Decision **PROPOSED DECISION OF ALJ WETZELL (Mailed 11/16/2010)**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Southern California Edison Company (U338E) for Applying the Market Index Formula and As-Available Capacity Prices adopted in D.07-09-040 to Calculate Short-Run Avoided Cost for Payments to Qualifying Facilities beginning July 2003 and Associated Relief.	Application 08-11-001 (Filed November 4, 2008)
And related matters	Rulemaking 06-02-013 Rulemaking 04-04-003 Rulemaking 04-04-025 Rulemaking 99-11-022

DECISION ADOPTING PROPOSED SETTLEMENT

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DECISION ADOPTING PROPOSED SETTLEMENT

1. Summary

After more than a year and a half of intensive negotiations, three investor-owned utilities, four representatives of qualifying facilities (QFs), and two ratepayer advocacy groups have developed, and now propose for our consideration, their "Qualifying Facility and Combined Heat and Power Program Settlement Agreement" (Proposed Settlement). In this decision the Commission reviews the Proposed Settlement, finds that it meets established criteria for approval of settlements, and therefore approves it.

The Proposed Settlement is comprehensive. It would resolve numerous outstanding QF issues involving disputes in several Commission, and provide for an orderly transition from the existing QF program to a new QF/Combined Heat and Power (CHP) program. This new program is designed to preserve resource diversity, fuel efficiency, greenhouse gas (GHG) emissions reductions, and other benefits and contributions of CHP. The Proposed Settlement is also designed to promote new, lower GHG-emitting CHP facilities and encourage the repowering, operational changes through utility-pre-scheduling, or retirement of existing, higher GHG-emitting CHP facilities. Additionally, the Commission finds that the Proposed Settlement provides for an appropriate allocation of the costs of the QF/CHP program to all customers in California who benefit from the CHP portfolio. The Proposed Settlement is comprehensive, but it does not resolve issues in numerous Commission proceedings implementing recent statutory requirements that pertain to QFs of 20 MW or less, such as new CHP systems under Assembly Bill 1613 (codified as Pub. Util. Code sections 2840-2845), except to acknowledge that the megawatt (MW) and GHG reductions will count toward the investor-owned utilities' MW and GHG reduction targets.

While the Proposed Settlement is the result of compromise and agreement among representatives of diverse interests, several parties strongly object to aspects of it. Foremost among their concerns is the Proposed Settlement's establishment of procurement and reporting requirements for community choice aggregators and electric service providers. We review the opponents' arguments for either rejecting the Proposed Settlement or approving it only with modifications. We conclude that the Proposed Settlement meets the Commission's standards for approval of settlements – it is reasonable in light of the record, consistent with the law, and in the public interest.

In approving the Proposed Settlement, we set in motion a series of steps that should lead to eventual closure of each of the captioned proceedings. However, we find that it is premature to close the proceedings. Accordingly, the proceedings will remain open at this time.

2. Background

2.1. Overview of Proceedings

Pursuant to Decision (D.) 08-07-048, Southern California Edison Company (SCE) filed Application (A.) 08-11-001 to obtain authority to retrospectively apply, for the period July 2003 through July 2008, the Qualifying Facility (QF) pricing adopted in D.07-09-040 for calculating short-run avoided costs (SRAC). This proceeding has been held in abeyance while the negotiations that led to the Proposed Settlement were in progress.

The Commission instituted Rulemaking (R.) 06-02-013 to ensure reliable and cost-effective electricity supply in California through integration of a comprehensive set of procurement policies and review of long-term procurement plans (LTPP). It is the successor proceeding to R.04-04-003 as to LTPP issues. Although most issues have been resolved, R.06-02-013 remains open for

consideration of a petition for modification of D.07-12-052 that pertains to treatment of QF capacity in the LTPP process.

R.04-04-003 is a multi-phase "umbrella" proceeding to promote policy and program coordination and integration in utility resource planning. Among other procurement issues, R.04-04-003 addresses development of a long-term policy for QFs with expiring contracts. The Commission instituted R.04-04-025 to develop avoided costs in a consistent and coordinated manner across Commission proceedings, including QF pricing issues. R.04-04-003 and R.04-04-025 were consolidated for purposes of testimony and hearings on QF policy and pricing issues by ruling issued in those proceedings on February 18, 2005. D.07-09-040, as modified, adopted specific policies and pricing mechanisms applicable to the utilities' purchase of energy and capacity from QFs. D.07-09-040 has been the subject of several applications for rehearing and petitions for modification, some of which remain open, and a Petition for Writ of Review at the California Court of Appeal (Case 210398).

R.99-11-022 was instituted to implement Public Utilities Code Section 390, which governs energy prices paid by utilities to nonutility power generators. It remains open to consider an evidentiary matter remanded to the Commission by the California Court of Appeal, *i.e.*, retrospective application of the SRAC formula adopted by D.01-03-067.[1]

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[1] *Southern California Edison Co. v. Pub. Util. Comm. (2002)* 101 Cal. App. 4th 982.

2.2. Policy Background

2.2.1. PURPA and the Commission's QF Program

In 1978, Congress enacted the Public Utility Regulatory Policies Act[2] (PURPA), which was part of a national effort to promote energy independence and efficiency. Under PURPA and subsequent implementing regulations of the Federal Energy Regulatory Commission (FERC), qualifying cogeneration and small power production facilities were provided certain benefits and exemptions. State regulatory agencies were delegated responsibility for developing QF programs and determining avoided-cost pricing. The Commission implemented PURPA in the early 1980s by adopting for the investor-owned utilities (IOUs) a number of standard form power purchase agreements (PPAs) that were available to QFs and establishing energy and capacity prices to be paid under these PPAs. Many QFs signed these PPAs and built cogeneration and small power production facilities to provide energy and capacity to the IOUs.

