

***Southern California Edison***

**2010 Energy Auction  
for the  
Blythe Generating Facility**

**Energy Auction Instructions  
and  
Terms and Conditions of  
Participation**

**February 2, 2010**

**A. GENERAL**

A.1. Southern California Edison Company (“SCE”) seeks to sell, by this energy auction (“Energy Auction”), the energy output from generating units contracted to SCE under a power purchase agreement with Blythe Energy, LLC. SCE will sell this energy output through the Energy Auction Products described in Section D of these Energy Auction Instructions and Terms and Conditions of Participation (“Energy Auction Instructions”). Any agreement entered into as a result of this Energy Auction will be documented in a power purchase tolling agreement and, depending on the Energy Auction Product, a Confirmation under an EEI Master Power Purchase & Sale Agreement (“EEI Master Agreement”). The Energy Auction Instructions describe the schedule and process by which bids to buy an Energy Auction Product (“Bids”) are to be submitted by bidders (“Bidders”) and evaluated in response to this Energy Auction, as well as SCE’s reservation of rights as set forth in Section G below. Capitalized terms not defined in these Energy Auction Instructions are used with the meanings ascribed to them in the Pre-Bid Documents described in Section E.2, below.

**B. BACKGROUND**

B.1. In Decision (“D”).06-07-029, the California Public Utilities Commission (“Commission”) adopted a cost-allocation methodology (“CAM”) that allows the advantages and costs of new generation to be shared by all benefiting customers in an investor owned utility’s (“IOU”) service territory. That Decision required that the IOUs procure the new generation through long-term power purchase agreements (“PPAs”). Pursuant to that Decision, the capacity and energy from the PPAs will be unbundled and the rights to the capacity will be allocated among all the load serving entities (“LSE”) in the IOU’s service territory. Each LSE will share in the capacity according to the LSE’s share of the 12-month service area coincident peak, and the LSE can apply the capacity towards its resource adequacy (“RA”) requirement. The LSEs’ customers receiving the benefit of this additional capacity only pay for the net cost of the capacity, determined as a net of the total cost of the PPA, minus the energy revenues associated with dispatch of the PPA. The energy revenues are to be determined by the results of periodic energy auctions for the PPA energy rights.

B.2. In D.08-05-028, the Commission authorized SCE to enter into a 10-year PPA with Blythe Energy, LLC (“SCE-Blythe Agreement”) referenced in Section A.1, above, for 490 megawatts (MW) of combined cycle capacity from the Blythe Energy Generating Facility (“Generating Facility”) for delivery from August 1, 2010 through July 31, 2020. D.08-05-028 also directed SCE to apply the CAM adopted in D.06-07-029 to the SCE-Blythe Agreement and to allocate the benefits and costs of the SCE-Blythe Agreement to all benefiting customers.

B.3. In D.07-09-044, the Commission adopted a joint settlement agreement (“Settlement Agreement”), which clarified and further defined the process

for and products to be included in the energy auctions it had established in D.06-07-029.

B.4. Consistent with D.07-09-044, and as described below, SCE will accept Bids in the Energy Auction for energy products from the Generating Facility. These Energy Auction Instructions describe the Energy Auction Products and outline the process used in the Energy Auction. The products and process have been developed pursuant to Commission Decisions 06-07-029 and 07-09-044 and as set forth in Appendix A of D.07-09-044.

### **C. INDEPENDENT EVALUATOR**

In accordance with D.07-09-044, SCE has retained an Independent Evaluator to oversee the preparation and administration of the Energy Auction and provide independent feedback to the Commission's Energy Division and to participants in SCE's Procurement Review Group established by the Commission in D.02-08-071 ("PRG").

### **D. ENERGY AUCTION PRODUCTS DESCRIPTION**

The Energy Auction includes the following proposed products for a three year term ("Energy Auction Products"): (1) a Back-to-Back Toll (described below in Section D.1) and (2) a Residual Back-To-Back Toll with associated Day-Ahead Unit Contingent Call Option(s) (described below in Section D.2).

