

**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 THE COGENERATION ASSOCIATION OF CALIFORNIA
AND THE ENERGY PRODUCERS AND USERS COALITION ON THE PROPOSED
DECISION OF ADMINISTRATIVE LAW JUDGE HALLIGAN**

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I. INTRODUCTION

The time has come in this proceeding to move from stridently held litigation positions toward consensus and resolution. Yet the utilities' comments, and markedly those of TURN, polarize issues and parties, failing to offer support for a reasoned middle ground. Certainly CAC/EPUC have equally strident criticisms of the PD and could easily restate litigation positions. Instead CAC/EPUC's comments identify and support pragmatic solutions within the Prospective QF Program¹ framework of the PD. The Commission's stated objective is to sustain a long term cogeneration program; CAC/EPUC propose resolutions to support that objective.²

At the outset a critical assessment of the rhetoric in TURN's opening comments can be instructive for the Commission. This assessment can sharpen focus on correctable flaws in the PD. Most significantly, it can pointedly reveal the misperception of what QFs actually seek as distinguished from TURN's (and the utilities') inaccurate and flawed "sound bite" reflections on the California QF community. TURN's comments allege that QFs seek "special treatment" and hold a persistent resistance to any and all efforts to be participants in what TURN calls "the 21st century market." According to TURN the power supply world has changed around QFs from the 1980's with an array of market supplies and alternatives to utility generation. The comments conclude: *"TURN's essential argument in this proceeding boils down a single salient point – in the wholesale marketplace of the 21st century, QFs should be paid prevailing wholesale market prices, no more no less, just like other participants in the market."* (TURN Comments p. 5).

Do QFs oppose "market" pricing? No. But "market" prices are only appropriate as avoided cost pricing if, as the PD recognizes, they reflect the utilities' incremental costs of generation to meet incremental load.³ Do QFs seek 1980 pricing for today's power deliveries? No. Comments from QFs recognize and accept changes in capacity pricing

¹ A QF is a Qualifying Facility under state and federal law; it is used interchangeably with "cogeneration" or Combined Heat and Power (CHP).

² Like all parties CAC/EPUC reserve all appellate and legal challenges.

³ PD, p. 5. "PURPA requires that QFs be compensated for power deliveries at a level equal to, but not higher than, 'the incremental costs to an electric utility of electric energy or capacity or both, which, but for the purchase from the qualifying facility or qualifying facilities, such utility would generate itself or purchase from another source.' [citation omitted] Thus a primary goal and guidepost in this proceeding is the need to accurately estimate the costs a utility would incur to obtain an amount of power that it purchases from a QF, either by the utility's self-generation or by purchase from a third party, on a short-term and long-term basis."

reflecting the Commission's adopted MPR for long term capacity. Comments from QFs accept heat rate ranges for pricing energy that are dramatically lower, but reflect actual gas fired generation operating on the utility systems.

Has the "array" of supply options changed in the last decade so that the actual costs of incremental generation operating to serve incremental load has changed? Not based on the record evidence in this proceeding.⁴

Does TURN's "21st century market" meet the standard for avoided cost? No. Consider the generators who actually are, as TURN's rhetoric provides, "participating in this 'market'." Is it solar, wind, or renewable resources? No, these intermittent projects secure full firm capacity MPR pricing, and potentially additional payments above those prices. There is no NP-15 or SP-15 artificially derived "market" prices applied to these resources.

Do "market" participants include utility built generation like Mountainview, Contra Costa 8 or new peaking units? No. These facilities all receive cost recovery under regulatory contracts, in some cases 30 year contracts, plus the pass through of future legal regulatory risk costs. The prices and terms for these resources are not regularly transparent or known, but certainly they are not limited to an NP-15 or SP-15 artificially derived "market" price for recovery.

Do "market" participants include merchant power plants? Theoretically yes, but pragmatically no. If a facility were to rely for its total recovery from the NP-15 or SP-15 "market" that facility would not be developed and built, and indeed that is the reality of the conditions in the California electricity market. Such merchant facilities are not being built, revealing a non-functioning, failing "market;" a market that does not reflect the full incremental cost of generation to meet incremental load.

Who is in this NP-15 and SP-15 market? There are generation facilities that are not recovering their costs from this "market" but from other contracts or regulated rates. This form of "market" masks and understates the avoided cost of the utilities, so it is favored by utility advocates like TURN.

