

**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 PACIFIC GAS AND ELECTRIC COMPANY
(U 39 E) ON PROPOSED DECISION OF ALJ HALLIGAN**

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Pursuant to Rule 14.3 (d) of this Commission's Rules of Practice and Procedure, Pacific Gas and Electric Company (PG&E) replies to the comments on the proposed decision (PD).^{1/}

I. INTRODUCTION.

In their comments, the Qualifying Facilities (QF) parties attempt to maintain a *status quo* that has cost California's ratepayers billions of dollars in above-market costs. Those above-market costs, and resulting stranded costs, could continue for decades. The Commission should immediately approve the PD (with PG&E's few suggested modifications) to move QFs into the wholesale marketplace of the 21st century in which QFs are paid prevailing wholesale market prices, no more and no less, just like other market participants.

The QFs attack the PD in two ways: (1) they claim the PD leaves certain issues unresolved so as to preclude its immediate implementation, therefore the PD's much-needed reforms should be delayed; and (2) they reargue the issues the PD explicitly and implicitly resolves based on the facts and clear evidence in the record of this proceeding. As discussed below, both approaches fail.

^{1/} PG&E received opening comments from California Cogeneration Council (CCC), Californians for Renewable Energy, Inc. (CARE), the California Wind Energy Association (CalWEA); the Cogeneration Association of California and the Energy Producers and Users Coalition (CAC/EPUC), County of Los Angeles (County), Division of Ratepayer Advocates (DRA), Independent Energy Producers Association (IEP), San Diego Gas & Electric Company (SDG&E), Southern California Edison Company (SCE) and The Utility Reform Network (TURN).

II. DISCUSSION.

A. The PD Can And Should Be Implemented Immediately.

Because the QFs' advocacy was largely unsuccessful, they all list a number of reasons why the PD's long-overdue changes should be delayed. Each QF party attempts to stall implementation of the PD to continue enjoying above-market energy payments.

IEP argues that the PD is too vague. (IEP pp. 8-11.) CAC/EPUC argue that SRAC should not be changed until the terms of a new long-term contract are worked out. (CAC/EPUC pp. 15-16.) CCC would delay the PD's implementation of revised energy pricing until each of the options under the prospective QF programs are "in place." (CCC p. 16.) The County urges a *two year* delay. (County p. 13.) As discussed below, the asserted reasons are invalid; the Commission should adopt the PD's directive to implement the changes immediately.

Several QFs raise issues concerning "the 'collar' around the possible IER values to provide a cap and floor for possible IER values." (PD p. 30.) IEP claims there are questions concerning the Market Index Formula (MIF) and the collar that make them "incomplete." (IEP p. 8.) CCC claims the collar is "biased against QFs" and, together with CAC/EPUC, these parties claim the collar results in excessive mitigation because the 12-month rolling average in the MIF provides enough protection against volatility. (CCC pp. 14-15; CAC/EPUC pp. 5-7.)

The collar's purpose is to "mute volatility and account for seasonality." (PD p. 31.) As such it protects QFs as well as ratepayers. In light of the energy crisis, such safeguards cannot be "excessive." PG&E is prepared to implement the PD's collar protections immediately; the collar does not preclude correctly determining avoided costs.

IEP and CCC raise questions concerning the Operations and Maintenance variable cost adder (O&M adder), including how and when it should be escalated. (IEP p. 9; CCC p. 18.) As numerous parties noted, however, the PD's addition of an O&M adder to a market-based power price is a mistake. (PG&E p. 4; SCE pp. 6-7; SDG&E p. 3; DRA p. 2; TURN pp. 6-7.) All issues concerning the O&M adder become moot if the Commission adopts the recommendations to eliminate the O&M adder in the MIF. However the O&M issue may be resolved, this resolution should not prevent immediate implementation of the PD.

The QFs raise issues concerning calculation of the burner tip gas price. (IEP p. 9; CCC pp. 17-18; CAC/CPUC pp. 23-24.) The PD should be clarified only to state how often gas

transportation tariff changes should be considered. (PG&E p. 5; SCE p. 8.) When PG&E posts its monthly SRAC prices, it will include all the relevant components of the burner tip gas price, using “natural gas border price indices” as Public Utilities Code Section 390(b) requires.^{2/} Thus, the process will be completely transparent to all interested parties.

