

**PUBLIC UTILITIES COMMISSION**505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3298**FILED**

02-06-12

02:07 PM

February 6, 2012

**Agenda ID #11034**  
**Ratesetting**

TO PARTIES OF RECORD IN APPLICATION 08-11-001 ET AL.

This is the proposed decision of Administrative Law Judge (ALJ) Yip-Kikugawa. It will not appear on the Commission's agenda sooner than 30 days from the date it is mailed. The Commission may act then, or it may postpone action until later.

When the Commission acts on the proposed decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the proposed decision as provided in Article 14 of the Commission's Rules of Practice and Procedure (Rules), accessible on the Commission's website at [www.cpuc.ca.gov](http://www.cpuc.ca.gov). Pursuant to Rule 14.3, opening comments shall not exceed 15 pages.

Comments must be filed pursuant to Rule 1.13 either electronically or in hard copy. Comments should be served on parties to this proceeding in accordance with Rules 1.9 and 1.10. Electronic and hard copies of comments should be sent to ALJ Yip-Kikugawa at [ayk@cpuc.ca.gov](mailto:ayk@cpuc.ca.gov) and the assigned Commissioner. The current service list for this proceeding is available on the Commission's website at [www.cpuc.ca.gov](http://www.cpuc.ca.gov).

/s/ KAREN V. CLOPTONKaren V. Clopton, Chief  
Administrative Law Judge

KVC:avs

Attachment

Decision PROPOSED DECISION OF ALJ YIP-KIKUGAWA  
(Mailed 2/6/2012)

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

Application of Southern California Edison Company (U338E) 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)

And Related Matters.

Rulemaking 06-02-013  
Rulemaking 04-04-003  
Rulemaking 04-04-025  
Rulemaking 99-11-022

**ORDER GRANTING VARIOUS MOTIONS  
AND CLOSING PROCEEDINGS**

**Summary**

This decision grants motions filed by Southern California Edison Company, Pacific Gas and Electric Company, San Diego Gas & Electric Company, The Utility Reform Network, the California Cogeneration Council, the Independent Energy Producers Association, the Cogeneration Association of California, the Energy Producers and Users Coalition, and the Division of Ratepayer Advocates (collectively, the Settling Parties) to withdraw various petitions for modification and to close Application 08-11-001, Rulemaking

(R.) 99-11-022, R.04-04-003, and R.04-04-025. This decision also closes R.06-02-013.

### **Background**

On December 21, 2010, the Commission issued Decision (D.) 10-12-035, which approved the “Qualifying Facility and Combined Heat and Power Program Settlement Agreement” (Settlement) entered into by Southern California Edison Company (SCE), Pacific Gas and Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E), The Utility Reform Network (TURN), the California Cogeneration Council (CCC), the Independent Energy Producers Association (IEP), the Cogeneration Association of California (CAC), the Energy Producers and Users Coalition (EPUC), and the Division of Ratepayer Advocates (DRA) (collectively, the Settling Parties). Ordering Paragraph 6 of D.10-12-035 provides, in relevant part, “Application 08-11-001, Rulemaking (R.) 06-02-013, R.04-04-003, R.04-04-025, and R.99-11-022 shall remain open pending action on a motion for closure to be filed by proponents, with the supporting documentation, of the October 8, 2010 Qualifying Facility and Combined Heat and Power Program Settlement Agreement (Settlement Agreement) if and when the conditions precedent to the settlement effective date set forth in the Settlement Agreement have been met.” The conditions precedent are specified in Section 16.2 of the Term Sheet attached to the Settlement Agreement (Settlement Agreement Term Sheet) and requires, as relevant here, “Final and non-appealable approval of the Settlement by the Commission as

submitted for approval without revisions unacceptable to any Party or in an alternative form that is acceptable to all Parties.”<sup>1</sup>

On December 2, 2011, the following motions were filed:

- *Motion of Southern California Edison Company to Withdraw Claims and of Settling Parties to Close Docket [A.08-11-001] (A.08-11-001 Motion)*
- *Motion to Withdraw Joint Petition for Modification of D.07-12-052 of Southern California Edison Company, Pacific Gas & Electric Company, and San Diego Gas & Electric Company in R.06-02-013 (R.06-02-013 Motion)*
- *Joint Parties’ Motion to Withdraw Pending Motions, Pleadings and Petition for Modification in Rulemaking 99-11-022 and to Close Docket (R.99-11-022 Motion)*

In each of the three motions, the moving parties state that the conditions precedent to effectiveness of the Settlement Agreement have been met and, that pursuant to D.11-10-016, the Settlement Effective Date occurred on November 23, 2011. Consequently, the moving parties now move to withdraw various petitions and claims in these proceedings. The *A.08-11-001 Motion* states that pursuant Section 14.2.3 of the Settlement Agreement Term Sheet, SCE moves to withdraw its retroactive claims for energy and capacity adjustments. The *R.06-02-013 Motion* states that pursuant to Section 14.2.12 of the Settlement Agreement Term Sheet, SCE, PG&E and SDG&E move to withdraw their Joint Petition for Modification of D.07-12-052. The *R.99-11-022 Motion* states that pursuant to Section 14.2.3.1 of the Settlement Agreement Term Sheet, the Settling Parties agree to waive and release various claims, petitions for modification and filings pending in the docket for an adjustment for energy and capacity

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<sup>1</sup> Settlement Term Sheet, § 16.2.2.

payments. These claims, petitions for modification and filings are listed in Attachment A of the *R.99-11-022 Motion*. The *A.08-11-001 Motion* and the *R.99-11-022 Motion* further request that the respective dockets be closed.

