

ATTACHMENT A

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AB1613 CHP Contracts
Proposed Revisions of Joint Utilities with CPUC Resolution

ITEM	SUBJECT	JOINT UTILITIES' PROPOSED REVISION TO STANDARD CONTRACT (REFERENCE TO RELATED REVISION OF SIMPLIFIED CONTRACT)	CPUC RESOLUTION OF PROPOSED REVISION
<i>DELIVERY POINT (Items 1-7)</i>			
1	Location, title to, and risk of loss of Power Product	[§1.03] The first two sentences are revised for clarity and to utilize terms that are already defined in the CHP contracts. ([§1.06] Similar)	<i>Accepted</i> – no objections raised by parties
2	Buyer's obligation to pay transmission and distribution costs	[§1.03] To maintain the focus of this Section on the Delivery Point and be consistent with the rest of the contract structure, the new language added in D.09-12-042 regarding Buyer's obligation to pay transmission or distribution costs is moved to existing §4.05 (Buyer's Responsibility). Also, the statement regarding Buyer's obligation to pay "any transmission or distribution costs" to deliver the power from the Generating Facility's bus bar to the CAISO-Controlled Grid is revised to limit such obligation to specific costs attributable to Buyer (i.e., maintaining its electric system to accommodate delivery of power to the CAISO-Controlled Grid) in order to avoid conflicts with other provisions in the contract and to be consistent with D.09-12-042. The phrase "any transmission or distribution costs" may be construed to include line losses specifically assigned to Seller pursuant to D.09-12-042, as well as interconnection facilities or system upgrades that are, in accordance with §3.06(b), charged to the Seller. This inconsistency, if not clarified as proposed, could lead to future disputes between the Parties.	<i>Rejected</i> – Proposed revisions are beyond the scope of contract clean-up. CCDC notes that the contract term language in the Simplified Contract was agreed upon by parties in this proceeding. ¹ This language was adopted by the Commission in D.09-12-042. The Joint Utilities provide insufficient justification for why this previously agreed upon language should be changed now.

¹ The SUPPLEMENTAL WORKING GROUP REPORT ON SIMPLIFIED AB 1613 CONTRACT filed in this proceeding on June 30, 2009 offered two alternatives for a "Delivery Point" term, one agreed upon by all parties except SCE and another proposed by SCE. The Commission adopted the former in D.09-12-042.

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		([§1.06] Similar; new language moved to §4.02)	
3	Seller's (i) obligation to pay interconnection and facilities upgrade costs and (ii) responsibility for line losses	[§1.03] To maintain the focus of this Section on the Delivery Point and be consistent with the rest of the contract structure, the new language added in D.09-12-042 regarding (i) Seller's obligation to pay interconnection and facilities upgrades costs, and (ii) Seller's responsibility for line losses is moved to §3.06(b). ([§1.06] Similar; new language moved to existing §3.07)	<i>Rejected</i> - Proposed revisions are beyond the scope of contract clean-up. The Joint Utilities' proposed changes appear to materially impact the contract in ways that are contrary to the Commission's intent in D.09-12-042.
4	Correct reference to CAISO-Controlled Grid	[§2.01(b)(ii)] In D.09-12-042, the Delivery Point is established at the point of interconnection between Seller's facility and Buyer's facility (i.e., the "bus bar"). However, the CHP contracts, which were originally based on the proposed QF Standard Contract, were written so that the Delivery Point would be at the CAISO-Controlled Grid. Therefore, in certain sections, the contracts used the terms "Delivery Point" and "CAISO-Controlled Grid" interchangeably. Given that the Delivery Point is no longer at the CAISO-Controlled Grid, the contracts must be conformed by using the term "CAISO-Controlled Grid" in the appropriate sections. If these revisions are not made, the intent of these sections will not be recognized and the sections themselves will be meaningless. In this §2.01(b)(ii), "Delivery Point" is changed to "CAISO-Controlled Grid" to reflect that Seller is responsible for agreements, permits and approvals necessary for the transmission of power to the CAISO-Controlled Grid. Also, the word "Deliver" is changed to "Transmit" in certain instances to make absolutely clear that Seller is not responsible for delivering power to the CAISO-Controlled Grid, in accordance with D.09-12-042. ([§3.06] Similar)	<i>Rejected</i> - see above, under Item 3.
5	Correct reference to CAISO-Controlled Grid	[§§2.01(f), 3.05, 3.06(b), 3.06(b)(v), 3.18(b), 4.05] <i>See comments under Item 4 above.</i> ([§§3.07,3.16, 4.02] Similar)	<i>Rejected</i> - see above, under Item 3.

