

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



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Order Instituting Rulemaking to Promote Policy and Program Coordination and Integration in Electric Utility Resource Planning.

Rulemaking 04-04-003  
(Filed April 1, 2004)

Order Instituting Rulemaking to Promote Consistency in Methodology and Input Assumptions in Commission Applications of Short-run and Long-run Avoided Costs, Including Pricing for Qualifying Facilities.

Rulemaking 04-04-025  
(Filed April 22, 2004)

**REPLY COMMENTS OF SAN DIEGO GAS & ELECTRIC COMPANY ON  
PROPOSED DECISION OF ALJ HALLIGAN**

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June 4, 2007

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Order Instituting Rulemaking to Promote Policy and Program Coordination and Integration in Electric Utility Resource Planning.

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**I. INTRODUCTION**

Pursuant to Article 14 of the California Public Utilities Commission's ("CPUC" or "Commission") Rules of Practice and Procedure, San Diego Gas & Electric Company ("SDG&E") files these Reply Comments to Opening Comments that various parties filed herein on May 25, 2007, in response to the above-referenced Proposed Decision ("Proposed Decision" or "PD") mailed April 24, 2007.

As discussed below, the central theme of the opening comments of the parties representing the interests of the Qualifying Facilities ("QF") is that the Proposed Decision is too flawed, both legally and substantively, to be implemented and until the Proposed Decision "gets it right," the *status quo ante* must be maintained. The QF parties merely rehash arguments from their briefs that the Proposed Decision appropriately considered and rejected. The Proposed Decision is consistent with the Public Utility Regulatory Policies Act of 1978 ("PURPA"), its related regulations of the Federal Energy Regulatory Commission ("FERC") and this Commission's policy and precedent. In other words, subject to certain discrete

clarifications/modifications reflected in the Opening Comments of SDG&E, Pacific Gas and Electric Company (“PG&E”), Southern California Edison (“Edison”), Division of Ratepayer Advocates (“DRA”) and The Utility Reform Network (“TURN”), the PD “got it right” and should be implemented without delay. To the extent necessary, details of implementation can be worked out in narrowly-tailored workshops as proposed by TURN; however, the delay inherent in the broad open-ended implementation procedures advocated by QF parties in their opening comments should be rejected.

## **II. DISCUSSION**

### **A. The Proposed Decision Should Be Implemented without Delay**

QFs claim that there are many issues that remain unanswered in the current PD and that implementation should be delayed. Independent Energy Producers Association’s (“IEP”) opening comments contains a laundry list of questions that IEP claims needs to be answered prior to implementation.<sup>1</sup> The County of Los Angeles (“County”) urges the Commission to delay until the earlier of two years or when the CAISO MRTU is implemented.<sup>2</sup> The Cogeneration Association of California and the Energy Producers and Users Coalition’s (“CAC/EPUC”) state that the revised pricing should not be implemented until the Prospective QF Program are in place and available to existing QFs.<sup>3</sup>

TURN however is realistic on implementation of the decision. TURN states that the Commission should decide the “big money issues” regarding QF energy and capacity payments. The smaller more technical issues can be decided in a “post-decision technical workshop”

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<sup>1</sup> IEP Opening Comments at 8-11.

<sup>2</sup> County Opening Comments at 13.

<sup>3</sup> CAC/EPUC Opening Comments at 16.

coordinated by the Energy Division.<sup>4</sup> SDG&E agrees that the Commission must decide the “big money issues” and set the overall policy and direction in the decision, as the Proposed Decision does, so that implementation can be done immediately. SDG&E agrees that there are narrowly focused post decision issues that will need to be addressed and the workshop is an appropriate forum. However, it is imperative that the workshop not delay implementation of the Decision. Absent a decision that sets clear direction, workshops will flounder as parties attempt to resurrect issues that the Decision was intended to definitively resolve.

**B. The Market Index Formula (MIF) Is Reasonable as Adopted**

The Opening Comments of QF parties regarding the MIF for the most part simply reargue positions the QF parties have taken in briefs and as such should be accorded no weight under Rule 14.3(c). The Administrative Law Judge considered these arguments in crafting the PD so that no adjustment to the PD’s findings and conclusions are warranted.

The Opening Comments of the County, California Cogeneration Council (“CCC”) and IEP<sup>5</sup> suggest the NP-15 and SP-15 markets are not appropriate for use in calculating the IER for use in the MIF. Using dismissive phrases like “‘dump’ energy market” does a disservice to the fair amount of hearing time and briefing devoted to the discussion of the adequacy of these energy markets. The PD adequately discusses these issues<sup>6</sup> before reaching Find of Fact 14. Under Commission direction, SDG&E and other utilities will be continuing to meet most of their procurement needs with utility owned resources and longer term contracts and only a portion will be met with market purchases. But utility marginal short-run purchases will continue to be from

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<sup>4</sup> TURN Opening Comments at 11.

<sup>5</sup> County Opening Comments at 3, 10; CCC Opening Comments at 4-7 and IEP Opening Comments at 7. SDG&E here notes that although CCC filed amended Opening Comments, the references herein are to the Opening Comments CCC filed May 25.