On December 6, 2011, Settling Parties filed *Motion of Settling Parties to Withdraw Petitions for Modification and to Close Dockets R.04-04-003 and R.04-04-025 (R.04-04-003 Motion)*. In that motion, PG&E withdraws its petition for modification of D.09-04-039 and CAC withdraws its petition for modification of D.07-09-040. The motion further states that, pursuant to various terms of the Settlement Agreement: (1) a request to withdraw a petition and cross-petition for writ of review was filed at the California Court of Appeal (Case No. B210398); (1) letters were sent to the Executive Director withdrawing applications for rehearing of D.09-04-032; and (3) CCC has sent a letter to the Executive Director withdrawing its *Motion for an Order Implementing the Prospective Contract Options Adopted in Decision 07-09-040*. The *R.04-04-003 Motion* also seeks to close R.04-04-003 and R.04-04-025.

No parties filed responses to the motions.

## **Discussion**

As part of the Settlement Agreement, the Settling Parties agreed to release or withdraw a number of pending petitions for modification, rehearing applications, motions, and claims at the Commission and pending appeals at the Court of Appeal. Some of the requests that they have filed have already been granted. On December 7, 2011, the Court of Appeal dismissed Case. No. B203198 as moot due to the effectiveness of the Settlement Agreement. On December 21, 2011, the Commission issued D.11-12-058, which dismissed two applications for rehearing of D.09-04-034, one filed jointly by PG&E, SCE, SDG&E and TURN and the other filed jointly by CAC and EPUC. On that same

day, the Commission issued D.11-12-059, which dismissed three applications for rehearing of D.09-04-032, the first filed jointly by SCE, PG&E and SDG&E, the second filed by IEP, and the third filed jointly by CAC and EPUC.

Granting the *A.08-11-001 Motion*, the *R.06-02-013 Motion*, the *R.99-11-022 Motion*, and the *R.04-04-003 Motion* would serve as an additional step in implementing the Settlement Agreement as it would resolve all pending claims and petitions for modification filed by Settling Parties. Further, granting the motions would resolve all outstanding issues presented by Settling Parties and would allow us to close these proceedings for purposes of Pub. Util. Code § 1701.5. No parties have opposed the motions.

Accordingly, we find that it would be reasonable to grant the *A.08-11-001 Motion*, the *R.06-02-013 Motion*, the *R.99-11-022 Motion*, and the *R.04-04-003 Motion*. Additionally, any petitions or motions that have not yet been addressed are hereby denied. Finally, we find that there are no further procedural or substantive issues need to be addressed in these proceedings. Accordingly, Application (A.) 08-11-001, R.06-02-013, R.04-04-025, R.04-04-003, and R.99-11-022 are closed.

### **Comments on Proposed Decision**

The proposed decision of the Administrative Law Judge (ALJ) in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on \_\_\_\_\_, and reply comments were filed on \_\_\_\_\_ by \_\_\_\_\_.

**Assignment of Proceeding**

Mark J. Ferron is the assigned Commissioner in A.08-11-001, Rulemaking (R.) 06-02-013, R.04-04-025, R.04-04-003 and R.99-11-022 and Amy Yip-Kikugawa is the co-assigned ALJ in these proceedings.

**Findings of Fact**

1. The conditions precedent for the Settlement Effective Date have been met.
2. No parties filed responses to the motions.

**Conclusions of Law**

1. The *Motion of Southern California Edison Company to Withdraw Claims and of Settling Parties to Close Docket [A.08-11-001]* should be granted.
2. The *Motion to Withdraw Joint Petition for Modification of D.07-12-052 of Southern California Edison Company, Pacific Gas & Electric Company, and San Diego Gas & Electric Company in R.06-02-013* should be granted.
3. The *Joint Parties' Motion to Withdraw Pending Motions, Pleadings and Petition for Modification in Rulemaking 99-11-022 and to Close Docket* should be granted.
4. The *Motion of Settling Parties to Withdraw Petitions for Modification and to Close Dockets R.04-04-003 and R.04-04-025* should be granted.
5. Granting the motions would resolve all pending claims and petitions for modification filed by Settling Parties.
6. Any outstanding petitions or motions should be denied.
7. A.08-11-001 and R.06-02-013, R.04-04-025, R.04-04-003 and R.99-11-022 should be closed.

**O R D E R**

**IT IS ORDERED** that:

1. *The Motion of Southern California Edison Company to Withdraw Claims and of Settling Parties to Close Docket [A.08-11-011] is granted.*

2. *The Motion to Withdraw Joint Petition for Modification of D.07-12-052 of Southern California Edison Company, Pacific Gas & Electric Company, and San Diego Gas & Electric Company in R.06-12-013 is granted.*

3. *The Joint Parties' Motion to Withdraw Pending Motions, Pleadings, and Petition for Modification in Rulemaking 99-11-022 and to Close Docket is granted.*

4. *The Motion of Settling Parties to Withdraw Petitions for Modifications and to Close Dockets R.04-04-003 and R.04-04-025 is granted.*

5. Application 08-11-001 and Rulemaking (R.) 06-02-013, R.04-04-025, R.04-04-003 and R.99-11-022 are closed.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.