BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

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03-03-08
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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)

JOINT PETITION OF THE COGENERATION ASSOCIATION OF CALIFORNIA, THE ENERGY PRODUCERS AND USERS COALITION AND THE INDEPENDENT ENERGY PRODUCERS ASSOCIATION FOR MODIFICATION OF DECISION 07-09-040

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March 3, 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)
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JOINT PETITION OF THE COGENERATION ASSOCIATION OF CALIFORNIA, THE ENERGY PRODUCERS AND USERS COALITION AND THE INDEPENDENT ENERGY PRODUCERS ASSOCIATION FOR MODIFICATION OF DECISION 07-09-040

This Joint Petition for Modification of Decision 07-09-040 (Decision or D.07-09-040) is submitted in response to the February 6, 2008 correspondence from the Energy Division to participants in the Commission convened workshops to implement the Decision.[1] The Energy Division correspondence requested that parties submit a petition for modification of D.07-09-040 to address what were viewed as discrepancies between agreements reached at the workshops and the Decision. The Joint Petition presents a comprehensive resolution of the issues identified in the Energy Division correspondence, as well as additional issues

[1] The Joint Petition is submitted by the Cogeneration Association of California (CAC), the Energy Producers and Users Coalition (EPUC), and the Independent Energy Producers Association (IEP) (collectively QF Parties). The Joint Petition is submitted pursuant to Rule 16.4 of the Rule of Practice and Procedure of the California Public Utilities Commission (Commission). A copy of the Energy Division's correspondence is attached to the Joint Petition as Appendix A.

identified by the utilities, in an effort to positively move toward full implementation of the Decision. The Joint Petition also incorporates a reservation of legal rights offered to allow the utilities to join in the comprehensive resolution proposed. Finally, the Joint Petition invites all parties, through their responses to the Joint Petition, to join in or support any one or all of the enumerated issues presented to facilitate the Commission's expedited consideration of the joint positions.

It has now been five months since the issuance of D.07-09-040. QFs are making operational plans and investments that are vital to ensuring the reliability of the electric grid this summer. It is important, from a business certainty perspective, that the implementation issues identified in this Joint Petition be resolved. The MIF process, including the issues addressed in the Joint Petition, needs to be finalized and the Resolution approving the MIF released and approved.

I. BACKGROUND

On February 6, 2008 the Energy Division distributed an electronic correspondence to participants in the Commission convened workshops to implement D. 07-09-040. The Energy Division correspondence requested that parties submit a petition for modification of D.07-09-040 to address what were viewed as discrepancies between agreements reached at the workshops and the Decision. Specifically, the Energy Division identified six separate issues to be addressed in the petition for modification. This included the Commission's discussion of the issues in the Decision and the proposed resolution of those issues as agreed to at the workshops. The Energy Division encouraged the

parties, to the extent possible, to submit a joint petition for the Commission's consideration.

Through correspondence with the Energy Division, the three utilities represented that they could support a joint petition for modification on only four of the six issues identified by the Energy Division.[2] The utilities stated that with regard to the remaining two issues, they could not support a joint petition for modification as doing so would be inconsistent with their joint application for rehearing submitted on October 25, 2007. The utilities also proposed two additional issues for resolution through the petition for modification process.[3]

On February 22, 2008, CAC/EPUC and IEP submitted a comprehensive response to the Energy Division correspondence.[4] The response addressed the six issues presented by the Energy Division for the parties' consideration as well as the two additional issues identified by the utilities. The response also addressed the utilities' apparent unwillingness to address implementation of certain issues on the express basis that they have applications for rehearing pending on those issues. While the response noted that the QF Parties did not perceive that a petition for modification was required they nevertheless expressed their willingness to submit a petition for the Commission's consideration.

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[2] Southern California Edison Company (SCE), Pacific Gas & Electric Company (PG&E) and San Diego Gas & Electric Company (SDG&E)

[3] A copy of the utilities' February 14, 2008 correspondence is attached as Appendix B.

[4] A copy of the QF Parties' February 22, 2008 response is attached as Appendix C.

