

**BEFORE THE
PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**



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

R.10-05-006

**PACIFIC GAS AND ELECTRIC COMPANY'S (U 39 E) AND
SAN DIEGO GAS & ELECTRIC COMPANY'S (U 902 E)
COMMENTS ON IMPLEMENTATION OF SB 695 AND
THE COST ALLOCATION MECHANISM**

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Pursuant to the *Administrative Law Judge’s Ruling On Implementation of SB 695 And The Cost Allocation Mechanism (Track III)*, issued September 14, 2010 (“Ruling”), Pacific Gas and Electric Company (“PG&E”) and San Diego Gas & Electric Company (“Joint Utilities”) submit these comments in response to the six questions raised by ALJ Kolakowski in the Ruling.

I. BACKGROUND

The Commission has already adopted two separate mechanisms to allocate the above-market costs associated with new generation resources. First, in D.04-12-048 and D.08-09-012, the Commission adopted a non-bypassable charge for customers departing from bundled utility service to ensure that these customers paid their fair share of the new generation resource costs incurred by the utilities on their behalf.¹ This non-bypassable charge applies to all customers that depart for direct access (“DA”), community choice aggregation (“CCA”), certain Western Area Power Administration (“WAPA”) and split-wheeling customers, and large municipalizations (subject to Commission approval in a separate application).² D.08-09-012 includes a detailed discussion as to how the non-bypassable charge should be calculated and implemented.³

¹ D.08-09-012, Ordering Paragraph (“OP”) 1.

² *Id.*, OP 1, 3.

³ *See e.g.* D.08-09-012 at pp. 39-81.

Second, in D.06-07-029, the Commission adopted a cost allocation mechanism or “CAM” that the utilities could elect to apply to contracts with third parties for new generation resources.⁴ Unlike the D.04-12-048 non-bypassable charge described above, the CAM applies not only to new departing customers in the categories described above, but also applies to existing DA and CCA customers. Under D.06-07-029, if the utilities choose to exercise the CAM option, they are required to conduct an energy auction to determine the market value of the underlying power purchase agreement (“PPA”).⁵ Revenues from the auction are credited against the underlying PPA costs, and any remaining amount is then allocated to all “benefitting customers” (*i.e.*, bundled, existing and departing DA, existing and departing CCA, and WAPA, split wheeling, and large municipal departing load to the extent approved by the Commission).⁶ The Resource Adequacy (“RA”) value of the PPA is also allocated to benefitting customers based on their respective portion of the cost allocation.⁷ A utility may elect to use the CAM when it files an application with the Commission for approval of PPA for a new generation resource.⁸ The specific energy auction and CAM cost allocation rules were developed in a joint settlement, which was approved by the Commission in D.07-09-044.

In October 2009, the California Legislature enacted Senate Bill (“SB”) 695. SB 695 addresses a number of issues, including the limited re-opening of DA and a new cost allocation mechanism for certain generation resources. Under Public Utilities Code section 365.1(c), adopted as a part of SB 695, if the Commission authorizes a third-party PPA or utility-owned generation that is needed “to meet system or local reliability needs for the benefit of all

⁴ The CAM cannot be used for utility-owned generation. *See* D.06-07-029 at p. 4.

⁵ D.06-07-029, at p. 31, Item #16; D.07-09-044 at p. 2.

⁶ D.08-09-012, OP 1.

⁷ D.06-07-029, at p. 32, Item #17; D.07-09-044 at p. 2.

⁸ D.07-09-044, Appendix A at p. 1, Item I.A.

customers in the electrical corporation's distribution service territory," the net capacity costs associated with the PPA or utility-owned generation can be allocated to benefitting customers.⁹ SB 695 also requires that the RA benefits associated with a PPA or utility-owned facility be allocated to all customers who pay the net capacity costs.¹⁰ SB 695 does not require an energy auction and includes a general description as to how net capacity costs are to be determined. Moreover, unlike the D.04-12-048 non-bypassable charge and the CAM process, SB 695 cost recovery is not limited to ten years, but, at least with regard to PPAs, is based on the term of the contract.¹¹

II. RESPONSE TO ALJ QUESTIONS

A. How should the CAM process adopted in D.06-07-029 and D.07-09-044 be modified or refined to comply with SB 695?

The Joint Utilities believe that, given the enactment of SB 695, the CAM process can be eliminated. The CAM process addresses some of the resources covered by SB 695, such as PPAs for new generation, but is not as broad as SB 695. For example, while SB 695 includes utility-owned generation, the CAM process does not. Moreover, the CAM process is limited to ten years, while SB 695 does not have any duration limits. Rather than adding a third cost allocation mechanism option, the Joint Utilities suggest that the Commission eliminate the CAM option and simply retain the non-bypassable charge and SB 695 cost allocation mechanisms. To the extent a utility has already implemented the CAM process, the CAM would remain in place. However, going forward, there would simply be two cost allocation options – a non-bypassable charge or SB 695.