Since the Commission implemented the QF program in the 1980s, there have been disputes between the QFs, IOUs and ratepayer advocates involving contract terms, SRAC pricing, capacity payments, contract extensions and terminations, and the availability of new contracts. Many of these disputes are still pending at the Commission. These include retrospective adjustments to SRAC pricing, disputes over pricing and ability to execute PPA extensions, motions for prospective QF PPA options, SRAC disputes dating back to the 2000-2001 energy crisis, disputes concerning administrative heat rates used to

[2] 16 U.S.C. § 796, *et seq.*

calculate SRAC, and applications for rehearing and petitions for modification of numerous QF decisions.

Not only is the Commission faced with disputes regarding existing QF PPAs and the existing QF program, the Commission is also faced with challenges as to how to implement the QF program going forward. For example, in D.07-09-040, the Commission recognized that it would need to address the impact of the California Independent System Operator's (CAISO) Market Redesign and Technology Upgrade (MRTU) on SRAC and the QF program. The Commission also has before it disputes over the terms and conditions of the new QF Standard Offer Contract (SOC) and disputes over the amount of QF capacity to include in the LTPP.

On the federal level, recently there have been changes to the PURPA purchase obligation. In October 2006, FERC issued Order No. 688:

> ... revising its regulations governing utilities' obligations to purchase electric energy produced by QFs. Order No. 688 implements PURPA section 210(m), which provides for termination of the requirement that an electric utility enter into power purchase obligations or contracts to purchase electric energy from QFs, if the Commission finds the QFs have nondiscriminatory access to markets.[3]

Although the California IOUs have not yet sought from FERC a termination of their PURPA purchase obligation for QFs larger than 20 megawatts (MW), it is argued that the changes in PURPA support a reexamination of California's existing QF program.

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[3] *New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation*, 130 FERC ¶61,216 (2010) at 3 (footnotes omitted).

2.2.2. State Policy Favoring Combined Heat and Power (CHP)

Public Utilities Code Section 372(a) and Energy Action Plan II[4] both demonstrate that state policy supports the development of "efficient, environmentally beneficial" CHP. In the 2009 Integrated Energy Policy Report (IEPR), the CEC recommended the continued support and development of CHP as a means to meet state greenhouse gas (GHG) goals and other policy objectives. In D.08-10-037 the Commission, joining with the CEC, recognized CHP as an emissions reduction strategy, provided for action to remove barriers to CHP penetration, and acknowledged the need for CHP policy review.

2.2.3. Climate Change Scoping Plan

On December 11, 2008, the California Air Resources Board (CARB) adopted the Climate Change Scoping Plan for California pursuant to Assembly Bill (AB) 32[5] (the CARB Scoping Plan).[6] In the CARB Scoping Plan, the CARB noted that:

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[4] In 2003, the Commission, the California Energy Commission (CEC), and the California Power Authority adopted an Energy Action Plan (EAP), articulating a single, unified approach to meeting California's electricity and natural gas needs. A key element was the "loading order" which specified California's policy to invest first in energy efficiency and demand response, followed by renewable resources, and only then in clean conventional electricity supply. In 2005, the Commission and the CEC adopted a second plan, EAP II, to reflect policy changes and actions. Since then, the Commission and the CEC have updated the EAP. The 2008 EAP update is available at the Commission's website using the following link:

http://www.cpuc.ca.gov/NR/rdonlyres/58ADCD6A-7FE6-4B32-8C70-7C85CB31EBE7/0/2008_EAP_UPDATE.PDF

[5] Stats. 2006, Ch. 488.

[6] The CARB Scoping Plan is posted at:

http://www.arb.ca.gov/cc/scopingplan/document/scopingplandocument.htm

> … [c]ombined heat and power (CHP), also referred to as cogeneration, produces electricity and useful thermal energy in an integrated system. The widespread development of efficient CHP systems would help displace the need to develop new, or expand existing, power plants. This measure sets a target of an additional 4,000 MW of installed CHP capacity by 2020, enough to displace approximately 30,000 [gigawatt hours] of demand from other power generation sources.[7]

2.3. Settlement Process Overview

Seeing a need to resolve outstanding disputes and to establish a new CHP program for California going forward, in May 2009 SCE, Pacific Gas and Electric Company, San Diego Gas & Electric Company, The Utility Reform Network, the California Cogeneration Council, the Independent Energy Producers Association, the Cogeneration Association of California, the Energy Producers and Users Coalition, and the Division of Ratepayer Advocates (Joint Parties) and Commission representatives met to lay out a settlement framework. From that time to the filing of the Joint Motion described below, the Joint Parties conducted what they describe as frequent and lengthy meetings to negotiate the Proposed Settlement. The Joint Parties had divergent interests, and unresolved disputes in proceedings at the Commission. As a result, the Joint Parties assert that the Proposed Settlement represents a compromise that should be evaluated as an integrated package. They note that the Proposed Settlement provides a detailed and comprehensive framework for a Qualifying Facility and Combined Heat and Power (QF/CHP) Program in California.

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[7] CARB Scoping Plan at 42-43 (footnotes omitted).

Pursuant to Rule l2.1(b) of the Rules of Practice and Procedure (Rules), on September 24, 2010 the Joint Parties provided notice of a formal settlement conference to the service lists in these proceedings. Because of widespread interest in matters at issue in these proceedings, Joint Parties also provided notice of potential settlement to the service lists in R.03-10-003 (regarding community choice aggregation), R.07-05-025 (consideration of the lifting of the suspension of direct access), and R.08-06-024 (combined heat and power).[8] The settlement conference was conducted on October 7, 2010. An overview of the Proposed Settlement was presented, and participants were able to ask questions and provide comments. Those that were interested in joining to support the Proposed Settlement were invited to do so.

On October 8, 2010, after the settlement conference was completed and participants were given an opportunity to review and comment on the Proposed Settlement, Joint Parties filed a motion (Joint Motion) for approval of the "Qualifying Facility and Combined Heat and Power Program Settlement Agreement" (Proposed Settlement).

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[8] R.08-06-024 is the Commission's proceeding, in which the Commission has issued D.09-12-042, *denying reh'g, as modified*, D.10-04-055, implementing AB 1613 involving statutory requirements for feed-in tariffs for new CHP facilities of 20 MW or less. These Commission decisions have been the subject of cross-petitions for declaratory orders in litigation at the FERC. *See, California Public Utilities Commission, et al.* (2010) 132 FERC ¶ 61,047, *request for clarification granted*, 133 FERC ¶ 61,059. In a separate decision in R.08-06-024, currently scheduled for the December 16, 2010 agenda, the Commission will be further addressing issues resolving a pending petition for modification and new comments submitted by parties in light of the FERC's orders.

