

Decision 11-10-016 October 6, 2011

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 GRANTING, IN PART, PETITION TO MODIFY DECISION 11-07-010 AND REQUEST TO ESTABLISH A SETTLEMENT AGREEMENT EFFECTIVE DATE AND GRANT MOTION FOR CLOSURE

Summary

This decision grants, in part, the joint petition for modification of Decision 11-07-010 and request to establish settlement effective date and grant motion for closure, filed jointly on July 28, 2011 by the California Municipal Utilities Association, 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. This

decision grants the request to modify Decision 11-07-010 and to establish a Settlement Agreement Effective Date. This decision also grants the separately-filed motion for expedited consideration. These proceedings remain open.

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, Pacific Gas and Electric Company, San Diego Gas & Electric Company, The Utility Reform Network (TURN), 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 (DRA) (collectively, Settling Parties). The Settlement provides a detailed and comprehensive framework for a Qualifying Facility and Combined Heat and Power Program (QF/CHP Program) in California. Among other things, the Settlement includes a procurement framework for Qualifying Facilities and Combined Heat and Power facilities. As a result of these procurement obligations, the Commission in D.10-12-035 also established certain requirements and cost obligations on electric service providers, Community Choice Aggregators (CCAs), publicly-owned utilities, and their respective customers.

On April 1, 2011, the Settling Parties and the California Municipal Utilities Association (CMUA) filed a petition for modification of D.10-12-035 (April 2011 Petition). The proposed changes and clarifications specified the extent to which Transferred Municipal Departing Load (MDL) Customers would be responsible for any non-bypassable charges (NBCs) associated with the Settlement and

provided that New MDL Customers will not be responsible for any NBCs associated with the Settlement. The April 2011 Petition made the distinction that the benefits from the QF/CHP Settlement were different for MDL customers when compared with Direct Access (DA) and CCA customers; therefore, separate treatment of how costs are allocated was reasonable for MDL customers.

The Commission granted the April 2011 Petition in D.11-07-010. However, in response to joint comments filed by Marin Energy Authority (MEA), the Alliance for Retail Energy Markets (AReM), Shell Energy North America (US) L.P (Shell) and the Direct Access Customer Coalition (DACC) that the agreement could result in the shifting of costs from MDL to DA and CCA customers, D.11-07-010 also concluded that CCA and DA customers would not be responsible for any costs incurred on behalf of MDL Customers. In addition, D.11-07-010 stated that to the extent the modifications proposed by Settling Parties and CMUA resulted in any unrecovered costs attributable to MDL Customers, these costs would be the responsibility of the Settling Parties,¹ consistent with the requirements of Pub. Util. Code § 366.2(d)((1).

On July 28, 2011, Settling Parties and CMUA (collectively, Joint Petitioners) filed a petition to modify D.11-07-010, among other things (July 2011 Petition). The Joint Petitioners request that the conclusions made in response to the joint comments from MEA, AReM, Shell and DACC, specifically the paragraphs and associated Conclusions of Law (COLs) concerning § 366.2(d)(1) and cost shifting, be deleted. The Joint Petitioners ask for these deletions because, they argue, “in

¹ See D.11-07-010 at 7, including footnote 10.

addition to being erroneous, the late-added paragraphs and COLs have an additional deleterious effect. Because D.11-07-010 included these passages, and these provisions are not acceptable to all of the Settling Parties, the QF/CHP Settlement has not yet become effective. If the Commission grants this Petition, all of the conditions precedent associated with the QF/CHP Settlement will have been satisfied and the QF/CHP Settlement can finally become effective.”² The July 2011 Petition cites the desire to have a settlement effective date as the motivation for having the language deleted, and they claim errors in both law and in the facts as the rationale for the deletion.

