the success of a competitive solicitation process. SCE's outreach efforts targeted a large number of potential Offerors based on contacts from previous renewable solicitations and business relationships developed since then. These efforts likely played a substantial role in the very robust response in terms of number of Offerors and specific offers or projects. SCE prepared a detailed list of potential Offerors with over 1,100 contacts that serves as the database for Seller contact and outreach. SCE sent emails to all potential Offerors on this list informing them of the RFO process and the issuance of the Procurement Protocol.

Prospective Offerors were informed of the RFO through the public nature of the process via CPUC decisions, SCE Advice Letter filings, and comments of Offerors. SCE also distributed a press release in March 2010 announcing the 2010 SPVP solicitation and the RFO Conference.

As noted above, SCE also established a section on its website for distribution of information to prospective Offerors. The website contained all the pertinent solicitation documents, time tables, and a list of questions and answers related to the solicitation. A total of 51 questions and answers were posted on the website. The IE found the website easy to access and navigate. All documents associated with the SPVP RFO were included on the website and were easy to identify, access, and download.

In addition, SCE also held two Conferences for prospective Offerors. The first was the CPUC Workshop on July 31, 2010 at which SCE provided a presentation on the SPVP program. The second was the 2010 Solar PV RFO Conference held on April 1, 2010, during which SCE provided a detailed explanation on the background of the program and RFO protocol, RFO instructions, as well as a description of the Pro Forma Standard PPA and interconnection requirements. Both conferences were extremely well attended.

As previously noted, a few Offerors inquired about the timing for posting the >5 MW contract. Also, there were several emails from Offerors raising issues about the status of their interconnection applications, although to the best of our knowledge there were no complaints about access to information specifically associated with the performance of the RFO project team or the information dissemination process. As will be described later in this report, there were a few formal and several general complaints raised about the interconnection process.

### **C. Identify Guidelines Used to Determine Adequate Robustness of a Solicitation. Was the Solicitation Adequately Robust?**

With regard to assessing whether the response to the solicitation was adequately robust, there are several criteria to consider:

- Was the response to the solicitation commensurate with the level of outreach?
- Did the solicitation encourage a diverse response from Offerors in terms of products requested, project structure, pricing options, etc?
- Was the response large with respect to the number of proposals, megawatts (“MW”) offered and amount of megawatt-hours (“MWh”) bid?

The overall result of this outreach activity was a very robust response from Offerors for both roof-top and ground-mount options. Indicative offers were also received from a diverse set of Sellers (i.e. experienced well-financed Sellers as well as new market entrants) involving several photovoltaic technology options. Information regarding the offers, MW and MWh quantities offered, project location, and pricing results (for binding offers only) is contained in the Confidential Appendix A to this IE Report.

In conclusion, the outstanding response of the market to SCE’s SPVP protocol is evidence that the outreach activities of SCE were effective and Sellers felt they had an adequate opportunity to receive a contract from the process.

### **D. Did the IOUs Seek Adequate Feedback About the Bidding/Bid Evaluation Process From All Bidders After the Solicitation Was Complete?**

SCE project team members were involved in continual communications with prospective Offerors to assist the Offeror prepare a complete offer for the program. Based on the volume of email traffic between SCE and prospective Offerors, much of SCE staff time during the conduct of the process from the indicative offer stage to the binding offer stage was associated with direct involvement with bidders. Based on review of the emails, it is safe to say that virtually every Offeror was involved in active communication with SCE about the process. In addition, SCE sent out regular reminders to eligible Offerors at different stages of the process reminding bidders of scheduled timeframes and filing requirements. As a result, both SCE staff, the IE and prospective Offerors were actively engaged throughout the process.

SCE also issues a survey to participants at the RFO conference requesting that they respond with their views regarding the Conference.

Lastly, and most importantly, CPUC Resolution E-4299 requires SCE to convene a Program Forum within 60 days of each solicitation's closing date to identify Program components that may need refinement as experience is gained with the program. The IE views this Forum as an important vehicle to solicit feedback from Offerors on their experiences with the positive and negative aspects of the program in an attempt to improve program components for the next solicitation.

#### **E. Any Other Relevant Information or Observations**

The SPVP solicitation was the first of its kind undertaken in California and elsewhere. As a first initiative, the process drew a range of sophisticated project developers and new firms looking to get into the industry. As a result, we found that several bidders were unsure of the requirements of the protocol, the requirements of the interconnection process, and what they needed to do to compete. The IE found SCE staff to be unbiased and fair to all bidders, whether the bidder was a well-known and successful project developer or a start-up. All bidders had equal access to information as well as SCE staff to seek or clarify information about their projects.

### **IV. Fairness and Appropriateness of SPVP RFO Bid Evaluation and Selection Methodology and Design**

#### **A. Framework and Principles for Evaluating SCE's Methodology**

This section of the report addresses the principles and framework underlying Merrimack Energy's review of SCE's methodology for the SPVP offer evaluation and selection. Key areas of inquiry by the IE and the underlying principles used by the IE to evaluate the methodology include the following:

- Were the procurement targets, products solicited, principles and objectives clearly defined in SCE's RFO and other materials?
- Were the bid evaluation and selection process and criteria reasonably transparent such that bidders would have a reasonable indication as to how they would be evaluated and selected?
- Was SCE's bid evaluation based on and consistent with the information requested in the RFO to be submitted by bidders in their proposal documents?
- Did the evaluation methodology reasonably identify the quantitative and qualitative criteria and describe how they would be used to qualify and rank offers?
- Were the bid evaluation criteria consistently applied to all offers?
- Does the price evaluation methodology allow for consistent evaluation of bids of different sizes and in-service dates?
- Did the bid evaluation criteria and evaluation process contain any undue or unreasonable bias that might influence project ranking and selection results or in any way favor affiliate bids?
- Was the RFO clear and concise to ensure that the information required by SCE to conduct its evaluation was provided by project sponsors?

## **B. Description of SCE's Evaluation Methodology<sup>11</sup>**

This section of the report provides an overall description of SCE's evaluation methodology and criteria applicable to the 2010 SPVP RFO. Based on the nature of the program, SCE has used a leveled cost methodology to evaluate and rank all offers in both the non-binding and binding offer stages. SCE identified the offer selection process in the RFO and at the Bidders conference.