2.4. Procedural History

Concurrently with the filing of the Joint Motion, the Joint Parties filed a motion for expedited consideration of the Proposed Settlement. The assigned Administrative Law Judge (ALJ) granted the motion by ruling issued in these proceedings on October 11, 2010 (October 11 Ruling).[9] Among other things, the time for filing comments on the Proposed Settlement was shortened from 30 days, as set forth in Rule 12.2, to October 25, 2010. The time for filing reply comments was shortened from 15 days, as set by Rule 12.2, to November 1, 2010. The October 11 Ruling also consolidated the proceedings for purposes of considering the Proposed Settlement. The ALJ also directed service of the October 11 Ruling on the service lists for the proceedings for which Joint Parties had served notice of the settlement conference, *i.e.*, R.03-10-003, R.07-05-025, and R.08-06-024, and on registered electric service providers (ESPs) and community choice aggregators (CCAs). On October 12, 2010 the ALJ directed the Joint Parties to serve notice of the Joint Motion on registered ESPs and CCAs. Joint Parties complied with this directive on October 13, 2010.[10]

On October 19, 2010 the assigned Commissioner and the ALJ issued an amended scoping memo for the consolidated proceedings for purposes of considering the Proposed Settlement (Amended Scoping Memo).[11] It provided

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[9] *Administrative Law Judge's Ruling Shortening Time for Comments and Replies on Proposed Settlement and Consolidating Proceedings*.

[10] See *Administrative Law Judge's Ruling Regarding Service of Joint Motion, Rulings, and Tendered Documents*, dated October 18, 2010.

[11] *Assigned Commissioner and Administrative Law Judge's Joint Ruling and Amended Scoping Memo for Consolidated Proceedings.*

that, with respect to consideration of the Proposed Settlement, the issues to be addressed in this proceeding are:

1. Whether the Proposed Settlement is reasonable in light of the whole record of these proceedings;
2. Whether the Proposed Settlement is consistent with the law;
3. Whether the Proposed Settlement is in the public interest;
4. Whether the Proposed Settlement should be approved, and if so whether it should be approved in its entirety without change.

The Amended Scoping Memo also directed parties claiming that evidentiary hearings were necessary to state, in comments on the Proposed Settlement, "with specificity the disputed issues of material fact related to the Proposed Settlement that are claimed to require hearings and why the facts are material to the resolution of the motion."[12]

Comments on the Proposed Settlement were filed by six parties or party groups: the CAISO, CAlifornians for Renewable Energy, Inc. (CARE); City and County of San Francisco (CCSF); California Municipal Utilities Association (CMUA); Shell Energy North America (US), LP (Shell Energy); and jointly by the Marin Energy Authority, the Alliance for Retail Energy Markets, and the Direct Access Consumer Coalition (CCA/Direct Access Parties). The CAISO supports the Proposed Settlement. CARE opposes it on the grounds that it is preempted by federal law and FERC orders. CARE also raises concerns regarding the expedited consideration of the Proposed Settlement and other procedural matters. CCSF objects to the Proposed Settlement unless provisions regarding cost allocation and portfolio requirements applicable to CCAs are removed.

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[12] Amended Scoping Memo at 4.

CMUA supports the efforts of the Joint Parties in reaching the settlement and believes that it represents a major achievement, but recommends certain amendments, deletions, and a clarification regarding provisions of the Proposed Settlement that pertain to CCAs, publicly-owned utilities (POUs), and municipal departing load (MDL). Shell Energy opposes the Proposed Settlement, arguing that the process leading up to it was flawed insofar as it would impose affirmative procurement obligations on ESPs, CCAs, and their customers. Shell Energy contends that such provisions lack legal authority and should be severed from the Proposed Settlement if it is approved. CCA/Direct Access Parties oppose, on due process and other legal and policy grounds, the provisions of the Proposed Settlement that would impose new regulatory requirements and cost obligations on ESPs, CCAs, and their customers. CCA/Direct Access Parties contend that if the Commission is inclined to adopt the Proposed Settlement, the provisions that are applicable to ESPs, CCAs, and their customers should be deleted. CCA/Direct Access Parties contend that evidentiary hearings or workshops are required for certain cost allocation issues.

Joint Parties filed reply comments arguing, among other things, that modifying the Proposed Settlement as requested by the commenting parties would upset the balance of interests underlying the Proposed Settlement and could cause the Joint Parties to terminate it.

3. Summary of the Proposed Settlement

The Proposed Settlement comprises an 8-page "CHP Settlement Agreement," a 76-page "CHP Program Settlement Agreement Term Sheet" (Term Sheet) with 17 sections, and 11 exhibits totaling more than 700 pages. The Term Sheet and exhibits are attached to, and incorporated by reference into, the CHP Settlement Agreement. Due to the length of the Proposed Settlement and

its attachments, we do not republish it with this decision. The Proposed Settlement in its entirety is permanently posted on the Commission's website.[13]

Sections 3.1 through 3.17 below present a brief overview of the corresponding 17 sections of the Term Sheet as described in the Joint Motion. Section 3.18 lists the 11 exhibits that are attached to the Proposed Settlement, including the *Pro Forma* PPAs and the *Pro Forma* PPA amendments that are included with the Proposed Settlement. We note the Joint Parties' caveat that any inconsistencies between their summary and the Term Sheet should be governed by the Term Sheet.

3.1. Goals and Objectives

Section 1 of the Term Sheet outlines the goals and objectives of the Proposed Settlement. The goals and objectives are addressed later in this decision.