The July 2011 Petition seeks to have the following paragraphs and Conclusions of Law deleted from D.11-07-010:

On page 7:

The proposed modifications in the Petition limit the time period to recover certain costs associated with the Settlement from MDL Customers. Therefore, there is a possibility that MDL Customers would not be responsible for some portion of the costs related to generation resources procured on their behalf. Pursuant to Pub. Util. Code § 366.2(d)(1), which prohibits the shifting of recoverable costs between customers, the [Investor-owned Utilities] IOUs cannot recover costs attributable to MDL Customers from bundled or other departing load customers (i.e., CCA and DA Customers). As such, any unrecovered costs attributable to MDL Customers shall be the responsibility of the Settling Parties.

² July 2011 Petition at 2.

Footnote 10:

As suggested by Joint Respondents, this could include investor owned utility shareholders and the Settling Parties that represent the QF and CHP owners and developers.

On page 12:

In response to comments, this decision has been revised to clarify that consistent with the requirements of Pub. Util. Code § 366.2(d)(1), bundled, CCA and DA customers shall not be responsible for any costs incurred on behalf of MDL Customers. Rather, to the extent the modifications proposed in the Petition result in any unrecovered costs that are attributable to MDL Customers, these costs shall be the responsibility of Settling Parties.

Conclusions of Law:³

3. Pub. Util. Code § 366.2(d)(1) prohibits the shifting of recoverable costs between customers.

4. Pursuant to Pub. Util. Code § 366.2(d)(1), the IOUs cannot recover any unrecovered costs attributable to MDL Customers from bundled, DA or CCA customers.

Second, the Joint Petitioners request that if the July 2011 Petition is “granted without modification or alteration,”⁴ then the Commission could also

³ On September 9, 2011, the Joint Petitioners filed an amendment to the petition for modification, detailing errata and clarifications to the July 2011 Petition. The text of the July 2011 Petition references COLs 3 and 4 from D.11-07-010. However, while Appendix A of the July 2011 Petition lists COLs 3 and 4, it erroneously identifies language from COL 2 rather than 3, and misstates COL 3 as COL 4. With this clarification, the language from the amended petition is shown here.

⁴ July 2011 Petition at 1.

establish the effective date of the Settlement Agreement as “the date when a Commission order granting the Petition becomes final and non-appealable” and close the proceedings.⁵

Third, in addition to the request to modify D.11-07-010 and the establishment of the settlement effective date, the Joint Petitioners request that the consolidated dockets be closed.

Joint Petitioners concurrently filed a motion for expedited consideration of the July 2011 Petition. The assigned Administrative Law Judge (ALJ) sent an email to parties to see if there would be any opposition to shortening the time to file comments and replies to the Petition. No opposition was received, so the ALJ granted the motion for expedited consideration. Pursuant to the shortened comment period, MEA, AReM, Shell and DACC (collectively, Joint Respondents) filed comments opposing the Petition on August 5, 2011. Joint Petitioners filed their reply on August 9, 2011.

The April 2011 and the July 2011 Petitions

First, we consider the Joint Petitioners’ request to modify D.11-07-010 by making the requested deletions. The Joint Petitioners claim that the sections they seek to be deleted address “a single, hypothetical concern – that the dates included in the [April 2011] Petition establish time limits for recovery of certain costs from MDL customers, and therefore there is a potential for future costs to be recovered from MDL customers.”⁶ The Joint Petitioners make references to the dates referenced in the April 2011 Petition and cited in D.11-07-010,

⁵ July 2011 Petition at 8.

⁶ July 2011 Petition at 4.

specifically July 1, 2022 and July 1, 2027. The Joint Petitioners state that “[b]ased presumably on the mere existence of dates in the [April 2011] Petition, D.11-07-010 mistakenly concludes that there is a ‘possibility that MDL customers would not be responsible for some portion of the costs related to generation resources procured on their behalf.’”⁷ The Joint Petitioners claim that this statement in D.11-07-010 is “factually flawed” based on the inclusion of the dates referenced in the April 2011 Petition: “The [April 2011] Petition includes carefully chosen dates for cost recovery to prevent any cost shifting. Simply stated, the dates included in the [April 2011] Petition correspond to dates in the QF/CHP Settlement and are simply reflective of timelines clearly established in the QF/CHP Settlement”⁸ as adopted in D.10-12-035. The July 2011 Petition also provides explanation of how the dates specified in the April 2011 Petition correspond to the cost-allocation relevant sections of the QF/CHP program adopted in D.10-12-035. The dates correspond to the contract term lengths of seven years for an existing CHP facility and twelve years for a new CHP facility. After this explanation, the Joint Petitioners state “[t]hese specified dates ensure that no cost shifting occurs as a result of the [April 2011] Petition. The concern in D.11-07-010 regarding the potential for time limitations to result in cost shifting is therefore unfounded.”