II. DISCUSSION

The utilities state in their February 14, 2008 correspondence that they "could support a joint PTM for issues 1, 3, 4 and 5 in Elizabeth's note." The utilities go on to state that "[a]s to items 2 and 6, we concluded that it would be inconsistent with our Joint Application for Rehearing filed on October 25, 2007 to seek modification on these points." The utilities also proposed "two additional modifications that could be included in the PTM."

In an effort to move this process forward toward comprehensive and timely solutions, the QF Parties propose the following modifications to D.07-09-040. The QF Parties' proposal positively address each and all of the issues identified in the Energy Division correspondence and incorporate the two additional issues identified by the utilities. Moreover, the QF Parties' proposal provides for a reservation of legal rights which should allow the utilities to participate in this comprehensive resolution of issues 2 and 6 without prejudice to their pending applications for rehearing. Finally, the QF Parties' proposal invites all parties to this proceeding, through their respective responses to the Joint Petition, to identify any or all of the proposed resolutions they support in an effort to expedite Commission resolution of joint positions.

Issue 1: Use Of A 12 Month Rolling Average Of Forward Market Prices

<u>Energy Division Identification of Issue</u>:

The Decision says on p. 6, "The market-based component will be calculated using a 12 month rolling average of forward market prices." At the workshop, parties agreed to use a simple average of 12 month forward market prices. The PTM should include this modification.

<u>QF Parties Proposed Modification</u>:

Finding of Fact 24 should be modified to add to the end thereof: "*The market-based component will be calculated using a simple average of 12 month forward market prices*." A corollary change to the Decision text at page 6 may also be made.

Issue 2: Time Of Use (TOU) Factors To Be Adopted And Implemented For The MIF Calculation

<u>Energy Division Identification of Issue</u>:

The Decision says on p. 74, "we believe it is appropriate to adopt TOU factors that are consistent with the adopted TOU factors for the Market Price Referent (MPR)." At the workshop, parties agreed to use the energy only portion of the MPR TOU factors. This should be in the PTM. I think there was also agreement around mapping the MPR TOU periods to the QF periods, as necessary. So, you may want to include that as well. I know there is disagreement on the specific numbers and specifics of the calculations so the PTM will be limited to the areas of agreement.

<u>QF Parties Proposed Modification</u>:

Proposed Resolution 2A:

Finding of Fact 29 should be modified to add to the end thereof: "*It is appropriate to adopt TOU factors that are consistent with the energy-only portion of adopted TOU factors determined as presented by SCE at the November 15, 2008 workshop, mapped to correspond to QF contract periods, as described in Attachment A to IEP's Protest dated January 7, 2008*." A corollary change to the Decision text at page 74 is also appropriate.

Parties may alternatively select:

Proposed Resolution 2B:

Finding of Fact 29 should be modified to add to the end thereof: "*It is appropriate to adopt TOU factors that are consistent with the energy-only portion of adopted TOU factors determined as presented by SCE at the November 15, 2008 workshop.*" A corollary change to the Decision text at page 74 is also appropriate.

Issue 3: Monthly, As Opposed To Annual, Update Of The Intrastate Transportation Rate Components Consistent With The Most Recent Value Reflected In Applicable Utility Gas Tariffs.

Energy Division Identification of Issue:

The Decision says on p. 72, "We will allow SDG&E and the other utilities to annually update the intrastate transportation rate to the most recent value in their gas tariffs, as necessary." At the workshop, parties agreed to update the intrastate transportation rate monthly as the component parts change. This should be in the PTM.

QF Parties Proposed Modification:

The Decision text at 72 should be modified to state in full: "*We will allow SDG&E and the other utilities to update the intrastate transportation rate monthly to the most recent value in their gas tariffs, as necessary*."

Issue 4: Identification Of Forward Electric Market Price Indices/Sources/Publications For Establishing A Weighted Average In Addition To Platt's Megawatt Daily And/Or The Intercontinental Exchange (ICE).

Energy Division Identification of Issue:

The Decision says on pp. 6-7, "The forward market prices will be based on a weighted average price of the forward market prices for North of Path 15 (NP15) or South of Path 15 (SP15), as reported in Platts Megawatt Daily and/or the Intercontinental Exchange (ICE)." At the workshop, parties agreed to use multiple independent sources which should not be limited to Platts and/or ICE. This should be in the PTM.

