

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

Application of Southern California Edison Company (U 338-E) for Applying the Market Index Formula and As-Available Capacity Prices Adopted in D.07-09-040 to Calculate Short-Run Avoided Cost for Payments to Qualifying Facilities Beginning July 2003 and Associated Relief

**Application 08-11-001
(Filed November 4, 2008)**

Order Instituting Rulemaking to Integrate Procurement Policies and Consider Long-Term Procurement Plans

**Rulemaking 06-02-013
(Filed February 16, 2006)**

Order Instituting Rulemaking to Promote Policy and Program Coordination and Integration in Electric Utility Resource Planning

**Rulemaking 04-04-003
(Filed April 1, 2004)**

Order Instituting Rulemaking to Promote Consistency in Methodology and Input Assumptions in Commission Applications of Short-Run and Long-Run Avoided Costs, Including Pricing for Qualifying Facilities

**Rulemaking 04-04-025
(Filed April 22, 2004)**

Order Instituting Rulemaking into Implementation of Public Utilities Code Section 390

**Rulemaking 99-11-022
(Filed November 18, 1999)**

CHP PROGRAM SETTLEMENT AGREEMENT

The parties to this CHP Program Settlement Agreement¹ are Pacific Gas and Electric Company (“PG&E”), a California corporation, Southern California Edison Company (“SCE”), a California corporation, and San Diego Gas & Electric Company (“SDG&E”), a California corporation (hereinafter collectively referred to as “Investor Owned Utilities” or “IOUs”), The Utility Reform Network (“TURN”) and the Division of Ratepayer Advocates (“DRA”) (hereinafter collectively referred to as “Consumer Interest Groups”), and California Cogeneration Council and all of its members (“CCC”),

¹ The term Settlement Agreement as used herein includes the CHP Program Settlement Term Sheet and Exhibits 1 through 11 listed below.

Cogeneration Association of California and all of its members (“CAC”), Energy Producers and Users Coalition and all of its members (“EPUC”), and the Independent Energy Producers Association (“IEP”) (hereinafter collectively referred to as qualifying facilities (“QF”) parties (“QF Parties”)). All of these entities are hereinafter referred to collectively as the “Parties” or individually as a “Party.”

RECITALS

The IOUs are all investor-owned public utilities in the State of California and all are subject to the jurisdiction of the California Public Utilities Commission (“Commission”) with respect to providing electric service to their customers.

The Consumer Interest Groups consist of DRA and TURN. DRA is an independent division of the Commission that advocates solely on behalf of utility ratepayers. TURN is an independent, non-profit consumer advocacy organization that represents the interests of residential and small commercial utility customers.

The QF Parties consist of CCC, CAC, EPUC, and IEP. The QF Parties are organizations that represent, *inter alia*, the interests of cogeneration Qualifying Facility operations and combined heat and power (“CHP”) facilities in the State of California. On September 20, 2007, the Commission issued D.07-09-040, in R.04-04-025/R.04-04-003, that established Short-Run Avoided Cost (“SRAC”) energy and as-available and firm capacity pricing for QFs and ordered the IOUs and QF Parties to work together to develop a Standard QF Contract through negotiations in which the Commission’s Energy Division took an active role. On August 1, 2009, the SRAC energy and as-available capacity pricing established in D.07-09-040 was implemented pursuant to Resolution No. E-4246, dated July 9, 2009.

On October 25, 2007, the IOUs and TURN filed an Application for Rehearing of D.07-09-040, CAC and EPUC filed an Application for Rehearing of D.07-09-040, and CCC filed an Application for Rehearing of D.07-09-040. In response to these

Applications for Rehearing, the Commission issued D.08-07-048, modifying D.07-09-040. In response to D.08-07-048, SCE and TURN filed a Petition for Writ of Review with the California Court of Appeals.

D.08-07-048 allowed the IOUs to seek retroactive application of the energy and as-available capacity pricing for QFs adopted in D.07-09-040. On October 3, 2008, the QF Parties filed a Petition for Modification requesting that the Commission modify D.08-07-048 to eliminate the opportunity for the IOUs to seek retroactive application of the energy and as-available capacity pricing adopted in D.07-09-040 as modified by D.08-07-048. D.08-07-048 established a deadline of November 4, 2008 for the IOUs to file applications for retroactive application of the SRAC energy and as-available capacity pricing.

On November 4, 2008, SCE filed its SRAC Update Application (A.08-11-001) which, pursuant to requests of the QF Parties, was ultimately held in abeyance until after issuance of a decision on the QF Parties' October 3 Petition for Modification of D.08-07-048. On that same date, November 4, 2008, PG&E and SDG&E filed notices of reservations of rights to later file claims to recover amounts exceeding the SRAC energy and as-available capacity pricing adopted on September 20, 2007, but indicating that they would not request recovery of any such amounts paid prior to September 20, 2007.

