

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  
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Including Pricing for Qualifying Facilities.

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

**THE CALIFORNIA COGENERATION COUNCIL'S APPLICATION FOR  
REHEARING OF THE OPINION ON FUTURE POLICY AND PRICING FOR  
QUALIFYING FACILITIES, DECISION 07-09-040**

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DECISION 07-09-040**

**I. INTRODUCTION**

Pursuant to Rule 16.1 of the Rules of Practice and Procedure of the California Public Utilities Commission ("Commission"), the California Cogeneration Council ("CCC") respectfully submits this Application for Rehearing of the Opinion on Future Policy and Pricing for Qualifying Facilities, Decision 07-09-040 ("Application for Rehearing") issued on September 25, 2007.<sup>1</sup>

The CCC appreciates the diversity of party positions and the myriad of issues this proceeding presents and understands and appreciates that Decision 07-09-040 ("Decision") represents a compromise aimed at reconciling those issues. Indeed, the CCC supports the Decision and brings this Application for Rehearing to clarify only three issues in the Decision that are erroneous as a matter of

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<sup>1</sup> Rule 16.1 codifies Public Utilities Code section 1732, which requires that in an Application for Rehearing, the CCC "set forth specifically the grounds on which the applicant considers the order or decision of the Commission to be unlawful or erroneous, and must make specific references to the record or law."

law. First, the Decision as to as-available capacity pricing ignores both current data on the record and recent Commission decisions adopting higher values for as-available capacity. Second, the Decision is internally inconsistent as to the Operation and Maintenance ("O&M") Adder because the Commission fails to adjust the O&M Adder to reflect Selective Catalytic Reduction ("SCR") costs and water treatment costs, which the Commission recognizes in the Decision as necessary and avoidable through the purchase of Qualifying Facility ("QF") power. Evidence exists in the record on the magnitude of these avoidable costs, but the Decision fails to include them in the adopted O&M Adder. Finally, the Commission directs that the Market Index Formula ("MIF") will change six months after the California Independent System Operator's ("CAISO") Market Redesign and Technology Update ("MRTU") is operational, and the Incremental Energy Rate ("IER") component of the MIF will be based entirely on MRTU market prices. This is arbitrary, may run afoul of the Public Utility Regulatory Policies Act ("PURPA"), and potentially harms ratepayers. For these reasons, the CCC respectfully requests that the Commission grant its Application for Rehearing to re-examine these issues and revise the Decision accordingly.

## **II. DISCUSSION**

### **A. The Decision's As-Available Capacity Pricing is Arbitrary because It Differs Significantly from the Most Realistic and Up-to-Date Evidence in the Record and from Recent Commission Decisions.**

The Decision as to the as-available capacity price constitutes legal error for two reasons. First, in the Decision, the Commission adopts an as-available capacity price that relies on stale data rather than more-current information in the record of this proceeding supporting a higher as-available capacity price. Second, the Commission has relied on this more recent information in other recent decisions on short-run capacity pricing and has adopted higher short-run capacity values, and it should also do so here. The Commission should therefore revisit this issue and adopt a higher as-available

capacity price.

The Commission's adoption of an as-available capacity price of \$32.53/kW-year constitutes legal error because the Commission arbitrarily rejected record evidence of current as-available capacity pricing and instead relied on out-dated information without any explanation or justification. Most of the parties proposed an as-available capacity price based on the fixed costs of a new combustion turbine ("CT").<sup>2</sup> Some parties (including the CCC) proposed CT costs levelized over twenty (20) years and expressed in nominal dollars;<sup>3</sup> others (such as SCE, SDG&E, and TURN) proposed an avoided CT cost based on an economic carrying charge rate calculation, escalated for inflation over the life of the contract.<sup>4</sup> The Decision adopted the specific economic carrying charge rate calculation proposed by TURN.<sup>5</sup> The Decision rejected the use of levelized, nominal CT costs, reasoning that a levelized nominal value would "require higher capacity payments in early years, exposing the utilities and their ratepayers to the risk of non-performance if the QF went off-line or simply failed to perform."<sup>6</sup> This levelized price, however, represents how capacity is priced in the market, and thus accurately portrays the costs that the utilities would incur to procure a new capacity resource as well as the capacity costs that the utilities avoid through their purchase of QF capacity.

Nonetheless, even accepting the Decision's conclusion that the as-available capacity price should be based on an economic carrying charge rate calculation, the Commission failed to review

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<sup>2</sup> Decision 07-09-040 at 87.

