

**PUBLIC UTILITIES COMMISSION**505 VAN NESS AVENUE
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TO PARTIES OF RECORD IN R.04-04-003, R.04-04-025

This is the proposed decision of Administrative Law Judge (ALJ) Yip-Kikugawa. It will not appear on the Commission's agenda for at least 30 days after the date it is mailed. The Commission may act then, or it may postpone action until later.

When the Commission acts on the proposed decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the proposed decision as provided in Article 14 of the Commission's Rules of Practice and Procedure (Rules), accessible on the Commission's website at www.cpuc.ca.gov. Pursuant to Rule 14.3, opening comments shall not exceed 15 pages.

Comments must be filed either electronically pursuant to Resolution ALJ-188 or with the Commission's Docket Office. Comments should be served on parties to this proceeding in accordance with Rules 1.9 and 1.10. Electronic and hard copies of comments should be sent to ALJ Yip-Kikugawa at ayk@cpuc.ca.gov and the assigned Commissioner. The current service list for this proceeding is available on the Commission's website at www.cpuc.ca.gov.

/s/ ANGELA K. MINKIN

Angela K. Minkin, Chief
Administrative Law Judge

ANG:amt

Attachment

Decision **PROPOSED DECISION OF ALJ YIP-KIKUGAWA**
(Mailed 11/17/2008)**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Promote Policy and Program Coordination and Integration in Electric Utility Resource Planning.	Rulemaking 04-04-003 (Filed April 1, 2004) (QF Issues)
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) (QF Issues)

**DECISION DENYING JOINT PETITION FOR MODIFICATION
OF DECISION 08-07-048 FILED BY QF PARTIES****1. Summary**

This decision addresses a joint petition filed by the Independent Energy Producers Association (IEP), the Cogeneration Association of California (CAC), the Energy Producers and Users Coalition (EPUC) and the California Cogeneration Council (CCC) (collectively, QF Parties) to modify Decision (D.) 08-07-048. We deny QF Parties' request to suspend the November 2008 filings for retroactive true-up of the Market Index Formula (MIF). We also decline to adopt QF Parties' request to revise the procedures for any future adjustments to short-run avoided cost (SRAC) payments. Although we deny QF Parties' Petition, we modify D.08-07-048 to clarify the procedures for

retroactive true-up of SRAC payments. We believe that these procedures, as modified, provide the regulatory certainty that QF Parties maintain is necessary to ensure continued operation of QFs in California.

2. Background

In Decision (D.) 07-09-040, we adopted specific policies and pricing mechanisms applicable to the purchase of energy and capacity from qualifying facilities (QFs) by Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE) and San Diego Gas & Electric Company (SDG&E) (collectively, the utilities or IOUs). Among other things, D.07-09-040 revised the methodology for calculating SRAC prices. This revised formula, the MIF, replaced the Transition Formula adopted in D.96-12-028, as modified by D.01-03-067.¹ The MIF was to be applied prospectively “to ensure that SRAC prices continue to reflect utility avoided cost in the changing electricity markets in California.” (D.07-09-040, at p. 9.)

Applications for rehearing of D.07-09-040 were filed by various parties, including a joint application for rehearing filed by PG&E, SCE, SDG&E, The Utility Reform Network and the Division of Ratepayer Advocates (collectively, Joint Parties). Among other challenges, Joint Parties asserted that D.07-09-040 erred by failing to order retroactive true-up of the MIF. All of the applications for rehearing were addressed in D.08-07-048, which modified D.07-09-040 and

¹ D.01-03-067 revised SCE’s Transition Formula by replacing the fixed factor with a dynamic factor. It also replaced the Topock gas index used in the Transition Formula for all three utilities with a gas index based on Malin, plus intrastate gas transportation. SCE’s revised Transition Formula is more commonly referred to as the Modified Formula.

denied rehearing of D.07-09-040, as modified. In response to Joint Parties' assertions concerning retroactive true-up of the MIF, D.07-09-040 was modified to permit the IOUs to seek retroactive application of the MIF. Any requests, however, were to be filed by November 4, 2008. D.08-07-048 also included provisions to permit the IOUs to file an application for retroactive true-up of SRAC prices on a going forward basis. Such an application would be limited to two years from the beginning of any alleged period of overpayment. (D.08-07-048, at p. 19 [Ordering Paragraph (OP) 1.(f)].)