What are the features of this "21st century market" beyond the "non-participation" of generators who are fully at risk in the market for recovery? This "market" has been shown to

⁴ There is no record evidence of SCE's or any other utilities' actual avoided cost. The denial of access to specific utility resource and cost data (see, 18 C.F.R. §292.302) eliminated this foundational evidence from the record.

reflect less than 5 percent of the total utility generation to meet load.⁵ This “market” outlaws direct access supply options, and imposes “non-bypassable charges” on departing load, load seeking alternatives to utility service, as a disabling financial restraint on buyers and sellers. It is a market that restrains competition while it favors utility dominance in purchasing conditions and generation supply development. Far from a functioning wholesale market, there is an illusion of a “market;” a “market” whose artificially low pricing cannot be a reasonable proxy for avoided costs. There is no functioning wholesale market in California that reflects utility avoided cost.

All this said, however, the objectives that CAC/EPUC seek may not be at all different from TURN; it is just that the “market” TURN touts for all participants, does not exist. QFs seek, like renewable resources or new utility developed generation resources, to participate in California procurement under terms and conditions that recognize their different “market” operations. There has never been a one size fits all “market” for generation supply in California. Intermittent renewable resources with higher costs are accommodated. Unique fleeting opportunity, cycling, load following utility generation projects are accommodated.

In this framework of a 21st century market CAC/EPUC seek some very simple objectives: (1) a secure contract with price and non-price terms that, whether “market” or administratively determined, is fully reflective of the utilities actual avoided costs (e.g., the full CPUC adopted MPR prices for LRAC); (2) to retain a procurement “market” for baseload, must-take operational CHP facilities, new and existing. Far from “special treatment” these objectives simply seek a fair place for QFs in what is not a “market” but a regulatory hybrid procurement structure.

From this vantage point, and with these objectives, CAC/EPUC have proposed pragmatic solutions within the structure the PD has set forth. (See Attachment A, CAC/EPUC’s identification of overall modifications/clarifications inserting comments on the summary Table 1 of the PD).

II. ARGUMENT

A. Utility Claims of Legal Error and Retroactive Avoided Cost Pricing Adjustments should be expressly Addressed and Rejected.

⁵ See, Prepared Rebuttal Testimony of William A. Monsen, Regarding Avoided Costs on Behalf of the Independent Energy Producers, October 28, 2005 at 10-12.

Relying exclusively on its own testimony SCE alleges that “*evidence of record demonstrates that the SRAC transition formula current [sic] in place has yielded energy payments in excess of SCE’s avoided cost for many years.*” (SCE Comments at footnote 73).⁶ SCE seeks retroactive avoided cost pricing adjustments and asserts legal error if the Commission fails to grant its request. The claim is specious and should be explicitly addressed and rejected on several grounds.⁷

First, SCE is rearguing allegations and “evidence” the Commission has previously examined and rejected in Decision 04-07-037. There is no new evidence to support SCE’s claims, and there remains no foundational evidence regarding the utilities’ actual avoided cost. In Decision 04-07-037, p. 6, the Commission held:

SCE’s claim that the evidence in this proceeding demonstrates that the SRAC formula violates PURPA is similarly unconvincing. According to SCE, the evidence in this proceeding shows that “the SRAC formula has yielded and will continue to yield prices for QF energy that systematically and materially exceed avoided cost.” (SCE App. for Rehg. of D.03-12-062, at p. 4.) In fact, the evidence cited by SCE only demonstrates that during some periods SRAC formula costs exceeded spot market costs. This is not the same as systematically exceeding avoided costs in violation of PURPA, and the evidence in the proceeding does not show systematic and continuously excessive prices.

Second, SCE ignores contrary record evidence that the existing SRAC pricing formula “... results in SRAC energy payments that are in line with, or lower than, current avoided costs.” (PD at 47) (Emphasis supplied)⁸

Finally, SCE seeks to bootstrap its argument suggesting that the Commission must retroactively adjust avoided cost prices under a Court of Appeals decision.⁹ The Court’s decision, however, only seeks a Commission determination if there has been a systematic violation of PURPA avoided cost pricing in prior periods. There is no evidence of such a violation. The PD provides that “*SRAC prices under the Transition Formula have exceeded*

⁶ There is no evidentiary foundation for this claim; specific utility resource and cost data to derive actual avoided cost (see, 18 C.F.R. §292.302) is not in the record.