As stated in the RFO, the solicitation process will be comprised of two stages. In the first stage Offerors are required to submit non-binding offers. The requirements to submit a non-binding offer are listed in the RFO and are described earlier in this report. From a

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<sup>11</sup> As previously noted, the traditional least cost best fit methodology used by SCE for other renewable solicitations was not applicable to the SPVP process, which was designed largely to facilitate the development of small-scale roof-top solar PV projects.

price standpoint, all offers are required to be for the same term (20 years) and for the same technology (solar photovoltaic project). In addition, Offerors are required to submit a single non-binding indicative product price per MWh alternating current (“AC”) before application of the Energy Payment Allocation Factor multiplier, to be applied to the Product over the full 20-year term of the PPA. The levelized indicative product price must not be greater than \$192.50/MWh AC.

In the second stage, Offerors selected as eligible Offerors (included on short list) are eligible to submit a binding offer. SCE indicates that it will evaluate and select binding offers from eligible offers based on the following factors:

1. The five-year 250 MW DC capacity goal;
2. The limitation that no more than 10% of the overall program capacity will be ground-mount; and
3. Binding Product Price (i.e. Binding Offers will be ranked and selected based on the Binding Product Price (\$/MWh AC). Binding Offers with a lower Binding Product Price will be accepted before Binding Offers with a higher Binding Product Price. Under no circumstances will SCE accept a Binding Offer with a Binding Product Price greater than \$192.50/MWh AC.

Offerors are allowed to submit a fixed product price for the full 20-year contract term or offer a base price and fixed escalation. However, in no case can the levelized price exceed the cap of \$192.50/MWh. Offerors were required in both stages to complete and submit the 2010 Solar PV Program RFO Offer Template which served as a basic source of information for each offer.<sup>12</sup>

Offerors were also informed in the RFO that the indicative product price and binding product price submitted by the Offeror to SCE in each Offer must include:

1. All awards, subsidies, tax credits (including production tax credits and investment tax credits) with respect to the generating facility;
2. All other benefits that the Offeror reasonably expects to apply to either the indicative product price or the binding product price;
3. Direct assignment costs;
4. The assumption that:
  - a. Offeror is required to post Development Security equal to \$20.00 per kW DC of the Gross Power Rating;<sup>13</sup>

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<sup>12</sup> The Template for the non-binding offer stage did not include a cell for the bidder to offer a fixed escalation option. Instead offerors were required to describe any such escalation in a separate section of the Template. This issue was rectified for the Binding Offer process. Offerors were also encouraged by SCE to complete a Revenue Calculator so that they could estimate expected revenues over the term of the proposed contract for purposes of assessing their offer prices.

<sup>13</sup> Offers greater than 5 MW are required to utilize a separate PPA which contains additional terms and conditions than the under 5 MW standard contract including additional credit and collateral obligations of the Offeror.

- b. Each of the indicative product price and the binding product price will be adjusted in each hour of delivery by the Energy Payment Allocation Factor set forth in Appendix E to the PPA.

All Offerors, with one exception in the indicative offer stage, submitted a price below the cap. However, once informed that the price exceeded the cap, the Offeror reduced its price to conform to the pricing cap.

Also, several eligible Offerors submitted questions to SCE about the levelized pricing tool used by SCE to evaluate escalating pricing offers. Since there were multiple requests for such information, the IE suggested that SCE issue a response to all eligible Offerors with regard to the levelized pricing methodology. In response, SCE issued a general email with a copy of the levelized pricing tool for the Offerors to use in developing their binding price. In its email, SCE reminded the Offerors that the price must not exceed the \$192.50/MWh cap, that a 10% discount rate is used for the evaluation, and also described the input requirements.

As previously noted, while SCE did not strictly apply project viability criteria in assessing offers, Offerors had to meet certain criteria to be considered eligible at each stage of the process. Such factors as site control, developer experience, and interconnection status qualify as project viability criteria and do encourage Offerors to move forward with somewhat mature offers.

### **C. Evaluation of the Strengths and Weaknesses of SCE's Methodology in This Solicitation**

#### **Strengths of Evaluation and Ranking Methodology**

As described, if an offer meets the eligibility criteria at each stage of the process, the key selection criterion is price. SCE's price ranking and evaluation methodology is designed to be relatively simple and straightforward. Offers are ranked in both the non-binding and binding offer stages based on the levelized price of the offer. Offerors are provided the flexibility to offer a fixed price over 20 years or a price which escalates by a fixed escalation factor. SCE also provided the Offerors on the short list with their levelized price tool which allowed the Offeror the ability to ensure it could assess the implications of fixed versus escalating pricing. In combination with the simple ranking and evaluation methodology (which are appropriate for this type of solicitation with a specific term and technology and the presence of a price cap) the Template provided by SCE (after corrections for escalated pricing) was fairly simple to follow and complete. Offerors appeared to have little or no difficulty with this process.

With regard to the other evaluation criteria and minimum requirements, SCE has included reasonable criteria to ensure the offers submitted are not merely "concepts" but at least are relatively mature projects with identified sites proposed by Offerors who have

a development team with experience to complete such projects. Identification of interconnection status is also an important criterion for such a process.

The minimal requirements and straightforward price evaluation is designed to ease the financial and time requirements normally placed on larger projects competing through the RPS solicitations. The more limited requirements should therefore encourage a larger number of smaller projects to compete in a solicitation designed to encourage such projects.

### **Weaknesses of the Evaluation and Ranking Methodology**

While we feel the quantitative evaluation and ranking methodology was reasonable for such a solicitation process designed to encourage smaller solar PV projects, particularly roof-top solar projects, by reducing the cost and time required to develop and construct the project, there are a few criteria and requirements that may have limited the level of final competition or led to a costly process for some Offerors. First, Merrimack Energy had expressed some concerns about the level of site control required at the time of submission of the non-binding offer. Merrimack Energy felt that at the time of submission of the non-binding offer, Offerors should, at a minimum, be required to submit a Letter of Intent for the site rather than demonstrate firm site control. Our concern was that the level of expenditure required to secure firm site control without a guarantee of securing a contract for small project developers may be a hindrance for competition. While it can be argued that the requirement of firm site control did not discourage smaller project developers based on the response to this RFO, we do have concerns that such an experience could limit competition in future solicitations. We do agree that requiring firm site control at the time of contract execution should be a requirement for contract execution.