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6	Correct reference to CAISO-Controlled Grid	<p>[<i>Exhibit A, Def. of "Transmission Provider"</i>]. See comments under Item 4 above. Also, note that this definition would make little sense without the requested revision, since, given that the location of the Delivery Point is at the bus bar, the Generating Facility and the Delivery Point are essentially synonymous. That is, the Transmission Provider is not needed to deliver Metered Energy on behalf of <i>Seller</i> from the Generating Facility to the Delivery Point, but is needed to deliver Metered Energy on behalf of <i>Buyer</i> from the Delivery Point (i.e., the bus bar) to the CAISO-Controlled Grid.</p> <p>(Similar)</p>	<p><i>Accepted with modifications</i> – Proposed revisions are accepted with one modification. The word “Seller” should be replaced with the word “Buyer” in Exhibit A, Def. of “Transmission Provider” in the Simplified Contract. It appears that this change, which the Joint Utilities’ proposal for the Standard Contract, was also intended for the Simplified Contract, although it was omitted in Joint Utilities’ Appendix C.</p>
7	Correct reference to CAISO-Controlled Grid	<p>[<i>Exhibit G, §2(a)(i)</i>] See comments under Item 4 above. Note that this Section would make little sense without the requested revision, since there would be no line losses between the CAISO-Approved Meter and the Delivery Point because they are essentially synonymous.</p> <p>([<i>Exhibit C, §2(a)(i)</i>] Similar)</p>	<p><i>Accepted</i> – no objections raised by parties</p>
<p>ACCESS TO METERS; METERING (Items 8-14)</p>			
8	Buyer's access to CAISO-Approved Meter data	<p>[<i>§2.01(l)</i>] This Section requires Seller to provide Buyer with access to its CAISO-Approved Meter and data as of the Term Start Date. This Section reflects Buyer's recent experience with contracts in other contexts that are similar to the CHP contracts that do not include this Section. Buyer has had to delay payment to Seller in such other contracts because Buyer did not have language granting Buyer access to the CAISO-Approved Meter and relevant data, and the Seller under such contract failed to provide access to Buyer in a</p>	<p><i>Rejected</i> – Proposed revisions are beyond the scope of contract clean-up. CCDC and FCE note that the proposed contract term language is overbroad.</p>

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		timely manner. ([§3.17] Similar. Note, however, that under the Simplified Contract, Items 8 and 9 discussed in this Matrix are both applied under §3.17 because the format of the Simplified Contract lacks a section delineating Seller's obligations before the Term Start Date.)	
9	Buyer's access to CAISO-Approved Meter data	[§3.19(b)] <i>See comments under Item 8 above.</i> ([§3.17] Similar)	<i>Rejected</i> – see above, under Item 8.
10	Buyer's access to CAISO-Approved Meter data	[<i>Exhibit A, Def. of OMAR</i>] Added new definition for Operational Metering Analysis and Reporting system currently operated and maintained by the CAISO as a repository for meter data. This supports the new proposed §2.01(l), which reflects current CAISO business practice and is used to clarify Seller's responsibility to provide access to data to the Buyer, so that payments can be made in a timely manner. This definition is taken from SCE's renewable pro forma agreement. <i>See also comments under Item 8 above.</i> (Similar)	<i>Accepted</i> – no objections raised by parties
11	Metering	[§3.09(c)(ii)] Section 3.09 allows the Parties to compare CAISO-Approved Meter data to the Check Meter data so that, if there is a discrepancy between the two meters, action is taken to resolve such discrepancy. Yet, since the time that the QF Standard Contract (which is the basis for the CHP contracts) was initially drafted, it has become apparent that the CAISO-Approved Meters may not only measure pure energy, but may include compensation factors (e.g., line losses). A new parenthetical is therefore added (i.e., "after adjusting for any compensation factors introduced by the CAISO into the CAISO-Approved Meter") to reflect that Buyer must remove any compensation factor in order to do an "apples-to-apples" comparison of the CAISO-Approved Meter data and the Check Meter data to detect any inaccuracy. Otherwise, if the CAISO introduces compensation factors into the CAISO-Approved Meter, it will be impossible to compare it against the Check	<i>Accepted</i> – no objections raised by parties

