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April 19, 2006

California Energy Commission
Dockets Office, MS-4
Re: Docket No. 03-RPS-1078 and 02-RPS-1038
1516 Ninth Street
Sacramento, CA 95814-5512

Dear Commission:

Re: Southern California Edison Company's Comments on the Proposed Changes to the Renewables Portfolio Standard Guidebooks

Southern California Edison Company (SCE) provides the following comments concerning the proposed changes to the Overall Program Guidebook for the Renewable Energy Program, the Renewables Portfolio Standard Eligibility Guidebook (RPS Guidebook), and the New Renewables Facilities Program Guidebook (NRFP Guidebook). As discussed below, additional revisions should be made to the draft NRFP Guidebook and the draft RPS Guidebook.

The principal changes that need to be considered and addressed before the Commission adopts the guidebooks pertain to: (1) the proposed confidentiality treatment of bidder and bid evaluation data and advice filings made at the California Public Utilities Commission (CPUC); and (2) the limitation of 10 years for supplemental energy payment (SEP) awards by the Commission.

1. Comments On The Draft NRFP Guidebook

A. Confidentiality Issues

SCE recognizes that the Commission needs certain information in order to calculate and evaluate the availability of SEPs for contracts presented to the Commission by LSEs and project developers. However, the information that the Commission proposes to require is both largely unnecessary for this purpose and

not needed for the Commission to faithfully perform its statutory obligations under SB 1078 and SB 1038. The draft NRFP Guidebook should therefore be revised to limit the dissemination of information regarding bids and bid evaluation to that which is necessary in order to make informed and lawful decisions regarding SEPs.

At page 9, the draft NRFP Guidebook discusses various categories of RPS solicitation data which the Commission request for the purpose of making "informed and timely decisions in evaluating SEP requests. . .." Most of this information is neither necessary nor appropriate for the purpose indicated. It is unclear why the Commission needs to "review the full range of the bids that the retail seller received in response to its RPS solicitation." *Id.*, at 9. More specifically, it is unclear what purpose would be served by the Commission having access to information concerning, with respect to "*unaccepted* bids, the levelized cent per KWh [sic] all-in bid price, the average annual generation by Time of Delivery (TOD) period, contract term delivery start date, applicable levelized MPR, levelized bid price, and levelized above market costs over the contract term." *Id.,* at 9 (emphasis added). Clearly, the Commission will not be asked to award SEP funding for "unaccepted bids." Similarly, it is unclear why the Commission would need access to "Aggregated data[1] for bids *below the MPR* including the total number of facilities, the weighted-average price of the bids, the amount of electricity bid, the percentage of the retail seller's APT represented by the bids, and the percentage of the generation bid that would require new transmission." *Id.*, at 9 (emphasis added). The Commission's function under the RPS implementing statutes is to award SEP funds for *contracts* approved by the CPUC with pricing terms that *exceed the CPUC-established MPR*. For this purpose, *the Commission does not need information related to bids that are rejected or about contracts with pricing terms that do not exceed the MPR.*

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[1] This discussion regarding aggregate data for bids below the MPR is even more confusing in that the CECs Form CEC-SEP-1, Bid Data Request, Bids Below the MPR appears to seek project by project bid data as opposed to aggregate data discussed at page 9. Further, CEC-SEP-1 looks identical to Form CEC-SEP-2, Bid Data Request, Bids Above the MPR.

Separate and apart from the irrelevance of most of the information sought to the Commission's consideration of the award of SEP funds, the broad range of market sensitive and trade secret information proposed to be required by the draft NRFP Guidebook, if publicly disseminated, has the potential to severely harm SCE's ratepayers and the proprietary commercial interests of bidders. SCE and other LSEs warrant the confidentiality of bids submitted in their RFO protocols. If a prospect of public disclosure exists (something which does not currently exist at the CPUC, the agency with jurisdiction over the conduct of the RFOs and the approval of contracts resulting from those RFOs), there may well be a chilling effect on the RFOs. California should be implementing policies to enhance the overall robustness of the RPS solicitation process in order to maximize the procurement opportunities from renewable resources. This Commission should not adopt policies that may discourage bidders from participating in the RPS solicitation process.

SCE is prepared to work with the Commission to provide to it all of the information that is *actually necessary* for the Commission to perform its statutory mandate. If the Commission were to limit the information requested to that actually required to award SEP funding, *i.e.*, general identification of the contracts approved by the CPUC with pricing terms that exceed the MPR, there would be limited need for confidentiality protection. However, if the Commission insists on LSEs making available the broad range of tertiary and largely irrelevant information contemplated by the draft NRFP Guidebook, the Commission must ensure adequate protections for market sensitive and trade secret information filed by LSEs and bidders. Unfortunately, the draft NRFP Guidebook does not provide adequate assurances in this regard.