Appendix A of D.07-09-044, attached hereto as Exhibit 1, provides additional details about these two products being offered in this Energy Auction. Exhibit 2 contains the pro forma contracts for each of the two Energy Auction Products.

D.1. *Back-to-Back Toll.* The Back-to-Back Toll ("BtB Toll") transfers to the winning bidder thereof (the "BtB Toll Holder") the dispatch rights, operational constraints, gas supply requirements, performance/availability incentives, penalties, and avoidable cost payments in the SCE-Blythe Agreement for a period of time to be specified in the Final Bid Documents (as defined in Section E.3 below) prepared during the stakeholder process described herein. The BtB Toll will not transfer the right to resource adequacy capacity ("RA Capacity") under the SCE-Blythe Agreement, and the BtB Toll Holder will be responsible for taking all steps and meeting all obligations necessary for SCE to use this RA Capacity to meet its RA requirements under the SCE-Blythe Agreement.

D.2. *Residual Back-to-Back Toll with Associated Day-Ahead Unit Contingent Call Option(s).*

D.2.1. *Description.*

D.2.1.1. This Energy Auction Product consists of two parts, each resulting from a separate (but concurrent) auction: (i) an auction for Day-Ahead Unit Contingent Call Options ("Call Options"); and (ii) an auction for a Residual Back-to-Back Toll ("Residual BtB Toll").

D.2.1.2. No Call Option shall be awarded unless SCE receives and accepts a bid for a Residual BtB Toll with the same term as the Call Option(s). Both a Residual BtB Toll and least one Call Option must be fully executed in order for any of them to become effective.

D.2.2. Residual Back-to-Back Toll. The Residual BtB Toll transfers to the winning bidder thereof (the “Residual BtB Toll Holder”) the dispatch rights, operational constraints, gas supply requirements, performance/availability incentives, penalties, and avoidable cost payments in the SCE-Blythe Agreement for a period of time to be specified in the Final Bid Documents, subject to the obligations of the Call Options auctioned concurrently. The Residual BtB Toll will not transfer the right to RA Capacity under the SCE-Blythe Agreement, and the Residual BtB Toll Holder will be responsible for taking all steps and meeting all obligations necessary for SCE to use this RA Capacity to meet its RA requirements.

D.2.3. Day-Ahead Unit Contingent Call Options. The winning bidder(s) of the Call Option(s) (“Call Option Holder”) receives the right, but not the obligation, to take energy from the Generating Facility and pay an option price based on a contract heat rate and index gas price plus transportation. The Call Option is for a fixed quantity for a predetermined time block. When Final Bid Documents are issued in accordance with the Energy Auction schedule set forth in Section E.1 below, they will specify the Call Options for which Bids may be submitted in this Energy Auction.

**E. BID PROCESS**

*E.1. Energy Auction Schedule.*

<b>Timeline</b>	<b>Action</b>
February 1, 2010	<ul style="list-style-type: none"> <li>• SCE posts Blythe Energy Auction Instructions and NDA</li> <li>• SCE sends Pre-Bid Documents to stakeholders that have fully executed NDA</li> </ul>
March 15, 2010	Stakeholder Process Meeting 1
May 10, 2010	Stakeholder Process Meeting 2
May 24, 2010	Final Bid Documents issued
June 1, 2010	Deadline to submit Notice of Intent
June 9, 2010	SCE to establish bid eligibility for Parties interested in bidding on the BtBToll and Residual BtB Toll
June 16, 2010 11AM PPT	Deadline for Bid Submittal
June 16, 2010 11:30AM PPT	SCE formats Acceptable Counterparty List with counterparties bidding on the Residual Back-to-Back Toll or Call Options and sends to those counterparties
June 16, 2010 12:30 PM PPT	Deadline for counterparties to send back Acceptable Counterparty List
June 16, 2010 2PM PPT	SCE to notify successful Bidder(s) and execute (i) Back-to-Back Toll or Residual Back-to-Back Toll, and successful Bidders for the Residual Back-to-Back Toll Toll and Option Confirmation to execute Confirmation for (iii) Call Options