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		<p>Meter on an equal footing without taking that factor out of the comparison. In fact, there will always be a discrepancy between the two meters, and unless the discrepancy is accounted for as proposed, it may trigger other provisions of the contract requiring recalibration and recertification of the meters.</p> <p>([§3.10(c)] Similar)</p>	
12	Definition of "Metered Energy"	<p>[<i>Exhibit A, Def. of Metered Energy</i>] A new clause is added (i.e., "after adjusting for any compensation factors introduced by the CAISO into the CAISO-Approved Meter") to reflect the fact that Metered Energy, as used to calculate payments to Seller pursuant to Exhibit C and the SDD Adjustment pursuant to Exhibit I, must reflect the actual energy delivered by Seller to the Delivery Point. Losses for which the Seller is responsible will be factored into the payment calculation by use of the "Loss Factor" term. It is important to note that, without this addition, Exhibit I will always result in an SDD Energy Adjustment. <i>See also comments under Item 11 above.</i></p> <p>(Similar)</p>	Accepted - no objections raised by parties
13	Metering	<p>[§3.09(b)] New language is added to reflect that it may be necessary to have more than one Check Meter if there is more than one CAISO-Approved Meter. For example, under §3.09(d), Seller may install multiple CAISO-Approved Meters under certain circumstances, and Buyer should have the right to have a Check Meter at each such CAISO-Approved Meter in the same way that Buyer already has the right to install one Check Meter where there is one CAISO-Approved Meter.</p> <p>([§3.10(b)] Similar)</p>	Accepted - no objections raised by parties
14	Metering	<p>[§3.09(c)(v)] New language is added to clarify how and why the Check Meter is to be used. Specifically, although various sections of the CHP contracts imply that the Check Meter is only to be used for back-up purposes when there is a malfunction with the CAISO-Approved Meter, there is no explicit term stating this fact. This added Section merely clarifies the intent of the contracts and makes it easier for Buyer's settlements group to administer the contracts as intended.</p>	Accepted with modifications - Proposed revisions are accepted with one modification. The words "or checked" should be added prior to the final word "recertified" in the relevant

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		([§3.10(c)] Similar)	sections of each contract to be consistent with other language in those sections.
GREENHOUSE GAS EMISSIONS <i>(Items 15-18)</i>			
15	GHG emissions reduction costs	[§3.03] This Section is revised to eliminate ambiguity and duplication in the language and to use terms already defined in the contracts as appropriate. ([§3.03] Similar)	<i>Accepted</i> - no objections raised by parties
16	GHG emissions reduction costs	[§3.03(a)] <i>See comments under Item 15 above.</i> Also, the reference in the final sentence to CARB allocating GHG emissions "based on the BTU content of the end product" is deleted because current CARB reporting protocols are based on not only BTU of the end product but also efficiency. This change simply makes the reference more general, to the "California Air Resource Board reporting protocols." ([§3.03(a)] Similar)	<i>Accepted with modifications</i> - Proposed revisions are accepted with one modification. The phrase "the electricity consumed on site" shall remain in the relevant contract terms, and the proposed phrase "Station Use" shall be deleted. "Station Use" as defined in the contract is not necessarily the same as "electricity consumed onsite," and would materially impact the contract.
17	"GHG" definition	[Exhibit A, Def. of GHG] Added new definition clarifying that GHG means "greenhouse gas," since the term "GHG" is used in new §3.03 but not defined, and is also used interchangeably with "greenhouse gas," which can create ambiguity. (Similar)	<i>Accepted</i> - no objections raised by parties
18	GHG compliance costs	[Exhibit A, Def. of Direct GHG Compliance Costs] The phrases "governmental authority" and "operation" are capitalized to reflect the fact that such terms	<i>Accepted</i> - no objections raised by parties

