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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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

Rulemaking 13-12-010
(Filed December 19, 2013)

**ADMINISTRATIVE LAW JUDGE'S RULING
SEEKING COMMENT ON CHP ISSUES**

This Ruling seeks comment from parties in this proceeding regarding issued deferred to the Long-Term Procurement Plans (LTPP) proceeding from Decision (D.) 10-12-035 (as modified by D.11-10-016), the Qualifying Facility and Combined Heat and Power Settlement Agreement (CHP Settlement or Settlement).¹

The CHP Settlement established targets and timelines for the three large electric utilities to execute new contracts with CHP resources and to achieve greenhouse gas (GHG) reductions from new and existing CHP facilities. The CHP Settlement has three defined program periods: a Transition Period, which began on the settlement effective date and continues until July 1, 2015; an Initial Program Period, which began on the settlement effective date and concludes on November 23, 2015; and a Second Program Period, which begins on November 24, 2015, and ends December 31, 2020.²

¹ The CHP Settlement became effective on November 23, 2011.

² CHP Program Settlement Agreement Term Sheet, Section 2.

The Transition Period is the time during which an existing CHP facility may obtain a new power purchase agreement (PPA), sell into the wholesale market, shut down, or cease to export to the grid.³ The Transition Period begins on the Settlement Effective date and ends on July 1, 2015.

The Initial Program Period establishes a deadline for the utilities to procure certain quantities of CHP capacity. The Settlement requires Pacific Gas and Electric Company, Southern California Edison Company (SCE) and San Diego Gas & Electric Company (SDG&E) to execute contracts for 1,402 megawatt (MW), 1,387 MW, and 160 MW of CHP capacity, respectively, from CHP facilities within 48 months of the Settlement effective date, which was November 23, 2011. Thus, the first program period ends on November 23, 2015.⁴

For the Initial Program Period, the Settlement outlines how the utilities should count the capacity from different types of CHP facilities, and it allows the utilities to count contracts executed through each of their three required CHP-only requests for offers (RFOs) as well as through bilateral negotiations, Commission-approved pro forma contracts and other procurement venues (e.g. local capacity requirement RFOs and all-source RFOs).

The Second Program Period establishes a deadline by which the three large utilities must procure a certain amount of GHG emissions reductions from CHP facilities. By December 31, 2020, the utilities are required to achieve, in total, 4.8 million metric tonnes (MMT) of GHG reductions, with each CHP facility counting toward this target according to methodologies outlined in Section 7 of

³ *Id.* at Section 2.1.1.

⁴ SDG&E has an additional requirement to procure an additional 51 MW by 2018.

the CHP Settlement Term Sheet.⁵ According to Settlement accounting, only new CHP facilities or those that change their operations (including shutting down) may count GHG emissions reductions toward the GHG target. In addition to meeting the GHG Target in the second program period, the Settlement also specifies that any capacity shortfall left after the first program period shall roll over into the second program period.

Regarding the Second Program Period, the Settlement identified a number of issues that will be resolved in the Commission's LTPP Proceeding. For instance, Settlement Term Sheet Section 6.6 states that the Investor-owned Utilities GHG Emission Reduction Target for the Second Program Period is subject to review and revision in the LTPP Process. The Commission has discretion to reduce or expand the GHG mandate.⁶ Importantly, the CHP Settlement does not specify the means by which utilities shall procure sufficient CHP resources to meet any outstanding GHG Emission Reduction Targets in the Second Program Period, and it requires the Commission to decide in the LTPP how many RFOs to require during that time.⁷

This ruling seeks comment from parties on the outstanding issues that were identified in the Settlement Term Sheet as ones that would be resolved in the Commission's LTPP proceeding. In addition to the issues specifically

⁵ This total is based on the investor-owned utilities' share, based on retail sales, of the statewide CHP GHG Emissions Reduction Target of 6.7 MMT established in the Air Resources Board's Climate Change Scoping Plan, and is explained in Section 6 of the CHP Settlement Term Sheet. Each utility's share of this target is updated annually by Energy Division staff based on the most current California Energy Commission (CEC) retail sales data. Each utility's current targets are: 2.16 MMT (PG&E); 2.17 MMT (SCE); and 0.50 MMT (SDG&E).

⁶ *Id.* at 5.1.4.8.

⁷ *Id.* at Sections 5.1.4, 5.4, and 6.6.

identified in the Term Sheet, parties may comment on whether the Transition Period should be extended⁸ and on whether special rules or processes should be created to encourage deployment of certain types of CHP that may have high emissions reduction potential but that may face barriers to market development.

Questions for Comment

Parties may comment on the following questions:

1. Should the Commission increase, decrease, or leave constant the utilities' obligation to procure 4.8 million metric tons of GHG emissions reductions by December 31, 2020, the end of the Second Program Period?⁹ If a change is necessary, what should the new target be?
2. What procurement processes and strategies should the Commission direct the utilities to employ in order to meet the MW and/or GHG targets established for the Second Program Period?
3. How many competitive RFOs should the Commission require the utilities to hold in the Second Program Period?¹⁰
4. Should the Commission modify the way GHG emissions reduction benefits are calculated for Settlement counting purposes, including how it calculates the double benchmark?¹¹
5. By what procedural method should a utility be permitted to make a showing during the Second Program Period that

⁸ The Settlement established a firm date as the end of the Transition Period, but it established the end of the Initial Program Period as 48 months after approval of the Settlement. A lengthy approval process resulted in a gap between the end of the Transition Period and the end of the Initial Program Period that may not have been intended by the settling parties.

⁹ Per Settlement Term Sheet Section 6.6.

¹⁰ Per Settlement Term Sheet Section 5.1.4.

¹¹ Per Settlement Term Sheet Section 7.4.1.

- it is unable to meet its MW and/or GHG emissions reduction targets?¹² How should the Commission evaluate whether a utility is justified in failing to meet its targets?
6. Should the Transition Period be extended so that the end of the Transition Period coincides with the end of the First Program Period?
 7. Should the Commission establish special targets or rules to promote CHP resources that face barriers to development and that have significant potential to reduce GHG emissions (e.g. bottoming cycle CHP, or renewably-fueled CHP resources)?

Parties are encouraged to engage in settlement discussions on the issues presented herein. A robust settlement among most or all affected parties or interests can potentially reduce the time, resources and controversies regarding implementation for the CHP Settlement issues for the LTPP proceeding, as well as allowing the affected parties and interests to avoid ambiguity by clearly stating implementation details. As stated in the Scoping Memo for this proceeding, the Administrative Law Judge (ALJ) Division has ALJs trained in all Alternative Dispute Resolution techniques, as well as extensive subject matter experience, available to assist parties in resolving disputes. Requests for

¹² Per Settlement Term Sheet Sections 5.4 and 6.9.

appointment of an ALJ to assist with ADR should be made to ALJ Jean Vieth (xjv@cpuc.ca.gov).

IT IS RULED that comments on the questions in this Ruling are due on September 17, 2014, and reply comments are due on October 8, 2014.

Dated July 29, 2014, at San Francisco, California.

/s/ DAVID M. GAMSON

David M. Gamson
Administrative Law Judge