In response to the July 2011 Petition, the Joint Respondents state “[o]ne can only wonder why the Settling Parties argue so strenuously against language in [D.11-07-010] that says they must pay for any cost shifting, if indeed, as they

⁷ July 2011 Petition at 5.

⁸ *Id.*

claim, there is no cost shifting to be worried about.”⁹ The Joint Respondents also state that “it seems curious that [the Joint Petitioners] could not come to some agreement to avoid this [July 2011] Petition, and to avoid compromising the effectiveness of the CHP Settlement. This inability for them to reach agreement on how to share such costs seems to fly in the face of their contention that there will be no cost shifting at all.”¹⁰ In essence, the Joint Respondents state that if the language does not have any impact, then they see no harm in denying the request to delete the language as requested.

The Joint Petitioners, in their reply, counter this by stating “as is evident from [the Joint Respondents’] repeated protests to the QF/CHP Settlement...any lack of clarity in the Commission’s decisions will likely result in further arguments and litigation down the road.”¹¹ They state “[i]t is entirely likely that in Future Energy Revenue Recovery Account (‘ERRA’) proceedings, the [Joint Respondents] will argue that cost shifting has occurred, based on their flawed interpretation of D.11-07-010, and will seek to shift certain costs to the Settling Parties. This will result in further time-consuming litigation. The Joint [Petitioners] filed the [July 2011] Petition in order to prevent future litigation regarding alleged cost shifting. As is evident from the procedural history, clarity and finality are critical to prevent future disputes and unnecessary litigation.”¹²

⁹ Response of Joint Respondents at 4.

¹⁰ *Id.*

¹¹ Reply of Joint Petitioners at 4.

¹² *Id.*

In response to the proposed decision, the settling parties assert the following: “In the event that there are unrecovered costs associated with the QF/CHP Program attributable to Municipal Departing Load as a result of the limitation of time periods for cost recovery in the April 2011 Petition, as adopted in D.11-07-010, such costs will not be allocated to DA and CCA customers.”¹³

D.11-07-010 states that “unrecovered costs attributable to MDL Customers shall be the responsibility of the Settling Parties.”¹⁴ The Settling Parties, as defined above, include: the Investor-Owned Utilities (IOUs), CHP Parties and Consumers Groups. The July 2011 Petition states that “the additions to D.11-07-010 endeavor to impose costs from the QF/CHP Settlement on non-jurisdictional entities, *i.e.*, CHP projects and developers. CHP projects and developers are not lawfully subject to Commission jurisdiction on cost allocation as reflected.”¹⁵ In their Response, the Joint Respondents state: “If the settling parties agree among themselves that all of the costs should be paid by the IOUs rather than the CHP projects or developers, they are free to bring that agreement before the Commission for approval.”¹⁶ In their reply, the Joint Petitioners state that “this suggestion ignores the delicate balance of benefits and burdens that all

¹³ Opening Comments of Joint Parties on Proposed Decision and Alternated Proposed Decision at 2-3.

¹⁴ D.11-07-010 at 7.

¹⁵ July 2011 Petition at 7.