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		are already defined in the CHP contracts. ([<i>Exhibit A Def. of Direct GHG Compliance Costs</i>]: Similar, but also corrected a typo (i.e., "the" for "a" Generating Facility))	
<i>PAYMENT CALCULATIONS; PAYMENT ADJUSTMENTS (Items 19-29)</i>			
19	Monthly contract payment calculations	[<i>Exhibit C, §1</i>] The qualifier "if applicable" is added to reflect that the Location Bonus shall be calculated as set forth in §6 of Exhibit C only if Seller is entitled to a Location Bonus because it is in a High-Value Area. ([<i>Exhibit B, §1</i>] Similar)	<i>Accepted</i> – no objections raised by parties
20	Monthly contract payment calculations	[<i>Exhibit C, §2</i>] This Section is revised to substitute the verbal description of how payments should be made with an algebraic formula so as to provide greater precision and clarity, and to facilitate consistent contract administration (since the significant majority of Buyer's contracts utilize a similar format, which will ease the administration of payments for Buyer's settlements group). The revised formula also adds a Loss Factor to allow implementation of the provision which requires Seller to be responsible for line losses from the Delivery Point to CAISO-Controlled Grid. Finally, it is important to note that, without the revision of this Section (including replacing undefined terms with terms that are already defined in the CHP contracts), inconsistencies will remain that may lead to future disputes (e.g., the proposed revision uses "Metered Energy," which is a defined term, rather than "metered kWh exported during the TOD period during the month"). ([<i>Exhibit B, §2</i>] Similar)	<i>Rejected</i> – Proposed revisions are beyond the scope of contract clean-up. IOUs may work with CHP parties to resolve this issue.
21	Monthly contract payment calculations	[<i>Exhibit C, §2</i>] This Section is revised to insert an annual payment limiter to implement the limitation already set forth in existing §4.02(a)(vi), which states that "Once 120% of the Expected Term Year Net Energy Production is achieved, no further payments will be calculated for the remaining TOD Periods within any remaining months of the current Term Year." ([<i>Exhibit B, §2</i>]: This Section is revised to insert two payment limiters to ensure	<i>Accepted</i> – no objections raised by parties

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		consistency with other contract provisions: (a) hourly limit of 5,000 kW, which implements the basic premise of the Simplified Contract that Seller will never deliver more than 5MW to Buyer; and (b) annual limit of As-available Contract Capacity x 8,760 hours, which implements existing §1.05(b), and which provides that the Expected Term Year Energy Production may not exceed the As-Available Contract Capacity at 100% capacity factor applied over the Term Year.)	
22	Monthly contract payment calculations	[Exhibit C, §3] See Section II of the Petition For Modification. The changes made to this Section revise the introduction to the Fixed Price Component table to reflect that, under the methodology by which these MPR factors were calculated, they are levelized values, i.e., each number represents the price that should be paid for each year of the Term to a Seller who begins operation in a given year. Since they incorporate levelization, they are not intended to be escalated each year. To do so would result in <u>double</u> escalation, hence overstating their value. ([Exhibit B, §3] Similar)	Accepted - The language of Section 3 of Exhibit C is modified to read, "the Fixed Price Component, FPC, for all TOD Periods shall be the amount in the following table for the year of the Term Start Date."
23	Monthly contract payment calculations	[Exhibit C, §4] To clarify the intent of this Section and facilitate consistent contract administration (including payment calculations by Buyer's settlement group), a payment calculation formula is substituted for the verbal description of parameters to be used pursuant to D.09-12-042. See also comments under Item 20 above. ([Exhibit B, §4] Similar)	Rejected - Proposed revisions are inappropriate and potentially inconsistent with D.09-12-042. Before filing final tariffs, each IOU shall include specific language for their utility relating to a) the indices and index locations used to calculate the "monthly bidweek gas price" consistent with D.09-12-042; and b) the specific gas transportation rate schedule for the utility. A reference to the utility's QF SRAC pricing elements is not

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			sufficient. D.09-12-042 articulates clearly how the gas price shall be determined and it is not the same as the QF SRAC pricing in all cases. D.09-12-042 intentionally left a placeholder in this part of the contracts so that each utility could fill this in as it relates to each utility.
24	Monthly contract payment calculations	[Exhibit C, §6] Added a new provision, including a payment formula, to implement the requirement in D.09-12-042 for a Location Bonus. ([Exhibit B, §6] Similar)	Accepted - no objections raised by parties
25	Seller responsibility for line losses	[Exhibit A, Def. of Loss Factor] New defined term is added to implement the requirement that Seller is responsible for line losses from the Delivery Point to CAISO-Controlled Grid. See also comments under Item 20 above. (Similar)	Accepted - no objections raised by parties
26	High-Value Area	[Exhibit A, Def. of High-Value Area] Referenced new definition added to §6 of Exhibit C. (Similar)	Accepted - no objections raised by parties
27	Location Bonus	[Exhibit A, Def. of Location Bonus] Referenced new definition added to §6 of Exhibit C. (Similar)	Accepted - no objections raised by parties
28	Payment adjustments	[§4.02(vi)] Deleted the word "energy" from this Section in recognition of the fact that D.09-12-042 orders "all-in" contract payments, rather than the separate energy and capacity payments of the QF Standard Contract (which was the basis for the CHP contracts). (N/A)	Accepted - no objections raised by parties
29	Scheduling and	[Exhibit I, §1] Factor "EP" used in the calculation of the SDD Energy	Accepted - no objections raised

