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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.

**Rulemaking 08-06-024
(Filed June 26, 2008)**

**Comments of
Pacific Gas and Electric Company (UE-39)
In Response to the Joint Ruling of the
Assigned Commissioner and Administrative Law Judge**

I. INTRODUCTION AND SUMMARY.

Pacific Gas and Electric Company (“PG&E”) respectfully submits these comments on the issues identified in the Joint Ruling of the Assigned Commissioner and Administrative Law Judge (“Joint Ruling”) dated September 9, 2010. The objective of the Joint Ruling was to explicitly include two matters within the scope of this proceeding, specifically, the pending petitions for modification of the Assembly Bill 1613 (“AB 1613”) decisions¹ and the Federal Energy Regulatory Commission (“FERC”) Order establishing the conditions of a valid AB 1613 feed-in tariff.² In addition, the Joint Ruling sought comments on: **(1)** the procurement of Greenhouse Gas (“GHG”) allowances; **(2)** the calculation of line losses associated with moving generation from delivery point to the California Independent Systems Operator (“CAISO”) grid; **(3)** contract changes reflecting

¹ Decision (“D.”) 09-12-042 and D.10-04-055.

² *California Public Utilities Commission*, 132 FERC ¶61,047 (2010).

Qualifying Facility (“QF”) requirements; and (4) contract terms needed to accommodate “very small” combined heat and power (“CHP”) generators.

The Joint Ruling overlooks the need to limit the price offered under the AB 1613 feed-in-tariff to the utility’s avoided cost, even though this limitation is required by the FERC Order to avoid conflict with federal law. Since compliance with FERC’s Order is essential to the success of the AB 1613 program, the Commission should expand the scope of this proceeding to consider how developments in its rulemaking to determine avoided costs, Rulemaking (“R”) 04-04-025, should be coordinated with this proceeding. Coordination is necessary to ensure that only one avoided cost is adopted by the Commission, that the adopted avoided cost is paid to all QFs, regardless of whether the QF is a CHP QF or not, and that AB 1613 feed-in-tariff prices do not exceed avoided cost.

With respect to the GHG issue, PG&E’s primary recommendation is that the cost of GHG allowances should not be treated as a generator cost but as a component of the utility’s avoided cost, and to the extent possible, resolution of this issue should be based on the record in the avoided cost proceeding. On the issue of line losses, PG&E refers to the *CAISO Business Handbook* and *PG&E’s Transmission Interconnection Handbook*. With respect to the development of contract terms for CHP generators with less than 500 kW of capacity, PG&E recommends that the AB 1613 Standard Contract for 5 MW CHP Generators be simplified. Finally, CHP generators that fail to maintain operating efficiency at the level required by AB 1613 during the contract term are in default of a material term of the AB 1613 contract and are not entitled to an alternative rate because their contracts are simply terminated.³

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³ Generators that fail to meet the efficiency standards and other requirements of Public Utilities Code §2840, et seq., are not eligible to remain in the AB 1613 program and are not subject to §2841(b)(2).

II. COORDINATION OF THIS PROCEEDING WITH THE COMMISSION'S EXISTING AVOIDED COST PROCEEDING WOULD RESOLVE MANY OF THE ISSUES IDENTIFIED BY THE JOINT RULING.

The Joint Ruling acknowledges FERC's determination that the AB 1613 feed-in-tariff is not preempted by federal law only so long as: (1) the CHP generator obtains QF status; and (2) the rates set by the CPUC do not exceed the avoided cost of the purchasing entity.⁴ The Joint Ruling is silent on the need to adopt utility avoided cost as the AB 1613 feed-in-tariff price. However, FERC's finding that nothing in the materials before it would allow it to conclude that the price adopted for AB 1613 purchases was at or below the utilities' avoided cost compels the Commission to articulate how it intends to establish the relationship between its AB 1613 price and the utilities' avoided cost.⁵ PG&E suggests that the most efficient way for the Commission to ensure consistency between the prices offered under the AB 1613 feed-in-tariff and the price offered to QFs is for the Commission to take official notice of the record in the pending proceedings in which avoided cost issues are being addressed, ("Avoided Cost Proceeding"⁶) and coordinate its actions in the two proceedings.

On September 24th, a number of parties active in the QF industry, including QF representatives, ("Joint Parties") provided public notice of their intent to settle unresolved issues in the Avoided Cost Proceeding, "including a new CHP Program to work towards GHG emissions reduction goals established in the California Air Resource Board's AB 32 Scoping Plan."⁷ There is every reason for the Commission to adopt any proposed avoided cost formula for its AB 1613 feed-in-tariff as well.