QF Parties Proposed Modification:

Proposed Resolution 4A:

The Decision text at pages 6-7 should be modified to state in full: "*The forward market prices will be based on a weighted average price of the forward market prices for North of Path 15 (NP15) or South of Path 15 (SP15), as reported in a minimum of three (3) publications selected from Platts Megawatt Daily, the Intercontinental Exchange (ICE), Tullett Liberty and Kiodex*."

Parties may alternatively select:

Proposed Resolution 4B:

The Decision text at pages 6-7 should be modified to state in full: "*The forward market prices will be based on a weighted average price of the forward market prices for North of Path 15 (NP15) or South of Path 15 (SP15), as reported in a minimum of three (3) publications containing robust forward price indices*."

Issue 5: Should The Decision's Requirement That A Simplified Standard Offer Contract Be Established For Small QFs Be Eliminated?

As this issue is the subject of ongoing and further discussion it has not been included for resolution as a part of this Joint Petition.

Issue 6: Modification Of The Definition Of Small QFs To Incorporate "Less Than Or Equal To" 131,400 MWhs.

<u>Energy Division Identification of Issue</u>:

The Decision says on pp. 3-4, "Small QFs are defined as QFs under 20 MW or that offer equivalent annual energy deliveries of 131,400 MWh and that consume at least 25% of the power internally and sell 100% of the surplus to the utilities." This wasn't discussed at the workshop. However, I think it was supposed to read less than or equal to 131,400 MWh. This should be in the PTM as well. If there are objections, please let me know. If it is a major stumbling block to the joint PTM, it can be moved to party specific PTMs instead.

<u>QF Parties Proposed Modification</u>:

The QF Parties agree with the Energy Division's proposal with one modification. Upon review, the calculated MWh are not correct and should be modified to reflect 20 MW x 8760 hours. Accordingly, the Decision text at pages 3-4 should be modified to state in full: "*Small QFs are defined as QFs under 20 MW or that offer equivalent annual energy deliveries of less than or equal to 175,200 MWh and that consume at least 25% of the power internally and sell 100% of the surplus to the utilities*."

Issue 7: Calculation Of The Monthly Weighted Average Power Price

<u>Utilities' Identification of Issue</u>:

First, footnote 6 of the D.07-09-040 states that the monthly weighted average power price is determined by weighting the monthly peak power price at 57% and the monthly off peak power price at 43%. The Joint MIF Advice Filing does not

determine the average on-peak and off-peak power prices in this manner. Rather, the Joint MIF Advice proposes to time weight the average on-peak and off-peak power prices based on the actual on-peak and off-peak hours in the applicable month. No party protested this aspect of the Joint MIF Advice Filing. The IOUs propose to address this issue in the PTM and modify footnote 6 to be consistent with the manner in which the average on- and off-peak power prices are calculated in the Joint MIF Advice.

QF Parties Proposed Modification:

The Decision text at footnote 6 should be modified to state in full: "*The monthly weighted average forward power price should be determined by weighting the monthly average on-peak and offpeak power prices based on the actual on-peak and off-peak hours in the applicable month*."

Issue 8: Post-MRTU Implementation Workshop And Process

Utilities' Identification of Issue:

Second, D.07-09-040 mandated that the Joint MIF Advice contain a description of how the MIF will be calculated once MRTU is operational. As noted in the Joint MIF Advice, however, the parties received a subsequent email from Energy Division staff deferring this topic until a later, as yet-unscheduled workshop. The IOUs propose to address this issue either by striking from D.07-09-040 the order to address post-MRTU implementation in the Joint MIF Advice or by expressly providing that the topic will be deferred until a later, as yet-unscheduled workshop.

QF Parties Proposed Modification:

Conclusion of Law 6 should be modified to add to the end thereof: "*After MRTU becomes operational, the Energy Division shall schedule a workshop to consider post-MRTU implementation issues*." A corollary clarification to Ordering Paragraph 2 is also appropriate.

Reservation of Rights

The QF Parties invite all parties to identify any one or all of the listed, numbered issues presented which they can join or promptly support in order to facilitate the expedited consideration of joint positions by the Commission. It is recognized that no party's position in this Joint Petition or joining in parts or all of

this petition will be construed or used to prejudice the party's pending applications for rehearing or any other legal claims available to the party.