*E.2. Pre-Bid Auction Documents*

As discussed in Section III of Exhibit 1, the pre-bid process (“Pre-Bid Process”) is intended to be an iterative process for stakeholders to review the initial pre-bid documents (“Pre-Bid Documents”) and to provide input into the development of

the final energy auction bid documents (“Final Bid Documents”) and the Energy Auction Schedule. The following lists the auction documents:

- E.2.1. Principles for Energy Auction Process and Products.* Exhibit 1 contains Appendix A of Decision D.07-09-044, setting forth the principles of an energy auction process and description of certain products for use in such auctions.
- E.2.2. Product Contracts.* Exhibit 2 contains the proposed pro forma BtB Toll PPA, Residual BtB Toll PPA, and Call Option Confirmation, at least one of which will be executed by a successful Bidder, if any, upon the conclusion of the Energy Auction.
- E.2.3. Bid Templates.* Exhibit 3 contains the templates that each prospective Bidder will use to submit its Bid.
- E.2.4. Acceptable Counterparty Information.* Exhibit 4 contains the template each Residual BtB Toll Bidder will provide, listing the acceptable counterparties for the Call Option for each product category, including the maximum megawatts the Bidder will accept from each counterparty. (Each acceptable counterparty must have an EEI Master Agreement with the Residual BtB Toll Holder as of Bid submission.)
- E.2.5. SCE-Blythe Agreement [Redacted].* Exhibit 5 contains a redacted copy of the SCE-Blythe Agreement.

**As noted in the Energy Auction Schedule in Section E.1 above, SCE will not provide copies of Exhibits 2-5 to a stakeholder unless and until such stakeholder returns to SCE a fully executed NDA (as defined in Section H below) in the form posted on SCE’s website for the Energy Auction.**

*E.3. Stakeholder Process*

SCE will conduct two meetings to solicit input from stakeholders on the Pre-Bid Documents. If needed, SCE will schedule additional meetings to solicit feedback on the Pre-Bid Documents. The location and timing of all meetings will be made available at least two weeks prior the meetings. At the conclusion of this stakeholder process, SCE shall issue final bid documents (“Final Bid Documents”) in a form that allows bidders to see what changes have been made from the Pre-Bid Documents.

Upon the completion of the stakeholder process described in the Energy Auction Instructions, the BtB Toll PPA, the Residual BtB Toll PPA and the Call Option Confirmation will be in final form, and not subject to change other than completion of credit provisions that will be left blank in the Final Bid Documents.

E.4. *Bid Submission*

E.4.1. SCE will only consider Bids that, as of the Bid deadline, contain all of the items specified in the table below (“Bid Submittal Package”).

<b>Bid Submittal Package To be Provided by All Bidders:</b>		
Document:	Filename:	Notes/Instructions:
1. Bid Templates	Exhibit 3 – Bid Templates.xls	Bidder must provide all information required in the Bid Templates spreadsheet.
2. Acceptable Counterparty Information	Exhibit 4 – Acceptable Counterparty Information.xls	Bidder for Residual Back-to-Back Toll must provide all information required in the Acceptable Counterparty Information spreadsheet.

E.4.2. SCE must receive each completed Bid Submittal Package prior to 11:00 a.m. Pacific Prevailing Time (“PPT”) on the date specified in the applicable Energy Auction Schedule in Section D.1. SCE must receive 5 hard copies and one electronic copy of the completed Bid Submittal Package. Bids must be submitted via overnight courier, U.S. mail, or hand delivered as specified in Section E.5. In the case of any conflict between the written documents and electronic versions, the written documents will be binding. SCE will not be responsible for Bids received after the submittal deadline due to unsuccessful transmission or delivery of the Bid Submittal Package.