Several parties raise issues concerning the PD’s treatment of Time of Use and Time of Delivery (TOU/TOD) factors. (IEP pp. 9-10; CCC pp. 19-21; CAC/EPUC p. 20; SDG&E pp. 4-5.) PG&E believes the PD defers consideration of this topic to the Investor-Owned Utilities’ (IOUs) next long-term procurement plan proceeding where the parties can fully address the issue. (PG&E p. 6.) Until then, the current TOU/TOD factors should remain effective.

The Commission should ignore the QFs’ transparent attempts to delay implementation of the PD, in particular, the MIF. There is no valid reason to hold short-run avoided cost (SRAC) pricing reform hostage to the development of standard contracts. This case has already taken three years to adjudicate. The SRAC pricing changes should be instituted immediately, before the standard contracts are approved. PG&E is sympathetic to TURN’s proposal for workshops, but PG&E does not believe TURN intends its workshop proposal to delay immediate implementation of the PD.

Finally, IEP’s argument that the PD is “fatally flawed” because it does not include sufficient findings of fact and conclusions of law as Public Utilities Code Section 1705 requires (IEP p. 1) can be easily remedied by incorporating into the final decision the text the IOUs and TURN have recommended.

B. The QFs’ Attack on the MIF Has No Factual Basis.

The PD correctly concludes that the IOUs’ avoided cost for energy today is reflected in day-ahead wholesale market prices. The PD therefore adopts the MIF to reflect this reality. (PD p. 62.) Virtually all the QFs’ comments on these determinations repeat arguments that QFs have previously made, and the PD properly rejects. As such, the Commission should ignore the

^{2/} CCC’s proposal to use PG&E City-gate prices does not comply with Section 390 (b) and should be rejected. (CCC p. 32, Appendix C.) CCC’s analysis of NP-15 market heat rates (p. 31, figure 2) – which cannot be considered because it is not in the record in this proceeding – is wrong as it uses City-gate prices and includes the O&M adder the IOUs, TURN, and DRA note should be removed. PG&E agrees with the proposal to calculate the burner-tip natural gas prices “as the sum of: (1) the simple average (*i.e.*, 50%/50% weighting) of the bid-week Malin and Topock CA Border natural gas prices in accordance with D.96-12-028.” (CAC/EPUC p. 24.)

bulk of the QFs' comments because "[c]omments that merely reargue positions taken in briefs will be accorded no weight." (Rule 14.3(c).)

CCC spends some 10 pages repetitiously arguing that its "adjustment factor" must be included in the MIF. The justification CCC advances for applying its adjustment factor to the MIF is that the mechanism, "when applied to NP-15/SP-15 Prices, would properly account for various shortcomings for these prices." (CCC p. 8.) The PD finds that the day-ahead prices do not have the "various shortcomings" CCC claims and therefore properly concludes there is no need for such an adjustment factor. Similarly, other QFs merely reargue the points they made before to resist market-based energy pricing. (County pp. 5-13; IEP p. 2.) As discussed below, these arguments were not valid when the QFs first advanced them and are not valid now.

CCC argues that the PD "ignores overwhelming evidence that the NP-15/SP-15 prices do not include substantial resources," such as Reliability Must Run, Must Offer dispatch, local Resource Adequacy and Department of Water Resources contracts. (CCC pp.3-4.) The County makes a similar claim. (County pp. 5-7.) The PD does consider this evidence – and rightly rejects it. (PD pp. 40-41; p. 59.) CCC next claims that day-ahead prices are "deflated artificially" by these "substantial resources" and by a "structural market defect," which CCC claims the PD "does not address." (CCC pp. 4-5.) Again, the PD discusses this issue and resolves it against the QFs. (PD pp. 40-42; 54-55.)

CCC again asserts the day-ahead markets "are only a small component of the utilities' resource mix" "characterized by relatively small volumes," and that the IOUs' least-cost dispatch decisions are irrelevant to determining avoided costs. (CCC pp. 6-7.) The PD correctly rejects these arguments. The day-ahead market involves numerous market participants throughout the western U.S. If the day-ahead market is where an IOU would buy its power "but for" a QF's generation, that price is the cost the IOU avoids in buying that QF power. Moreover, CCC's claim that "the entire problem with the utilities submitting infeasible schedules" is "not disputed" is plainly false. (See PG&E's Opening Brief pp. 26-30.) In any event, these issues were the subject of extensive testimony and briefing, all of which the PD takes into account. (PD pp. 39-42; 46-49; 53-59.)