In December 2008, pursuant to Assembly Bill ("AB") 32, the California Air Resources Board ("CARB") adopted the Climate Change Scoping Plan. In part, that plan embraced a statewide target to reduce 6.7 million metric tons ("MMT") of Greenhouse Gas ("GHG") from the incremental development of Combined Heat and Power ("CHP") facilities.

On January 26, 2009, Administrative Law Judge ("ALJ") DeBerry issued a ruling suggesting proposed principles as a way of resolving the dispute over the reasonableness of PG&E's and SCE's payments to QFs during the period December 2000 through March 2001 ("Proposed Principles"). This dispute was remanded to the Commission by the

California Court of Appeal in Southern California Edison Co. v. Public Utility Commission, 101 Cal.App 4th 982 (2002) (Remand Dispute). On May 1, 2009, Opening Comments on the Proposed Principles were filed with the Commission, and, on May 15, 2009, Reply Comments on the Opening Comments were filed with the Commission.

On April 16, 2009, the Commission issued D.09-04-032 which modified D.08-07-048 concerning the showing that the IOUs must make in support of any requests for retroactive application of changes to SRAC. D.09-04-032 also allowed SCE to amend its SRAC Update Application by May 7, 2009 which SCE did, and gave PG&E and SDG&E 45 days to submit their applications. On May 7, 2009, SCE filed its amended SRAC Update Application. PG&E and SDG&E have requested and been granted by the Commission's Executive Director multiple extensions for the filing of their applications to accommodate settlement negotiations.

The IOUs plan to submit an application to the Federal Energy Regulatory Commission ("FERC") pursuant to Section 210(m) of the Public Utility Regulatory Policies Act ("PURPA") to terminate the IOUs' QF purchase obligation.

On May 18, 2009, the Parties commenced settlement negotiations of outstanding QF and CHP issues before the Commission and FERC, and resulting from the CARB AB 32 Scoping Plan. These negotiations continued for over a year. This Settlement Agreement is the result of those negotiations.

TERMS OF AGREEMENT

In consideration of the mutual obligations, promises, covenants, and conditions contained herein, the Parties agree to the terms and conditions of this Settlement Agreement and agree to support its approval by the Commission.

Each Party shall review any Commission orders regarding this Settlement Agreement to determine if the Commission has changed, modified, or severed any portion of the Settlement Agreement, deleted a term, or imposed a new term. If a Party is

unwilling to accept such change, modification, severance, deletion, or addition of a new term of the Settlement Agreement, that Party shall so notify the other Parties within ten (10) business days of issuance of any such Commission order regarding this Settlement Agreement. The Parties shall thereafter promptly discuss each change, modification, severance, deletion or new term found unacceptable and negotiate in good faith to achieve a resolution acceptable to all Parties and promptly seek Commission approval of the resolution so achieved. Failure to resolve such change, modification, severance, deletion, or new term to this Settlement Agreement to the satisfaction of all Parties within ninety (90) calendar days of notification, and to obtain Commission Approval of such resolution promptly thereafter, shall cause this Settlement Agreement to terminate.

This Settlement Agreement is the result of extended negotiations. It represents a compromise of disputed claims between the Parties, which are identified in Section 14 of the Term Sheet. The Parties have reached this Settlement Agreement after taking into account the possibility that each Party may or may not prevail on any given issue. This Settlement Agreement is reasonable in light of the whole record, consistent with law, and in the public interest.

As provided under Rule 12.5 of the Commission's Rules of Practice and Procedure, the Parties request that the Commission expressly find the Settlement Agreement Term Sheet is precedential.

This Settlement Agreement includes the CHP Program Settlement Agreement Term Sheet ("Term Sheet") and Exhibits 1-11, each of which is attached and incorporated by reference into this document. Exhibits 1-11 are as follows:

1. Amendment to Legacy QF Power Purchase Agreement ("PPA") for PG&E;
2. Amendment to Legacy QF PPA for SCE;
3. Amendment to Legacy QF PPA for SDG&E;
4. Transition PPA;

5. CHP Request for Offer (“RFO”) Pro Forma PPA;
6. QF PPA for QFs 20 MW or Less;
7. Optional As-Available PPA;
8. Non-Disclosure Agreement (“NDA”) for CHP Auditor;
9. List of Members of CAC;
10. List of Members of CCC; and
11. List of Members of EPUC.

The Settlement Agreement contains the entire agreement and understanding between the Parties as to the subject matter of this agreement, and supersedes all prior agreements, commitments, representations, and discussions between the Parties. In the event there is any conflict between the terms and scope of the Settlement Agreement and the terms and scope of the accompanying *Joint Motion for Approval of the Qualifying Facility and Combined Heat and Power Settlement Agreement*, the Settlement Agreement shall govern. In the event there is any conflict between the terms and scope of the Term Sheet on contract issues and the attached PPAs (Exhibits 1-7), the PPAs shall govern.