On October 3, 2008, the QF Parties filed a joint petition (Petition) to modify D.08-07-048.² QF Parties request that the Commission eliminate the process adopted in D.08-07-048 that would permit the IOUs to file an application for retroactive review of payments made to the QFs. Responses opposing the Petition were filed by SCE, PG&E and SDG&E.

3. Discussion

SCE's comments to the proposed alternate decision of Commissioner Grueneich, which was ultimately adopted as D.07-09-040, requested that the MIF be applied retroactively to at least 2004. In D.07-09-040, the Commission addressed SCE's request by stating:

updating the SRAC formula to better reflect changes in the energy market does not, by itself, indicate that SRAC prices under the prior formula were in violation of PURPA. Furthermore, the record in this proceeding does not support a conclusion that the

² On September 3, 2008, CAC and EPUC filed a joint application for rehearing of D.08-07-048. This decision does not dispose of nor prejudice this pending application for rehearing.

Modified Formula yielded prices that exceed utility avoided costs or systematically violated PURPA.

(D.07-09-040, at p. 9.) Joint Parties' rehearing application alleged that the Commission's rejection of retroactive application of the MIF was both not supported by the administrative record or findings of fact and conclusions of law and contrary to *Southern Cal. Edison Co. v. Public Utilities Com.* (2002) 101 Cal.App.4th 982 (*Edison II*) and *Southern Cal. Edison Co. v. Public Utilities Com.* (2005) 128 Cal. App. 4th 1 (*Edison III*). To address this challenge, the Commission modified D.07-09-040 to provide the IOUs an opportunity to seek retroactive application of the MIF. The decision also adopted procedures for future adjustments to SRAC payments. Finally, the decision stated that an application for retroactive true-up must

provide both the time period for which [the IOU] believes retroactive adjustment is warranted, and evidence demonstrating that the IOU's method is more accurate than the method the Commission has already reviewed and adopted for determining avoided costs for that particular time period. For any periods already in the past, the IOUs will have until November 4, 2008 to file an application. Going forward, the IOUs will have 2 years from the beginning of any alleged period of overpayment to file an application.

(D.08-07-048, at p. 19 (OP 1.f.))

QF Parties request that the modifications adopted in D.08-07-048 be reversed. They contend that retroactive application of the MIF is unwarranted, as the Commission had already made a determination that payments under the Transition Formula did not exceed utility avoided cost. (Petition, p. 5.) The Petition further presents various reasons why QF Parties believe the modifications are inconsistent with *Edison II* and *Edison III*, as well as prior Commission precedent on avoided costs. Finally the Petition maintains that

retaining the provisions adopted in D.08-07-048 concerning future adjustments of SRAC payments would both make development of new QF capacity commercially impossible and impede the ability of existing QFs to continue to operate. Accordingly, the Petition requests that the Commission reverse its determination and modify D.08-07-048 to: (1) suspend the November 2008 IOU filings on retroactive application of the MIF; and (2) revise the procedures for any future IOU filings requesting adjustments to SRAC payments.

As discussed below, we deny QF Parties' request to suspend the November 2008 IOU filings on retroactive application of the MIF. We also deny QF Parties' request to adopt its proposed procedures for any future IOU filings requesting adjustments to SRAC payments. However, we find that the procedures adopted in D.08-07-048 are unclear and should be clarified. Accordingly, we modify D.08-07-048, as discussed in this decision to address QF Parties' concerns about the need for regulatory certainty with respect to SRAC pricing.

3.1. Retroactive Application of the MIF

Under the Federal Energy Regulatory Commission's (FERC) rules implementing the Public Utilities Regulatory Policies Act³ (PURPA), state regulatory commissions are given broad authority to establish the avoided cost payments to be paid by the IOUs to QFs. (18 C.F.R. §§ 292.301-292.304.) This payment, however, "may not exceed the incremental cost to the electric utility of alternative electric energy." (D.07-09-040, at p. 13 (citation omitted).) Further, if an IOU requests retroactive adjustment of SRAC payments, the

³ 16 U.S.C. § 824a-3.

Commission must consider this request and make a determination on the evidence presented. (*See Edison II, supra*, 101 Cal.App.4th at p. 999.)