⁷ Utility generation received extraordinarily high energy crisis payments, and utility management engaged in procurement actions/non-actions detrimental to ratepayers that could be subject to the same form of hindsight reasonableness reviews and retroactive adjustments or penalties.

⁸ The evidence of avoided cost could only be approximated from alternative, and utility-challenged public documentation, and not from actual utility source data. The evidence raises irrefutable doubts that spot market energy prices from NP-15 or SP-15 represent avoided cost.

⁹ *S. Cal. Edison Co. V. Cal. P.U.C.*, 128 Cal.App.4th 1 (2005); SCE Opening Comments, p. 19.

market prices, and potentially, avoided costs on occasion. Therefore, we find that it is time to update the SRAC methodology to ensure that it continues to reflect utility avoided costs.” (PD at 57) (Emphasis supplied).

The Commission is looking forward, developing a long term policy for both existing and new QFs, and setting pricing on a going forward basis. The Commission is establishing a “Prospective” QF Program.¹⁰ Record evidence does not support any retroactive adjustment of avoided cost prices. Still the final decision should be improved to explicitly address this issue, reject SCE’s allegations and clarify that there is no basis for determining that past avoided cost pricing was unlawful.

B. Consensus with PG&E on the Identification and Treatment of “Small” QFs should be Recognized and Adopted.

PG&E raises concerns over requiring utilities to accept new “large” QFs, but impliedly acknowledges that 20 MW or smaller QFs should receive the option of new standard offer contracts. PG&E comments (p. 12-13) state opposition to requiring new contracts for facilities like the 550 MW Los Medanos Energy Center, arguing that PG&E does not want to be:

... unable to extend new contracts to many, much smaller existing QFs. In the recently-adopted PURPA regulations, FERC created “a rebuttable presumption that the requirement that an electric utility enter into new contracts or obligations to purchase from a QF remains in effect, in all markets, for QFs sized 20 MW net capacity or smaller.”

Significantly even PG&E recognizes that QFs sized 20 MW net capacity or smaller will be recognized as facilities that should receive PURPA protections. CAC/EPUC have proposed a solution that addresses PG&E’s apprehension over “large” new QFs by simply allowing either a capacity or annual GWH equivalent (164.25 GWH annual delivery) measure to determine what is “small.” In short, rather than continue to contest PG&E’s position, CAC/EPUC have fashioned a solution (CAC/EPUC Opening Comments, p. 13-14) to sustain an option for new “small” QFs.

C. A “Long Term” QF Program Requires Secure and Reliable Contract Terms and Pricing for the Full Term of the Contract.

¹⁰ “[T]his decision updates the methodology for calculating SRAC energy prices on a prospective basis only....” (PD at 9) (Emphasis supplied)

Referencing §210(m) of EPCRA 2005, PG&E and SCE propose that the PD should be modified to terminate the Commission's Prospective QF Program once FERC terminates PG&E's mandatory purchase requirement. (PG&E Comments p. 14; SCE Comments p. 5). This is a short-sighted and destabilizing proposal for all QFs and should be rejected.¹¹

It is axiomatic that for a contract to have any meaning at all, it cannot be subject to unilateral termination or material modification during its term. Similarly, the Prospective QF Program must not be terminated or changed to materially affect contract terms unless the Commission first determines that QFs have real options to sustain existing and new QF operations for California.

The utilities, the QFs and all parties are well aware that it is possible, even probable that the CAISO's MRTU will be initially implemented in early 2008. If the utilities' position is accepted, the QF program would last a total of perhaps 18 months, making a mockery of any stable, long-term policy for QFs. The remedy for this issue is apparent. Reject the utilities' proposal for triggering termination of the QF program, and direct that the price and non-price terms in the QF contracts shall remain effective for the term of the contract at the election of the QF. Do not permit uncertainty and a lack of secure contract terms to undermine QF operators or developers for the relatively short 5 and 10 year contracts contemplated by the QF program.¹²

In addition, the Commission should serve notice that there will be no automatic trigger to change contracts or terminate the QF program. The Commission should assure an orderly process to transition to MRTU "markets" after the completion of any QF contract. The Commission must assure that any "market" (MRTU or otherwise) is functioning and operating successfully to reflect full avoided costs before relying on such a market for QF pricing.¹³

D. There are Multiple Pricing Issues that Warrant Modification, but Focus on One-Sided Reductions to QF Payments is Misplaced.

The utilities, TURN and DRA alternatively reargue litigation positions to "correct" pricing determinations that would further reduce QF payments under the PD. Each of these

¹¹ No party seeks to terminate contracts executed prior to any FERC termination of a mandatory purchase obligation.