CCC also claims that the PD "misunderstands" its adjustment factor. (CCC pp. 7-8.) There is no indication that the PD "misunderstands" the adjustment factor; the PD simply rejects

it. Moreover, the claim that the factor assumes “only about 10% of QF generation” means it is not a QF-in/QF-out approach is disingenuous. (CCC p. 9; County p. 8.) A 10 percent block of QF power is a substantial block of power. The Public Utility Regulatory Policies Act (PURPA) does not justify treating QFs as a block of any size. (See PG&E’s Opening Brief pp. 16-22.)

The claim that the adjustment factor is needed to account for the “aggregate value” of QF generation is also irrelevant. (CCC p. 10; County p. 10.) The PD recognizes this “value” is only one of the issues the Commission may take into account “to the extent practicable when determining the avoided cost of energy and capacity.” (18 C.F.R. § 292.304(e).)

CCC argues it would be discriminatory not to adopt the market adjustment used in determining the avoided costs of energy-efficiency programs in setting avoided costs for QFs. (CCC p. 11.) CCC fails to mention that it borrowed from the E-3 methodology, but unilaterally increased the E-3 adjustment factors to further increase prices. CCC’s logic is that when calculating SRAC it should be assumed that no new resources are added to the IOUs’ portfolios to make up for the IOUs’ net short positions. (CCC Ex. 102, p. 42, fn. 54.) Thus the proposal assumes a net short position that does not match the IOUs’ actual needs and sets QF prices assuming a fictional resource shortage. CCC’s contorted use of the E-3 elasticity factor is legally and factually unsupported and the PD rightly rejects it.^{3/}

Finally, CCC argues that the Commission should use forward market heat rates and market prices. (CCC pp. 15-19.) This is more re-argument. (See CCC Opening Brief pp. 18-20.) The Commission should ignore it.

C. The Prospective QF Program Should Be Revised.

The parties’ various recommendations to modify the contract prices in the PD validate PG&E’s testimony that “only market prices can accurately reflect the utilities’ supply alternatives.” (PG&E Ex. 29, 4-7.) No new long-term contracts should be required for QFs exceeding 1 MW. (PG&E pp. 8-10.) If new contracts are required: (1) their term should be shortened to less than five years and they should be priced at market or through competitive solicitations; (2) the QFs should meet credit requirements which could include posting of collateral, like other wholesale generators^{4/}; and (3) the contract costs should be equitably

^{3/} For a complete discussion of the flaws in the CCC’s elasticity factor, see SCE Ex. 2, pp. 49-50; PG&E’s Opening Brief dated March 6, pp. 37-39; PG&E Ex. 29, pp. 3-19 to 3-20.

^{4/} Since the energy crisis, wholesale energy markets have evolved and become more sophisticated with

allocated to all electric customers who benefit to avoid burdening PG&E's bundled service customers, as SCE suggests. (SCE pp. 4-5.)

If the Commission endorses the PD's provision of new contracts with administratively-determined capacity payments, the PD's prices should also be modified as discussed below. Further CAC/EPUC's proposed revision to the schedule to file the contracts should be denied.^{5/}

1. The As-Available Capacity Price Should Be Eliminated Or Reduced.

PG&E agrees with SCE that QFs delivering "as-available" power would be overpaid if they receive both an energy payment commensurate with day-ahead energy prices and a separate as-available capacity payment because the power purchased at day-ahead prices is significantly "firmer" than as-available QF power. As PG&E's expert testified:

The DA spot market is both an obvious and conservative (i.e., erring on the side of overpayment) measure of PG&E's true short-run avoided costs. . . . [T]he product traded on DA spot market is as valuable, or more valuable, than short-run energy provided by standard offer QFs. This is because DA traded energy is "financially firm" energy scheduled one day in advance. . . . No PG&E QFs selling under standard offer contracts pays liquidated damages for the non-delivery of power in any given hour, although liquidated damages is a standard feature of significant value to PG&E and other buyers in the NP-15 spot market. As a result, NP-15 DA prices are an overpayment for standard offer QF energy when non-price factors are taken into account. (PG&E Ex. 28, pp. 3-14 to 3-15.)