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	delivery deviation adjustments	Adjustment is revised to replace "TOD Energy Price" (which is no longer a defined term given that D.09-12-042 orders "all-in" contract payments and not the avoided cost price calculation) with the following phrase: "TOD Period Payment divided by Metered Energy applicable to the Settlement Interval specified in Section 2(b) of Exhibit C, defined as (FPC+VPC) x AF." The added language captures the intent of the EP factor given the new structure of the CHP contracts. Without this change, Exhibit I will not be able to be properly administered. (N/A)	by parties
<i>MISCELLANEOUS (Items 30-35)</i>			
30	Operation and record keeping	[§3.14(h)] This Section is revised to clarify its intent by substituting the defined term "Power Product" for "energy," which is an undefined term that is not as precise as Power Product (which, for example, nets Station Use from the electric energy that Seller is required to deliver to Buyer pursuant to the contracts). Without correction, this imprecision may create an unnecessary ambiguity in the contract that could potentially lead to future disputes. (N/A)	Accepted - no objections raised by parties
31	Eligible CHP Facility Status	[e.g., §3.17(a)] Changed "California Energy Commission" to the defined term "CEC," which is used in various places in the CHP contracts. ([e.g., §3.15] Similar)	Accepted - no objections raised by parties
32	Limitation on obligation to maintain Eligible CHP Facility status	[§§2.01(a), 6.01(xvi), 9.02(f)] In each of these Section, the cross reference to §3.17(b), regarding Seller's obligation to maintain its status as an Eligible CHP Facility, is deleted. This revision is made because §3.17(b) originally cross-referenced a section in the QF Standard Contract (on which the CHP contracts are based) that provided that Seller must used "commercially reasonable efforts" to maintain its status as an Eligible Qualifying Facility, and also provided a further definition of "commercially reasonable efforts" (see §3.17(c) of the QF Standard Contract). D.09-12-042 removed the "commercially	Accepted with modifications - Proposed revisions are accepted with one modification. The words "Subject to Section 3.15" shall not be deleted from Section 6.01(b)(vi) of the Simplified Contract. The Joint Utilities do

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		reasonable efforts" standard previously set forth in the QF Standard Contract. Therefore, such a limitation is no longer necessary or applicable, and references to it should be deleted. ([§6.01(b)(vi)] Similar)	not explain this deletion This reference is potentially important to the contract.
33	Form of Letter of Credit, Attachment A	[Exhibit L §1.F.] This Section is revised to delete provision for Development Security requirement increasing from \$20/kW per kW to \$60/kW, thus conforming this Section to the requirements of D.09-12-042 and other provisions of the Standard Contract. (N/A)	Accepted - no objections raised by parties
34	Forecast	N/A ([§4.01(g)] Revised "forecast of electric energy," which is undefined, to the defined term "Forecast" in order to maintain consistency and avoid ambiguity.)	Accepted - no objections raised by parties
35	Incorrect section references and no-longer-applicable defined terms	In implementing D.09-12-042, various sections were added, deleted and/or modified by the Energy Division, but a check of the section references and Exhibit A (Definitions) in the contracts was not done to assure that such section references and definitions were still correct and properly used in the contracts. Buyer has corrected these errors in section numbering as follows: §§ 2.01(a), (c) and (g); 3.08(c); 3.09(b)(ii); 3.11(a)(vi); 6.01(b)(i); 9.03(d); 9.08(h); 9.16; "Check Meter;" "PURPA;" "Qualifying Facility;" "Telemetry System;" Exhibit D, 4(c)(ii). (Similar: § 4.01(a); definition of "Check Meter;" "Delivery Point")	Accepted - no objections raised by parties

(END OF ATTACHMENT A)