¹⁶ Response of Joint Respondents at 5.

of the Settling Parties recognize that the QF/CHP Settlement achieves, which is the same balance that the [July 2011] Petition seeks to preserve.”¹⁷

Discussion

At the core of this issue is the possibility of cost shifting between customers because of the dates specified in the April 2011 Petition as it relates to the CHP procurement contract length terms as a result of the QF/CHP Program adopted in D.10-12-035. The modifications to the QF/CHP Settlement, as requested in both the April 2011 and the July 2011 Petitions, is to establish limits for recovery of certain costs from MDL customers. In D.11-07-010, the Commission found that “[c]onsistent with D.08-09-012 and our overall guiding principles for resolving [non-bypassable charges (‘NBCs’)] implementation issues, the proposed changes clarify that MDL Customers would not pay any NBCs related to new generation resources [associated with the QF/CHP Settlement] that were not procured on their behalf.”¹⁸ Essentially, the modifications to D.10-12-035 sought by the April 2011 Petition and adopted in D.11-07-010 ensure that the NBCs associated with the initial program period would be better defined for MDL customers.

The Joint Petitioners seek modification of D.11-07-010 because, they assert, the two specified paragraphs and two Conclusions of Law contain factual and legal errors.¹⁹ Based on the additional context provided by July 2011 Petition, we

¹⁷ Reply of Joint Petitioners at 5.

¹⁸ D.11-07-010 at 7.

¹⁹ Since assertions of legal error should be raised via applications for rehearing and not petitions for modification, we focus on the factual assertions made by the Joint Petitioners.

agree that no cost-shifting will occur between customers as a result of the procurement conducted in the QF/CHP program by the inclusion of the dates as proposed in the April 2011 Petition and as adopted in D.11-07-010. We agree that the dates specified in D.11-07-010 with respect to cost allocation correspond to the dates of the term lengths of various procurement options adopted in D.10-12-035, and that the existence of dates does not create the opportunity for cost shifting beyond those specified times.

The Joint Respondents argue that if there is no possibility of cost shifting, then there should be no harm in denying the July 2011 Petition and not removing the language from D.11-07-010. However, we are convinced by the arguments made by the Joint Petitioners in their reply that removal of the language will provide additional certainty and clarity in future proceedings.

We are also persuaded by the argument that, if the language were to remain, uncertainty would remain about the future of the QF/CHP settlement as adopted in D.10-12-035. On balance, the contested language may or may not²⁰ cause direct harm, but it does create additional uncertainty and delay in the establishment of the QF/CHP Settlement. Based on the clarifications made by the Joint Petitioners about how the specified dates²¹ do not create the possibility of cost shifting, we find that removing the specified language provides

²⁰ In particular, we note that COL 3 from D.11-07-010 is a simple statement. Without the context of the rest of the contested language, COL 3 is most likely innocuous.

²¹ We acknowledge that any future changes to the QF/CHP Program, as adopted D.10-12-035 and modified by D.11-07-010, specifically the Settlement periods and/or the term length of the contracts, may also require a corresponding change to the cost-allocation portion of the program, in order to continue to ensure that no cost shifting occurs.

additional regulatory certainty. The Joint Petitioners state in their opening comments on the proposed decision that in the event that these date limitations becomes unsynchronized with the dates of the program periods adopted in D.10-12-035, the Commission can at that time allocate costs consistent with the public utilities code and assure that costs are not shifted onto DA and CCA customers. We agree. Given these reasons, we find it reasonable to grant the Joint Petitioners request to remove the specified language referenced above from D.11-07-010.

The Joint Petitioners also seek deletion of the specified paragraphs because “CHP projects and developers are not lawfully subject to Commission jurisdiction on cost allocation”²² as determined in D.11-07-010. The Joint Respondents state that this need not be the case “if the settling parties agree amongst themselves”²³ to something different. Because we remove the language, the jurisdictional issue is also removed.

Establishment of Settlement Agreement Effective Date and Closure of Dockets

We now turn to the second portion of the July 2011 Petition, which requests the establishment of a Settlement Agreement Effective Date. We agree with Joint Petitioners’ statements that the Settlement Agreement “represents the culmination of more than a year and a half of negotiations and regulatory approval processes”²⁴ and we would also like to see the Settlement Agreement

²² July 2011 Petition at 7.

²³ Response of Joint Respondents at 5.