¹² Once again comparison to the 30 year term of the Mountainview contract is relevant when considering the Commission's "long term" QF contract policy.

¹³ A listing of issues and evaluations the Commission should make to determine the viability of a market for its California QF program is in Attachment B, entitled Sample Indicia of a Functioning Power Market.

reargued litigation positions needs to be rejected. The commission must consider the misplaced focus by these parties on the precision of a specific calculation without consideration of the overall accuracy of the “all in” pricing contemplated by the PD.

1. Allegations that the MIF Methodology Double-Counts Variable O&M are in Error.

Several parties argue that the adopted MIF methodology double-counts variable O&M in the calculation of the SRAC energy payment. The claims are premised on the Commission eliminating SCE’s proposed adjustment to the SP-15 “market price” index. The adjustment is the subtraction of an entirely arbitrary \$2.00/MWh number, which SCE and other parties wish to characterize as “variable O&M.” This leads to the assertion that the price “calculation” double counts variable O&M. But these arguments presume a level of precision in the arbitrary calculation of the MIF that simply does not exist.

The NP-15 and SP-15 indices reflect an average price of transactions made at the SP-15 and NP-15 market centers. None of the cost components, and certainly not variable O&M, are identified in the average reported prices. The indices, by definition, understate the “incremental” price of energy transactions at these market centers. It can be speculated that the incremental reported price has all price components and the lowest prices do not. But speculation as to the precision of what is reflected in these average prices is like the proverbial missing the forest for the trees (or in this case a branch). In reality this argument reflects SCE’s effort to re-litigate and secure its full litigation position on the MIF calculation rather than the 99 percent provided by the PD.

The Commission should view these arguments for what they are – rate “slashing” under the guise of precision but sadly without any improvement in avoided cost pricing accuracy. The relevant figure for the Commission appears to be the “all in” price, not an arbitrarily fixed and speculative variable O&M figure. There are far more significant issues of precision and fairness related to pricing than this issue for the Commission to consider (e.g., as addressed in the following section). The proposed “variable O&M” adjustment should be rejected.

2. Contrary To Party Assertions The Commission’s \$104/kW-year Payment For LRAC Capacity Systematically Understates The Value Of Firm Capacity Provided By QFs By As Much As 50%.

SCE, PG&E and TURN (as well as other parties) argue the PD's \$104/kW-year payment for LRAC capacity overstates the value for the firm capacity provided by QFs. Once again these parties seek to re-litigate positions that are simply designed as one-sided reductions to the Commission's pricing determinations. An examination of the Commission's adopted MPR pricing that is apparently meant to apply to LRAC capacity pricing reveals an underpayment, as opposed to overpayment, error in the PD. In addition, even a comparison to cost and resultant pricing for the unique fleeting opportunity Mountainview fixed costs reveals a serious underpayment for capacity.

Attachment C entitled Tables and Source Data Comparison of Full MPR Pricing and Mountainview Pricing presents a compelling picture of the error in the PD for capacity pricing and in the litigation positions taken by utility parties.

The PD has stated the principle that QF LRAC prices should be the cost of a combined cycle gas turbine (CCGT) resource (PD at 92-93). But the PD fails to fully translate this principle into the designated price. The PD "short-form" \$104/kW-year price is not the MPR determined CCGT capacity-related price. The 10-year MPR CCGT capacity price for 2007 is \$157/kW-year. The PD "short-form" only calculates the fixed cost components attributable to the "return" and "depreciation" of the \$980/kW investment. MPR capacity-related fixed costs not reflected in the \$104/kW-year PD capacity price are costs associated with: (1) income taxes, (2) property taxes, (3) fixed O&M, and (4) insurance costs. For example, the MPR fixed cost component of \$157/kW-year includes a 2007 fixed O&M cost of \$13.94/kW-year that escalates at 2.46% annually.¹⁴ In contrast, the "unique fleeting opportunity" Mountainview fixed O&M cost is about \$30/kW-year based on information presented in a recent FERC filing.¹⁵

Accordingly, a comparison to the fixed costs of utility generation projects reveals a dramatic underpayment for QF firm capacity. CCGT resources have been advocated by the utilities in recent Mountainview (SCE) and Contra Costa 8 (PG&E) proceedings as their most economical long-term resource option, and this Commission has concurred. This same firm supply CCGT resource was adopted as the benchmark price for reasonableness in the

¹⁴ Resolution E-4049, Appendix E, page 30 at Line 2.