<sup>6</sup> PD at 40-41, 46-49 and 54-59.

the market and so the market is appropriate for the determination of avoided costs. Accordingly, the PD correctly decided that “these are the energy costs that would otherwise be incurred by the utilities in the short run to replace QF power.”<sup>7</sup>

IEP indicates that the MIF is opaque and is based on historical prices.<sup>8</sup> Neither of these assertions is correct. The MIF is based on the Modified Formula, as described in the PD at 24-25 and adopted in Decision (“D.”) 01-03-067. The key factors that are changed or updated are the calculation of the Incremental Energy Rate, which under the MIF would be based on 12 months of historical data on the relationship of electric market prices and gas market prices in California, the variable operation and maintenance (“O&M”), and gas prices that are clearly laid out and transparent.<sup>9</sup> Contrary to IEP’s assertion, the short-run avoided cost (“SRAC”) price will be forward looking in using current gas prices and recent historical relationships between electric and gas market prices.

**C. The PD Proposes an As-Available Capacity Payment that Provides the “Missing Money”**

The CCC opening comments on the PD focus extensively on “missing money”<sup>10</sup> from the energy market. To encourage an adequate amount of generation in the right locations, additional payments are made outside the energy market in the form of Reliability Must Run or Must Offer Obligation arrangements and Resource Adequacy payments. But the PD does provide an added stream of revenue to QFs through an as-available capacity payment equal to

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<sup>7</sup> PD at 59.

<sup>8</sup> IEP Opening Comments at 2, 3.

<sup>9</sup> PD at 59-66.

<sup>10</sup> See CCC Opening Comments at 4-5 (for use of the term “missing money”) and 3-7 (for various references to these types of costs).

the amount of revenue required to bring new peaking generation on-line.<sup>11</sup> It would be double-counting to adjust the energy price to account for “missing money” as CCC proposes and to provide for a capacity payment.

**D. PURPA Does Not Require Consideration of the Aggregate Value of QF Production**

The County contends that the PD errs as a matter of policy and law in failing to take into account and adopt some mechanism for reflecting the aggregate value of QF production.<sup>12</sup> Contrary to that assertion, PURPA does not mandate aggregation in any form. As SDG&E has previously pointed out,<sup>13</sup> PG&E conclusively rebutted the contention with a detailed analysis of the errors of this interpretation of PURPA as it relates to aggregate QF generation.<sup>14</sup> FERC precedent also does not support the QFs’ interpretation regarding aggregate value.<sup>15</sup> Finally, FERC approval of QF avoided energy costs adopted in virtually every state of the union without reference to “aggregate value” shows the fallacy of the QF interpretation.<sup>16</sup> The PD’s discussion of this point at 50-52 is correct and CCC has advanced no credible basis to warrant modification.

**E. The Elasticity Adjustment Proposed by CCC Is Not Appropriate**

CCC and County<sup>17</sup> propose to use CCC’s “elasticity adjustment” to adjust market energy prices. SDG&E disagrees. The record contains extensive detail on why the CCC “elasticity

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<sup>11</sup> PD at 85-90. SDG&E proposed changes to that amount in its opening comments to better reflect the required payments.

<sup>12</sup> County Opening Comments at 4, 10.

<sup>13</sup> SDG&E Reply Brief at 3-4.

<sup>14</sup> PG&E Opening Brief at 16-20.

<sup>15</sup> 16 U.S.C. 824a-3(d) (1982).

<sup>16</sup> PG&E witness Lauckhart did indicate that Louisiana and a small part of Texas consider a form of aggregate value by omitting consideration of QFs with as available capacity. Exh. 28 at 4-25 – 4-27; Tr. 3667: 23 -3668:1.

<sup>17</sup> CCC Opening Comments at 8-11; County Opening Comments at 8-9.

adder” is legally and economically deficient. SDG&E’s Opening Brief at 8-11 and Reply Brief at 14 showed the CCC “elasticity adjustment” was legally deficient, violating PURPA guidelines. SDG&E’s Opening Brief at 39-41 explained why the concept is economically deficient.

CCC makes a specific point that the E3 price elasticity demand adder was adopted by the Commission for energy efficiency and so it likewise should be adopted for QFs as well.<sup>18</sup> This comparison is in error for several reasons. First, it should be noted that the price elasticity adder for Energy Efficiency cost effectiveness analysis was required by law. Assembly Bill (“AB”) 970 contained specific language requiring the use of a price elasticity adder in Energy Efficiency cost effectiveness.

Second, the CCC “elasticity adjustment” is very different from a demand-side reduction.<sup>19</sup> Instead, it is simply a variant of the QF-in/QF-out flawed method that the PD correctly rejects.<sup>20</sup>

In short, the PD had it right in rejecting the elasticity adjustment or any other variant of the QF-out/QF-in or aggregate value argument.<sup>21</sup>

#### **F. The Prospective QF Program Does Not Impose a Must-Take Obligation for Long-Term Contracts**

DRA correctly notes that the PD should be modified to prevent the “QF Gold Rush” and to reflect that the Prospective QF Program is not a QF option that can be exercised by the QF only. The new long-term contract must be based on mutual agreement by the QF and the utility

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<sup>18</sup> CCC Opening Comments at 9, 11.