²⁴ July 2011 Petition at 2.

implemented as soon as possible. In order to establish a Settlement Agreement Effective Date, Sections 16.2.1 and 16.2.2 of the CHP Program Settlement Agreement Term Sheet (Term Sheet) as adopted in D.10-12-035 create two conditions²⁵ which must be present before the Settlement becomes effective.

- (16.2.1) a final and non-appealable Commission decision approving the QF/CHP settlement that does not modify, change, and/or make an addition to the settlement;
- (16.2.2) a final and non-appealable FERC order approving a Joint Application to suspend the mandatory purchase obligation for QFs greater than 20 [megawatts] MW under the Public Utility Regulatory Policies Act of 1978 ("PURPA").²⁶

As established by the Joint Petitioners, the IOUs filed on March 18, 2011 a joint application to suspend the mandatory purchase obligation for QFs greater than 20 MW under PURPA. On June 16, 2011, the Federal Energy Regulatory Commission (FERC) issued its *Order Granting Application to Terminate Purchase Obligation ("Order")*.²⁷ The Joint Petitioners also establish that the FERC Order is final and non-appealable as of July 18, 2011. The Joint Respondents do not contest the fact in their Response that the condition in 16.2.2 to establish a Settlement Agreement Effective Date has been met.

²⁵ Section 16.2 of the Term Sheet has the conditions precedent to effectiveness of the Settlement. D.10-12-035 recognized most of them at the time of its issuance; the remaining conditions needed to establish a Settlement Agreement Effective Date are these two Sections, 16.2.1 and 16.2.2.

²⁶ 16 U.S.C. § 796, et seq. (2011).

²⁷ July 2011 Petition at 8.

The Joint Petitioners state that the condition in 16.2.1, however, “has not yet been satisfied as a result of the language added into D.11-07-010.”²⁸ Because final and non-appealable status of the Commission decision approving the settlement is required to satisfy this condition, and D.10-12-035 has a pending application for rehearing from CMUA on the MDL issue, the April 2011 Petition states: “The proposed modifications of D.10-12-035 would resolve CMUA’s Application for Rehearing of D.10-12-035. Accordingly, upon Commission adoption, without change, of the modifications proposed herein, CMUA will submit a letter to the Executive Director of the Commission withdrawing CMUA’s Application for Rehearing or, alternatively, the Commission may, concurrent with its adoption of the modifications proposed herein, deny CMUA’s Application for Rehearing as moot.”²⁹

The July 2011 Petition states that if the Commission were to approve the petition to delete the specified language from D.11-07-010 that “the Settling Parties agree that the [16.2.1] condition precedent will have been satisfied when a Commission order granting the [July 2011] Petition becomes final and non-appealable.”³⁰

The July 2011 Petition references³¹ Ordering Paragraph (OP) 6 of D.10-12-035, which states “[the proceedings] shall remain open pending action on a motion for closure to be filed by proponents, with the supporting

²⁸ *Id.*

²⁹ April 2011 Petition at 1-2.

³⁰ July 2011 Petition at 8.

³¹ July 2011 Petition at 7.

documentation, of the (Settlement Agreement) if and when the conditions precedent to the settlement effective date set forth in the Settlement Agreement have been met. Subject to the discretion of the assigned Commissioner or Administrative Law Judge, the proceedings may be held in abeyance pending such motion and Commission action on such motion.” OP 6 also requires regular status reports to be filed at the Commission, including detail on when the “motion for closure is filed, stating what actions have been completed and what actions remain to be completed before the conditions precedent have been met. The Commission decision that addresses the motion for closure will set the effective date of the Qualifying Facility/Combined Heat and Power Program set forth in the Settlement Agreement.”

Discussion

No party disputes the fact that the second condition precedent in 16.2.2 from the Term Sheet to establish a Settlement Agreement Effective Date, namely the achievement of a final and non-appealable Order rendered by FERC, has been met. We agree that this condition has been satisfied.