¹⁵ Source: Mountainview Power Company FERC Form 1 2006 Q4.

procurement of intermittent renewable resources (i.e., the market price referent). The fixed price component for the Mountainview resource reflected in Attachment C is \$123/kW-year.

In short it is unreasonable to establish the QF capacity price at \$104/kW-year when the Commission has determined that prices in the MPR of \$157/kW-year and the Mountainview cost of \$123/kW-year are reasonable and in the case of Mountainview below the “market.”¹⁶ Indeed, the \$104/kW-year price for a 10-year contract beginning in 2007 understates the fixed capacity payment that an intermittent renewable resource could receive by over 50% $[(157 - 104) \div 104 = .51]$ when all of the fixed cost components (i.e., income and property taxes, fixed O&M, and insurance costs) are taken into account. Not only should the utility parties’ argument that the \$104/kW-year is too high be rejected, the Commission should correct the PD to provide QFs with the full MPR CCGT price.

3. Eliminate SDG&E’s Ancillary Services Credit Adjustment from the As-Available Capacity Payment Calculation.

Several parties argue in error to deduct the entirety of SDG&E’s \$14.82 for non-spinning reserve ancillary services from the value of a new combustion turbine from the PD adopted as-available capacity payment. (SCE Comments p. 9-12; TURN Comments p. 7-9; DRA Comments p. 4). As demonstrated in CAC/EPUC’s opening comments (at 23), the adjustment for even a portion of ancillary services is in error. The SDG&E premise to credit an ancillary service adjustment is based upon the assumption that a CHP unit would operate like a CT and provide non-spinning reserves when it is not running to serve load. However, the adopted SRAC payment method requires a QF to be “running” during all hours of the year in order to be paid any capacity payment. This means the “avoided CT” is always operating at full capacity and unavailable to provide any Ancillary Services. The Commission should eliminate SDG&E’s erroneous ancillary credit adjustment from the as-available capacity payment calculation.

E. The PD’s “No New Credit Support” Determination for Future QF Contracts is Material and should be Retained.

The PD provides that QFs with expiring contracts seeking to sign new, one- to five year as-available contracts or one- to ten year unit firm contracts “*shall not be required to provide new credit support provisions nor new interconnection studies.*” (PD at 116-118).

¹⁶ See, Decision 03-12-059, (December 18, 2003) at 40.

This is a material commercial and financial issue for QF resources which should be retained in the final decision. Many reasons support this determination: (1) credit support conditions from utility RFOs – essentially full replacement power costs at unknown and unpredictable prices – are unrealistic commercial barriers for these operations; (2) existing QFs have a long history of firm, reliable operation¹⁷; and (3) QF contracts are structured so that payment is conditioned on performance – these conditions have resulted in reliable, firm QF deliveries without additional credit terms.

SCE’s comments seek to modify the PD to “*allow the utilities to pursue standard credit performance requirements in all new or renewed QF contracts.*” (SCE Comments at 20). The final decision should reject SCE’s request on several grounds. First, procedurally SCE’s argument does not correct a factual, legal or technical error in the PD. (Rule 14.3(c)). Second, SCE argues without record evidence that credit performance requirement will provide benefits to utility interests. This implies that QFs will not perform under standard “pay for performance” QF contract terms. SCE has no basis for this assertion. Accordingly, the Commission should reject SCE’s proposed modification to impose new or additional credit support provisions on QF contracts.

III. CONCLUSION

For the forgoing reasons the Commission should adopt the proposed modifications provided by CAC/EPUC.

Respectfully submitted,



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¹⁷ Indeed during the energy crisis in 2000 and 2001 most QF facilities continued to operate and deliver power for months even though they were not being paid by the utilities.