3.2. Settlement Periods

Section 2 describes the three periods covered by the Proposed Settlement: the Transition Period, the Initial Program Period, and the Second Program Period. The Transition Period is designed to facilitate the transition from the existing QF Program to the new QF/CHP Program. During the Initial Program Period, which overlaps with the Transition Period, the IOUs have specific MW Targets (MW Targets) for entering into new PPAs with CHP and other facilities. In the Second Program Period, the IOUs procure any portion of the MW Targets that they did not procure during the Initial Program Period and

[13] Appendix A to this decision contains links to the Commission's website for each of the component documents of the Proposed Settlement as well as the joint motion for approval of the Proposed Settlement.

additional CHP capacity to meet GHG Emissions Reduction Targets (GHG Targets) or other CHP procurement targets established by the Commission. SDG&E has a target to procure an additional 51 MW during the Second Program Period.

3.3. Transition PPA

Section 3 describes the eligibility requirements for QF and CHP facilities for a PPA during the Transition Period and the pricing for Transition Period PPAs. The "Transition Standard Contract for Existing Qualifying Cogeneration Facilities" (Transition PPA) is included as an exhibit to the Term Sheet and is an attachment to the Proposed Settlement.

3.4. CHP Procurement Process

Section 4 of the Term Sheet describes the various aspects of the CHP procurement process under the new QF/CHP Program. First, Section 4.2 describes the new CHP Request for Offers (CHP RFO) process under which the IOUs will procure generation from CHP facilities to meet MW Targets and GHG Targets specified in the Proposed Settlement. Section 4.2 includes eligibility requirements for CHP participating in the RFOs (Section 4.2.2), the delivery terms of PPAs resulting from the RFOs (Section 4.2.3), pricing (Section 4.2.4), and RFO evaluation and selection criteria (Section 4.2.5). In addition, the Joint Parties developed a *Pro Forma* power purchase agreement for CHP RFOs (CHP RFO PPA) that is attached as an exhibit to the Term Sheet.

Section 4 also describes the procurement processes for CHP other than through CHP RFOs that will count towards meeting MW and GHG Targets. Specifically, Sections 4.3 - 4.6 describe bilaterally negotiated CHP PPAs, PPAs

under the AB 1613[14] feed-in tariff, PPAs for QFs of 20 MW or less under PURPA, and Optional As-Available PPAs for certain large CHP facilities that have significant on-site load and specific operating characteristics. Section 4.7 addresses utility-owned CHP and limits the contribution of utility-owned facilities to ten percent (10%) of each IOU's GHG Target. IOU-owned facilities will not count toward the MW Targets in the Initial Program Period. Section 4.8 describes "utility prescheduled facilities" which are existing QF facilities that convert to IOU-dispatchable generating facilities. Finally, Section 4.9 addresses new behind-the-meter CHP facilities as one of the procurement options under the QF/CHP Program.

Section 4.10 specifies the Commission approval process required for new PPAs arising from the procurement options in the QF/CHP Program. This includes Tier 2 advice letter filings for existing CHP facilities that execute the CHP RFO PPA without material modification, and a Tier 3 advice letter process for all other CHP PPAs. CHP PPAs that are less than five years in duration do not require Commission pre-approval but will be reported in the IOUs' Quarterly Compliance Reports and CHP Program Semi-Annual Report.

Section 4.11 specifies information that CHP facilities must provide to the IOUs on an annual basis for monitoring purposes and Section 4.12 specifies the timing for commencement of deliveries from a CHP facility that has entered into a new CHP PPA.

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[14] Stats. 2007, Ch. 713.

3.5. MW Targets

Section 5 establishes a total MW Target for the IOUs of 2,949 MW during the Initial Program Period and a total MW Target of 3,000 MW for the entire QF/CHP Program. Section 5.1.2 includes a chart allocating this MW Target to three target periods for each of the IOUs. For example, the first MW Targets for SCE, PG&E, and SDG&E are 630 MW, 630 MW, and 60 MW, respectively. SDG&E has a specified MW Target during the Second Program Period. If the IOUs have not fulfilled the MW Targets assigned to them for the Initial Program Period they will also need to procure MWs during the latter period to fulfill those targets.

Section 5.1.4 provides that the IOUs are required to conduct three CHP RFOs during the Initial Program Period to seek CHP PPAs to meet the MW Targets. The number of CHP RFOs during the Second Program Period will be established in the LTPP proceedings.

Section 5.2 includes detailed counting rules as to how CHP PPAs executed during the Initial Program Period, whether through a CHP RFO or another procurement process, count toward the MW Targets. Section 5.3 clarifies the appropriate use of the MW counting procedure.

Section 5.4 addresses justifications for an IOU's failure to meet its MW Target. These justifications include lack of sufficient offers in the RFOs, the efficiency of CHP participating in the procurement programs, excessive offer prices, and the amount of GHG reductions.

3.6. GHG Emissions Reduction Targets

The Joint Parties assert that one of the key benefits of the Proposed Settlement is the implementation of a CHP Program designed to reduce GHG, consistent with the CARB Scoping Plan. Section 6.1 describes the Proposed

Settlement strategy for reducing GHG, including maintaining existing, efficient CHP facilities, adding new, efficient CHP resources and achieving the GHG Targets by December 31, 2020. Section 6.2 addresses maintaining the GHG emissions reductions from existing CHP and establishing new targets for GHG reductions from new facilities. In particular, the Proposed Settlement establishes a GHG Emissions Reduction Target or "GHG Target" of 4.3 million-metric tons (MMT) for the IOUs and 0.5 MMT for ESPs[15] and CCAs. These targets are based on the 6.7 MMT GHG reductions attributable to CHP in the CARB Scoping Plan. Based on the current percentage of retail sales in California, the 6.7 MMT would be allocated as follows: (1) 4.3 MMT to the IOUs; (2) 0.5 MMT to ESPs and CCAs; and (3) 1.9 MMT to POUs. Joint Parties note that the Commission does not have jurisdiction over POUs, but assert it can set GHG Emissions Reduction Targets for the IOUs, ESPs and CCAs (collectively, load-serving entities or LSEs).

Section 6.2.2.3.3 provides for the adjustment of the allocation of the GHG Targets based on changes in retail sales during the term of the Proposed Settlement. Thus, for example, if customers depart utility service for ESPs or CCAs, the GHG Targets for the IOUs will decrease and the targets for the ESPs and CCAs will increase. The GHG Targets can also be adjusted among the IOUs.

