



**PUBLIC UTILITIES COMMISSION**

505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3298

**FILED**  
7-09-15  
09:03 AM

July 9, 2015

Agenda ID #14130  
Ratesetting

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

This is the proposed decision of Administrative Law Judge Yacknin. Until and unless the Commission hears the item and votes to approve it, the proposed decision has no legal effect. This item may be heard, at the earliest, at the Commission's August 13, 2015 Business Meeting. To confirm when the item will be heard, please see the Business Meeting agenda, which is posted on the Commission's website 10 days before each Business Meeting.

Parties of record may file comments on the proposed decision as provided in Rule 14.3 of the Commission's Rules of Practice and Procedure.

/s/ KAREN V. CLOPTON

Karen V. Clopton, Chief  
Administrative Law Judge

KVC:ek4

Attachment

Decision **PROPOSED DECISION OF ALJ YACKNIN** (Mailed on 7/9/2015)**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

**DECISION DENYING PETITION TO MODIFY DECISION 10-12-035****Summary**

This decision denies the California Cogeneration Council's petition to modify Decision 10-12-035 to extend the termination date for transition power purchase agreements under the Qualifying Facility and Combined Heat and Power Program Settlement Agreement.

**1. Discussion**

Decision (D.) 10-12-035 approved the "Qualifying Facility and Combined Heat and Power Program (QF/CHP) Settlement Agreement."<sup>1</sup> That settlement

<sup>1</sup> The settling parties were Southern California Edison Company, Pacific Gas and Electric Company, San Diego Gas & Electric Company, The Utility Reform Network, the California Cogeneration Council (CCC), the Independent Energy Producers Association, the Cogeneration

*Footnote continued on next page*

resolved numerous outstanding disputes regarding the Commission's then-existing program for implementing the investor-owned utilities' obligation to purchase electricity from qualifying facilities pursuant to the Public Utility Regulatory Policies Act (PURPA),<sup>2</sup> and established a detailed and comprehensive framework to provide for an orderly transition to a new QF/CHP Program reflecting changes in the PURPA purchase obligation and the California market.

Among other things, the settlement provided the opportunity for CHP facilities that were selling to a utility under "legacy" power purchase agreements (PPAs) under the existing program to enter into "transition" PPAs as they transitioned away from the utilities' must-take obligation and into the new competitive program. The termination date for these transition PPAs is July 1, 2015.

The settlement also establishes the Initial Program Period, ending 48 months after the effective date of the settlement (on November 22, 2015), during which time the utilities are to competitively procure 3000 megawatts (MW) through new PPAs with CHP and other facilities; and the Second Program Period, during which time the utilities are to competitively procure any portion of the megawatt targets that they did not procure during the Initial Program Period and any additional procurement targets established by the Commission.

The CCC petitions to modify D.10-12-035 to extend the termination date for the transition PPAs to the end of the Initial Program Period or, for CHP facilities that are successful in any of the utilities' competitive solicitations, to the

---

Association of California (CAC), the Energy Producers and Users Coalition (EPUC), and the Division of Ratepayer Advocates.

<sup>2</sup> 16 U.S.C. § 796, et seq.

date that the Commission approves those PPAs and they become effective.<sup>3</sup> The CCC makes two interrelated assertions: First, it asserts that the Initial Program Period was expected to end before the transition PPAs expired and that the settlement agreement is ambiguous with regard to this intent and should be clarified as a matter of law. Second, it asserts that allowing the transition PPAs to expire before the operators of existing CHP facilities know if they are successful in the competitive solicitations is “untenable” because it requires them to shut down or make alternative arrangements before they know whether they will have a new PPA.

We disagree. The settlement sets the expiration date for the transition PPAs for July 1, 2015, and sets the expiration date of the Initial Program Period for 48 months after the effective date of that period. These terms are not ambiguous or capable of more than one reasonable interpretation and, therefore, do not require our interpretation or clarification.

As for whether the settlement has placed the operators of existing CHP facilities in an “untenable” position, we recently considered and rejected that assertion in D.15-06-028 when we denied CCC’s as well as EPUC/CAC’s request that we extend the transition period. To the contrary, we noted that “the [Greenhouse Gas] Emissions Reduction Targets adopted in [that] decision provide a continued and sustained market beyond the Initial Program Period” and “that the remaining MW requirement from the Initial Program Period will continue until procured. As a result, we are confident that a combination of the

---

<sup>3</sup> Coalinga Cogeneration Company, Sargent Canyon Cogeneration Company, Salinas River Cogeneration Company and Mid-Set Cogeneration Company filed a response in support of the petition and asking for additional relief. Because we conclude that relief is unnecessary, we do not reach the merits of the additional relief sought by these parties.

competitive solicitations, near-term bilateral agreements, and arrangements to sell excess electricity into the market are appropriate avenues for the limited number of facilities that remain on the transition PPAs. Therefore, it is unreasonable to extend the Transition Period.” (D.15-06-028 at 44.) We have no cause to alter this assessment.

The petition is denied.

## **2. Comments on the Proposed Decision**

The proposed decision of the Administrative Law Judge 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 \_\_\_\_\_.

## **3. Assignment of Proceeding**

Michel Peter Florio is the assigned Commissioner and Hallie Yacknin is the assigned ALJ in these proceedings.

## **Finding of Fact**

As we stated in D.15-06-028, the Greenhouse Gas Emissions Reduction Targets adopted in that decision provide a continued and sustained market beyond the Initial Program Period and, as a result, the combination of the competitive solicitations, near-term bilateral agreements, and arrangements to sell excess electricity provide adequate opportunities for the continued operation of the limited number of facilities that remain on the transition power purchase agreements.

**Conclusions of Law**

1. The terms of the QF/CHP Program Settlement Agreement regarding the expiration dates for the transition power purchase agreements and the Initial Program Period are not ambiguous or capable of more than one reasonable interpretation and, therefore, do not require our interpretation or clarification.

2. It is unnecessary to extend the Transition Period for purposes of providing adequate opportunities for the continued operation of facilities that remain on the transition power purchase agreements.

3. The petition should be denied.

4. All pending motions should be deemed denied.

5. This order should be effective immediately.

**O R D E R**

**IT IS ORDERED** that:

1. The California Cogeneration Council's petition to modify Decision 10-12-035 is denied.

2. All pending motions are deemed denied.

This order is effective today.

Dated \_\_\_\_\_, 2015 at San Francisco, California.