<sup>3</sup> Levelized payments for CT costs do exist in long term contracts, such as in the Renewable Portfolio Standards program. *See, e.g.* D.03-06-071, in which the Commission adopted the levelized cost of a new CT as the market price referent ("MPR") for as-available capacity under the RPS program and affirmed this usage in D.04-06-015. The CCC, however, does not take issue with the Commission's decision to use an economic carrying charge rate calculation so long as the CT cost is based on current and accurate evidence in the record.

<sup>4</sup> Decision 07-09-040 at 87.

<sup>5</sup> *Id.* at 94.

<sup>6</sup> *Id.*

whether all of the cost elements used in TURN's calculation are reasonable in light of the record and Commission precedent. In the Decision, the Commission adopted an as-available capacity price of \$32.50 per kW-year, based on TURN's marginal CT cost of \$64.13 per kW-year in 2006, which is then adjusted by subtracting \$14.82 / kW-year in ancillary service revenues and \$16.78 / kW-year in energy rents.<sup>7</sup> TURN calculated its marginal CT cost of \$64.13 per kW-year in 2006 as the product of a 2003 CT capital cost of \$523 per kW and a real economic carrying charge of 9.94%, with the result escalated to 2006.<sup>8</sup>

TURN derives its proposed CT capital cost of \$523 per kW from a 2003 CEC study that is outdated and too low, as demonstrated by both the record in this proceeding and recent Commission precedent. For example, the CCC proposed an as-available capacity price calculation that uses the Commission-approved costs of an existing new combustion turbine that SDG&E procured two years later, in 2005 (the RAMCO project).<sup>9</sup> The capital costs for the RAMCO CT were \$747 per kW.<sup>10</sup> As shown by this data, and as the Commission is aware from other proceedings, capital costs for new generating capacity in California have escalated dramatically since 2003.<sup>11</sup>

The CCC recognizes that the record in this case was developed in the second half of 2005 and early 2006, and thus is dated to some extent. Nonetheless, the Commission need not go outside of the record in order to find support for a more recent and more realistic value for CT capital costs than

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<sup>7</sup> Decision 07-09-040 at 94.

<sup>8</sup> Ex. 149 (TURN/Marcus), Appendix B, Tables B-1 and B-2.

<sup>9</sup> CCC/Beach Ex. 102 at 51-52.

<sup>10</sup> The Commission approved the RAMCO purchase, and a subsequent increase in the purchase price, in Resolutions E-3896 and E-3953. Exhibit B of Attachment 5 of SDG&E's Advice Letter E-1621-E shows RAMCO's capital cost as \$34.0 million; its capacity is 45.51 MW, as stated in Resolution E-3896, at 3.  $\$747/\text{kW} = \$34 \text{ million} / 45,510 \text{ kW}$ .

<sup>11</sup> *See, e.g.*, Resolution E-4118, adopted October 4, 2007 in R. 06-02-012 and R. 06-05-027, at 10-12. In recognition of the recent extraordinary increases in power plant construction costs, this recent Resolution raised the 2004 – 2007 escalation rates used to determine the capital costs for the combined-cycle gas turbine plant used to determine the 2007 MPR.

TURN's 2003 estimate. The CCC supplied evidence of the 2005 RAMCO value of \$747 per kW, and the Commission can use this evidence to support a higher CT value.<sup>12</sup> If TURN's economic carrying charge calculation of the as-available capacity price, adopted by the Commission in this Decision, is changed in just this one respect – substituting the more realistic 2005 RAMCO CT capital cost of \$747 per kW for the outdated 2003 California Energy Commission ("CEC") value of \$523 per kW – the annualized CT cost for 2008 increases to \$96.37 per kW-year.<sup>13</sup> Using a more up-to-date annual CT cost of \$96.37 per kW-year, then subtracting \$14.82 / kW-year in ancillary service revenues and \$16.78 / kW-year in energy rents as stated in the Decision, would result in a reasonable as-available capacity price of \$64.77 per kW-year in 2008. This short-run capacity value is more realistic and consistent with recent Commission precedent, given other measures of CT capital costs and indicators of short-term capacity that the Commission has adopted in recent orders.<sup>14</sup>

The Commission's adoption of an as-available capacity payment that is significantly below the short-term capacity values and CT costs it has adopted or approved in other proceedings, without explanation or record support, is arbitrary, fails to reflect the utilities' avoided costs accurately, and constitutes legal error. The Commission should grant CCC's Application for Rehearing and rectify this error.