None of the provisions of this Settlement Agreement shall be considered waived by any Party unless such waiver is given in writing. The failure of a Party to insist in any one or more instances upon strict performance of any of the provisions of this Settlement Agreement or to take advantage of any of their rights hereunder shall not be construed as a waiver of any such provisions or the relinquishment of any such rights for the future, but the same shall continue and remain in full force and effect.

This Settlement Agreement shall be interpreted, governed and construed under the laws of the State of California, including Commission decisions, orders and rulings as if executed and performed wholly within the State of California.

This Settlement Agreement is executed in nine counterparts, each of which shall be deemed an original. The undersigned represent that they are authorized to sign on behalf of the Party represented.

<p>PACIFIC GAS and ELECTRIC COMPANY A California Corporation</p> <p>By <u>Christopher P. Johns</u> Title <u>President</u> Date <u>10/8/10</u></p>	<p>SAN DIEGO GAS & ELECTRIC COMPANY A California Corporation</p> <p>By _____ Title _____ Date _____</p>
<p>SOUTHERN CALIFORNIA EDISON COMPANY A California Corporation</p> <p>By <u>Mark R. Ulmer</u> Title <u>Vice President Renewable & Alternative Power</u> Date <u>10/8/2010</u></p>	<p>THE UTILITY REFORM NETWORK</p> <p>By _____ Title _____ Date _____</p>
<p>INDEPENDENT ENERGY PRODUCERS ASSOCIATION</p> <p>By _____ Title _____ Date _____</p>	<p>DIVISION OF RATEPAYER ADVOCATES</p> <p>By _____ Title _____ Date _____</p>

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<p>PACIFIC GAS and ELECTRIC COMPANY A California Corporation</p> <p>By _____ Title _____ Date _____</p>	<p>SAN DIEGO GAS & ELECTRIC COMPANY A California Corporation</p> <p>By <u>Matt Burkhardt</u> Title <u>VP-Elect & Fuel Procurement</u> Date <u>10/8/10</u></p>
<p>SOUTHERN CALIFORNIA EDISON COMPANY A California Corporation</p> <p>By _____ Title _____ Date _____</p>	<p>THE UTILITY REFORM NETWORK</p> <p>By _____ Title _____ Date _____</p>
<p>INDEPENDENT ENERGY PRODUCERS ASSOCIATION</p> <p>By _____ Title _____ Date _____</p>	<p>DIVISION OF RATEPAYER ADVOCATES</p> <p>By _____ Title _____ Date _____</p>

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<p>SOUTHERN CALIFORNIA EDISON COMPANY A California Corporation</p> <p>By _____ Title _____ Date _____</p>	<p>THE UTILITY REFORM NETWORK</p> <p>By <u>MP Florio</u> Title Senior Attorney Date October 8, 2010</p>
<p>INDEPENDENT ENERGY PRODUCERS ASSOCIATION</p> <p>By _____ Title _____ Date _____</p>	<p>DIVISION OF RATEPAYER ADVOCATES</p> <p>By _____ Title _____ Date _____</p>

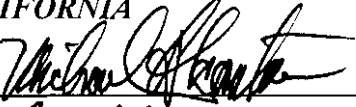
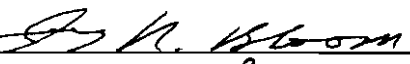

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SOUTHERN CALIFORNIA EDISON COMPANY A California Corporation By _____ Title _____ Date _____	THE UTILITY REFORM NETWORK By _____ Title _____ Date _____
INDEPENDENT ENERGY PRODUCERS ASSOCIATION By _____ Title _____ Date _____	DIVISION OF RATEPAYER ADVOCATES By <u>Joseph [Signature]</u> Title <u>Acting Director - Division of Ratepayer Advocates</u> Date <u>10/8/10</u>

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SOUTHERN CALIFORNIA EDISON COMPANY A California Corporation By _____ Title _____ Date _____	THE UTILITY REFORM NETWORK By _____ Title _____ Date _____
INDEPENDENT ENERGY PRODUCERS ASSOCIATION By <u>P. de</u> Title <u>Attorney for</u> Date <u>10/08/10</u>	DIVISION OF RATEPAYER ADVOCATES By _____ Title _____ Date _____

<p>COGENERATION ASSOCIATION OF CALIFORNIA</p> <p>By <u></u></p> <p>Title <u>COUNSEL</u></p> <p>Date <u>October 7, 2010</u></p>	<p>CALIFORNIA COGENERATION COUNCIL</p> <p>By <u></u></p> <p>Title <u>COUNSEL</u></p> <p>Date <u>October 7, 2010</u></p>
	<p>ENERGY PRODUCERS AND USERS COALITION</p> <p>By <u></u></p> <p>Title <u>COUNSEL</u></p> <p>Date <u>October 7, 2010</u></p>