The uncertainty associated with interconnection status was another major weakness of the process. While there were a number of reasons why projects were not able to meet the interconnection requirements, there was a level of frustration expressed by several Offerors. In some cases, smaller and less experience developers did not understand the interconnection process. While SCE attempted to describe the requirements for interconnection and who to contact, this process appeared to be problematic for some. Others had difficulty meeting interconnection requirements due their inability to provide all the information required to complete their studies. Still others did not submit their applications early enough to secure a priority place in the interconnection queue and were therefore not in a position to have their studies completed. There were also a few cases where Offerors interpreted the feedback they received from the interconnection group at SCE that they would be able to meet the RFO requirements on time to submit a binding offer only to find out later that SCE was not able to complete the analysis on time.

### **D. Recommended Future Improvements in the Evaluation and Ranking Process**

The IE questions whether the two-stage non-binding and binding bid process is the most workable and efficient process for this type of solicitation. First, there may be little value

associated with an indicative or non-binding bid stage in a solicitation where there is a price cap in any case. Also, if the process is based only on a binding offer, Offerors could have more time to secure site control and assess the status of their interconnection application and requirements prior to submitting a binding offer. While more Offerors may fall out in the project development phase under a binding offer only process, the Offeror would be in a more preferable position to assess its financial situation than to be required to meet certain criteria at different points in the process as included in the two-stage process.

If SCE maintains a two-stage process, we would recommend that Offerors should be required to only provide a Letter of Intent for the site when they submit their non-binding offer and then be required to meet firm site control requirements upon or just before contract execution. We also believe that a more informative interconnection process should be established. One option may be to encourage the interconnection group at SCE to provide progress reports and a non-binding probability assessment at key intervals whether a specific project would likely qualify on time to submit a binding offer.

#### **E. Additional Information or Observations Regarding SCE's Evaluation Methodology**

No additional information or observations are provided.

## **V. Did SCE Fairly Administer the Evaluation Process?**

### **A. Principles and Guidelines Used to Determine Fairness of Process**

In evaluating SCE's performance in implementing the 2010 SPVP solicitation process, Merrimack Energy has applied a number of principles and factors, which incorporate those suggested by the Commission's Energy Division as well as additional principles that Merrimack Energy has used in its oversight of other competitive bidding processes. These include:

- Were all Offerors treated the same regardless of the identity of the Offeror?
- Were Offerors questions answered fairly and consistently and the answers made available to all?
- Was the economic evaluation of the bids fair and consistent?
- Were the requirements listed in the Procurement Protocol applied in the same manner to all proposals?
- Was there evidence of any undue bias regarding the evaluation and selection of different type of product, project structures, or bid sizes, that cannot be reasonably explained?
- Did SCE ask for "clarifications" in a manner that provided the bidder an unfair advantage over others?
- Did all bidders have access to the same information?

#### **B. Description of IE Methodology Used to Evaluate Administration of SCE's SPVP Process**

As previously discussed, the IE was actively involved in all phases of the process. The IE was copied on all emails exchanged between SCE and Offerors including receiving copies of all offers, supporting documents, and contracts. The IE was also included in project team meetings to discuss the status of the process and issues which were raised. The IE also compiled summaries of non-binding and binding offers and was able to follow the progress of the process throughout.

Based on our involvement, we conclude that SCE reasonably followed the criteria outlined in the Procurement Protocol. In addition, the evaluation was consistent and equitable across different types of products. SCE's overall approach for this initial solicitation was to be more inclusive and attempt to work with Offerors to ensure they could conform, if reasonably possible.

Based on our assessment of the evaluation process relative to the above criteria, it is our opinion that all Offerors were treated fairly and consistently and all generally had access to the same amount and quality of information. The IE did make a few suggestions to provide specific information to Offerors such as a reminder of the schedule and

requirements for submitting information at various stages in the process and a copy and description of the levelized price methodology, which SCE did provide to all eligible Offerors.

SCE maintained a website dedicated to the 2010 SPVP and posted all documents and a number of Offeror questions and answers on the website. While individual Offerors submitted questions directly to SCE and received quick responses, many of the questions pertained specifically to an Offeror's project. As previously noted, the RFO Conference held by SCE provided detailed information to all bidders with regard to the evaluation methodology and the requirements for Offerors to provide the information requested. We also observed no difference in the treatment of Offerors regarding clarification questions for Offerors, correspondence and communications with Offerors, and follow-up contacts. Finally, SCE generally implemented the evaluation criteria and methodologies as outlined in the Procurement Protocol. We noted as one exception the resolution of the site control issue mentioned previously in this report.

In addition to including the Confidentiality provision in the RFO, SCE also provided the IE a document entitled "Policies and Procedures Concerning Affiliate Participation in SCE Request for Offers and Request for Proposals," dated March 14, 2010. The document establishes the internal policies and procedures to be followed in connection with SCE solicitations. SCE also established an internal Audit function for the SPVP RFO designed to conduct an independent assessment of SCE compliance with CPUC Orders. The audit function is also involved in ensuring the process is fair and the confidentiality requirements are adhered to.

During the course of the solicitation, the IE received a call from SCE legal staff identifying a situation where the confidentiality procedures had been affected. In this case, a document from the IPP portion of the program had inadvertently made its way to a UOG team member. The staff person alerted the appropriate personnel, closed the document and deleted it. The UOG staff member did not know who the bidder was and had no information on pricing. This issue was brought to the attention of the internal auditor and was reported and discussed with the IE.

## **C. Results Analysis**

### **Identify instances where the IE and the IOU disagreed in the evaluation process**

As previously noted, the IE and SCE disagreed on a few issues. First, the IE had questions about the requirement that Offerors demonstrate firm site control at the time they submit their non-binding offer. The IE was of the opinion that a letter of intent would be adequate at the time the non-binding offer was submitted and that demonstration of firm site control should not be required until the binding offer was submitted.

The IE also disagreed with the SPVP project team with regard to the Options identified for the binding offers and initial selection of the preferred option. The IE suggested

adding an additional project to one of the option categories. The SPVP project team created a different Option (i.e. Option 1.1) which contained the IE's recommendation.

The IE and SCE had minor differences with regard to the initial list of offers in the non-binding offer stage. This was more of a bid compilation issue and the IE and SCE compared their lists and developed a consistent list of offers.