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<sup>12</sup> CCC/Beach Ex. 102 at p. 51-52.

<sup>13</sup> This calculation does not change the RECC factor or the year-to-year escalation rates shown in Table B-2 of TURN's Ex. 149. As a result, the annual CT cost for 2008 shown in Column 18 of Table B-2 (\$67.47/kW) simply increases by the ratio of the CT capital costs, i.e. by \$747/kW divided by \$523/kW.

<sup>14</sup> In August 2006 the Commission directed SCE to build 250 MW of new peaking capacity. See the "Assigned Commissioner's Ruling Addressing Electric Reliability Needs in Southern California for Summer 2007," released August 15, 2006 in R. 06-02-013/R. 05-12-013. SCE's seventh status report on these peakers, filed April 3, 2007 in R. 06-02-013 and R. 05-12-013, reported the expected cost of these units to be \$275 million, or \$1,100 per kW. Based on this information, the RAMCO cost of \$747 per kW represents a conservative estimate of the CT costs that are avoided by QF generation in California today. Additionally, almost a year ago, the Commission increased the price that PG&E offers for summer peak demand reductions, from \$84 per kW-year to \$108 per kW-year (D. 06-11-049), and SCE's current demand response incentives are \$95.60 to \$103.40 per kW-year (Schedule E-BIP for customers taking service above 50 kV).

**B. The Commission Failed to Account for Evidence Relating to Variable SCR and New Environmental Costs in Setting the O&M Adder**

The Decision as to the O&M Adder constitutes legal error because the Decision is internally inconsistent because the O&M Adder value adopted by the Commission fails to account for Selective Catalytic Reduction ("SCR") costs and other new environmental costs, even though the Decision states that "[v]ariable generating costs today also include air emission credit costs and periodic costs to replace expensive catalysts in air emission control equipment."<sup>15</sup> Indeed, evidence in the record demonstrates that these new SCR and water treatment were \$0.60 per MWh in 2006 and \$0.62 per MWh for 2008, assuming a two percent (2%) escalation per year.<sup>16</sup> Incorporating these SCR and water treatment costs would result in an O&M Adder of \$3.26 per MWh for 2007 (\$2.65 plus \$0.61) and \$3.33 per MWh in 2008 (\$2.71 plus \$0.62).

This internal inconsistency constitutes legal error, and the Commission should grant the CCC's Application for Rehearing and adjust the O&M Adder so that it incorporates avoidable SCR and new environmental costs.<sup>17</sup>

**C. The Commission's Order to Revise the MIF Six Months after the MRTU is Operational is Arbitrary and Contrary to Law**

Finally, the Commission erred as a matter of law when it ordered that the MIF be revised six months after the implementation of the CAISO's day-ahead market and held that although "the MIF . . . is the best, currently available estimate of the utilities' avoided cost, we decide today that this formula will change when the CAISO's MRTU is operational. We provide a six month transition after

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<sup>15</sup> Decision 07-09-040 at 28.

<sup>16</sup> CCC/Beach, Ex. 102, at 48-49, citing California Energy Commission data.

<sup>17</sup> CCC/Beach, Ex. 102, at 48:9-49:14.

MRTU is operational before the MIF will change."<sup>18</sup> The Commission's Decision not only sets an arbitrary timeframe for amending the MIF methodology by basing the IER exclusively on the new MRTU, but also ignores the statutory requirements of PURPA, which require a finding that that energy prices paid to non-utility generators must reflect the utility's avoided costs.<sup>19</sup>

First, the six month timeline set forth in the Decision is arbitrary and unsupported by any record evidence. The Decision merely states that "[w]e provide a six month transition after MRTU is operational before the MIF will change."<sup>20</sup> The Commission does not support this decision or provide reasoning behind why after six months it will be appropriate to base the MIF methodology on the MRTU market. Indeed, no evidence whatsoever exists in this record as to whether or not the MRTU market, which has yet to even come into existence, will reflect the utilities short run avoided costs ("SRAC"). Furthermore, the Commission does not define any process, standard or benchmark for evaluating the robustness of MRTU or assessing whether the MRTU market that materializes meets the statutory mandates of PURPA, which require that SRAC prices reflect avoided costs, before instituting the change in the MIF. Such action is arbitrary and constitutes an error of law.

Additionally, the Decision's six month timeline ignores the lessons of the past from the PX market. The PX market functioned from 1998 – 2000, but the Commission never determined that the PX was functioning properly for the purposes of determining the SRAC energy payments as required under Section 390.<sup>21</sup> As the Commission points out in the Decision, "the PX never achieved this level

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<sup>18</sup> Decision 07-09-040 at 67.