**Table 1
Qualifying Facility (QF) Programs
Adopted and Existing**

No.	Provision	Prospective QF Program (Adopted) (For any future contract for expiring and expired QFs; and for New QFs as described)		Existing QF Program (Will phase out with QF Contract Expiration)	
		One- to Five-Year As-Available Energy Contract	One- to Ten-Year Unit Firm Capacity Contract	Adopted	Current
<p>Recommendation: Non-price terms and conditions for must-take QF resources must be non-discriminatory to ensure an effective, secure, and commercially viable QF Program. Terms and conditions should be on par with those applicable to utility resources (e.g., Mountainview) and implemented simultaneously with adopted avoided cost pricing.</p>					
1	Energy Price	<p align="center"><u>Market Index Formula (MIF)</u> For PG&E, SCE, and SDG&E: Same as SCE's current SRAC formula as adopted in D.01-03-067, with the exception that the heat rate, or Incremental Energy Rate (IER), component will instead be calculated from a twelve-month rolling average* of historical NP-15 or SP-15 Day Ahead market price data with a "collar" around the possible IER values to provide a cap and a floor to mitigate excessive volatility.</p>		<p>Market Index Formula (MIF) Same as in the Prospective QF Program, or as contractually based, e.g., fixed price agreement or SRAC energy variant.</p>	<p>SRAC Transition Formula for PG&E and SDG&E; and the Modified Transition Formula for SCE.</p>
<p>Recommendation: The Energy Price "Cap and Floor" should reflect real operating resource higher heating value (HHV) heat rates (i.e., TURN's 10,000 Btu/kWh CT; Mountainview's 7,000 Target Full Load Heat Rate at a "new and clean" condition).</p> <p>A firm and fixed 7.4¢/kWh "All In" price option (at an assumed \$7.50/MMBtu gas price) should be offered to QFs.</p> <p>IOU burner-tip gas prices for SCE and SDG&E should be the sum of: (1) the bid-week Topock-CA Border natural gas price; and (2) the intrastate natural gas transportation cost. For PG&E the burner-tip natural gas price should be the sum of: (1) the simple average (i.e., 50%/50% weighting) of the bid-week Malin and Topock-CA Border natural gas prices and (2) the intrastate natural gas transportation cost.</p>					
2	Capacity Price	As-available capacity payments will not fall below the first-year capacity price for the duration of the contract.	The capacity payment will be fixed for the duration of the contract.	Existing contractually-based capacity payments remain unchanged. -----	Posted Price for As-Available Capacity. ----- -----
2a	Calculation of Capacity Price	Based on the fixed cost of a Combustion Turbine (CT) as proposed by TURN, less the estimated value of	Based on the MPR capacity cost in E-4049 of \$980/kW which results in an annual cost of \$104/kW-yr.	Eligibility: If as-available capacity counts for purposes of Resource Adequacy (RA), QFs will receive a	Contractually-Based Capacity Prices.

		Ancillary Services (A/S) as generally proposed by SDG&E.		capacity payment.	
<p>Recommendation: The beneficial term and duration of the adopted capacity pricing should be matched by sound capacity price calculations. The as-available calculation's flaws should be corrected through escalation of the 2004 CT costs (\$60.94/kW-yr) to 2007 (\$66.92/kW-yr), an annual inflation adjustment to the variable O&M, and removal of the A/S credit adjustment as inconsistent with TOU Factor applications..</p> <p>The MPR firm capacity calculation should be corrected to include (1) all fixed CCGT cost components (<i>i.e.</i>, return costs, depreciation costs, and income and property taxes, insurance costs and fixed O&M),and (2) local QF benefits.</p>					
3	Daily Scheduling	Standard CAISO Timetables and Protocols for Day-Ahead Schedules for QFs greater than 1MW**		No Change	None
<p>Recommendation: Retention of the utilities' traditional role of Scheduling Coordinator for QF power deliveries and interface with the ISO maintains a critical component for the success the Prospective QF Program. State jurisdiction (<i>e.g.</i>, Rule 21 interconnection oversight) over QF resources should be maintained in a manner that is consistent with the ISO Tariff but does not subject these resources to unnecessary ISO Tariff obligations.</p>					
4	Forecasting	Weekly, Monthly and Annual Forecasts**		No Change	None
<p>Recommendation: Forecasting issues – See comment to Provision 3 above.</p>					
5	Deliveries	SC-SC Trade (where SC = Scheduling Coordinator for QFs greater than 1MW)**		No Change	None. Utility is now the Scheduling Coordinator.
<p>Recommendation: Delivery issues – See comment to Provision 3 above.</p>					
6	Emergency Response	Standard ISO Emergency Response Provisions**		No Change	None
<p>Recommendation: Emergency Response issues – See comment to Provision 3 above.</p>					
7	CPUC Performance Requirements	Day-Ahead Scheduling**	Penalties to Capacity Payment for Failure to Deliver 95% during on-peak months and 90% during off-peak months (no counting scheduled outages).** This is a Qualifying Capacity provision.	No Change	None
<p>Recommendation: Monthly peak and off-peak period QF delivery requirements, consistent with traditional QF operations, should be established.</p>					
8	Credit	None**	None**	No Change	None
<p>Recommendation: The credit support policy for QFs with expiring contracts must be maintained to ensure retention of the utilities' QF supplies.</p>					
9	Termination Rights	QF has the ability to terminate if selected in native utility solicitation**		No Change	QF has the unilateral right to terminate on 30-