#### **D. Administration of the Bid Evaluation Process**

The IE has concluded that the proposal evaluation process was fairly administered with respect to all proposals. Since there were no affiliate offers, issues associated with affiliate offers were not a factor in the assessment. The IE felt that the SPVP project team performed their function in communicating with Offerors in an exemplary manner. Responses from SCE to the Offerors were generally thorough and informative and were very timely for the Offeror.

#### **E. Any Other Relevant Information**

During the process, while the emails from a few Offerors illustrated frustration in understanding the interconnection process, only two complaints were submitted and both via email. One Offeror submitted an email to the SPVP project team arguing that its projects would not require system upgrades and would qualify for the RFO in contradiction to the response to the Offeror from the SCE interconnection group notifying the Offeror that it will not be able to complete system upgrade studies for the offers. The IE reviewed the RFO and concluded that it would not be fair to other Offerors if this Offeror was allowed to submit a binding offer based on its own view that its projects would not require system upgrades.

A second Offeror complained because Transmission Planning had informed the Offeror that it anticipated there would be no network upgrades required for the project and the System Impact Study would be delivered by July 12, 2010. The Offeror was subsequently informed that the System Impact Study had been delayed and will not be delivered on time.

### **VI. Project Specific Contract Negotiations**

All but one of the contracts submitted by SCE for approval in the SPVP process was based on the less than 5 MW Standard Contract. The Cascade Solar LLC contract was based on the negotiated contract (i.e. > 5 MW). The IE monitored the contract

negotiations between SCE and the Offeror and found the negotiations to be fair and reasonable. The negotiation process was open and competitive and the parties reached agreement within a reasonable timeframe given the schedule time limits included in the RFO. The IE recommends approval of this contract.

## **VI. Conclusions and Recommendations**

### **A. Conclusions**

For the reasons stated herein, Merrimack Energy concludes that the offer selection decisions by SCE in the 2010 SPVP process were reasonable and based on the requirements, evaluation criteria and stated preferences set forth in the Procurement Protocol. Furthermore, the offers and contracts were selected through a competitive solicitation process with a robust response. In implementing the process, SCE was fair and reasonable to all Offerors, provided consistent and thorough information to Offerors, and was unbiased in the treatment of any Offeror. Furthermore, SCE's project team was very responsive to the requirements of Offerors and treated all Offerors equally. Merrimack Energy therefore recommends approval of the contracts.

### **B. Recommendations**

However, we recommend that in the next renewable solicitation that SCE consider changes to improve the procurement process, including the following:

1. SCE should reconsider the use of a two stage (i.e. non-binding offer stage and binding offer stage) solicitation and evaluation process for future SPVP solicitations. In our view, the two-stage process may not have provided value commensurate with the additional requirements placed on SCE staff and the Offerors. The indicative pricing information provided by Offerors provided very limited value, particularly in a process where all offers that meet specified minimum requirements are eligible to submit a binding offer and a price cap exists. The non-binding pricing requirements along with the requirement that Offerors provide demonstration of a firm site commitment, adds a financial burden to Offerors. A single-stage binding offer process in combination with a requirement that Offerors demonstrate firm site control and interconnection status at the time they submit their binding offer or execute their contract may be more palatable without negatively affecting participation in the process. In our view, such a process provides a more informed decision making process for the Offeror who can decide prior to submitting an offer whether it has a reasonable chance to compete. This initial process encouraged Offerors to keep their projects alive for longer in the hope that they could possibly meet RFO requirements;
2. Should SCE continue to apply a two-stage process, we would recommend revising the site control requirements in any case. For the non-binding offer stage, a letter of intent for the site should be sufficient as is common in many other solicitation processes. We feel demonstration of firm site control in this process

should be provided either at the time of submission of the binding offer or at the time of contract execution. This would serve to limit the cost exposure to Offerors. Based on the current requirement it is challenging for Offerors to secure firm site control before they are actually awarded a contract. The cost of securing firm site control with no certainty of getting a contract could discourage some Offerors who may not have the financial wherewithal to secure sites;

3. The inclusion of larger ground-mounted projects in this first solicitation added complexities in the process and additional time pressures that may have negatively affected the success of more roof-top projects. For example, these projects also applied for positions in the interconnection queue. Also, since the >5 MW contract was utilized, additional contract development, review, and negotiation time was required. Since the majority of the ground-mounted requirements have been contracted for, the IE suggests that future SPVP solicitations should be limited to smaller roof-top projects secured via the standard under 5 MW contract;
4. The uncertainty associated with the interconnection process, including the Offeror knowledge of the status of their applications, proved to be a very challenging process and raised concerns for a number of Offerors. As a result, we would recommend a more structured process for providing feedback to Offerors. Merrimack Energy would suggest the following process for the interconnection group to keep Offerors informed on their status:
  - a. Within one week of receipt of the interconnection application, the interconnection group would inform the Offeror of its expectation of the probability (non-binding) for the Offerors' projects to meet the interconnection requirements based on other projects in the queue and the location of the project;
  - b. The interconnection group should provide regular monthly updates to Offerors on the probability of their projects meeting RFO requirements, including the reasons for any change in the probability;
  - c. Offerors would then have at least a reasonable expectation if their application would meet RFO requirements prior to submitting an offer;
  - d. Based on the nature of generation interconnection, the probability assessment would be based on the interconnection group's best assessment at any point in time but would not be legally binding. The intent would be to provide up-to-date information to allow Offerors to decide to go forward with their offers or decide to withdraw.
5. Opportunities for meetings between Offerors and representatives from the interconnection group at the time of the RFO conference should be expanded. The IE found these meetings to be informative and such meetings could be structured to provide valuable exchange of information between Offerors and SCE's interconnection group and greater insight to Offerors;

6. The internal audit function utilized by SCE was an important step toward ensuring that confidential information was not exchanged between the SPVP project team and the UOG team. The IE recommends that the audit function should be maintained for future SPVP solicitations where projects are secured through both the UOG program and the PPA program;
7. Assess whether the existing process of responding to Offeror questions is the most effective mechanism for use of SCE internal resources. As noted, the IE found SCE's SPVP project team to be very responsive to Offerors and to "hold Offerors' hands" through the process. While this role was important for the first RFO, the IE is concerned that Offerors may become too complacent and in effect rely on SCE staff to "develop their proposal." In addition, Offerors generally begin to ask frivolous questions if access to a key decision-maker is easy. While it is essential for SCE staff to communicate with Offerors about project-specific issues, we feel more of the communications should be handled via Q&A on the RFO website, particularly before offers are received;
8. Revise Offer experience requirements in the RFO in the following manner:
  - a. State in the RFO that Offerors can meet the experience requirements through the experiences of members of its project team rather than just the experience of the Offeror;
  - b. Broaden the experience requirements to include three renewable projects of any technology, not just solar PV;
  - c. Consider pre-qualifying Offerors who clearly meet the experience requirements in a previous RFO. This could be done through a "check the box" response by the Offeror indicating it has met the experience requirements in previous RFOs or RFPs.