E.5. *Contact Information*

The website address for this Energy Auction is:  
<http://www.sce.com/EnergyProcurement/EnergyAuction>

Any questions relating to this Energy Auction should be addressed to SCE via email at: EnergyAuction@sce.com or the following:

Gene Lee (626) 302-3081 or Jesse Bryson (626) 302-3297

Overnight courier, U.S. mail, or hand delivered Bid Submittal Packages shall be sent to:

Gene Lee, Energy Auction  
 Southern California Edison Company  
 G.O. 1, Quad 1-C  
 2244 Walnut Grove Avenue  
 Rosemead, California 91770

**F. BID VALUATION METHODOLOGY**

- F.1. SCE, with oversight from the Independent Evaluator, will review the bids, select successful bidders and execute contracts with successful bidders or, in the case of any awards of Call Options, facilitate the execution of the Call Option Confirmations by buyers and sellers thereof.
- F.2. The Energy Auction will have a “Minimum Bid Price” consistent with Section V.A of Appendix A of D.07-09-044. If no Bids exceed the established Minimum Bid Price, there will be no awards in this Energy Auction.
- F.3. The highest-priced Call Option Bid(s) will be combined with the highest-priced Residual BtB Toll Bids for the specified energy product to establish the combined Call Option/Residual BtB Toll Bid for the specified energy product.
- F.4. The successful Bid will be either: (i) the combined Call Option/Residual BtB Toll Bids or (ii) the BtB Toll Bid that provides the highest overall value provided that it is equal to or higher than the Minimum Bid Price for the subject product.

**G. RESERVATION OF RIGHTS**

SCE reserves the right at any time, in its sole discretion, to abandon this Energy Auction, to change any dates specified in this Energy Auction, to change the basis for the evaluation of Bids, to terminate further participation in this process by any party, to accept any Bids or to enter into any BtB Toll PPA or Residual BtB Toll PPA, to facilitate the entry of Bidders for the Residual BtB Toll PPA and the Call Option(s) into an Call Option Confirmation, to evaluate the qualifications of any Bidder and/or the terms and conditions of any Bid, to reject any or all proposals or Bids, to prohibit or limit mutually exclusive Bids, to consider additional products, to change any form, document, term or condition used in this Energy Auction at any time during the Energy Auction process, or waive any irregularities, all without notice and without assigning any reasons and without incurring liability of Edison International, SCE or any of their respective subsidiaries, affiliates or representatives to any Bidder or any other party. SCE shall have no obligation to consider any Bid submitted. SCE will not reimburse any Bidder for its expenses related to this Energy Auction under any circumstances, regardless of whether the bidding process proceeds to a successful conclusion or is abandoned. SCE shall not be deemed to have accepted any Bid, and shall not be bound by any term thereof, unless and until an authorized representative of SCE executes a BtB Toll PPA or Residual BtB Toll PPA and the Residual BtB Toll Holder executes an Call Option Confirmation with the Call Option Holder(s) under the existing EEI Master Agreement between them.

**H. CONFIDENTIALITY**

All information provided by SCE to Bidder as part of this Energy Auction shall be treated by Bidder as confidential as provided herein and in the non-disclosure agreement between Bidder and SCE (“NDA”), other than information that Bidder can establish is already publicly available. Accordingly, Bidder shall take all

reasonable precautions to protect against the disclosure of this information to the public or to any third parties other than its officers, directors, employees, legal counsel, accountants, lenders and consultants who have a need to know for the purposes of evaluating the Energy Auction and preparing and submitting a Bid in this Energy Auction. Bidder agrees to use this information solely for the purpose of evaluating the Energy Auction and preparing and submitting a Bid in this Energy Auction, and for no other purpose.