The first condition precedent to establish a Settlement Agreement Effective Date, as detailed in Section 16.2.1 of the Term Sheet, cannot be met until there is “a final and non-appealable Commission decision approving the QF/CHP settlement that does not modify, change, and/or make an addition to the settlement.” The decision that adopted the QF/CHP settlement is D.10-12-035, and there are pending applications for rehearing on that decision, including one filed by CMUA and one by City and County of San Francisco (CCSF).³² These

³² While D.11-03-051 denied rehearing of D.10-12-035 on certain issues, it also granted CMUA’s motion for abeyance. In granting the motion for abeyance, D.11-03-051

Footnote continued on next page

pending applications for rehearing would otherwise prevent this condition from being met. In the April 2011 Motion, CMUA, as a Joint Petitioner, indicated that they would accept either withdrawing their Application for Rehearing or have the Commission concurrently deny it as being moot. D.11-07-010 was silent on this part of the April 2011 Motion and the July 2011 Motion did not seek clarification either way. Because our action in this decision restores the modifications requested in the April 2011 Petition, now “without change,” we anticipate that CMUA may submit a request to the Executive Director to withdraw its application for rehearing.³³

As mentioned above, the pending applications for rehearing on D.10-12-035 prevent the Section 16.2.1 condition to establish a Settlement Agreement Effective Date from being met. However, because the settlement was modified by D.11-07-010, it is not just the pending applications for rehearing on D.10-12-035 which prevent this condition from being met. This decision modifying D.11-07-010 also needs to be final and non-appealable. The Settling Parties have agreed that the condition in 16.2.1 of the Term Sheet to establish the Settlement Agreement Effective Date can be satisfied when this decision has reached final and non-appealable status. The Joint Respondents do not raise any disputes to this agreement. Since all of the Settling Parties are in agreement and no party disputes it, we conclude that Section 16.2.1 of the Term Sheet will be

recognized that CMUA’s application for rehearing was similar to issues raised by CCSF. D.11-03-051 also held the unresolved portions of CCSF’s application for rehearing in abeyance, consistent with CMUA’s motion.

³³ We presume, without pre-judgment of the outcome, that as soon as CMUA’s application for rehearing is withdrawn, the Commission can quickly dispose of CCSF’s rehearing application.

satisfied when D.10-12-035 and this decision reach final and non-appealable status. When this happens, all of the conditions to establish a Settlement Agreement Effective Date will be satisfied. Therefore, we establish that the Settlement Agreement Effective Date shall be when D.10-12-035 and this decision are final and non-appealable.

Lastly, the Joint Petitioners filed a Motion for Closure on these consolidated dockets. While the establishment of a Settlement Agreement Effective Date is perhaps the most relevant remaining element in the open proceeding, there are still a few remaining items, including the before mentioned pending applications for rehearing. As such, these proceedings remain open.

Comments on the Proposed Decision

The alternate proposed decision of Commissioner Ferron in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code. Pursuant to Rule 14.6(b) of the Commission's Rules of Practice and Procedure, the 30-day public review and comment period required by Section 311 is reduced by stipulation of the parties. Comments on the proposed decision are due 14 days after the proposed decision is mailed; reply comments are due 5 days after the filing of opening comments. Comments were filed on September 28, 2011 and reply comments were filed on October 3, 2011 by Southern California Edison Company, Pacific Gas and Electric Company, San Diego Gas & Electric Company, TURN, the Independent Energy Producers Association, the Cogeneration Association of California, the Energy Producers and Users Coalition, DRA and CMUA (collectively, the Joint Petitioners) and by MEA, AReM, Shell and DACC (collectively, Joint Respondents). Based on the comments, we make no substantive changes but we do make some minor edits to provide additional clarity.

Assignment of Proceeding

Mark J. Ferron is the assigned Commissioner in Application 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. D.10-12-035 approved the “Qualifying Facility and Combined Heat and Power Program Settlement Agreement” (Settlement) entered into by Southern California Edison Company, Pacific Gas and Electric Company, San Diego Gas & Electric Company, TURN, the California Cogeneration Council, the Independent Energy Producers Association, the Cogeneration Association of California, the Energy Producers and Users Coalition, and DRA (Settling Parties).