III. CONCLUSION

The Joint Petition presents a comprehensive resolution of the issues identified in the Energy Division correspondence, as well as additional issues identified by the utilities, in an effort to positively move toward full implementation of D.07-09-040. The Joint Petition incorporates a reservation of legal rights offered to allow the utilities to join in the comprehensive resolution proposed, specifically with regard to issues 2 and 6 above. Finally, the Joint Petition invites all parties, through their responses to the Joint Petition, to join in or support any one or all of the enumerated issues presented to facilitate the Commission's expedited consideration of the joint positions. The MIF process, including the issues addressed in this Joint Petition needs to be finalized and the Resolution approving the MIF released and approved.

Respectfully submitted,

/s/ Douglas Kerner

Michael Alcantar
Rod Aoki

Counsel to the Cogeneration Association of California and the Energy Producers and Users Coalition

Douglas Kerner

Counsel to the Independent Energy Producers Association

March 3, 2008

Appendix A

From: Stoltzfus, Elizabeth [eks@cpuc.ca.gov]
Sent: Wednesday, February 06, 2008 2:00 PM
To: Michael Alcantar; david@branchcomb.com; runwithmee@aol.com; wam@mrwassoc.com; HAWLSR@BP.com; jkarp@winston.com; jbloom@winston.com; tomb@crossborderenergy.com; beth@beth411.com; schen@sempra.com; sgarcia@sempra.com; gbaker@sempra.com; dbarker@semprautlities.com; BJL-LEC@SBCGLOBAL.net; seth.hooper@weyerhaeuser.com; evk1@pge.com; norman.furuta@navy.mil; James.Woodruff@sce.com; daveD@smw104.org; john_goodwin@fpl.com; Hines, Donna J.; jsugar@energy.state.ca.us; mflorio@turn.org; bob@enrgydynamix.net; Kinosian, Robert; gdmerrigan@midamerican.com; ackleyy@dteenergy.com; reisj@dteenergy.com; sdavies@caiso.com; bbasho@caiso.com; john.cioffi@ge.com; craig.goldberg@ge.com; ron.dahlin@ge.com; asnyder@sempra.com; mdozier@caiso.com; dick@davishydro.com
Cc: Strauss, Robert L.
Subject: Petition to modify: your help requested

Follow Up Flag: Follow up
Flag Status: Red
Dear workshop participants,

I am writing you because it has come to my attention that a petition to modify (PTM) will be necessary to address the discrepancies between what was agreed on in the workshop and the Decision (D.07-09-040). Because the discrepancies are significant, it looks like the resolution to the joint IOU advice letter (AL) will not be able to go through until the PTM has gone through. As many would like to see the resolution go through ASAP, your quick filing of the PTM will keep the process moving.

The strongest PTM will be one that comes from all parties (as discussed in the workshop and confirmed with our legal department). If the PTM comes from all parties, it will allow the CPUC to expedite the PTM process. Thus, we encourage the parties to submit a joint PTM that includes the items of agreement between the parties (based on the consensus reached at the workshop). If specific parties have additional issues they would like to raise, they should feel free to do a separate PTM.

There have been requests for a list of specific issues to include. These items are:

1) a) The Decision says on p. 6, "The market-based component will be calculated using a 12 month rolling average of forward market prices."

b) At the workshop, parties agreed to use a simple average of 12 month forward market prices. The PTM should include this modification.

2) a) The Decision says on p. 74, "we believe it is appropriate to adopt TOU factors that are consistent with the adopted TOU factors for the Market Price Referent (MPR)."

b) At the workshop, parties agreed to use the energy only portion of the MPR TOU factors. This should be in the PTM. I think there was also agreement around mapping the MPR TOU periods to the QF periods, as necessary. So, you may want to include that as well. I know there is disagreement on the specific numbers and specifics of the calculations so the PTM will be limited to the areas of agreement.

3) a) The Decision says on p. 72, "We will allow SDG&E and the other utilities to annually update the intrastate transportation rate to the most recent value in their gas tariffs, as necessary."

b) At the workshop, parties agreed to update the intrastate transportation rate monthly as the component parts change. This should be in the PTM.