<sup>19</sup> If, indeed, it is a demand-side reduction, it is irrelevant to the avoided cost of a supply-side resource. A demand-side reduction would lower the market price not increase prices to utility customers.

<sup>20</sup> SDG&E Opening Brief at 39-40.

<sup>21</sup> PD at 49-53.

and also be based on utility need for baseload fossil generation. While SDG&E does not believe the PD to be ambiguous on this point, out of an abundance of caution, SDG&E endorses the DRA proposal-to include an express provision that the new long-term contracts are not considered to be executed and legally binding unless the contract is executed and signed by both the QF and the utility.

The PD should not leave open to interpretation the PD's intent that NO must-take obligation exists for long-term contracts with new QFs or QFs with expiring contracts. The PD clearly states that the contract will be based on utility need for base load fossil generation:

“Our prospective QF process will ensure that the amount of QF power under contract is consistent with the utilities’ need. If a utility currently does not need additional QF power, for example, the utility is only required to renew existing contracts if it chooses, and will not be required to purchase new QF capacity if the utility can demonstrate that it no longer needs capacity.”<sup>22</sup>

The PD should unambiguously restate that no must-take obligation exists for long-term contracts with QFs, consistent with the recent Commission findings in D.07-01-039.<sup>23</sup> Stating this express intent is especially important given the Commission’s recent Order regarding Direct Access.<sup>24</sup>

**G. CAC/EPUC Proposal to Submit Standard Offer Contract Forms by June 07, 2007 Should Be Rejected.**

CAC/EPUC proposes that all parties file proposed standard offer contracts by June 7, 2007, with reply comments on the contracts by June 21, 2007. This proposal is unreasonable considering the Commission decision has not been issued yet. The PD’s Ordering Paragraph 2

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<sup>22</sup> PD at 121.

<sup>23</sup> D.07-01-039, “Interim Opinion on Phase 1 Issues: Greenhouse Gas Emission Performance Standard,” at 93-97 (2007).

<sup>24</sup> “Order Granting Petition for Rulemaking and Instituting Rulemaking as to Whether, When or How Direct Access Should Be Restored,” (P.06-12-002, R.07-05-025) (May 30, 2007).

requires the utilities to file and serve their draft contracts 45 days after the effective date of the decision and then allows 21 days for other parties to file comments should be maintained.

#### **H. PURPA Does Not Preclude the State Regulatory Authority from Determining Data Used to Derive Avoided Costs and Conditions of Access to Confidential Data**

Contrary to IEP's suggestion that State regulatory authorities are without authority to determine the cost data that a regulated entity must maintain to calculate avoided costs, the plain language of Section 292.302(d)(1) makes clear that that is not the case.<sup>25</sup> Similarly, the FERC has also left it to the State's discretion to determine what avoided cost data should be made public or kept confidential.<sup>26</sup> IEP's and CAC/EPUC's claim that failure to gain access to confidential data undermined their case is without merit. The PD appropriately applied the confidentiality rules established by this Commission and the State Legislature.<sup>27</sup>

### **III. CONCLUSION**

In view of the foregoing and for the reasons set forth in SDG&E's Opening Comments, SDG&E urges that the Proposed Decision be adopted and implemented expeditiously, subject to SDG&E's requested clarifications and modifications. The Proposed Decision will (1) bring the prices paid for QF power more in line with current wholesale energy prices, (2) modernize the

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<sup>25</sup> 18 C.F.R. §292.302(d)(1) provides in pertinent part:

...[A]ny State regulatory authority may require (with respect to any electric utility over which it has ratemaking authority)...data different than those which are otherwise required by this section if it determines that avoided costs can be derived from such data.

<sup>26</sup> *Tennessee Power Company*, 77 FERC ¶61,125 at 61,484 (1996).

<sup>27</sup> Pub. Util. Code §454.5(g).

QF contract terms and conditions to make them more consistent with the competitive wholesale generation market and (3) provide QFs and utilities the flexibility to negotiate longer-term contracts with short run avoided cost pricing terms.

Respectfully submitted,

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June 4, 2007

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a copy of the foregoing **REPLY  
COMMENTS OF SAN DIEGO GAS & ELECTRIC COMPANY ON PROPOSED  
DECISION OF ALJ HALLIGAN** on all parties of record in **R.04-04-003, R.04-04-025** by electronic mail and by U.S. Mail to those parties who have not provided an electronic address to the Commission. I have also sent hard copies by overnight mail to the assigned Administrative Law Judge(s) and Commissioner(s).

Dated at San Diego, California, this 4<sup>th</sup> day of June, 2007.

/s/ JOEL DELLOSA

Joel Dellosa

# CALIFORNIA PUBLIC UTILITIES COMMISSION

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**File: CPUC - PG&E, EDISON, SDG&E**

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