2. On April 1, 2011, the Settling Parties and CMUA filed a petition for modification of D.10-12-035.

3. D.11-07-010 granted the April 2011 petition to modify D.10-12-035.

4. D.11-07-010 concluded that, consistent with Pub. Util. Code § 366.2(d)(1), CCA and DA customers would not be responsible for any costs incurred on behalf of MDL Customers.

5. On July 28, 2011, Settling Parties and CMUA filed a joint petition to modify D.11-07-010.

6. Settling Parties and CMUA contend that the discussion of § 366.2(d)(1) in D.11-07-010 is factually and legally erroneous.

7. D.10-12-035 adopted terms for CHP procurement contracts at seven and twelve years.

8. The dates established in D.10-12-035 as modified by D.11-07-010 correspond to dates of CHP procurement contracts of seven and twelve years, ensuring that there will be no cost-shifting amongst customers.

9. In order to establish a Settlement Agreement Effective Date, two remaining conditions must be met, as defined by Sections 16.2.1 and 16.2.2 of the CHP Program Settlement Agreement Term Sheet.

10. On July 18, 2011, condition 16.2.2 of the Term Sheet to establish a Settlement Agreement Effective Date was met upon the FERC Order being final and non-appealable.

11. In order to satisfy condition 16.2.1 of the Term Sheet to establish a Settlement Agreement Effective Date, a final and non-appealable Commission decision approving the QF/CHP settlement that does not modify, change, and/or make an addition to the settlement is needed.

12. D.11-03-051 held in abeyance an application for rehearing filed by CMUA and unresolved portions of CCSF's application for rehearing.

Conclusions of Law

1. The joint petition to modify D.11-07-010 should be granted by deleting the indicated paragraphs on page 7 and page 12 and the associated conclusions of law 3 and 4.

2. Section 16.2.1 of the Term Sheet will be satisfied when D.10-12-035 and this decision reach final and non-appealable status.

3. The Settlement Agreement Effective Date should be when D.10-12-035 and this decision reach final and non-appealable status.

O R D E R

IT IS ORDERED that:

1. The joint motion for expedited consideration of the joint petition for modification of Decision 11-07-010 and request to establish settlement agreement effective date and grant motion for closure is granted.

2. The joint petition for modification of Decision 11-07-010 and request to establish settlement effective date and grant motion for closure filed by the California Municipal Utilities Association, 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 is granted as set forth in Ordering Paragraphs 3 and 4, and is otherwise denied.

3. The following text from Decision 11-07-010 is deleted: A) On page 7: “The proposed modifications in the Petition limit the time period to recover certain costs associated with the Settlement from MDL Customers. Therefore, there is a possibility that MDL Customers would not be responsible for some portion of the costs related to generation resources procured on their behalf. Pursuant to Pub. Util. Code § 366.2(d)(1), which prohibits the shifting of recoverable costs between customers, the [Investor-owned Utilities] IOUs cannot recover costs attributable to MDL Customers from bundled or other departing load customers (i.e., CCA and DA Customers). As such, any unrecovered costs attributable to MDL Customers shall be the responsibility of the Settling Parties.” The deletion on page 7 includes footnote 10. B) On page 12: “In response to comments, this decision has been revised to clarify that consistent with the requirements of Pub. Util. Code § 366.2(d)(1), bundled CCA and DA customers shall not be responsible for any costs incurred on behalf of MDL Customers. Rather, to the extent the modifications proposed in the Petition result in any unrecovered costs that are attributable to MDL Customers, these costs shall be the responsibility of Settling Parties.” C) Conclusions of Law 3 and 4.

4. The Settlement Agreement Effective Date shall be when Decision 10-12-035 and this decision reach final and non-appealable status.

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

This order is effective today.

Dated October 6, 2011, at Los Angeles, California.

MICHAEL R. PEEVEY
President
CATHERINE J.K. SANDOVAL
MARK J. FERRON
Commissioners

I dissent.

/s/ TIMOTHY ALAN SIMON
Commissioner

I abstain.

/s/ MICHEL PETER FLORIO
Commissioner