⁹ Pub. Util. Code § 365.1(c)(2)(A).

¹⁰ *Id.*, § 365.1(c)(2)(B).

¹¹ *Id.*

B. How should the Commission interpret and define the term “all customers” in the context of SB 695 and existing procurement rules?

In D.08-09-012, the Commission already determined the customers that are subject to the D.04-12-048 non-bypassable charge and the CAM process.¹² These determinations do not need to be re-visited. With regard to SB 695, the statute expressly states that it applies to bundled, DA and CCA customers.¹³ However, the statutory language is not exclusive; nor does the statute limit the application of the SB 695 cost allocation mechanism only to bundled, DA and CCA customers. To be consistent with D.08-09-012, the SB 695 cost allocation mechanism should also apply to customers departing as a part of a large municipalization, and WAPA and split-wheeling departing load customers. There is no reason to exclude these customers from paying their fair share of costs incurred on their behalf, and doing so is completely consistent with SB 695 language and existing Commission precedent.¹⁴

C. Pursuant to Section 365.1(c)(2)(A), should the Commission grant authorization in this proceeding to allow utility-owned generation be eligible for CAM treatment?

The Joint Utilities are not requesting that D.06-07-029 be modified to allow the CAM process to apply to utility-owned generation. Rather, the Joint Utilities are proposing that the CAM process be eliminated and replaced with an SB 695 cost allocation mechanism. SB 695 is clear that the cost allocation mechanism under that statute applies to both PPAs and utility-owned generation. Whatever process is approved for implementing SB 695 needs to apply equally to PPAs and utility-owned generation.

¹² D.08-09-012, OP 1-3.

¹³ Pub. Util. Code §365.1(c)(2)(A).

¹⁴ D.08-09-012 at pp. 30-31 (citing D.03-09-052 and D.06-05-018 as a basis for departing load charges for new generation resources applied to WAPA and split-wheeling customers).

D. What criteria and factors should the Commission consider when determining whether to allow utility-owned generation to be eligible for CAM?

See Joint Utilities’ response to Section II.C, above.

E. How should the Commission interpret Section 365.1(c)(2)(B) which provides that “an energy auction shall not be required” but “may be allowed as a means to establish the energy and ancillary services value of resources for the purposes of determining the net capacity costs”?

SB 695 expressly provides that an energy auction shall not be required to determine the net capacity costs. However, an energy auction “may be allowed” to establish the energy and ancillary services value of a new generation resource. The statutory language is not entirely clear, but it appears to allow the Commission some discretion as to the use of an energy auction, but prohibits the Commission from requiring an auction. In its decision implementing the SB 695 cost allocation mechanism, the Commission should expressly reject the use of an energy auction for two reasons.

First, the statute is clear that the Commission cannot require an energy auction. If the Commission issues a decision approving the implementation of SB 695, including the use of an energy auction, it will effectively be requiring an energy auction in violation of the clear statutory language. In order to avoid concerns about violation of the statute, the Commission should determine that an energy auction is not necessary under SB 695. If a utility elects to use an energy auction when implementing SB 695, it can propose doing so in its application for approval of a generation resource. However, absent a utility requesting an energy auction, the Commission cannot require an auction in its implementation of SB 695.

Second, as a practical matter, the energy auctions that have been conducted to date have been complicated, time consuming and not particularly effective. Although neither PG&E nor SDG&E has conducted an energy auction, the Joint Utilities understanding is that the energy auctions conducted by SCE involved a significant amount of time and resources, and yielded

little benefit. Rather than requiring the utilities and parties to incur the time and expense associated with an energy auction that may, in the end, yield little value, the Commission should adopt the net capacity cost methodology proposed by the Joint Utilities below in Section II.F.