Section 6.3 identifies the GHG Target allocated to ESPs and CCAs and indicates that it is the preference of the Joint Parties that these non-IOU Load Serving Entities (LSEs) achieve these targets by entering into CHP PPAs. However, if these non-IOU LSEs are not required to enter into CHP PPAs, the

[15] The Joint Parties use the term "energy service provider." We use the statutory term "electric service provider." (Pub. Util. Code Section 218.3.)

IOUs will procure the appropriate amount of CHP for these LSEs to meet their GHG Target and the costs of this procurement by the IOUs will then be allocated to the customers of non-IOU LSEs. The allocation of CHP PPA costs is addressed in Section 13 of the Proposed Settlement. Section 6.4 describes the methodology for establishing the GHG Targets for each of the IOUs. Section 6.5 requires each IOU to report its progress toward meeting its GHG Target in its semi-annual CHP Program Reports that are submitted to the Commission. Section 6.6 states that the GHG Targets for the Second Program Period are subject to review and revision in the LTPP process.

Section 6.7 provides for revisions to the GHG Targets if CARB modifies its CHP reduction goals and provides for GHG Targets to be adjusted in the LTPP if AB 32 compliance is suspended or delayed. In Section 6.8, the Joint Parties agree to advocate at CARB in support of the Proposed Settlement, subject to certain conditions.

Finally, Section 6.9 sets out the justifications for failing to meet the GHG Targets, including the efficiency of CHP facilities participating in the IOUs' procurement programs, excessive offer prices, and a lack of need for CHP resources.

3.7. GHG Emission Accounting Methodology

Section 7 establishes the accounting principles for determining the IOUs' progress toward meeting their GHG Targets. This section adopts a Double Benchmark methodology for determining GHG reductions and provides detailed accounting procedures for new, repowered, and existing CHP facilities to determine the amount of GHG emissions reductions that are attributable to these different types of facilities.

3.8. Commission Jurisdictional Entities' Reporting Requirements

Section 8 establishes reporting requirements for Commission-jurisdictional LSEs. Each LSE must prepare a semi-annual report detailing progress toward meeting its MW Targets and GHG Targets. Sections 8.2 - 8.5 describe the contents of the semi-annual reports, and specify report content for different categories of CHP generation (e.g., new, legacy, terminated).

3.9. CHP Auditor

Section 9 provides for a CHP auditor (CHP Auditor) who is to act as an advocate for CHP interests regarding the implementation of the QF/CHP Program. The CHP Auditor is used in situations where an IOU provides notice that it does not anticipate meeting the MW Targets during a particular RFO or the GHG Targets. The CHP party or parties requesting a CHP Auditor bear the costs and the CHP Auditor is provided with an opportunity to receive and review confidential IOU information regarding the relevant QF/CHP RFO. Section 9 includes provisions for execution of a non-disclosure agreement by the CHP Auditor (Section 9.1.4), when an IOU notice triggers an audit (Section 9.2), the time period for an audit review (Section 9.3), receipt and review of confidential information (Section 9.4), and the number of CHP Auditors, as well as rules regarding any potential conflicts of interest (Section 9.5).

3.10. SRAC Energy Pricing Structure

Section 10 establishes methodologies and formulas for SRAC to be used in Transition PPAs, Legacy PPAs, other existing QF PPAs and Optional As-Available PPAs. Section 10.2 includes a methodology for transitioning, by January 1, 2015, SRAC pricing from a formula that is based in part on administratively-determined heat rates to a formula that uses solely market heat

rates. Section 10.4 includes a process for addressing market disruptions that may impact the market heat rate to be used in SRAC. Section 10.2 also includes IOU-specific time-of-use (TOU) factors to be applied to energy prices to encourage energy deliveries during the times when the energy is most needed by customers. The SRAC formula also includes a locational adjustment based on CAISO nodal prices. Section 10.2 also includes pricing options based on whether a cap-and-trade program or other form of GHG regulation is developed in California or nationally.

If and when such a cap-and-trade program initially is developed that applies to California, Section 10.2 establishes a floor test which compares an energy price developed with a market-based heat rate to an energy price developed with either a negotiated heat rate, or a heat rate from a period prior to the start of a cap-and-trade program, plus the market price of GHG allowances. The higher of the two energy prices is the one chosen as SRAC.

Section 10.3 requires the Seller under a CHP PPA to provide certain information to the IOU regarding GHG information that it has reported to CARB or another governmental authority, and information concerning the operation of its facility. Finally, Section 10.5 addresses the responsibility for GHG-related costs.

3.11. Legacy PPA Matters for Existing QFs

Under Section 11.1, QFs with existing standard offers or other PPAs (QF PPAs) at the time of the Settlement Effective Date will be paid for energy based on the SRAC formula specified in Section 10 (unless the QF PPA specifies a different price) or may elect to amend their standard offer QF PPA to choose one of the energy price options described in the Legacy QF Amendments, attached as an exhibit to the Proposed Settlement. Unless otherwise specified in the QF PPA,

capacity payments for QF PPAs will be based on the capacity price established by the Commission in D.07-09-040. Section 11.2 provides for the transition from a QF PPA to a new CHP PPA and ensures that delivery from an existing CHP facility continues uninterrupted during that period. The amendments are not available to QFs participating in the Renewables Portfolio Standard (RPS) program.

Section 11.3 provides that the Seller under an existing QF PPA shall make a good faith effort to provide forecasting information to the IOU so that the IOU can more accurately schedule QF generation in the CAISO markets. This section provides specific forecasting submittal procedures.

3.12. CAISO Tariff Compliance

Section 12 provides that all CHP facilities subject to the CAISO Tariff shall comply with CAISO requirements when the facility begins deliveries under a CHP PPA. Section 12 also includes requirements for the installation of metering and telemetry equipment at existing CHP facilities within six months of the execution of a CHP PPA. The Joint Parties also acknowledge that the CAISO may condition, waive or modify certain requirements for QF and CHP facilities.