**Appendix J**  
**Confidentiality Declaration**

**DECLARATION OF GEORGE WILTSEE REGARDING THE CONFIDENTIALITY OF  
CERTAIN DATA**

I, George Wiltsee, declare and state:

1. I am an Energy Contract/Trading Specialist in the Renewable and Alternative Power department of Southern California Edison Company ("SCE"). As such, I had responsibility for preparing and supervising the preparation of this Advice Letter ("Protected Materials"). I make this declaration in accordance with Decision ("D.") 06-06-066, the Administrative Law Judge's Ruling Clarifying Interim Procedures for Complying with D.06-06-066, issued on August 22, 2006 in California Public Utilities Commission ("Commission" or "CPUC") Rulemaking ("R.") 05-06-040, and D.08-04-023. I have personal knowledge of the facts and representations herein and, if called upon to testify, could and would do so, except for those facts expressly stated to be based upon information and belief, and as to those matters, I believe them to be true.

2. I have reviewed the Protected Materials. Listed below are the data in the Protected Materials for which SCE is seeking confidential protection and the categories on the Matrix of Allowed Confidential Treatment Investor Owned Utility ("IOU") Data ("Matrix") to which these data correspond.

<b>Data</b>	<b>Page</b>	<b>Matrix Category</b>	<b>Period of Confidentiality</b>
Consistency with Commission Decisions and Rules and Project Development Status	Appendix A	VII.F/VII.G RPS Contracts  VII.H Score sheets, analyses, evaluations of proposed RPS projects  VIII.A Bid Information  VIII.B Specific quantitative	RPS contracts confidential for three years, or until one year following expiration, whichever comes first.  Score sheets, analyses, evaluations of proposed RPS projects confidential for three years.  For bid information,

		analysis involved in the scoring and evaluation of participating bids	total number of projects and megawatts bid by resource type public after final contracts submitted to CPUC for approval.  Specific quantitative analysis involved in the scoring and evaluation of participating bids confidential for three years after winning bidders selected.
2010 SPVP Solicitation Overview and Workpapers	Appendix B	VII.F/VII.G RPS Contracts  VII.H Score sheets, analyses, evaluations of proposed RPS projects  VIII.A Bid Information  VIII.B Specific quantitative analysis involved in the scoring and evaluation of participating bids	RPS contracts confidential for three years, or until one year following expiration, whichever comes first.  Score sheets, analyses, evaluations of proposed RPS projects confidential for three years.  For bid information, total number of projects and megawatts bid by resource type public after final contracts submitted to CPUC for approval.  Specific quantitative analysis involved in the scoring and evaluation of participating bids confidential for three years after winning bidders selected.
Confidential Contract Summary	Confidential Appendix C	VII.F/VII.G RPS Contracts  VII.H Score sheets, analyses, evaluations of proposed RPS projects	RPS contracts confidential for three years, or until one year following expiration, whichever comes first.  Score sheets, analyses,

		<p>VIII.A Bid Information</p> <p>VIII.B Specific quantitative analysis involved in the scoring and evaluation of participating bids</p>	<p>evaluations of proposed RPS projects confidential for three years.</p> <p>For bid information, total number of projects and megawatts bid by resource type public after final contracts submitted to CPUC for approval.</p> <p>Specific quantitative analysis involved in the scoring and evaluation of participating bids confidential for three years after winning bidders selected.</p>
Comparison of Cascade PPA with SCE's Standard SPVP Power Purchase Agreement	Confidential Appendix D	VII.F/VII.G RPS Contracts	RPS contracts confidential for three years, or until one year following expiration, whichever comes first.
Cascade PPA	Confidential Appendix E	VII.F/VII.G RPS Contracts	RPS contracts confidential for three years, or until one year following expiration, whichever comes first.
Cascade PPA's Contribution Toward RPS Goals	Confidential Appendix F	V.C LSE Total Energy Forecast – Bundled Customer	LSE total energy forecast – bundled customer front three years of forecast data confidential.
AMF Calculator for the Cascade PPA	Confidential Appendix G	<p>VII.F/VII.G RPS Contracts</p> <p>VII.H Score sheets, analyses, evaluations of proposed RPS projects</p> <p>VIII.B Specific quantitative analysis involved in the</p>	<p>RPS contracts confidential for three years, or until one year following expiration, whichever comes first.</p> <p>Score sheets, analyses, evaluations of proposed RPS projects confidential for three years.</p>

		scoring and evaluation of participating bids	Specific quantitative analysis involved in the scoring and evaluation of participating bids confidential for three years after winning bidders selected.
Rate Impact Information	Confidential Appendix H	<p>VII.H Score sheets, analyses, evaluations of proposed RPS projects</p> <p>VIII.A Bid Information</p> <p>VIII.B Specific quantitative analysis involved in the scoring and evaluation of participating bids</p>	<p>Score sheets, analyses, evaluations of proposed RPS projects confidential for three years.</p> <p>For bid information, total number of projects and megawatts bid by resource type public after final contracts submitted to CPUC for approval.</p> <p>Specific quantitative analysis involved in the scoring and evaluation of participating bids confidential for three years after winning bidders selected.</p>
Independent Evaluator Report	Confidential Version of Appendix I	<p>VII.F/VII.G RPS Contracts</p> <p>VII.H Score sheets, analyses, evaluations of proposed RPS projects</p> <p>VIII.A Bid Information</p> <p>VIII.B Specific quantitative analysis involved in the scoring and evaluation of participating bids</p>	<p>RPS contracts confidential for three years, or until one year following expiration, whichever comes first.</p> <p>Score sheets, analyses, evaluations of proposed RPS projects confidential for three years.</p> <p>For bid information, total number of projects and megawatts bid by resource type public after final contracts submitted to CPUC for approval.</p>

			Specific quantitative analysis involved in the scoring and evaluation of participating bids confidential for three years after winning bidders selected.
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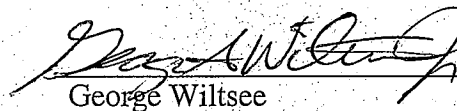
3. SCE is complying with the limitations on confidentiality specified in the Matrix that pertain to the data listed in the table above.