4) a) The Decision says on pp. 6-7, "The forward market prices will be based on a weighted average price of the forward market prices for North of Path 15 (NP15) or South of Path 15 (SP15), as reported in Platts Megawatt Daily and/or the Intercontinental Exchange (ICE)."

b) At the workshop, parties agreed to use multiple independent sources which should not be limited to Platts and/or ICE. This should be in the PTM.

5) a) The Decision says on p. 3, "a simplified version of the EEI contract shall be utilized for Small QFs."

b) This was only touched on briefly in the workshop. Ed Kurz was the careful reader, outside the Commission, who caught this. My understanding is that this was accidentally left in from a previous version and that no one will miss it. If there are objections, please let me know. Thus, we would like to see the PTM suggest that this phrase is removed from the Decision. If it is not, we will all have to deal with possibly 3 more contracts (one small QF contract for each IOU) to work through towards agreement.

6) a) The Decision says on pp. 3-4, "Small QFs are defined as QFs under 20 MW or that offer equivalent annual energy deliveries of 131,400 MWh and that

consume at least 25% of the power internally and sell 100% of the surplus to the utilities."

b) This wasn't discussed at the workshop. However, I think it was supposed to read less than or equal to 131,400 MWh. This should be in the PTM as well. If there are objections, please let me know. If it is a major stumbling block to the joint PTM, it can be moved to party specific PTMs instead.

The above are the key points for the PTM. I provided specific page numbers for the quotes, however most of the points are mentioned on multiple pages in the Decision so please don't consider the page references to be comprehensive. If there is contention on any of the above issues, please let me know. Thanks.

The following people have identified themselves as points of contacts on this matter for the organization that they work for:

PG&E: Ed Kurz
CCC: Beth Vaughan
IEP: Doug Kerner
TURN: Mike Florio
CAC/EPUC: Michael Alcantar
SCE: Jim Woodruff

I have calls in to other parties as well. I'm still trying to find out who the points of contacts should be for SDG&E and DRA. Could someone from those organizations please let me know? Could the points of contacts please let me know if they have any issues with including the above in the PTM and what their plans are to move ahead with the PTM? Thank you for your help.

Elizabeth Stoltzfus

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Elizabeth Stoltzfus
Public Utilities Regulatory Analyst
California Public Utilities Commission
Energy Division
415-703-5586
eks@cpuc.ca.gov
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Appendix B

From: Amber.Dean@sce.com
Sent: Thursday, February 14, 2008 10:28 AM
To: Michael Alcantar; david@branchcomb.com; runwithmee@aol.com; wam@mrwassoc.com; HAWLSR@BP.com; jkarp@winston.com; jbloom@winston.com; tomb@crossborderenergy.com; beth@beth411.com; schen@sempra.com; sgarcia@sempra.com; gbaker@sempra.com; dbarker@semprautlities.com; BJL-LEC@SBCGLOBAL.net; seth.hooper@weyerhaeuser.com; evk1@pge.com; norman.furuta@navy.mil; James.Woodruff@sce.com; daveD@smw104.org; john_goodwin@fpl.com; Hines, Donna J.; jsugar@energy.state.ca.us; mflorio@turn.org; bob@enrgydynamix.net; Kinosian, Robert; gdmerrigan@midamerican.com; ackleyy@dteenergy.com; reisj@dteenergy.com; sdavies@caiso.com; bbasho@caiso.com; john.cioffi@ge.com; craig.goldberg@ge.com; ron.dahlin@ge.com; asnyder@sempra.com; mdozier@caiso.com; dick@davishydro.com; map@cpuc.ca.gov; Berj.Parseghian@sce.com; jweil@aglet.org; janreid%coastecon%com@sce.com
Cc: eks@cpuc.ca.gov; Strauss, Robert L.
Subject: Fw: Petition to modify: your help requested

Follow Up Flag: Follow up
Flag Status: Red

Earlier this week, SCE, PG&E and SDG&E convened to discuss the Petition for Modification (PTM) of D.07-09-040 addressed in Elizabeth's note below. We concluded that we could support a joint PTM for items 1, 3, 4, and 5 in Elizabeth's note. As to items 2 and 6, we concluded that it would be inconsistent with our Joint Application for Rehearing filed on October 25, 2007 to seek modification on these points. Parties may choose to file a separate PTM if they wish to address items 2 and 6.