3.13. IOU Cost Recovery for CHP PPAs

Section 13 addresses cost allocation if the Commission determines that IOUs should purchase CHP generation on behalf of ESPs and CCAs. In this circumstance, the IOUs are authorized to recover "net capacity costs" from all bundled, direct access (DA) and CCA customers on a non-by-passable basis. Net capacity costs are the total costs paid by the IOU under the QF/CHP Program less the value of the energy and ancillary services supplied to the IOU under the program.

Section 13.1.1 recognizes that PPAs under the QF/CHP Program may be greater than 10 years and requires that the Commission: (1) affirmatively supersede the 10-year limitation for stranded cost recovery established in D.04-12-048 and D. 08-09-012, and (2) determine that all above-market or net capacity costs associated with the QF/CHP Program can be recovered for the entire duration of any CHP PPA.

Section 13.1.2.1 provides that if the Commission determines that ESPs and CCAs are responsible for procuring CHP generation for their customers, any above-market costs associated with the QF/CHP Program can be allocated to future departing load customers who depart for DA or CCA service.

In Sections 13.1.3 and 13.1.4, the Joint Parties agree that they will not advocate the imposition of QF/CHP Program costs on CHP customer generation departing load, and in Section 13.1.5 the Joint Parties agree to advocate that CHP PPAs entered into as a result of the QF/CHP Program not be included in the existing Competition Transition Charge.

Finally, Section 13.2 provides that all payments made by the IOUs under the QF/CHP Program can be recovered in the IOUs' respective Energy Resources Recovery Account.

3.14. Settlement of Pending and Anticipated Litigation

Section 14 addresses the settlement of pending as well as anticipated claims and litigation. In Section 14.1, the IOUs agree under certain conditions to withdraw with prejudice all SRAC retrospective price adjustment claims. The Joint Parties mutually agree not to raise any new SRAC retrospective adjustment claims under the Court's remand as long as the PURPA purchase obligation remains suspended (as described in more detail in Section 15).

In Section 14.2, the Joint Parties agree to release or withdraw a number of pending claims, rehearing applications, or motions including claims and motions at the Commission (Sections 14.2.1 -14.2.3, 14.2.5 -14.2.12) and pending appeals at the Court of Appeal (Section 14.2.4).[16] Section 14 does not affect the Joint Parties' rights to advocate their respective position regarding the confidentiality of IOU procurement information.

3.15. FERC Section 210(m) Application

Under Section 15, if the Commission approves the Proposed Settlement, the IOUs will then submit an application to FERC requesting termination of the IOUs' PURPA purchase requirement from QFs with net capacity in excess of 20 MW, consistent with Section 210(m) of PURPA. Section 15.1 establishes a process for the CHP representatives to review the IOUs' FERC application and provides that these parties can intervene and comment on, but not protest, the IOUs' application. Under Section 15.1.10, the CHP representatives can file at FERC for reinstatement of the PURPA purchase obligation if an IOU "breaches its obligations under the [Proposed Settlement] or the CHP Program adopted in the [Proposed Settlement] is not successfully implemented, based upon the IOU's

[16] There are pending appellate court cases in which the Commission is a party. (*See Southern California Edison Company, et al. v. Public Utilities Commission of the State of California*, California Court of Appeal, Second Appellate District, Division 8 (Case No. B210398).) We observe that the Joint Parties have no authority to settle a court case in which the Commission is a party, since the Commission is a decision maker in the review of this settlement rather than a party to the settlement. However, we note that the approval of the Proposed Settlement will have the effect of making moot issues raised in pending appellate court litigation. In an order filed October 13, 2010, the California Court of Appeal granted an abeyance of the appellate litigation pending regulatory approval of the settlement by the Commission and the FERC.

failure to meet the targets established by the Commission pursuant to the [Proposed Settlement], without justification as provided for in the [Proposed Settlement]."

Section 15.2 addresses a circumstance where FERC reinstates the PURPA purchase obligation. In this case, SRAC pricing established under the Proposed Settlement stays in place until changed by the Commission (Section 15.2.1.1), although Joint Parties may advocate for a change to SRAC (Section 15.2.1.3). Joint Parties may also advocate for retrospective adjustments to SRAC pricing (Section 15.2.1.4). If the PURPA purchase obligation is reinstated, the IOUs' obligations to conduct CHP RFOs or to engage in alternative procurement processes and the MW Targets and GHG Targets are suspended "provided that the Commission may on grounds other than the Settlement [Agreement] direct the procurement of CHP resources." (Section 15.2.1.7) Any procurement target to be established by the Commission in the LTPP remains in place unless and until modified by the Commission in a subsequent proceeding. The Joint Parties also agree in Section 15.2.1.8 that for purposes of Section 210(m), designated CHP PPAs constitute "legally enforceable obligations."

3.16. Conditions Precedent and Settlement Effective Date

Section 16.2 specifies that the Proposed Settlement becomes effective upon satisfaction of the following conditions precedent: (1) a final and non-appealable FERC order approving the IOUs' application to terminate their PURPA purchase obligation (Section 16.2.1), (2) a final and non-appealable Commission decision approving the Settlement, including a determination that the Settlement supersedes certain portions of existing Commission decisions (Sections 16.2.2 and 16.2.4 -16.2.6), and (3) CARB support, in written form, for the Settlement (Section 16.2.3).

Section 16.3 provides that after the Proposed Settlement becomes effective, if CARB adopts regulations directly imposing a MW Target or GHG Emissions Target that differs from the Proposed Settlement for the Second Program Period, the IOUs' obligations to purchase from CHP to meet these targets will remain in place until such time as the Commission is able to consider such change in an LTPP or other pertinent proceeding.

3.17. Glossary

The section includes a glossary of the defined terms used in the Settlement.