F. Aside from an energy auction, what are alternative mechanisms that can be used to determine the net capacity costs?

SB 695 includes a general framework for determining net capacity costs. In particular, the statute provides:

Net capacity costs shall be determined by subtracting the energy and ancillary services value of the resource from the total costs paid by the electrical corporation pursuant to a contract with a third party or the annual revenue requirement for the resource if the electrical corporation directly owns the resource.¹⁵

In Application (“A.”) 09-09-021, concerning PG&E’s 2008 LTRFO, PG&E, TURN and DRA proposed a partial settlement that addressed a number of ratemaking issues, including the implementation of SB 695 for the PPA and utility-ownership proposals at issue in that proceeding. The Partial Settlement included a methodology for determining net capacity costs. In D.10-07-045, the Commission approved the Partial Settlement.¹⁶ The SB 695 implementation mechanism approved as a part of the Partial Settlement adopted by the Commission in D.10-07-045 should be adopted in this proceeding as well.

First, the net capacity cost methodology adopted in D.10-07-045 is relatively straightforward to administer. PPA or utility-owned generation costs are determined based on contract payments, or the annual revenue requirement in the case of utility-owned generation, and any imputed costs that would have been incurred.¹⁷ Revenues are determined based on when

¹⁵ Pub. Util. Code § 365.1(c)(2)(B).

¹⁶ An excerpt from the Partial Settlement Agreement approved in D.10-07-045 that addresses implementation of SB 695 is attached to these comments as Appendix A.

¹⁷ Imputed costs are necessary because the net capacity cost methodology includes imputed revenues that are assumed to have been received, even if the new generation resource was not actually operating or dispatched.

it would have been economic to operate a new generation resource and use CAISO day-ahead nodal prices and CAISO ancillary service prices. The net capacity cost is determined by calculating the costs and revenues and netting these against each other to determine if there are net capacity costs to be allocated to all bundled, DA, CCA, large municipalization, and WAPA and split-wheeling customers. Unlike the complexity of an energy auction, the net capacity cost methodology approved by the Commission in D.10-07-045 involves straightforward calculations that can be presented to the Commission in a compliance or advice letter filing on an annual basis.

Second, the net capacity cost methodology is transparent. The methodology relies on published prices, such as CAISO nodal prices, ancillary service prices, and published gas index prices. All of these prices are public and available to parties to verify the calculation of net capacity costs. In addition, to the extent the new generation resource is a utility-owned resource, the revenue requirement will be public, and payments under a PPA can also be provided subject to appropriate confidentiality protection. With all of the necessary inputs, parties being allocated net capacity costs will be able to confirm that their respective portion of the costs are being appropriately calculated.

Finally, the net capacity cost methodology is fair because it accurately estimates energy and ancillary services revenues because it is based on market prices. The CAISO nodal and ancillary service prices used in the calculation are market-based prices, as are the gas index prices. Because all of these are market prices, they reflect the true value of the energy and ancillary services from the new generation resource, as required by SB 695.

III. CONCLUSION

The Joint Utilities respectfully request that the Commission implement SB 695 by: (1) adopting the net capacity cost allocation methodology approved in D.10-07-045; (2) allowing a

utility to elect to use SB 695 when it files an application for approval of a new generation resource; (3) determining that no energy auction is required for a utility electing to utilize SB 695; (4) applying SB 695 to all bundled, DA, CCA, large municipalization (subject to a Commission approval), WAPA, and split-wheeling customers; and (5) eliminating the CAM mechanism.

Respectfully submitted,

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APPENDIX A

(Excerpt from Partial Settlement Approved In D.10-07-045)

In lieu of recovering stranded costs under a non-bypassable charge pursuant to Commission Decisions 04-12-048 and 08-09-012, the following Net Capacity Cost Charge authorized under SB 695, codified as Public Utilities Code Section 365.1, will apply to the Mirant Marsh Landing PPA and CCGS Project, to the extent the project is approved by the Commission (each approved project is referred to as a “Project”). The methodology set forth below incorporates the Joint Parties Proposal approved by the Commission in D.07-09-044, Appendix A, Section IX, for use prior to completion of the energy auction.

1. Applicability: Consistent with Public Utilities Code § 365.1, net capacity costs shall be recovered from: bundled customers, existing and new direct access customers of Energy Service Providers (ESPs), and Community Choice Aggregation (CCA) customers (collectively “Benefitting Customers”). PG&E may apply to the Commission to seek authorization to make the Net Capacity Cost Charge applicable to large municipalizations as specified in D.08-09-012.

2. Allocation of Resource Adequacy Benefits: System and local resource adequacy (RA) benefits associated with the Project will be allocated quarterly to load serving entities (LSEs) that serve Benefitting Customers based on each LSE’s percentage of peak load. LSEs shall be notified in July of each year of the System and Local RA capacity they will be receiving for each month in the next calendar year.