At page 10, the draft NRFP Guidebook states that "The Energy Commission will consider applications to hold data on the CEC-SEP- 3 and CEC-SEP-4 forms confidential pursuant to its regulations on confidential designation, California Code of Regulations, Title 20, Section 2501 et seq." Both CEC Data Request forms contain the following legal statement: "Information submitted to the Energy Commission is subject to public disclosure unless designated

confidential pursuant to the Energy Commission's confidentiality regulations 20 CFR section 2505." However, this proviso does not provide up-front assurance of confidential treatment of trade secret and market sensitive data. Indeed, an LSE could be put in the position where it is required to file confidential information with the CEC; it applies for confidential protection of that information; the CEC denies the LSE's request for confidential protection; and all confidential information is subsequently disclosed. Additionally, Form CEC-RPS-3 requires LSEs to submit to the CEC an *unredacted* copy of the advice letter for contracts emanating from the RFO.

Public disclosure of unredacted advice filings and bid data as contemplated by the draft NRFP Guidebook will impair the competitiveness of SCE's current and future RPS solicitations, and ultimately will likely increase the overall RPS program cost to ratepayers. This type of information, if made available to market participants, could allow the counterparties to compare one bid with another. Consequently, instead of providing its best possible bid to an RFP, a market participant could simply optimize its bid to extract higher revenues while improving or maintaining its bid ranking. This manipulation would enrich bidders and harm customers. SCE strongly opposes public disclosure of such information.

B. <u>SEP Funding Issues</u>

The Draft NRFP Guidebook must also be revised to address a serious problem concerning SEP funding for contracts with terms greater than 10 years. At page 4, the NRFP Guidebook states:

> SEPs are calculated based on the difference between the contract price and the MPR, up to any Energy Commission established caps. SEPs are to be paid for the lesser of ten years or the length of the utility contract, with a further restriction that no SEPs will be made for contracts with terms of less than three years.

Further clarification of this statement is necessary in order to avoid confusion and uncertainty for LSEs and other RPS stakeholders.

SCE recognizes that there is currently a statutory constraint on the payment of SEP funds for a period of greater than 10 years. However, it is

inconsistent with the overall RPS program to adopt a payment methodology which pays only the difference between the MPR and the contract rate for a period of 10 years if the contract has a term greater than 10 years. If the 10 year payment stream of SEP funding for a 15 or 20 year contract does not incorporate the above-market payments associated with the contract during the portion of the contract term which exceeds 10 years, the seller will not receive the full contract price for the full term of that contract. By statute, the buyer cannot be required lawfully to pay a rate that exceeds the MPR.

The cavalier treatment of this particular issue in the draft NRFP Guidebook is likely to create great uncertainty in the RPS process. SCE believes that further discussion of this point is necessary and appropriate before the changes to the guidebook are adopted. Among other things, the Commission should consider whether it has the discretion within current statutory guidelines to award SEP funding in a manner that assures full recovery of above-market payments within 10 years for contracts with lengthier terms. However, such approaches may implicate other concerns, such as increased buyer-side market risk and credit exposure.

To the extent that the Commission determines not to explore this issue in greater depth and provide guidance to RPS stakeholders on this point, it should at least recognize the issue as problematic in the guidebook. It may be that legislative action is required to address the asymmetry between directives in the RPS statute and CPUC decision to require LSEs to offer contracts with terms greater than 10 years and the ostensible limitation in the Public Resources Code of 10 years on SEPs. If that is the case, SCE recommends that the Commission amend the NRFP Guidebook to expressly seek and endorse appropriate legislative reform.

2. Draft RPS Guidebook

The discussion on page 5, under the heading of "RPS Targets" is confusing. Specifically, the draft RPS Guidebook states:

> "In accounting for RPS-eligible procurement, it is necessary to categorize specific purchases as incremental procurement or baseline procurement. Applying CPUC rules, this accounting depends on both static and dynamic information.
>
> 1. Static information: The characteristics of the renewable energy facility determine if it may be accounted for as incremental procurement or if it is restricted to baseline and adjusting the baseline. The following resources are restricted by statute to count only towards baseline or adjusting the baseline; generation cannot count towards the incremental procurement target:
> a) Geothermal facilities that began commercial operations before September 26, 1996.
> b) Small hydroelectric facilities that began commercial operations before September 12, 2002 and were owned, or whose generation was procured, by a utility as of this date.
> c) Eligible municipal solid waste combustion facilities located in Stanislaus County that began commercial operations before September 26, 1996.
> 2. Dynamic information: The amount of time the retail seller has been procuring energy from the RPS-eligible facility is dynamic and can be the determining factor in accounting for procurement as baseline or incremental.
>
> The Energy Commission's RPS certification identifies if a facility is RPS-eligible, or RPS and SEP-eligible. In the event that the generation from a facility is statutorily restricted to baseline, the Energy Commission will note this on the facility's RPS-certification notice. The "vintage" of the RPS procurement is dynamic and therefore outside the scope of the Energy Commission's RPS certification process."

It is unclear what is intended by this provision. In the absence of further clarification, it is not possible to comment on this section. In order to avoid confusion, SCE recommends that staff and the Commission revisit this language to ensure that it properly and clearly expresses the Commission's intent.

If you have any questions regarding these comments, please call me at (916) 441-2369.

Sincerely,

Manuel Alvarez

cc: Commissioner John L. Geesman
Commissioner Jackalyne Pfannenstiel
Chairman Joseph Desmond
Commissioner James Boyd
Commissioner Arthur H. Rosenfeld