SCE and the Independent Evaluator may disclose any information about or disclosed by Bidder as a part of or regarding this Energy Auction to the Commission and other regulatory and governmental entities or agencies and to the PRG and the California Independent System Operator (“CAISO”). SCE and the Independent Evaluator do not have any liability whatsoever to Bidder in the event of a disclosure of information disclosed by or about Bidder by any governmental or regulatory entity or agency or by the PRG or CAISO.

#### **I. BIDDER’S WAIVER OF CLAIMS AND LIMITATION OF REMEDIES**

By submitting a Bid, Bidder knowingly, voluntarily, and completely waives any rights under statute, regulation, state or federal constitution, or common law to assert any claim, complaint, or other challenge in any regulatory, judicial, or other forum, including without limitation, the Commission (except as expressly provided below), the Federal Energy Regulatory Commission (“FERC”), the Superior Court of the State of California (“State Court”) or any U.S. District Court (“Federal Court”) concerning or related in any way to the Energy Auction or any documents in the Energy Auction including all exhibits, attachments, and appendices thereto (“Waived Claims”). Bidder further expressly acknowledges and consents that if it asserts any Waived Claim at the Commission, FERC, State Court, or Federal Court, or otherwise in any forum, to the extent that Bidder’s Bid has not already been disqualified, SCE is entitled to automatically disqualify such Bid from further consideration in the Energy Auction or otherwise, and further, SCE may elect to terminate the Energy Auction.

By submitting a Bid, Bidder further agrees that the sole forum in which Bidder may assert any challenge with respect to the conduct or results of the Energy Auction is at the Commission. Bidder further agrees that: (1) the sole means of challenging the conduct or results of the Energy Auction is a complaint filed under Article 3, Complaints and Commission Investigations, of Title 20, Public Utilities and Energy, of the California Code of Regulations, (2) that the sole basis for any such protest shall be that SCE allegedly failed in a material respect to conduct the solicitation in accordance with the Energy Auction Instructions; and (3) that the exclusive remedy available to Bidder in the case of such a protest shall be an order of the Commission that SCE again conduct any portion of the Energy Auction that the Commission determines was not previously conducted in accordance with the Energy Auction Instructions or D.07-09-044. Bidder expressly waives any and all other remedies, including, without limitation, compensatory and/or exemplary damages, restitution, injunctive relief, interest, costs and/or attorneys’ fees. Unless SCE elects to do otherwise in its sole discretion, during the pendency of such a protest the Energy Auction and any related regulatory proceedings related to the Energy Auction will continue as if the protest had not been filed, unless the Commission issues an order

suspending the Energy Auction or SCE has elected to terminate or suspend the Energy Auction or any portion thereof.

Bidder further acknowledges and agrees that if Bidder asserts any Waived Claim, SCE shall be entitled to seek immediate dismissal of Bidder's claim, complaint, or other challenge, with prejudice, by filing a motion to dismiss (or similar procedural device) supported by the language in this Section I and that Bidder will not challenge or oppose such a request for dismissal. Bidder further acknowledges and agrees that if it asserts any Waived Claim, and if SCE successfully has that claim dismissed or transferred to the Commission, Bidder shall pay SCE's full costs and expenses incurred in seeking such dismissal or transfer, including reasonable attorneys' fees and expenses.

Bidder agrees to indemnify and hold SCE harmless from any and all claims by any other party asserted in response to the assertion of any Waived Claim by Bidder for reasonable costs and expenses, including reasonable attorneys' fees, incurred by SCE or as a result of a Bidder's protest to a filing at the Commission resulting from the Energy Auction.

Except as expressly provided in the Energy Auction Instructions and Final Bid Documents, nothing herein, including Bidder's waiver of any Waived Claims as set forth above, shall in any way limit or otherwise affect the rights and remedies of SCE.

**J. BIDDER'S REPRESENTATIONS, WARRANTIES AND COVENANTS;  
BINDING OFFER**

By submitting a Bid, Bidder makes the following representations, warranties, and covenants to SCE, which representations, warranties, and covenants shall be deemed to be incorporated in their entireties into each of Bidder's Bids. Bidder thus agrees to be bound by the conditions of the Energy Auction, including these conditions, in submitting Bidder's Bids.