				days notice. ----- IOU termination rights are tied to QF non-performance, and QFs can also be derated.
Recommendation: Provisions regarding termination rights, similar to other standard terms and conditions, must be addressed expeditiously and implemented in concert with changes in avoided cost pricing calculations.				
10	New QFs	New QFs may seek a contract under the Prospective QF Program. If an IOU claims a new QF contract will result in over-subscription, the IOU shall meet and confer with its Procurement Review Group (PRG) within 20 days of receiving such a request from a new QF. The Commission's Energy Division will prepare a brief summary of the PRG meeting regarding the IOU's ability to enter into the new QF contract. If the PRG feedback is unfavorable toward the new QF, the new QF may opt to file a formal complaint with the Commission.	--	--
Recommendation: A simple 20 MW capacity or annual GWH equivalent (164.25 GWH annual delivery) measure should be established to exempt from the PRG process "small" QFs with no significant impact on the respective utility's portfolio. New QFs not meeting the above measure should obtain standard contracts through the PRG process. The PRG process must, however, recognize the lack of risk of oversubscription where: (1) new QFs would serve a specified percentage of the baseload portfolio historically served by expiring or terminated CDWR contracts; or (2) new QFs would serve load equivalent to or less than the percentage of load served by existing QFs multiplied by the new load growth.				
11	CAISO Resource Adequacy (RA) Tariff	QFs with a dependable capacity of greater than 1 MW shall comply with the CAISO RA tariff.	--	--
Recommendation: QFs should comply with applicable tariff provisions that support Resource Adequacy requirements, but should not be needlessly subject to CAISO Tariff jurisdiction or requirements which do not appropriately account for the unique operating characteristics of these resources.				

Attachment B
SAMPLE INDICIA OF FUNCTIONING POWER MARKET
(Energy and Capacity)

What is a “functioning power market?” To borrow from former Justice Potter Stewart’s 1964 effort to define obscenity -- *“I shall not today attempt further to define the kinds of material I understand to be embraced ... [b]ut I know it when I see it....”*¹ The exercise to define in advance or in the abstract a “functioning power market” bears similarly difficult qualifications. Nevertheless there are some indicia of a functional power market the Commission should determine to exist in order to verify that such market would establish avoided cost:

1. Whether the markets have been tested and evaluated over time, times of day, season, and varying operating conditions to insure that appropriate price signals are being provided, including during periods of shortage.
2. Whether there are multiple buyers and sellers reaching price and delivery terms that sustain existing and new baseload CHP generation projects.
3. Whether the market is transparent including price visibility.
4. Whether the market has appropriate monitoring to insure that access is allowed on a nondiscriminatory basis, including access to transmission and interconnection services.
5. Whether the market is independently administered and auction based.
6. Whether there are competitive day ahead and real time wholesale markets for electric energy and wholesale markets for the long-term sales of capacity.
7. Whether transactions within the relevant market are sufficient to demonstrate that a meaningful opportunity to sell exists both short term and long term,
8. Whether the markets are sufficiently robust to secure the reliable long term delivery of power to the grid by QF baseload operations,
9. Whether the market does not allow for significant arbitrage between the day ahead and real-time markets.
10. Whether the market allows for sale of electrical energy consistent with cogeneration QFs’ thermal energy obligations (sales on a continuous basis).
11. Whether the market is sufficiently robust that utility baseload assets can be sustained upon the price signals received by the QFs and other market participants.

¹ Jacobellis v. Ohio, 378 U.S. 184, 197 (1964).

Attachment C
Tables and Source Data Comparison
Of Full MPR Pricing and Mountainview Pricing

The PD refers to the \$980/kW installed cost of the Market Price Referent (MPR) Combined Cycle Gas Turbine (CCGT). But rather than using that full price for LRAC capacity it calculates a capacity price of \$104/kW-year. This price does not reflect the total MPR price, nor does it compare favorably with the below market, unique fleeting opportunity capacity price of the Mountainview project.