3.18. Attachments to the Settlement

In addition to the Term Sheet, the Settlement Agreement attaches the following exhibits (Exhibits 1-11), as listed below:

1. Amendment to Legacy QF PPA for PG&E
2. Amendment to Legacy QF PPA for SCE
3. Amendment to Legacy QF PPA for SDG&E
4. Transition PPA for existing Qualifying Cogeneration Facilities
5. CHP RFO Pro Forma PPA for CHP Facilities Participating in Solicitations
6. QF PPA for QFs 20 MW or Less
7. Optional As-Available PPA for eligible As-Available Facilities
8. Non-Disclosure Agreement (NDA) for CHP Auditor
9. List of Members of CAC
10. List of Members of CCC
11. 11.List of Members of EPUC

4. Discussion

4.1. Standard of Review of Settlements

Rule 12.1(d) provides that "[t]he Commission will not approve settlements, whether contested or uncontested, unless the settlement is reasonable in light of the whole record, consistent with law, and in the public interest." The Commission has rejected (or provided for modification of) settlements when it does not find these criteria are met. Factors that the Commission has considered in reviewing settlements include: (1) the risk, expense, complexity and likely duration of further litigation, (2) whether the settlement negotiations were at arms-length, (3) whether major issues were addressed, and (4) whether the parties were adequately represented.[17] The Commission needs to be assured that parties to a settlement were able to make informed choices in the settlement process. With respect to whether a settlement agreement is consistent with the law, the Commission must be assured that no term of the settlement agreement contravenes statutory provisions or prior Commission decisions. A settlement that implements or promotes state and Commission policy goals embodied in statutes or Commission decisions would be consistent with the law. To determine whether a settlement agreement is in the public interest, in addition to substantive public interest concerns associated with the circumstances of a particular proceeding, the Commission may inquire into whether a settlement expeditiously resolves issues that otherwise would have been litigated.

Noting that the Commission has rejected or modified settlements where the interests of parties affected by the settlement were not represented in the

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[17] *Re Pacific Gas & Electric Company,* 30 CPUC 2d 189, 222.

settlement discussions, CCSF cites to D.96-01-011. There, the Commission considered a settlement that resulted from negotiations that excluded some parties. CCSF points out that the Commission applied a heightened standard of review, quoting the following passage:

> While the settling parties have met the strict letter of the settlement rules, they did not "bring to the table" those who are in a position to represent all affected groups. If the settling parties choose not to accommodate all affected interest groups, they run the risk of not achieving an all-party settlement, and thus heightening the Commission's standard of review as they have done in this case.[18]

In the same decision, the Commission had explained the more stringent standard of review, distinguishing it from the standard for all-party settlements established in D.92-12-019. After noting that it was not considering an all-party settlement, the Commission stated that it would consider the settlement under the three criteria set forth in Rule 51.1(e):[19]

> However, the standard of review here is somewhat more stringent. Here, we consider whether the Settlement taken as a whole is in the public interest. In doing so, we consider the individual elements of the settlement in order to determine whether the settlement generally balances the various interests at stake as well as to assure that each element is consistent with our policy objectives and the law.[20]

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[18] *Re Southern California Edison Company* 64 CPUC 2d 241, 267.

[19] *Id.* Rule 51.1(e) is the predecessor of Rule 12.1(d). Nearly identical to its successor, Rule 51.1(e) provided that "[t]he Commission will not approve stipulations or settlements, whether contested or uncontested, unless the stipulation or settlement is reasonable in light of the whole record, consistent with law, and in the public interest."

[20] *Id.*, quoting D.94-04-088 at 8.

We concur that it would be inappropriate to apply the standards for all-party settlements here, just as it was in *Re Southern California Edison Company, supra,* since we are reviewing a settlement that was not signed by all parties. We consider the Proposed Settlement as a whole and its individual elements, and whether it balances the various interests at stake. Before we review the Proposed Settlement and whether these settlement criteria are met, we address issues regarding the process of its development and submittal to the Commission.

4.2. Process Issues

4.2.1. Compliance With the Settlement Rules

We find that Joint Parties have complied with the relevant elements of the Commission's settlement rules.[21] In particular, they convened and provided timely notice of a settlement conference (Rule 12.1(b)), and they filed a motion for approval that provided a statement of the factual and legal considerations adequate to advise the Commission of the scope of the settlement and of the grounds on which adoption is urged (Rule 12.1(a)).

Noting that hearings in R.06-02-013 were held in 2007, CARE argues that, at least with respect to R.06-02-013, the Joint Parties' filing of the Proposed Settlement on October 8, 2010 violates the Rule 12.1(a) provision that settlements may be proposed within 30 days after the last day of hearing. We find this to be an unreasonable, overly restrictive application of Rule 12.1(a). R.06-02-013 was litigated and largely resolved by 2007. It remains open for consideration of a petition for modification, for which a proposed decision is pending. There is no connection between the evidentiary hearings held in 2007 and the petition for

[21] Article 12 (Rules 12.1 -12.7).

modification that would warrant the strict application of Rule 12.1(a) that CARE suggests. If we were to apply the rule as literally as CARE proposes in all circumstances, we would render the Commission's settlement process unavailable in many proceedings, including those where petitions for modification are involved as well as proceedings where no evidentiary hearings are held. No purpose is served by such an outcome, and it would be contrary to our preference that parties have the opportunity to pursue settlements and other forms of alternative dispute resolution. We therefore reject CARE's argument that the motion is untimely.

4.2.2. Shortened Comment Period

CARE contends that its due process rights were violated, "because an October 25, 2010 (12 days) comments due date and a November, 1, 2010 (7 days) reply comments due date is unreasonable and unjustified…"[22] CCSF argues that CCAs have had "minimal time" to review and analyze the settlement. Shell Energy also raises concerns about the shortened comment period.

As explained in the October 11 Ruling, which adopted the expedited schedule for considering the Proposed Settlement, parties were given notice of the October 7 formal settlement conference on September 24, 2010. That notice also informed parties that settlement documents would be posted on the IOUs' websites prior to the settlement conference. In accordance with the notice, the

[22] CARE comments at 6. CARE misstates the date of the ALJ ruling that adopted the expedited schedule as October 13, 2010. The ruling was issued on October 11. Thus, there were 14 days from the date of the ruling to the date that comments were due, not 12 days as stated by CARE. Moreover, under Rule 12.2 the time for filing comments is calculated from the date the motion for adoption of the settlement was served, not the date of an ALJ's ruling. The comments were due 17 days after the motion was filed.