1. Bidder has read, understands and agrees to be bound by all terms, conditions and other provisions of the Energy Auction Instructions, the NDA between it and SCE and the Final Bid Documents.
2. Bidder has had the opportunity to seek independent legal and financial advice of its own choosing with respect to the Energy Auction, the NDA and the Final Bid Documents, including these Energy Auction Instructions, including any appendices.
3. Bidder acknowledges and agrees that, in SCE's evaluation of Bids pursuant to this Energy Auction, SCE reserves the right to disqualify a Bidder that is unwilling or unable to meet any requirements of this Energy Auction, as determined by SCE in its sole discretion.

Bidder has obtained all necessary authorizations, approvals and waivers, if any, required by it as a condition of submitting its Bid and, if Bidder submits a final Bid pursuant to the terms of the Energy Auction Instructions, entering into a BtB Toll PPA or Residual BtB Toll PPA with SCE, as applicable, and if

applicable, a Call Option Confirmation between the Residual BtB Toll Holder and the Call Option Holder under the existing EEI Master Agreement between them.

4. Bidder is submitting its Bid subject to all applicable laws and regulations.
5. Bidder has not engaged, and covenants that it will not engage, in any communications with any other actual or potential participant in the Energy Auction concerning this auction, price terms in Bidder's Bid, or related matters and has not engaged in collusion or other unlawful or unfair business practices in connection with this Energy Auction.
6. If Bidder is eligible to submit a Bid in accordance with the Energy Auction Instructions, any Bid so submitted is a binding offer subject only to SCE's acceptance, in SCE's sole discretion.
7. The information submitted by Bidder to SCE in connection with this Energy Auction, including information in the Energy Auction Bid Template, and all information submitted as part of the completed Bid Submittal Package as described herein, is true and accurate as of the date of Bidder's Bid. Bidder also covenants that it will promptly update such information upon any material change thereto.
8. Bidder acknowledges and agrees that:
  - a. SCE may rely upon all Bidder's representations, warranties, and covenants in this Energy Auction Instructions (including the completed Bid Submittal Package and in any final Bid submitted by Bidder if Bidder submits a final Bid); and
  - b. SCE may disclose information as set forth in Section H., above.
9. BIDDER HEREBY ACKNOWLEDGES AND AGREES THAT ANY BREACH BY BIDDER OF ANY OF THE REPRESENTATIONS, WARRANTIES AND COVENANTS IN THESE ENERGY AUCTION INSTRUCTIONS AND ALL OTHER FINAL BID DOCUMENTS, IN ADDITION TO ANY OTHER REMEDIES THAT MAY BE AVAILABLE TO SCE UNDER APPLICABLE LAW, SHALL CONSTITUTE GROUNDS FOR IMMEDIATE DISQUALIFICATION OF SUCH BIDDER, AND, DEPENDING ON THE NATURE OF THE BREACH, MAY ALSO BE GROUNDS FOR TERMINATING THE ENERGY AUCTION IN ITS ENTIRETY.

## EXHIBITS

- |              |  |
|--------------|--|
| Exhibit 1:   | Appendix A from CPUC Decision 07-09-044 "Principles for Energy Auction Process and Products" |
| Exhibit 2.1: | Power Purchase Back-to-Back Tolling Agreement  |
| Exhibit 2.2: | Day-Ahead Unit Contingent Call Option Confirmation   |
| Exhibit 2.3: | Power Purchase Residual Back-to-Back Tolling Agreement                                       |
| Exhibit 3:   | Bid Templates  |
| Exhibit 4:   | Acceptable Counterparty Information  |
| Exhibit 5:   | SCE-Blythe Agreement [Redacted]  |
| Exhibit 6:   | Notice of Intent   |