<sup>19</sup> 16 U.S.C. § 824a-3(b).

<sup>20</sup> Decision 07-09-040 at 67.

<sup>21</sup> The functionality test established in Public Utilities Code Section 390 incorporates the statutory mandates of PURPA, which require that SRAC prices reflect actual avoided costs. While Section 390 does not address adoption of MTRU-based SRAC pricing, the requisite requirements preceding its use in setting QF SRAC pricing should be no different.

of operation and ceased market operation in 2001."<sup>22</sup> Most importantly, if the Commission had prematurely shifted SRAC energy payments to the PX, ratepayers would have been exposed to the volatility experienced in the PX market, rather than the stable and lower prices that were paid under the SRAC transition formula during the turbulent period that preceded the demise of the PX. As the Commission is aware, only a limited number of QFs transitioned to PX pricing prior to the 2000 – 2001 crisis. The Commission should consider carefully what would have occurred in 2000 – 2001 if all QFs had been switched automatically to PX pricing six months after the PX began operations in April 1998.

Nevertheless, the Commission here assumes, without any record analysis, that the MRTU day-ahead market will be fully operational and will accurately represent avoided costs six months after the MRTU is operational. The Commission further assumes that even if the Assigned Commissioner determines that the market price does not fully reflect the utilities' avoided costs after six months, the market price will fully reflect their avoided costs after a year.<sup>23</sup> These assumptions not only fail to account for lessons learned from the PX, but also fail to provide safeguards to protect ratepayers. The Commission's choice of six months for modifying the MIF, with up to an additional six months for delay, is arbitrary and constitutes legal error.

Finally, the Decision puts the determination of whether the MRTU day-ahead market is functioning properly in the hands of the Assigned Commissioner, without providing any due process for interested parties or opportunity for full Commission review. Similarly, it also allows the Assigned

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<sup>22</sup> Decision 07-09-040 at 78.

<sup>23</sup> The Commission allows the Assigned Commissioner to delay the implementation of the MRTU pricing for an additional six months. *Id.* at 66.

Commissioner to delay the change to MRTU-based SRAC pricing for an arbitrarily limit of up to six months. As the Decision states:

We direct the Energy Division to monitor the operation of the CAISO markets, in close consultation with the CAISO's market monitoring group. If the Assigned Commissioner in consultation with the Energy Division and based on the CAISO's market monitoring reports, determines that the market price does not fully reflect utility avoided cost, then the Assigned Commissioner shall delay the methodology change from the initial MIF (which includes the Administrative Heat Rate in calculating the IER) to the revised MIF (which eliminates the Administrative Heat Rate part of the IER calculation) for up to six additional months.<sup>24</sup>

The CCC proposes that the Decision be revised, at a minimum, to provide for (1) a comment process for interested parties to submit positions and evidence as to whether or not the MRTU market should be used in setting SRAC and, (2) whatever extension is deemed necessary to meet the requirements of PURPA and to protect ratepayer interests. Through the suggested comment process, interested parties can address the functionality of the MRTU market as well as the legal requisites to its use in setting avoided cost prices. The need to not set arbitrary limits of any delay in MRTU-based pricing should be obvious based on California's difficult experience with PX-based pricing.

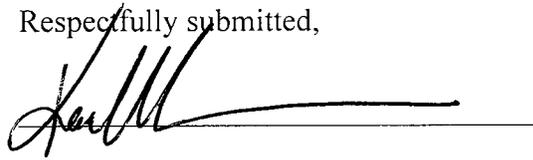
### **III. CONCLUSION**

For the reasons set forth above, the Commission should grant the CCC's Application for Rehearing in order to revise Decision 07-09-040 in accordance with the suggestions contained herein.

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<sup>24</sup> *Id.* at 68.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Karleen M. O'Connor", is written over a horizontal line.

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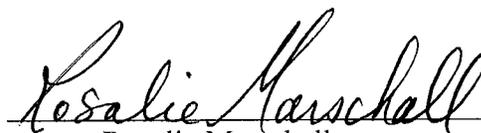
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on all known parties to R.04-04-003 and R.04-04-025 by sending a copy via electronic mail and by mailing a properly addressed copy by first-class mail with postage prepaid to each party named in the official service list without an electronic mail address.

Executed on October 25, 2007 at San Francisco, California.

  
Rosalie Marschall

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