In D.07-09-040, we found that “SRAC energy payments under the Transition Formula have exceeded market prices, and potentially avoided costs, on occasion.” (D.07-09-040, at p. 144 (Finding of Fact (FOF) 11).) Nonetheless, the record did not support a conclusion that there was a systematic violation of PURPA. (*Id.* at p. 9.) Joint Parties’ rehearing application maintained that SRAC payments under the Transition Formula systematically exceeded the IOU’s avoided costs as of 2004. Accordingly, Joint Parties asserted that the MIF should be applied retroactively. (Joint Parties’ Rehearing Application, pp. 14-15.) Pursuant to *Edison II*, Joint Parties must be provided the opportunity to present evidence to support their request for retroactive true-up and this Commission must consider and make a final determination based on the evidence.

QF Parties argue that the Commission had, in fact, reached a determination that the MIF should not be applied retroactively based on evidence in the record. This evidence, however, was the same evidence that had been raised in opposition to Joint Parties’ rehearing application. (*See, e.g.*, IEP Response to Rehearing Applications, pp. 7-8; CCC Response to Rehearing Applications, pp. 8-9.) The Commission has already considered these arguments and found them lacking. Indeed, the evidence cited by QF Parties would demonstrate, at best, that the Commission did not find PG&E’s proposal to reflect PG&E’s avoided cost. It is unclear why a determination concerning PG&E’s avoided cost should be extended to SRAC payments and avoided costs of SCE and SDG&E.

QF Parties also allege retroactive application of the MIF is unlawful under *Edison II* and *Edison III*. (Petition, p. 6.) However, a challenge concerning the lawfulness of D.08-07-048 must be raised in an application for rehearing, not simply as part of a petition for modification. (Pub. Util. Code, § 1731, subd. (b).) The time for raising such a challenge has now passed, and, by failing to raise its challenge in a timely manner, QF Parties are precluded from doing so now.⁴

Even if QF Parties were not precluded from raising this challenge, we find their arguments unavailing. The decisions challenged in *Edison III* were issued as part of our long-term procurement proceeding (R.01-10-024), and SRAC pricing was not directly at issue in that proceeding. Further, these decisions did not make any changes regarding SRAC pricing. As such, SCE's request for retroactive true-up of SRAC payments in R.01-10-024 was premature. "[W]e have not found that the SRAC methodology is inadequate, and unless and until we do it is premature to consider whether retroactive adjustments should be made." (D.04-03-037, at p. 7.) The Court of Appeal also noted the Commission's willingness to consider retroactive true-up of SRAC payments in upholding the Commission's decisions in *Edison III*. (See, *Edison III, supra.*, 128 Cal.App.4th at p. 12.) After determining that any challenges for

⁴ CAC/EPUC's rehearing application of D.08-07-048 raised two legal challenges. First, CAC/EPUC asserted that the determination of avoided cost pricing in D.08-07-048 was inconsistent with PURPA and § 390(b). CAC/EPUC further maintained that D.08-07-048 erred in upholding the ALJ's denial of QF access to utility data. Neither of these challenges concerns the lawfulness of applying the MIF retroactively. Today's decision in no way disposes or prejudges the issues raised in this application for rehearing of D.08-07-048.

retroactive true-up of SRAC payments was premature until the SRAC methodology was changed, we cannot foreclose the ability for parties to seek retroactive true-up now that D.07-09-040 has adopted the MIF.

We note that although the IOUs may seek retroactive application of the MIF, they bear the burden of demonstrating that retroactive true-up is warranted. This burden will not be met simply by providing “the magnitude in reduction in SRAC energy payments that would have resulted if the new MIF pricing formula were applied retroactively.” (Joint Parties’ Rehearing Application, p. 16.) Rather, the IOU must first state the time period for which the MIF should be applied retroactively and show the proper determination of its avoided costs. Then, the IOU must demonstrate not only that application of the Transition Formula has resulted in SRAC payments that persistently and systematically over time exceed its avoided costs in violation of PURPA, but also that SRAC prices under the MIF better reflect its avoided costs.

Finally, we recognized that the IOUs should be provided an opportunity to seek retroactive application of the MIF, but in order to provide certainty and closure on this matter, the IOUs should not delay in filing such a request. Accordingly, D.08-07-048 required the IOUs to make any such filings by November 4, 2008.⁵

For the reasons above, we deny QF Parties’ request to suspend the November 2008 IOU filings on retroactive application of the MIF. However, we find that D.08-07-048 does not clearly explain the showing required by IOUs

⁵ On November 4, 2008, SCE filed an application seeking retroactive application of the MIF between July 2003 and July 2008. This request is being considered in Application (A.) 08-11-001.

seeking retroactive application of the MIF. Therefore, we modify D.08-07-048 to provide the necessary clarification.