The MIF sufficiently compensates as-available QFs for the full value of their power.

If, however, the Commission does order a separate as-available capacity payment, it should adopt TURN's approach. The as-available capacity price established in the PD is too high because in calculating the price, the PD does not deduct from the total fixed costs of a Combustion Turbine (CT): (1) the gross margins a CT earns by selling energy; and (2) the full value of ancillary services (A/S) that CT provides. (PG&E pp. 10-11.) While the PD recognizes an A/S value, that amount is insufficient, and should be increased to \$14.82/kW-yr, as SDG&E originally proposed and SDG&E, DRA, SCE and TURN recommend. As TURN correctly states,

If the correct values for ancillary services revenues and inframarginal energy rents were properly subtracted from the total CT capacity cost of \$64.13 for 2006, the

respect to credit. Thus, having QFs meet modern day credit standards is commercially appropriate and in the best interest of the customer.

^{5/} The PD requires the IOUs to file draft contracts within 45 days. PG&E will meet and confer with the QFs during this period, as it did with the Commission-required extensions and the Renewable Portfolio Standard (RPS) agreements to attempt, to the extent possible, to limit disputes about the contract forms.

result would be \$64.13 minus \$14.82 for ancillary services minus \$16.78 for energy value, or \$32.53 per kW-year. (TURN p. 9.)

CAC/EPUC argue there should be no deduction for A/S. (CAC/EPUC p. 23.) Their rationale is that a typical QF cannot earn A/S revenues outside of the hours that a typical QF operates under net-sales PPAs. The PD's CT proxy, however, is an avoided capacity cost for a typical CT, not a typical QF's power plant, so the deduction for A/S value is required.

The QFs' proposal to escalate the as-available capacity price using the Consumer Price Index should be rejected because that index reflects increases in consumer prices, not utility supply costs. (CCC p. 23; CAC/EPUC p. 21.) In the MPR calculation, capital costs are escalated using the US Army Corp of Engineers Escalation Index (CWBS Feature Code 07). PG&E does not object to escalating the price using a proper index, if the price in the PD is reduced consistent with TURN's recommendations. If the price is not reduced, a further escalation is not justified because the PD price is already too high.

2. The Commission Should Adopt The Revisions To The Firm Capacity Price SCE and SDG&E Propose.

SCE's suggestion to revise the firm capacity price to account for a new Combined Cycle Gas Turbine's (CCGT) residual value and the net energy benefits provided by a CCGT is methodologically sound, and should be adopted. The Commission should also adopt SDG&E's proposal to incrementally lower capacity prices for contracts with terms of less than ten years to account for the increased residual value of a CCGT that is operating under a contract of less than 10 years. TURN's proposal to reduce the energy payment by the net energy benefits is also methodologically sound, but would pose an administrative burden, because the IOUs would need to post an additional SRAC solely for those QFs who have executed firm capacity contracts.

D. IEP and CAC/EPUC's Confidentiality Objections Are Baseless.

IEP and CAC/EPUC complain that the Commission did not provide adequate access to certain data and thereby violated federal law. (IEP pp. 4-5; CAC/EPUC pp. 24-25.) In the first place, the historic data the QFs sought is irrelevant to the PD's determination that QFs should be paid a market-based energy price. Thus even if the QFs had full access to all data they demanded, this would not have changed the PD's result.

Second, Section 292.302 of the PURPA regulations specifically delegates to state regulatory authorities the power to determine which data a public utility must disclose to derive

avoided costs.^{6/}

In this proceeding the QFs were given the opportunity to appoint a representative to review confidential data. CAC/EPUC did not even attempt to appoint a reviewing representative. IEP and CCC both did so, and their designated representatives reviewed confidential data, which CCC did not bother to use in the proceeding. There were two full hearings on confidentiality issues before several ALJs who carefully determined what information must be withheld from market participants like QFs to protect ratepayer interests. This Commission has properly and legally regulated access to confidential utility data pursuant to state law and consistent with the Federal Energy Regulatory Commission's (FERC) deference to state policy regarding this issue.

E. Non-QF Generators Require FERC-Jurisdictional Interconnection Agreements.

CalWEA argues that existing QFs should be allowed to retain their existing interconnection arrangements even if they are no longer selling to the utility, or selling as a QF. (CalWEA p. 2.) An existing project may not need a new study if it intends to continue operations without changing the existing generator. If the project is no longer selling as a QF, a new interconnection agreement is necessary.