4. I am informed and believe and thereon allege that the data in the table above cannot be aggregated, redacted, summarized, masked or otherwise protected in a manner that would allow partial disclosure of the data while still protecting confidential information.

5. I am informed and believe and thereon allege that the data in the table in paragraph 2 above has never been made publicly available.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on September 16, 2010, at Rosemead, California.

  
George Wiltsee

**Appendix K**

**Proposed Protective Order**

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

Submission of Power Purchase and Sale )  
Agreement for Procurement of Renewable )  
Energy from SCE's 2010 Solar Photovoltaic  
Program Solicitation

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**Advice 2514-E**

**PROTECTIVE ORDER**

1. Scope. This Protective Order shall govern access to and the use in this proceeding of Protected Materials produced by, or on behalf of, any Disclosing Party.

2. Modification. This Protective Order shall remain in effect until it is modified or terminated by the California Public Utilities Commission ("Commission") or Assigned Administrative Law Judge ("Assigned ALJ"). The parties acknowledge that the identity of the parties submitting Protected Materials may differ from time to time. In light of this situation, the parties agree that modifications to this Protective Order may become necessary, and they further agree to work cooperatively to devise and implement such modifications in as timely a manner as possible. Each party governed by this Protective Order has the right to seek changes in it as appropriate from the Assigned ALJ or the Commission.

3. Definitions.

A. The term "Protected Material(s)" means: (i) trade secret, market sensitive, or other confidential and/or proprietary information as determined by the Disclosing Party in accordance with the provisions of D.06-06-066 and subsequent decisions, General Order 66-C, and Public Utilities Code section 454.5(g), or any other right of confidentiality provided by law; or (ii) any other materials that are made subject to this Protective Order by the Assigned ALJ, Law and Motion Administrative Law Judge ("Law and Motion ALJ"), Assigned Commissioner, the Commission, or any court or other body having appropriate authority. Protected Materials also includes memoranda, handwritten notes, spreadsheets, computer files and reports, and any

other form of information (including information in electronic form) that copies, discloses, or compiles other Protected Materials or from which such materials may be derived (except that any derivative materials must be separately shown to be confidential). Protected Materials do not include: (i) any information or document contained in the public files of the Commission or any other state or federal agency, or in any state or federal court; or (ii) any information that is public knowledge, or which becomes public knowledge, other than through disclosure in violation of this Protective Order or any other protective order.

B. The term “redacted” refers to situations in which Protected Materials in a document, whether the document is in paper or electronic form, have been covered, blocked out, or removed. The term “unredacted” refers to situations in which the Protected Materials in a document, whether in paper or electronic form, have not been covered, blocked out, or removed.

C. The term “Disclosing Party” means a party who initially discloses any specified Protected Materials in this proceeding.

D. The term “Market Participant” (“MP”) refers to a party that is:

- 1) A person or entity, or an employee of an entity, that engages in the wholesale purchase, sale, or marketing of energy or capacity, or the bidding on or purchasing of power plants, or bidding on utility procurement solicitations, or consulting on such matters, subject to the limitations in (3) below.
- 2) A trade association or similar organization, or an employee of such organization,
  - a) whose primary focus in proceedings at the Commission is to advocate for persons/entities that purchase, sell, or market energy or capacity at wholesale; bid on, own, or purchase power plants; or bid on utility procurement solicitations; or
  - b) a majority of whose members purchase, sell, or market energy or capacity at wholesale; bid on, own, or purchase power plants; or bid on utility procurement solicitations; or
  - c) formed for the purpose of obtaining market sensitive information; or
  - d) controlled or primarily funded by a person or entity whose primary purpose is to purchase, sell, or market energy or

capacity at wholesale; bid on, own, or purchase power plants; or bid on utility procurement solicitations.

- 3) A person or entity that meets the criteria of (1) above is nonetheless not an MP for purposes of access to market sensitive data unless the person/entity seeking access to market sensitive information has the potential to materially affect the price paid or received for electricity if in possession of such information. An entity will be considered not to have such potential if:
  - a) the person or entity's participation in the California electricity market is *de minimis* in nature. In the resource adequacy proceeding (R.05-12-013), it was determined in D.06-06-064, § 3.3.2, that the resource adequacy requirement should be rounded to the nearest megawatt ("MW"), and load serving entities ("LSEs") with local resource adequacy requirements less than 1 MW are not required to make a showing. Therefore, a *de minimis* amount of energy would be less than 1 MW of capacity per year, and/or an equivalent of energy; and/or
  - b) the person or entity has no ability to dictate the price of electricity it purchases or sells because such price is set by a process over which the person or entity has no control, *i.e.*, where the prices for power put to the grid are completely overseen by the Commission, such as subject to a standard offer contract or tariff price. A person or entity that currently has no ability to dictate the price of electricity it purchases or sells under this section, but that will have such ability within one year because its contract is expiring or other circumstances are changing, does not meet this exception; and/or
  - c) the person or entity is a cogenerator that consumes all the power it generates in its own industrial and commercial processes, if it can establish a legitimate need for market sensitive information.

E. An MP's Reviewing Representatives are limited to persons designated by the MP who meet the following criteria:

1. are outside experts, consultants, or attorneys;
2. are not currently engaged, directly or indirectly, in: (a) the purchase, sale, or marketing of electrical energy or capacity or natural gas (or the direct supervision of any employee(s) whose duties include such activities); (b) the bidding on or purchasing of power plants (or the direct supervision of any employee(s) whose duties include such activities); (c) consulting with or advising others in connection with any activity set forth in subdivisions (a)

or (b) above (or the direct supervision of any employee(s) whose duties include such activities or consulting); and

3. are not an employee of an MP.