⁴ Joint Ruling at p. 3.

⁵ "Indeed, there is no record in these proceedings on which the Commission may determine whether the CPUC's offer price is consistent with the avoided cost rate requirements of § 210 of PURPA. Thus, nothing in this Order shall be read as the Commission ruling on whether the CPUC's offer price is consistent with the avoided cost requirements of PURPA." 132 FERC ¶61,047, *supra*, at p. 27.

⁶ R.04-04-025 and R.04-04-003, *inter alia*.

⁷ Joint Notice of Settlement Conference, filed 9/24/10 in A.08-11-001, R.06-02-013, R.04-04-025, et al.

III. PG&E PROVIDES THE FOLLOWING RESPONSES TO QUESTIONS.

A. GHG Allowance Procurement and Reimbursement.

The timing and mechanism for reimbursement of GHG allowances should be dictated by the short-run avoided cost (“SRAC”) methodology. PG&E expects that the market price of electricity will incorporate the value of GHG allowances based on the marginal resource. To the extent that SRAC is based on market prices, SRAC will automatically incorporate the GHG allowance costs of avoided resources. If SRAC has an additional payment for allowances, that payment should be based on the pre-determined avoided heat rate, like the 6,924 Btu/kWh adopted for the AB 1613 feed-in-tariff, and the most recent allowance auction price.

In any event, the requirement that utilities procure GHG allowances on behalf of CHP Sellers must be deleted.⁸ Buyers are responsible for avoided costs, not stand-alone GHG allowance costs. Within the framework of this proceeding, however, PG&E and the IOUs have argued that GHG costs should be the responsibility of the Seller.⁹ The Joint Ruling takes a step in the right direction by considering how GHG allowance costs can be kept at a reasonable level if CHP generators undertake the procurement of GHG allowances.

(1) If Sellers (CHP generators) require reimbursement for GHG allowance costs, at what intervals should invoices be submitted to the Buyers (IOUs)?

To the extent that they are part of the SRAC formula, GHG allowance costs will be included in payments due under Seller’s monthly invoice for delivered energy. Currently, SRAC is

⁸ The *pro forma* CHP contract submitted by all three utilities, by advice letter on June 21, 2010, states that Buyer shall be responsible for Direct GHG Compliance Costs attributable to the Generating Facility for GHG emissions associated with the Power Product. See, *Standard Contract for Eligible CHP Facilities*, §3.03. This allocation of GHG costs to Buyer differs from the treatment of GHG costs in the case of avoided cost pricing and unnecessarily complicates the power purchase relationship between Seller and Buyer. With the issuance of *California Public Utilities Commission*, 132 FERC ¶61,047 (2010), the incorporation of avoided cost pricing in the CHP Standard Contract requires that this term be deleted.

⁹ *Joint Petition for Modification of Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company of Commission Decision 09-12-042*; Feb. 2, 2010.

determined under D.07-09-040 and E-4246, and the SRAC provisions do not include reimbursement of Seller's cost of GHG allowances. As explained above, Seller's direct GHG allowance costs are not eligible for reimbursement.

(2) Is a test (market based or some other method) needed to ensure that the invoices submitted by the Seller leave the ratepayer no worse off than if the Buyer had managed these compliance costs? If so, how should the market test be structured?

As explained above, the market energy price should automatically reflect the cost of GHG allowances borne by the marginal avoided resource. The avoided cost methodology should incorporate this valuation to the extent any is needed; sellers should not be submitting any separate invoices. A "market test" is not necessary because any valuation of GHG allowances should be based on a public index, the best option being a publicly available auction price.

B. Line Loss Factor Calculation.

What is an appropriate calculation for line losses associated with moving the CHP project's power from the Delivery Point to the grid controlled by the California Independent System Operator?

Seller is responsible for all losses incurred at and after the Delivery Point to the CAISO grid.¹⁰ The loss factor is calculated in accordance with *PG&E's Transmission Interconnection Handbook* which states that all wholesale generators must install PG&E metering and CAISO metering. CAISO meters that are installed on PG&E's distribution system have a correction factor programmed into the meter to account for line losses. The compensation for line losses in a network connected line must be based on an engineering study or other method agreed between the CAISO and the CAISO Metered Entity. Therefore, the appropriate calculation for line losses associated with moving the CHP project's power from the Delivery Point to the grid controlled by

¹⁰ See, *Standard Contract for Eligible CHP Facilities*, § 3.06 b(iv).

the CAISO is the calculation for line loss calculated in accordance with *PG&E's Transmission Interconnection Handbook* and the *CAISO Business Handbook*.