This Commission has jurisdiction over most interconnection agreements for QFs selling to the utility under a PURPA arrangement, but the FERC has jurisdiction over interconnection agreements for other generators making wholesale sales. (Order 2003 (2003) 104 FERC ¶ 61,103 paragraph 813.) FERC has approved form agreements that are now available. Thus, the Commission should reject CalWEA's request to guarantee that existing QF interconnection "arrangements" may remain in place for projects no longer selling as QFs to interconnected utilities, as the relief sought exceeds the Commission's authority.

^{6/} Section 292.302(d)(1) provides: After public notice in the area served by the electric utility, and after opportunity for public comment, any 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. (Emphasis added.) The FERC defers to state authorities to decide what data should be made public in connection with avoided cost determinations. *Tennessee Power Company* (1996) 77 FERC ¶ 61,125, p. 61,484.

F. The PD Properly Requires QFs to Follow The CAISO Tariff.

The PD's requirement that QFs abide by the CAISO tariff, coming nine years after the CAISO assumed control over the grid, is needed to integrate QFs into the wholesale market. Adherence to CAISO standards and procedures ensures that QFs follow the same rules other similarly situated facilities now follow. (PG&E Ex. 29, p. 7-1.) The QFs should comply with CAISO operating and scheduling protocols, as the PD requires.

CAC/EPUC object to this requirement. As the PD notes, however, the requirement is fully consistent with the EAP II, including its requirement to better integrate QFs into the CAISO operations. (PD p. 129.) Reliability of the CAISO-controlled grid trumps CAC/EPUC's claim to special status under the EAP II. If new renewable generators must follow the CAISO tariff, so should the gas-fired QFs.

G. CAC/EPUC's Remaining Arguments Are Meritless.

CAC/EPUC seek to insulate its oil company constituents from the rigors of competition by requesting: (1) a fixed priced contract (pp. 7-8); (2) large set-asides of the IOUs' portfolios (pp. 11-12); and (3) cost of service ratemaking (p. 8). The Commission should reject each of these overreaching requests.

Fixed price long-term contracts would pose a great risk of overpayment to the QFs. The PD, which fixes the capacity price but allows energy prices to fluctuate, protects ratepayers from energy overpayments. Fixing the entire price now, as CAC/EPUC request, would deny ratepayers any reductions in wholesale prices that may occur in the next decade as additional resources come on line. The proposal should be rejected.

The Commission should also reject CAC/EPUC's proposal to set aside as much as 24% of PG&E's portfolio, the amount "historically served by DWR." (CAC/EPUC p. 13.) Because PG&E's needs for additional baseload resources are very limited, PG&E would be required to resell this additional power. (PG&E Ex. 29, 2-13, 2-14.) A requirement to buy more gas-fired QF power would conflict with PG&E's purchase of baseload renewable power. It would also result in prices that violate PURPA because lower-cost providers would be excluded from bidding to fill these needs. Further, cogeneration purchase requirements would conflict with the Energy Policy Act of 2005, which requires a cogenerator seeking QF status to demonstrate that the output of its facility "is used fundamentally for industrial, commercial, or institutional

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 4th day of June, I served a true copy of:

**REPLY COMMENTS OF PACIFIC GAS AND ELECTRIC COMPANY (U 39 E)
ON PROPOSED DECISION OF ALJ HALLIGAN**

[XX] By Electronic Mail – serving the enclosed via e-mail transmission to each of the parties listed on the official service lists for R.04-04-003 and R.04-04-025 (List QF Issues) 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 lists for R.04-04-003 and R.04-04-025 (List QF Issues) 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 4th day of June 2007 at San Francisco, California.

/s/

DONNA LEE

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA SERVICE LIST

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R0404025: Commissioner Assigned: Michael R. Peevey on December 20, 2005

ALJ Assigned: Julie Halligan on April 28, 2004

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R0404003: Commissioner Assigned: Michael R. Peevey on April 6, 2004

ALJ Assigned: Carol A. Brown on August 12, 2004; **ALJ Assigned:** Mark S. Wetzell on April 6, 2004

R0404025: Commissioner Assigned: Michael R. Peevey on December 20, 2005

ALJ Assigned: Julie Halligan on April 28, 2004

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Total number of addressees: 195

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