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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the
Commission's Own Motion into
combined heat and power Pursuant to
Assembly Bill 1613.

R.08-06-024
(Filed June 26, 2008)

**DIVISION OF RATEPAYER ADVOCATES RESPONSE
MOTION TO STAY OF DECISION 10-12-055**

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January 10, 2011

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The Division of Ratepayer (DRA) supports the Motion of Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas and Electric Company [Joint Utilities] for Stay of Decision 10-12-055 filed on January 6, 2011 [Motion to Stay].

DRA agrees that not granting the Motion to Stay would result in irreparable harm to ratepayers if the Joint Utilities are forced to enter into 10-year contracts with Qualified Facilities (QFs) at prices that are later determined to exceed the Joint Utilities' avoided cost. Decision (D.) 09-04-032 allows Joint Utilities to apply for retroactive adjustment of their short-term avoided cost methodology.¹ However, the retroactive period may not exceed eighteen months.² If litigation of this issue takes longer than eighteen months, and the final determination is that the price in D.10-12-055 exceeds the Joint Utilities' avoided cost, ratepayers would be responsible for the higher prices previous to the eighteen months of the final determination.

DRA also agrees that there is a high likelihood that the Joint Utilities would prevail in an enforcement action at the Federal Energy Regulatory Commission [FERC] and that FERC would determine that the pricing mechanism adopted in D. 10-12-055

¹ D.09-04-032, Ordering Paragraphs 1-2, pp. 20-21.

² *Id.*

violates federal law for the following reasons. First, the pricing adopted in D. 10-12-055 exceeds the avoided cost prices adopted in D. 10-12-035. Second, the price assumes fixed energy, whereas the product will be as-available energy. Third, there is no evidence that the locational bonus component is the cost a utility would avoid by purchasing power from an AB1613 CHP instead of paying for upgrades to transmission or distribution systems.

For the reasons stated above, DRA recommends that the Commission grant the Joint Utilities' Motion to Stay.

Respectfully submitted,

/s/ MITCHELL SHAPSON

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January 10, 2011

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of “**DIVISION OF RATEPAYER ADVOCATES RESPONSE MOTION TO STAY OF DECISION 10-12-055**” to the official service list in **R. 08-06-024** by using the following service:

E-Mail Service: sending the entire document as an attachment to all known parties of record who provided electronic mail addresses.

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Executed on January 12, 2011 at San Francisco, California.

/s/ NANCY SALYER
NANCY SALYER

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R.08-06-024

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