3.2. Procedure for Future Adjustments to SRAC Payments

QF Parties contend that the procedures for review of future adjustments of SRAC prices adopted in D.07-08-048 would result in continuous consideration of the SRAC methodology and establishes an impossible standard. Therefore, QF Parties propose procedural requirements for any future IOU filings requesting adjustments to SRAC payments. (Petition, p. 12 and Attachment B.)

In support of their request, QF Parties contend the Commission has a policy of not ordering retroactive true-up of SRAC payments and that allowing consideration of retroactive true-up is both a departure from this policy and unsupported by any authority. We disagree. As discussed above, the Commission has an obligation under PURPA to ensure that SRAC payments do not exceed utility avoided cost. In the event the Commission determines that there is a violation of PURPA, it must adjust SRAC payments. Such adjustments may include retroactive true-up of SRAC payments if warranted. (*See, e.g.,* D.01-12-024, at p. 4; *In Re Biennial Resource Plan Update* [D.93-06-086] (1993) 49 Cal.P.U.C.2d 679.) The procedures adopted in D.08-07-048 for future adjustment of SRAC payments reflect our obligation to ensure compliance with PURPA. Accordingly, these procedures are consistent with FERC Regulations and our existing policy. (*See generally,* 18 C.F.R. § 292.305.)

QF Parties maintain that the adopted procedures create uncertainty over the finality of any SRAC determinations and jeopardize the ability for QFs to continue operations. (Petition, pp. 2 and 12.) While we are sympathetic to

these concerns, we continue to believe that procedures concerning future adjustments for SRAC prices should be established. Our intent in D.08-07-048 was to provide guidance on how the IOUs would seek future adjustments for SRAC payments. As explained, these modifications were made based on our concerns with regard to Commission resources and the desire to provide regulatory certainty to both QFs and IOUs. (D.08-07-048, p. 19 (OP 1.f.))

In light of QF Parties concerns, we modify D.08-07-048 to provide more clarity and certainty concerning future adjustments for SRAC payments. However, we are concerned with the procedures proposed in Attachment B of the Petition. QF Parties' proposed procedures would adopt a clear and convincing evidentiary standard before any changes to the then-existing SRAC methodology would be adopted. However, the evidentiary standard applied to applications is "substantial evidence in light of the whole record." (See, Pub. Util. Code, § 1757, subd. (a).) The Court in *Edison II* and *Edison III* also note that the Commission's determination should be made based on "substantial evidence." (*Edison II, supra.*, 101 Cal.App.4th at p. 999; *Edison III, supra.*, 128 Cal.App.4th at p. 12.) Furthermore, Attachment B includes a requirement that "the established avoided cost shall not be modified until full implementation of any order establishing a new avoided cost." (Petition, Attachment B, p. 2.) However, there is an outstanding petition for modification filed by CCC concerning the effective date of the MIF. Adopting the language proposed in the Petition would effectively prejudice the outcome of that petition. In light of our concerns and the failure by the Petition to fully explain why the proposed procedures are reasonable and should be adopted, we decline to adopt the procedures contained in Attachment B of the Petition. Instead, we shall modify D.08-07-048 to adopt the procedures below.

The procedures we adopt today would set the earliest date for retroactive adjustment of any newly adopted SRAC methodology to the date an application for adjustment of the SRAC methodology is filed. For the sake of regulatory certainty, we take a page from the Federal Power Act (FPA). Absent extraordinary circumstances, Section 206 of the FPA limits the earliest refund effective date for a complaint alleging unreasonable rates as the date the

complaint is filed. (16 U.S.C. §824e, subd. (e).) Although these principles do not apply directly to QFs, we believe that adoption of a similar limitation for consideration of retroactive adjustment of any newly-adopted SRAC methodology is both reasonable and consistent with PURPA.