F. Persons or entities that do not meet the definition of MP are non-market participants (“NMPs”), and may have access to market sensitive information through their designated Reviewing Representatives. An attorney or consultant that simultaneously represents MPs and NMPs may not have access to market sensitive data. If, on the other hand, simultaneous representation is of MP and NMP clients involved in completely different types of matters, there should be no bar (although there may be ethical implications of such representation that we do not address here). For example, if an attorney represents an MP in matters unrelated to procurement, resource adequacy, RPS, or the wholesale purchase, sale, or marketing of energy or capacity, or the bidding on or purchasing of power plants, or bidding on utility procurement solicitations, in a forum other than this Commission, and simultaneously represents an NMP in cases related to these topics before the Commission, there should be no bar to the attorney's receipt of market sensitive data (pursuant to a non-disclosure agreement and protective order) in the latter matter. In close cases, the balance should militate to bar simultaneous representation because of the risks it poses.

G. All Reviewing Representatives are required to execute a non-disclosure agreement and are bound by the terms of this Protective Order.

4. Designation of Materials. When filing or providing in discovery any documents containing Protected Materials, a party shall physically mark such documents on each page (or in the case of non-documentary materials such as computer diskettes, on each item) as “PROTECTED MATERIALS SUBJECT TO PROTECTIVE ORDER,” or with words of similar import as long as one or more of the terms, “Protected Materials,” “Protective Order,” or “General Order No. 66-C” is included in the designation to indicate that the materials in question are protected.

All materials so designated shall be treated as Protected Materials unless and until the designation is withdrawn pursuant to Paragraph 17, below, or an ALJ, Commissioner, or other Commission representative makes a determination changing the designation.

All documents containing Protected Materials that are filed with the Commission or served shall be placed in sealed envelopes or otherwise appropriately protected and shall be endorsed to the effect that they are filed or served under seal pursuant to this Protective Order. Such documents shall be served upon Reviewing Representatives and persons employed by or working on behalf of the state governmental agencies referred to in Paragraph 12, below, who are eligible and have requested to review such materials. Service upon the persons specified in the foregoing sentence may either be by electronic mail in accordance with the procedures adopted in this proceeding, by facsimile, or by overnight mail or messenger service. Whenever service of a document containing Protected Materials is made by overnight mail or messenger service, the Assigned ALJ shall be served with such document by hand on the date that service is due.

5. Redaction of Documents. Whenever a party files, serves, or provides in discovery a document that includes Protected Materials (including but not limited to briefs, testimony, exhibits, and responses to data requests), such party shall also prepare a redacted version of such document. The redacted version shall enable persons familiar with this proceeding to determine with reasonable certainty the nature of the data that has been redacted and where the redactions occurred. The redacted version of a document to be filed shall be served on all persons on the service list and the redacted version of a discovery document shall be served on all persons entitled thereto.

6. Selection of Reviewing Representatives. Each MP and NMP selecting a Reviewing Representative shall first identify its proposed Reviewing Representative to the Disclosing Party. An attorney or consultant that simultaneously represents MPs and NMPs may not have access to market sensitive data, subject to the exception in Paragraph (3)F, above. Any designated

Reviewing Representative has a duty to disclose to the Disclosing Party any potential conflict that puts her/him in violation of D.06-12-030. A resume or curriculum vitae is reasonable disclosure of such potential conflicts and should be the default evidence provided in most cases.

7. Access to Protected Materials and Use of Protected Materials. Subject to the terms of this Protective Order, Reviewing Representatives shall be entitled access to Protected Materials. All other parties in this proceeding shall not be granted access to Protected Materials, but shall instead be limited to reviewing redacted versions of documents. Reviewing Representatives may make copies of Protected Materials, but such copies become Protected Materials. Reviewing Representatives may make notes of Protected Materials, which shall be treated as Notes of Protected Materials if they disclose the contents of Protected Materials. Protected Materials obtained by a party in this proceeding may also be requested by that party in a subsequent Commission proceeding, subject to the terms of any protective order governing that subsequent proceeding, without constituting a violation of this order.

8. Maintaining Confidentiality of Protected Materials. Each Reviewing Representative shall treat Protected Materials as confidential in accordance with this Protective Order and the Non-Disclosure Certificate executed pursuant to Paragraphs 7 and 8. Protected Materials shall not be used except as necessary for the conduct of this proceeding, and shall not be disclosed in any manner to any person except: (a) Reviewing Representatives who have executed Non-Disclosure Certificates; (b) Reviewing Representatives' paralegal employees and administrative personnel, such as clerks, secretaries, and word processors, to the extent necessary to assist the Reviewing Representatives, provided that they shall first ensure that such personnel are familiar with the terms of this Protective Order and have signed a Non-Disclosure Certificate; or (c) persons employed by or working on behalf of the California Energy Commission ("CEC") or other state governmental agencies covered in Paragraph 12, below. Reviewing Representatives shall adopt suitable measures to maintain the confidentiality of Protected Materials they have obtained pursuant to this Protective Order and shall treat such Protected Materials in the same

manner as they treat their own most highly confidential information. Reviewing Representatives shall be liable for any unauthorized disclosure or use by their paralegal employees or administrative staff. In the event any Reviewing Representative is requested or required by applicable laws or regulations, or in the course of administrative or judicial proceedings (in response to oral questions, interrogatories, requests for information or documents, subpoena, civil investigative demand, or similar process) to disclose any Protected Materials, they shall immediately inform the Disclosing Party of the request and the Disclosing Party may, at its sole discretion and cost, direct any challenge or defense against the disclosure requirement, and the Reviewing Representative shall cooperate in good faith with such party either to oppose the disclosure of the Protected Materials consistent with applicable law or to obtain confidential treatment of them by the person or entity who wishes to receive them prior to any such disclosure. If there are multiple requests for substantially similar Protected Materials in the same case or proceeding where a Reviewing Representative has been ordered to produce certain specific Protected Materials, the Reviewing Representative may, upon request for substantially similar materials by another person or entity, respond in a manner consistent with that order to those substantially similar requests.

9. Exception for California Independent System Operator (CAISO). Notwithstanding any other provision of this Protective Order, with respect to a CAISO Reviewing Representative only, participation in the CAISO's operation of the CAISO-controlled grid and in its administration of the CAISO-administered markets, including, but not limited to, markets for ancillary services, supplemental energy, congestion management, and local area reliability services, shall not be deemed to be a violation of this Protective Order.