MPR Pricing – The MPR pricing for purchases beginning in 2007 that was adopted by this Commission in Resolution E-4049 is presented in the following table.

Line 1 of the table presents the “All-In” (*i.e.*, combined fixed and variable levelized costs) that was adopted in Resolution E-4049 beginning for year 2007 pricing. Lines 2 and 3 present the fixed and variable components of the “All-In” price, which are calculated by the MPR model cited in Resolution E-4049. Line 4 recasts the fixed components as a capacity price (\$/kW-year) utilizing the 78.98% capacity factor resulting from the MPR model ($0.02269 \times 8760 \times .7898 = 156.97$). Line 5 is the equivalent heat rate based upon the model’s levelized natural gas forecast (Line 6). The equivalent heat rate was calculated by dividing the variable cost component in \$/kW by the levelized natural gas forecast times the conversion factor. For example, a variable cost component of \$0.05811/kWh at a levelized natural gas value of \$7.80 equates to an equivalent heat rate of 7,449 Btu/kWh ($0.05811 \div 7.80 \times 10^6 = 7,449$).

Adopted 2006 Market Price Referents
(Nominal - Dollars)

Line	Pricing For Baseload MPR - Year 2007 ¹	10-Year	15-Year	20-Year
1	“All In” Price (\$/kWh)	\$0.08080	\$0.08212	\$0.08460
2	Fixed Component (\$/kWh)	\$0.02269	\$0.02339	\$0.02401
3	Variable Component (\$/kWh)	\$0.05811	\$0.05873	\$0.06060
4	Capacity Price (\$/kW-year)	\$157 ²	\$162	\$166
5	Equivalent Heat Rate (Btu/kWh)	7,449 ³	7,467	7,473
6	Levelized Natural Gas Forecast (\$/MMBtu)	\$7.80 ⁴	\$7.87	\$8.11

¹ Resolution E-4049 for all in MPR price and 2006 MPR Model_Resolution E 4049_Final_12_13_06.xls; tab entitled “MPR_Matrix” for fixed and variable component.
² Capacity Price (\$/kW-year) = Line 2 x .7898 x 8760 = 0.02269 x .7898 x 8760 = 157.
³ Equivalent Heat Rate (Btu/kWh) = [Line 3 ÷ Line 6 x 10⁶] = [0.05811 ÷ 7.80 x 10⁶] = 7449.
⁴ 2006 MPR Model_Resolution E 4049_Final_12_13_06.xls; tab entitled “Gas & Basis Forecasts.”

Mountainview Pricing

The following table records Mountainview's monthly fixed cost recovery payment of \$10,247/MW-month (Line 1), and calculates the total annual fixed payment of \$123/kW-year (Line 2) based upon the monthly information. Additionally, the annual reported Mountainview non-capital related fixed cost recovery O&M is presented in the table (Line 3), and the calculated non-capital O&M in \$/kW-year is shown (Line 5) based on an installed capacity of 1,054 MW (Line 4).

<u>Mountainview Fixed Cost Recovery</u>		
Line	Description	Mountainview
1	Fixed Cost Recovery (\$/MW-Month)	\$10,247 ⁵
2	Total Annual Fixed Cost Recovery (\$/kW-year)	\$123 ⁶
3	Mountainview's Non-Capital Recovery O&M	\$31.6 Million ⁷
4	Mountainview Capacity (MW)	1,054 ⁵
5	Mountainview's Non-Capital O&M (\$/kW-year)	\$30 ⁸

⁵ Most current value from Mountainview Power Company's 2007 Q1 EQR filing at FERC.

⁶ Annual Fixed Cost Recovery (\$/kW-yr) = (Line 1 x 12) ÷ 1000 = (10247 x 12) ÷ 1000 = 123.

⁷ Source: Mountainview Power Company FERC Form 1 2006 Q4.

⁸ Non-Capital O&M = [Line 3 ÷ Line 4 x 10³] = [31.6 ÷ 1054 x 10³] = 29.98.

CERTIFICATE OF SERVICE

I, Karen Terranova hereby certify that I have on this date caused the attached **Reply Comments of the Cogeneration Association of California and the Energy Producers & Users Coalition on the Proposed Decision of Administrative Law Judge Halligan** in R.04-04-003/R04-04-025 to be served to all known parties by either United States mail or electronic mail, to each party named in the official attached service list obtained from the Commission's website, attached hereto, and pursuant to the Commission's Rules of Practice and Procedure.

Dated June 4, 2007 at San Francisco, California.



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