We believe that this limitation provides reasonable certainty for both IOUs and QFs. An IOU seeking retroactive true-up of SRAC payments would most likely also be seeking an adjustment to the SRAC methodology on a going forward basis. Given the time and expense to litigate a new SRAC methodology, it is unlikely an IOU would make such a filing unless SRAC payments systematically and persistently over time exceed its avoided cost. Further, absent extraordinary circumstances, it is unlikely that the IOU would delay filing an application for adjustment once it believes its SRAC payments are in violation of PURPA.⁶

As with the IOU filing for retroactive application of the MIF, the burden for demonstrating that a change in the then-effective SRAC methodology lies with the applicant. The showing would need to include: (1) the proper method for determining the IOU's avoided cost; (2) evidence that application of the then-effective methodology results over time in a persistent and systematic violation of PURPA; and (3) a proposed methodology that would best reflect utility avoided cost.

We find that modifying D.08-07-048 in this manner best balances our concerns with respect to Commission resources and the need to provide

⁶ For example, in 2000, SCE filed its Emergency Petition to adjust SRAC prices immediately upon its determination that escalating natural gas prices at Topock resulted in SRAC payments that it believed exceeded its avoided costs.

regulatory certainty to the QFs and IOUs. These procedures specify the showing required by the IOUs in an application to revise the then-existing SRAC methodology. Once an application is filed, QF Parties will be on notice that the then-existing SRAC methodology will be under review and may be changed. The QFs will also know that absent extraordinary circumstances, the earliest date for any retroactive adjustment of a newly adopted SRAC methodology will be the date the application was filed.

We believe that modification of the procedures, as discussed above, is more reasonable than the procedures proposed by the QF Parties in Attachment B of their Petition. Accordingly, we deny QF Parties' request to adopt their proposed procedures.

4. Comments on Proposed Decision

The proposed decision of the ALJ was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on _____, and reply comments were filed on _____ by _____.

5. Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner and Amy C. Yip-Kikugawa is the assigned Administrative Law Judge in both proceedings.

Findings of Fact

1. The Market Index Formula (MIF) adopted in D.07-09-040 replaced the Transition Formula adopted in D.96-12-028, as modified by D.01-03-067, as the methodology for calculating the short-run avoided cost (SRAC) energy price that the IOUs pay QFs.
2. D.08-07-048 modified D.07-09-040 to permit the IOUs to seek retroactive application of the MIF and established procedures to permit the IOUs to file an application for retroactive true-up of SRAC prices on a going forward basis.
3. The Independent Energy Producers Association (IEP), the Cogeneration Association of California, the Energy Producers and Users Coalition and the California Cogeneration Council (CCC) (collectively, QF Parties) filed a joint petition (Petition) to modify D.08-07-048.
4. PURPA and the FERC rules implementing PURPA require state commissions to ensure that SRAC payments do not exceed a utility's avoided cost.
5. The procedures adopted in D.08-07-048 were intended to provide regulatory certainty to both QFs and IOUs and to address our concerns with respect to Commission resources.
6. The procedures adopted in D.08-07-048 concerning retroactive adjustment of SRAC prices are unclear and should be modified.
7. Under Section 206 of the Federal Power Act, the earliest refund effective date for a complaint alleging unreasonable rates is the date the complaint is filed.

Conclusions of Law

1. QF Parties' petition for modification should be denied.
2. In connection with its obligations under PURPA, the Commission must order retroactive true-up of SRAC prices if it determines that it is warranted to ensure compliance with PURPA.
3. A party seeking adjustment to SRAC prices under the then-existing SRAC methodology bears the burden of proving that over time there is a persistent and systematic violation of PURPA.
4. It would be reasonable to require IOUs seeking retroactive application of the MIF to file their request by November 4, 2008.
5. It would be unreasonable to adopt QF Parties' proposed procedures for future adjustments to SRAC payments.
6. QF Parties are precluded from raising a challenge concerning the lawfulness of D.08-07-048 under Pub. Util. Code §1731(a).
7. It would be reasonable to set the earliest date for retroactive application of any newly adopted SRAC methodology to the date an application for adjustment of the SRAC methodology is filed.