We also discussed two additional modifications that could be included in the PTM. First, footnote 6 of the D.07-09-040 states that the monthly weighted average power price is determined by weighting the monthly peak power price at 57% and the monthly off peak power price at 43%. The Joint MIF Advice Filing does not determine the average on-peak and off-peak power prices in this manner. Rather, the Joint MIF Advice proposes to time weight the average on-peak and off-peak power prices based on the actual on-peak and off-peak hours in the applicable month. No party protested this aspect of the Joint MIF Advice Filing. The IOUs propose to address this issue in the PTM and modify footnote 6 to be consistent with the manner in which the average on- and off-peak power prices are calculated in the Joint MIF Advice.

Second, D.07-09-040 mandated that the Joint MIF Advice contain a description of how the MIF will be calculated once MRTU is operational. As noted in the Joint MIF Advice, however, the parties received a subsequent email from Energy Division staff deferring this topic until a later, as yet-unscheduled workshop. The IOUs propose to address this issue either by striking from D.07-09-040 the order to address post-MRTU implementation in the Joint MIF Advice or by expressly providing that the topic will be deferred until a later, as yet-unscheduled workshop.

The IOUs propose to draft a short PTM on items 1, 3, 4, and 5, as well as the two additional items noted above. Our stated rationale for seeking the PTM will be to clarify the Decision and facilitate implementation of the new QF pricing. SCE has agreed to take the lead in drafting and circulating the Joint PTM. Please let me know as soon as possible if you believe you and/or your clients will be able to join this PTM. Once the PTM is drafted, I will circulate to all parties who have expressed interest in joining the PTM.

Thank you,
Amber Dean

CHRISTOPHER T. ELLISON
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JEFFERY D. HARRIS
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February 22, 2008

By email

Ms. Elizabeth Stoltzfus
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

Re: Market Index Formula Implementation (R.04-04-003/R.04-04-025)

Dear Ms. Stoltzfus,

This communication is being offered to you jointly by the Independent Energy Producers Association (IEP), the Cogeneration Association of California (CAC) and the Energy Producers and Users Coalition (EPUC). Collectively these QF Parties have worked to positively address the six items presented for parties' consideration in your email of February 6, 2008. Your communication on behalf of the Energy Division requested that the parties transmit a joint petition for modification on six identified issues. A joint petition was viewed as a necessary vehicle to support a Resolution approving issues agreed to in the implementation workshop process and allowing the MIF to go into place. The QF Parties have also received and reviewed a Joint Utility (IOU) reply to your communication dated February 14, 2008.

The IOU reaction to the Energy Division's request is at best disappointing. The IOUs are apparently unwilling to address implementation regarding selected issues on the express basis that they have Applications for Rehearing pending on those issues. Since those IOU Applications challenge essentially every element of the Decision, it appears that the IOUs will not effectively present or entertain resolutions of implementation issues under this standard. We disagree with this posture, and we propose to cooperate with the Commission's intention and effort to make this process successful. We do not appreciate the perceived need for a Petition for Modification to support the Resolution, and conclude this letter with a request for reconsideration of that perceived need. Failing that, however, we are prepared to deliver a Petition for Modification, that other parties are invited to join, as follows with regard to the six issues identified in the February 6 email, and the additional two issues identified in the IOU communication:

1) Issue: Use of a 12 month rolling average of forward market prices. The Energy Division proposal is generally fine; Finding of Fact 24 should be modified to add to end thereof:

"The market-based component will be calculated using a simple average of 12 month forward market prices." A corollary change to Decision text at 6 may also be appropriate.

2) Issue: Time of Use (TOU) Factors to be adopted and implemented for the MIF calculation. The Energy Division proposal is generally fine: Finding of Fact 29 should be modified to add to the end thereof: "It is appropriate to adopt TOU factors that are consistent with the energy-only portion of adopted TOU factors determined as presented by SCE at the November 15, 2008 workshop, mapped to correspond to QF contract periods, as described in Attachment A to IEP's Protest dated January 7, 2008." A corollary change Decision text at 74 is also appropriate.