10. Non-Disclosure Certificates. A Reviewing Representative shall not inspect, participate in discussions regarding, or otherwise be granted access to, Protected Materials unless and until she/he has first completed and executed a Non-Disclosure Certificate, attached hereto as Appendix A, and delivered the original, signed Non-Disclosure Certificate to the Disclosing

Party. The Disclosing Party shall retain the executed Non-Disclosure Certificates pertaining to the Protected Materials it has disclosed and shall promptly provide copies of the Non-Disclosure Certificates to Commission Staff upon request.

11. Return or Destruction of Protected Materials. Protected Materials shall remain available to Reviewing Representatives until the later of the date that an order terminating this proceeding becomes no longer subject to judicial review, or the date that any other Commission proceeding relating to the Protected Materials is concluded and no longer subject to judicial review. If requested to do so in writing after that date, the Reviewing Representatives shall, within fifteen (15) days of such request, return the Protected Materials (including Notes of Protected Materials) to the party that produced them, or shall destroy the materials, except that copies of filings, official transcripts, and exhibits in this proceeding that contain Protected Materials and Notes of Protected Materials may be retained if they are maintained in accordance with Paragraph 8, above. Within such time period each Reviewing Representative, if requested to do so, shall also submit to the Disclosing Party an affidavit stating that, to the best of its knowledge, all Protected Materials and all Notes of Protected Materials have been returned or have been destroyed or will be maintained in accordance with Paragraph 8, above. To the extent Protected Materials are not returned or destroyed, they shall remain subject to this Protective Order and General Order No. 66-C. In the event that a Reviewing Representative to whom Protected Materials are disclosed ceases to be engaged to provide services in this proceeding, access to such materials by that person shall be terminated. Even if no longer engaged in this proceeding, every such person shall continue to be bound by the provisions of this Protective Order and the Non-Disclosure Certificate.

12. Access and Use by Governmental Entities.

A. In the event the Commission receives a request from the CEC for a copy of or access to any party's Protected Materials, the procedure for handling such requests shall be as follows. Not less than five (5) days after delivering written notice to the Disclosing Party of the

request, the Commission shall release such Protected Materials to the CEC upon receipt from the CEC of an Interagency Information Request and Confidentiality Agreement (“Interagency Confidentiality Agreement”). Such Interagency Confidentiality Agreement shall: (i) provide that the CEC will treat the requested Protected Materials as confidential in accordance with this Protective Order; (ii) include an explanation of the purpose for the CEC’s request, as well as an explanation of how the request relates to furtherance of the CEC’s functions; (iii) be signed by a person authorized to bind the CEC contractually; and (iv) expressly state that furnishing of the requested Protected Materials to employees or representatives of the CEC does not, by itself, make such Protected Materials public. In addition, the Interagency Confidentiality Agreement shall include an express acknowledgment of the Commission’s sole authority (subject to judicial review) to make the determination whether the Protected Materials should remain confidential or be disclosed to the public, notwithstanding any provision to the contrary in the statutes or regulations applicable to the CEC.

B. In the event the Commission receives a request for a copy of or access to a party’s Protected Materials from a state governmental agency other than the CEC that is authorized to enter into a written agreement sufficient to satisfy the requirements for maintaining confidentiality set forth in Government Code section 6254.5(e), the Commission may, not less than five (5) days after giving written notice to the Disclosing Party of the request, release such protected materials to the requesting governmental agency, upon receiving from the requesting agency an executed Interagency Confidentiality Agreement that contains the same provisions described in section (a), above.

C. The CEC may use Protected Materials when needed to fulfill its statutory responsibilities or cooperative agreements with the Commission. Commission confidentiality designations will be maintained by the CEC in making such assessments and the CEC will not publish any assessment that directly reveals the data or allows the data submitted by an individual LSE to be “reverse engineered.”

13. Dispute Resolution. Any parties involved in disputes that arise under this Protective Order, including, but not limited to, alleged violations of this Protective Order and disputes concerning whether materials were properly designated as Protected Materials, shall first meet and confer in an attempt to resolve such disputes. If the meet and confer process is unsuccessful, the involved parties may present the dispute for resolution to the Assigned ALJ or the Law and Motion ALJ.

14. Other Objections to Use or Disclosure. Nothing in this Protective Order shall be construed as limiting the right of a party, the Commission Staff, or a state governmental agency covered in Paragraph 12, above, from objecting to the use or disclosure of Protected Materials on any legal ground, such as relevance or privilege.

15. Remedies. Any violation of this Protective Order shall constitute a violation of an order of the Commission. Notwithstanding the foregoing, the parties and Commission Staff reserve their rights to pursue any legal or equitable remedies that may be available in the event of an actual or anticipated disclosure of Protected Materials.

16. Withdrawal of Designation. A Disclosing Party may agree at any time to remove the “Protected Materials” designation from any materials of such party if, in its opinion, confidentiality protection is no longer required. In such a case, the Disclosing Party will notify all other parties that the Disclosing Party believes are in possession of such materials of the change of designation.

17. Interpretation. Titles are for convenience only and may not be used to restrict the scope of this Protective Order.

Entered: \_\_\_\_\_  
Administrative Law Judge

Date: \_\_\_\_\_

**APPENDIX A TO PROTECTIVE ORDER**

**BEFORE THE PUBLIC UTILITIES COMMISSION**

**OF THE STATE OF CALIFORNIA**

Submission of Power Purchase and Sale )  
Agreement for Procurement of Renewable )  
Energy from SCE's 2010 Solar Photovoltaic )  
Program Solicitation )

**Advice 2514-E**

**NON-DISCLOSURE CERTIFICATE**

I hereby certify my understanding that access to Protected Materials is provided to me pursuant to the terms and restrictions of the Protective Order in this proceeding, that I have been given a copy of and have read the Protective Order, and that I agree to be bound by it. I understand that the contents of the Protected Materials, any notes or other memoranda, or any other form of information that copies or discloses Protected Materials shall not be disclosed to anyone other than in accordance with that Protective Order. I acknowledge that a violation of this certificate constitutes a violation of an order of the California Public Utilities Commission.

By: \_\_\_\_\_

Title: \_\_\_\_\_

Representing: \_\_\_\_\_

Date: \_\_\_\_\_