3. Allocation of Net Capacity Costs: PG&E shall forecast the annual net capacity costs, which are defined below. This calculation shall be subject to an annual review and balancing account true-up. PG&E shall use the net cost forecast it has developed to establish an annual revenue requirement for all Benefitting Customers to recover the net capacity cost of the

Project. All Benefiting Customers shall be charged monthly for their respective portion of the net capacity costs based on the established revenue requirement.

4. Term: Recovery of net capacity costs for the Mirant Marsh Landing PPA shall be equal to the term of each PPA. Recovery of net capacity costs for CCGS Project shall be limited to 10 years. To the extent the Project(s) are approved by the Commission, by approval of this Partial Settlement Agreement, the Commission makes the findings, authorizations and orders necessary to comply with Public Utilities Code Section 365.1 that each Project is needed to meet system or local area reliability needs for the benefit of all Benefiting Customers.

5. Methodology For Calculation of Net Capacity Costs: The net cost of each Project will be determined by subtracting the Project Revenues from the Project Costs, where:

“Project Costs” include the following:

- a. All actual unavoidable costs incurred by the utility for the Project (*e.g.*, capacity payments, the cost of posting collateral, if any, and the annual non-fuel revenue requirement for a utility-owned plant).
- b. Imputed avoidable fuel costs calculated as the product of: (i) the quantity of natural gas that would be utilized by the Project, and (ii) the price of natural gas, (i) and (ii) being applicable for periods when the Project would recover its avoidable operating expenses from the day-ahead energy and/or ancillary services markets (*i.e.*, for periods when it would have been “economic” to “run” the Project, based on day-ahead prices).
 - (1) For purposes of this calculation, the price of natural gas for each hour shall be the daily spot index price for the applicable day as reported by an established industry publication (*e.g.*, *Gas Daily* or *NGI*) for the trading point closest to delivery point of the Project plus any applicable Project gas transportation charges and Local Distribution Company (LDC) tariff charges.
 - (2) The CAISO hourly day-ahead nodal price for the Project’s “injection point” shall be utilized for energy.
- c. Imputed avoidable non-fuel Project costs for all assumed dispatched energy from subsection (b) above. For example, if the Project requires a variable O&M charge of \$2.00/MWh for delivered energy, the imputed avoidable non-fuel Project costs

for a given hour would be the amount of energy assumed to have been dispatched times the \$2.00/MWh variable O&M charge.

“Project Revenues” include the following:

- a. The imputed day-ahead energy revenues for hours in which the Project is determined to have been economic to dispatch. The imputed energy revenues shall be calculated as the product of the: (i) the calculated energy assumed to be dispatched by the Project, and (ii) the CAISO hourly day-ahead nodal energy price for the Project’s “injection point”.
- b. The imputed day-ahead ancillary services revenues. For hours in which it was determined that the Project would not have been economic to be scheduled in the day ahead energy market, an assessment of whether it would have been economic to offer non-spinning reserves (assuming the Project provides such services) shall be performed using hourly CAISO day-ahead energy prices and natural gas prices described in the definition of “Project Costs” Item (b)(1) above and the CAISO published day-ahead non-spinning reserves price. The imputed day-ahead ancillary service revenue calculation shall be constrained by the amount of capacity available under the Project to be offered into non-spinning reserves market and any other relevant operating limitation (*e.g.*, minimum load requirements or maximum operating hours). The imputed day-ahead ancillary services revenues shall be calculated net of any calculated operating costs that would have to be incurred to offer ancillary services capacity (*e.g.*, start-up costs). The imputed day-ahead ancillary services revenues calculation will not assume real-time incremental dispatch of energy by the CAISO.

CERTIFICATE OF SERVICE BY ELECTRONIC MAIL OR U.S. MAIL

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 1st day of October 2010, I caused to be served a true copy of:

**PACIFIC GAS AND ELECTRIC COMPANY'S (U 39 E) AND
SAN DIEGO GAS & ELECTRIC COMPANY'S (U 902 E)
COMMENTS ON IMPLEMENTATION OF SB 695 AND
THE COST ALLOCATION MECHANISM**

[XX] By Electronic Mail – serving the above via e-mail transmission to each of the parties listed on the official service list for R.10-05-006 with an e-mail address.

[XX] By U.S. Mail – by placing the enclosed for collection and mailing, in the course of ordinary business practice, with other correspondence of Pacific Gas and Electric Company, enclosed in a sealed envelope, with postage fully prepaid, addressed to those parties listed on the official service list for R.10-05-006 without an e-mail address.

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 1st day of October 2010 at San Francisco, California.

/s/
STEPHANIE LOUIE

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Last Updated: September 24, 2010

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