3) Issue: Monthly, as opposed to annual, update of the intrastate transportation rate components consistent with the most recent value reflected in applicable utility gas tariffs. The Energy Division proposal is generally fine; the Decision text at 72 should be modified to state in full: "We will allow SDG&E and the other utilities to update the intrastate transportation rate monthly to the most recent value in their gas tariffs, as necessary."

4) Issue: Identification of forward electric market price indices/sources/publications for establishing a weighted average in addition to Platt's Megawatt Daily and/or the Intercontinental Exchange (ICE). The Energy Division proposal is generally fine; the Decision text at 6-7 should be modified to state in full: "The forward market prices will be based on a weighted average price of the forward market prices for North of Path 15 (NP15) or South of Path 15 (SP15), as reported in a minimum of three (3) publications selected from Platts Megawatt Daily, the Intercontinental Exchange (ICE), Tullett Liberty and Kiodex."

5) Issue: Should the Decision's requirement that a simplified standard offer contract be established for Small QFs be eliminated? On this issue, IEP thinks that the Energy Division proposal is incorrect and that the requirement should remain. The Decision includes a broad discussion of the need and propriety of simplified processes for small QFs (see, generally, for example, pp 122-123; 134); so it is not at all clear to us that what is described as a vestigial remark really is an accurate reflection of the Decision. It also makes more sense that the Decision intended a simplified contract for small QFs since it has made that indication elsewhere; indeed at its February 14 business meeting, the Commission approved such a simplified contract for small waste-water facilities and other renewables. Resolution E-4137. Moreover, the base agreement is supposed to a "simplified" EEI-based document, irrespective of QF size. Decision, FF 38.

6) Issue: Modification of the definition of Small QFs to incorporate "less than or equal to" 131,400 MWhs. The Energy Division proposal is generally fine, although, upon review, IEP sees that the calculated MWh are not correct (should be 20 MW x 8760 hours); the

Decision text at 3-4 should be modified to state in full: "Small QFs are defined as QFs under 20 MW or that offer equivalent annual energy deliveries of less than or equal to 175,200 MWh and that consume at least 25% of the power internally and sell 100% of the surplus to the utilities."

In their note explaining their unwillingness to provide the Petition you requested, the IOUs do relate that they have discovered two other issues that are susceptible of ready agreement and should be the subject of a modification. We agree. Accordingly, we are prepared to include the following issues in the Resolution:

7) Issue: Calculation of the monthly weighted average power price. The Decision text at footnote 6 should be modified to state in full: "The monthly weighted average forward power price should be determined by weighting the monthly average on-peak and off-peak power prices based on the actual on-peak and off-peak hours in the applicable month."

8) Issue: Post-MRTU implementation workshop and process. Conclusion of Law 6 should be modified to add to end thereof: "After MRTU becomes operational, the Energy Division shall schedule a workshop to consider post-MRTU implementation issues." A corollary clarification to Ordering Paragraph 2 is also appropriate.

It has now been five months since adoption of the Final Decision in the QF avoided cost proceeding. QFs are making operational plans and investments that are vital to ensuring the reliability of the electric grid this summer. It is important, from a business certainty perspective, that these implementation issues be resolved. IEP, CAC and EPUC see no reason why the Resolution should be further delayed. The MIF process needs to be finalized and out of the way – we are hopeful that this can happen at latest by May. Since a joint Petition for Modification you envisioned is evidently not going to happen, we urge that you not belabor this process further and that the Resolution approving the MIF, including the points addressed above, be released and approved. Otherwise, the Commission will surely be facing a slew of petitions and the certainty of delay that it seeks to avoid. We do not, therefore, presume that the Energy Division is seeking multiple petitions, but will deliver one if that is necessary.

Thank you for your consideration.

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cc: R.04-04-003/R.04-04-025 (QF Issues) Service List (by email)

CERTIFICATE OF SERVICE

I, Karen Terranova hereby certify that I have on this date caused the attached **Joint Petition Of The Cogeneration Association Of California, The Energy Producers And Users Coalition, and The Independent Energy Producers Association For Modification Of Decision 07-09-040** 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 March 3, 2008 at San Francisco, California.

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