O R D E R

IT IS ORDERED that:

1. The joint Petition for Modification of Decision (D.) 08-07-048 filed on October 3, 2008, by the Independent Energy Producers Association, the Cogeneration Association of California, the Energy Producers and Users Coalition and the California Cogeneration Council is denied.
2. D.08-07-048 is modified as follows:

- a. On page 7, Section II.D., “Retroactive true-up of SRAC energy payments” is deleted and replaced with the following:

D. Retroactive true-up of SRAC energy payments

The Joint Parties next allege that we erred in failing to order a retroactive true-up of SRAC energy prices in D.07-09-040. The Joint Parties point to page 9 of D.07-09-040, where the Commission states that the Decision “updates the methodology for calculating SRAC energy prices on a prospective basis only, to ensure that SRAC prices continue to reflect utility avoided cost in the changing electricity markets in California.” (Joint Parties’ Reh. App., p. 14.) The Joint Parties also refer to our statement that “the record in this proceeding does not support a conclusion that the [SRAC transition formula] yielded prices that exceed utility avoided costs or systematically violated PURPA,” and allege that this determination is not supported by record evidence and is not reflected in sufficient findings and conclusions as required by Section 1705. (Joint Parties Reh. App., pp. 14-15.)

We address this argument by modifying D.07-09-040 to permit an IOU to request retroactive application of the MIF. An IOU seeking retroactive application of the MIF will have until November 4, 2008 to file its application. In its application, the IOU must first state the time period for which the MIF should be applied retroactively and show the proper determination of its avoided costs. Then, the IOU must demonstrate not only that application of the Transition Formula has resulted in SRAC payments that persistently and systematically exceed its avoided costs in violation of PURPA, but also that SRAC prices under the MIF better reflect its avoided cost. We remind the IOUs that prior to adoption of D.07-09-040, SRAC prices under the Transition Formula are presumed to properly reflect utility avoided cost. Therefore, the IOUs bear the burden of presenting evidence to the contrary. This burden is not met by simply showing “the magnitude in reduction in SRAC energy payments that would have resulted if the new MIF pricing formula were applied retroactively.” (Joint Parties’ Rehearing Application, p. 16.)

Consistent with our obligation under PURPA to ensure that SRAC payments reflect utility avoided cost, we also modify D.07-09-040 to include procedures for parties who wish to seek retroactive true-up of SRAC prices in the future. Going forward, the earliest date effective date of a newly adopted SRAC methodology shall be the date that an application for adjustment of the then-existing SRAC methodology is filed. As with the IOU application for retroactive adjustment of the MIF, the applicant shall bear the burden of demonstrating that the then-existing SRAC pricing methodology has systematically and persistently violated PURPA.

b. On page 19, Ordering Paragraph 1.f. is deleted and replaced with the following:

The contract terms and pricing in this decision apply specifically to expired, expiring and new QF contracts. Other than updating the SRAC formula and posted capacity prices, we do not change existing QF contracts. Furthermore, this decision updates the methodology for calculating SRAC energy prices on a prospective basis only, to ensure that SRAC prices continue to reflect utility avoided cost in the changing electricity markets in California. In comments, SCE has requested that the adopted MIF be applied retroactively. However, updating the SRAC formula to better reflect changes in the energy market does not, by itself, indicate that SRAC prices under the prior formula were in violation of PURPA. Furthermore, the record in this proceeding does not support a conclusion that the Modified Formula yielded prices that exceed utility avoided costs or systematically violated PURPA. Should a party believe retroactive review of the Modified Formula is necessary to ensure compliance with PURPA, it should file an application. In the application, the IOU must provide the following: (1) the time period for which the IOU believes SRAC payments under the Modified Formula exceeded its avoided costs; (2) the proper method for determining the IOU's avoided cost during that time period; (3) evidence that application of the Modified Formula resulted in SRAC payments that persistently and systematically over time exceed the IOU's avoided costs in violation of PURPA; and (4) evidence that application of the MIF better reflects its avoided costs. An IOU seeking retroactive

application of the MIF will have until November 4, 2008 to file its application. Going forward, the earliest date for retroactive adjustment of any newly adopted SRAC methodology to the date an application for prospective adjustment of the SRAC methodology is filed. The party filing the application must show: (1) the proper method for determining the IOU's avoided cost; (2) evidence that application of the then-effective methodology results over a period of time in a persistent and systematic violation of PURPA; and (3) a proposed methodology that would best reflect utility avoided cost. We believe that the time limitations adopted for retroactive true-up of SRAC payments are reasonable given our legitimate concerns about Commission resources and the need for regulatory certainty for both QFs and IOUs.

This order is effective today.

Dated _____, at San Francisco, California.

***** SERVICE LIST *****
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