

WSGR ALERT

JUNE 2011

SOUTHERN CALIFORNIA EDISON ANNOUNCES REVISIONS TO CREST PPA

Southern California Edison (SCE) recently announced revisions to the pro forma power purchase agreement (PPA) governing the California Renewable Energy Small Tariff (CREST) acquisition program.

CREST is designed to be "a simple and streamlined mechanism for [small renewable] generators to sell electricity to the utility without complex negotiations and delays."¹ The program is available to any renewable energy generation facility not exceeding 1.5 megawatts (MWs), utilizing a certified resource listed under California's Renewables Portfolio Standard (RPS),² and operated within SCE's service territory. SCE enters into CREST PPAs on a first-come, first-served basis, purchasing at predetermined, non-negotiable prices either: (1) the entire output of a renewable generation facility or (2) the excess energy produced by the facility and not used onsite by the customer. Generating facilities receiving subsidies from other California renewable energy programs, including net metering and the California Solar Initiative, may not participate in CREST.

SCE recently released a draft of its proposed CREST PPA, which is based on SCE's previously proposed PPA for Solar Photovoltaic Generating Facilities Not Greater

Than 5 MWs (the Solar PV Program 5MW PPA).³ The Solar PV Program is one of the primary vehicles by which SCE acquires solar-powered electricity, and the 5MW PPA is a streamlined contract designed to reduce the transaction costs associated with aggregating power from smaller producers.

While the proposed CREST PPA and proposed Solar PV Program 5MW PPA are similar, they are not identical. Differences include:

1. *Pricing Mechanism:* Unlike the Solar PV Program 5MW PPA, the CREST PPA establishes per kWh prices in accordance with the Market Price Referent (MPR), a standardized pricing schedule issued by the California Public Utilities Commission (CPUC).⁴ While the MPR is intended to reflect the fair market price of non-renewable electricity, it allows for seasonal and time-of-day adjustments, potentially benefiting CREST projects. The MPR price under the proposed CREST PPA varies depending on: (1) whether the customer chooses a 10, 15, or 20-year contract; (2) the date on which the generating facility becomes operational; and (3) the time of day and season in which power is produced. For a CREST

project achieving operation in 2012, the MPR price varies from \$0.056 per kWh (for super off-peak periods under a 10-year contract) to \$0.329 per kWh (for on-peak periods under a 20-year contract).⁵

2. *Force Majeure Provisions:* Both the proposed Solar PV 5MW PPA and the proposed CREST PPA require projects to be operational within 18 months of the PPA signing date, subject to a force majeure that "may not be greater in scope or longer in duration than is required."⁶ However, the revised CREST PPA adds an additional force majeure provision, which states, "Notwithstanding anything in this Agreement to the contrary, the [start date] may not be later than thirty (30) months of the [PPA signing date]."
3. *Collateral Requirements:* Unlike the proposed Solar PV 5MW PPA, the revised CREST PPA does not impose a collateral requirement on producers.
4. *Labor Provisions:* The proposed CREST PPA eliminates certain labor provisions contained in the proposed Solar PV 5MW PPA governing the construction and maintenance of generation facilities.

¹ For general background on CREST, see http://asset.sce.com/Documents/Shared/100125_CRESTRFAQs.pdf.

² For further information on resources certified under the RPS, see <http://www.energy.ca.gov/2010publications/CEC-300-2010-008/CEC-300-2010-008-CMF.PDF>.

³ http://asset.sce.com/Documents/Shared/CREST_PPAModificationProcess.pdf.

⁴ While eliminating the use of the MPR for determining utilities' procurement obligations, SBX1 2 (enacted April 12, 2011), did not affect the use of the MPR for calculating PPA prices.

⁵ For further information, see http://asset.sce.com/Documents/Shared/100125_CRESTRFAQs.pdf.

⁶ SCE Proposed Pro Forma CREST PPA: <http://www.sce.com/EnergyProcurement/renewables/crest.htm>.

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SCE is currently reviewing stakeholder comments, and will hold a web conference on July 27, 2011, to discuss the CREST PPA. SCE intends to submit an advice letter to CPUC seeking approval of the revised CREST PPA on August 5. The advice letter filing will trigger an additional stakeholder comment period on the CREST PPA revisions as the CPUC formally reviews them.

For further information on the revised CREST PPA or other clean energy regulatory issues, please contact Todd Glass, Peter Mostow, Sheridan Pauker, or Keene O'Connor in Wilson Sonsini Goodrich & Rosati's energy and clean technology practice.



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