C. Contract Changes Reflecting QF Requirements.

- (1) *What changes are necessary to the contracts approved under D.09-12-042 to reflect the requirement for QF certification in addition to the already mandated certification from CEC?***

The Definition of “Eligible CHP Facility” in the *Standard Contract for Eligible CHP Facilities* and related *Standard Contract for Eligible CHP Facilities with Net Output not Greater than 5 MW* (“Five MW CHP Contract”) must be amended as indicated by the highlighted text to establish the requirement that the generator be a Qualifying Facility under PURPA:

“Eligible CHP Facility” means a facility, as defined by Public Utilities Code Section 2840.2, subdivisions (a) and (b) that, ***(1)*** meets the guidelines established by the California Energy Commission pursuant to Public Utilities Code § 2843 ***and, (2) meets the requirements of 18 Code of Federal Regulations §202.201, et seq.***

- (2) *If a QF already certified for and participating in the feed-in tariff program loses its CEC certification under AB 1613 but maintains QF certification by FERC, what should the contract provide as the alternative rate for the QF (e.g. should the QF receive short run avoided cost pricing)?***

If the generator loses its CEC certification under AB 1613, it is no longer an “Eligible CHP Facility” as defined, and an Event of Default will have occurred.¹¹ In that case, any sales by the generator to the IOU are no longer pursuant to the terms of the AB 1613 contract; there is no point in providing an alternative rate.

D. Very Small (less than 500 kilowatt) Contract Option.

- (1) *What changes are required from the adopted contracts to make a less than 500 kW contract more streamlined?***

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¹¹ *Standard Contract for Eligible CHP Facilities*, §6.01(c)(xvi) “Seller failure to maintain status as an Eligible CHP Facility During the Term.”

PG&E suggests that interested parties negotiate amendments to the Five MW CHP Contract to simplify the document so that it reflects the delivery potential, operating characteristics, and needs of cogenerators offering 500 kW or less of capacity.

(2) *What changes, if any, are required in this contract to comply with the FERC order?*

The terms of the negotiated contract should require the seller to meet QF certification requirements and provide payments equal to SRAC.

IV. CONCLUSION.

The Assigned Commissioner and Administrative Law Judge should expressly expand the scope of this proceeding to include the adoption of avoided cost as the price for AB 1613 energy procurement, consistent with the outcome of the Commission's consideration of the settlement being proposed in the Avoided Cost Proceedings. The issues identified in the Joint Ruling should be resolved in accordance with the foregoing recommendations.

DATED: September 29, 2010

Respectfully submitted,

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By: _____ /S/
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CERTIFICATE OF SERVICE

I, the undersigned, state that I am a citizen of the United States and am employed in the City and County of San Francisco; that I am over the age of eighteen (18) years and not a party to the within cause; and that my business address is Pacific Gas and Electric Company, Law Department B30A, 77 Beale Street, San Francisco, CA 94105.

I am readily familiar with the business practice of Pacific Gas and Electric Company for collection and processing of correspondence for mailing with the United States Postal Service. In the ordinary course of business, correspondence is deposited with the United States Postal Service the same day it is submitted for mailing.

On the 29th day of September, 2010, I served a true copy of:

**Comments of
Pacific Gas and Electric Company (UE-39)
In Response to the Joint Ruling of the
Assigned Commissioner and Administrative Law Judge**

- [XX] **By Electronic Mail** – serving the enclosed, via E-Mail transmission, to each of the parties listed on the Official Service list for CPUC Docket No. R.08-06-024 with an e-mail address.
- [XX] **By U. S. Mail** – serving the enclosed, via U. S. Mail, to the party listed on the Official Service list for CPUC Docket No. R.08-06-024 without an e-mail address.
- [XX] **By Hand Delivery to:**

**Administrative Law Judge Yip Kikugawa
CALIFORNIA PUBLIC UTILITIES COMMISSION
505 Van Ness Avenue, 5th Floor
San Francisco, CA 94102**

I certify and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on this 29th day of September, 2010 at San Francisco, California.

/S/
ELIZABETH J. DIAMOND