Term Sheet, which sets forth in detail the elements of the Proposed Settlement, was posted on the IOUs' respective websites on October 4, 2010, as were the *pro forma* agreements and amendments. At the October 7, 2010 settlement conference, parties had opportunity to participate and ask questions about the settlement. Parties also had the opportunity to propound data requests and one party, CMUA, did so.

We conclude that while this process was expedited, parties had adequate time and were not unreasonably burdened or prejudiced by the schedule. The thoughtful and substantive comments that were filed by the parties demonstrate that they had reasonable opportunity to review and respond to the Proposed Settlement.

CARE also argues that the settlement rules do not specify that the time for filing comments on proposed settlements and replies to such comments may be shortened from 30 and 15 days, respectively, and, therefore, that the expedited schedule shortening time for comments and replies violates its due process rights. This argument is without merit. While Rule 12.2 itself does not explicitly provide for such a reduction, it is subject to the application of Rule 1.2, which provides that:

> These rules shall be liberally construed to secure just, speedy, and inexpensive determination of the issues presented. In special cases and for good cause shown, the Commission may permit deviations from the rules.

Based on the foregoing discussion, we affirm the October 11 Ruling's provision for shortening time for comments and replies on the Proposed Settlement.

4.2.3. Adequacy of the Comment Process

Raising concerns similar to those regarding the shortened comment period, some parties contend, in effect, that the settlement rules' provision for comments and replies on the Proposed Settlement is inadequate in this proceeding. CCSF asserts that it has had no meaningful opportunity to have its concerns considered or addressed. Shell Energy contends that the settlement review process was flawed because ESPs, CCAs, and their customers were not consulted about or invited to participate in the settlement process. CCA/Direct Access Parties raise due process concerns based on the grounds that negotiations leading to the Proposed Settlement were conducted without notice that DA and CCA issues were being discussed.

The settlement rules do not require that all parties participate in settlement discussions. In fact, the rules explicitly accommodate settlements among a limited number of parties to a proceeding by (1) providing that settlements need not be joined by all parties (Rule 12.1(a)), and (2) providing that, prior to signing a settlement, the settling parties shall convene at least one conference with notice and opportunity to participate provided to *all* parties (Rule 12.1(b)). As Joint Parties observe, the fact that some parties may not be invited to participate in settlement negotiations is the very reason why the rules allow for non-settling parties to file comments. Additionally, as the Commission has stated:

> Our settlement rules do not require that all interested parties participate in the preliminary discussions leading to the settlement. Indeed, if that were the case, parties might find it difficult to reach settlements as it is often easier to reach consensus with a few parties

first, and then attempt to get consensus from a broader array of parties.[23]

CCSF notes that in D.06-05-034, the Commission modified a settlement that would have allocated potential Competition Transition Charge costs to parties that were not represented in settlement discussions. However, in that case the affected parties were not parties to the proceeding. In this case, affected parties were given notice of the settlement, and six parties (or party groups) actively participated by submitting comments.

The process followed here is in conformance with the Commission's settlement rules, and parties have had the opportunity to file comments and replies on the Proposed Settlement as well as file comments and replies on the proposed decision. We find that parties were given notice of the settlement and had the opportunity to be heard, and conclude that the process followed here meets due process requirements.

CCA/Direct Access Parties request that hearings or workshops on the Proposed Settlement be scheduled. CCA/Direct Access Parties request is limited to three issues:

1. Whether unbundled customers would derive any benefits from IOU procurement under the proposed QF/CHP program, and if so what costs are associated with these benefits.
2. Whether the current cost allocation under D.06-07-029 is appropriate for "above market" costs associated with the QF/CHP program.
3. Whether the current cost allocation under D.06-07-029 should be extended from 10 years to 12 years for purposes of the QF/CHP program.

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[23] *Re Southern California Edison*, 64 CPUC 2d 241, 267.

CCA/Direct Access Parties argue that these issues should be considered on a comprehensive basis along with other IOU procurement/cost allocation issues. We will address cost allocation issues later in this decision to the extent necessary for considering the Proposed Settlement. However, we are persuaded that these are policy and legal issues that are appropriately addressed by notice and comments. We find that neither hearings nor workshops on the Proposed Settlement are necessary.

4.2.4. Scope of the Consolidated Proceedings

CARE claims that the Proposed Settlement is not allowed within the scope of R.06-02-013 in light of a 2006 scoping ruling providing that that proceeding will not be the place to re-litigate procurement targets already established elsewhere. However, CARE fails to explain how approval of the Proposed Settlement would constitute relitigation of earlier proceedings. CARE's claim is therefore without merit.

CCA/Direct Access Parties contend that the following three issues are outside the scope of the consolidated proceedings, contrary to Rule 12.1(a):[24]

1. Whether the Commission has the authority to establish GHG emissions reduction targets for ESPs and CCAs, and if so what those targets should be.
2. Whether the Commission has the authority to impose CHP procurement requirements on ESPs and CCAs, and if so, what those requirements should be.

[24] Rule 12.1(a) provides in part that "[r]esolution shall be limited to the issues in that proceeding and shall not extend to substantive issues which may come before the Commission in other or future proceedings."

3. Whether the Commission has the authority to allocate costs incurred by the IOUs under a CHP procurement program to all customers, and if so what costs should be allocated to all customers and how should that allocation be implemented.

We are not persuaded by these arguments. The issue of cost allocation to ESPs and CCAs is within the scope of R.06-02-013, a phase of which dealt with stranded costs, non-bypassable charges, and ESP/CCA customer responsibility for those charges. D.08-09-012, issued in R.06-02-013, addressed the allocation of QF contract costs to ESP and CCA customers. Also, in D.06-06-071, issued in R.04-04-003, the Commission determined that GHG-related issues for the IOUs, ESPs, and CCAs were within the noticed scope of R.04-04-003. Further, the question of Commission jurisdiction over CCAs and ESPs for purposes of GHG emissions reductions has been addressed in R.04-04-003 and is within the scope of that proceeding. Finally, we note that the Amended Scoping Memo provides that the Proposed Settlement is within the scope of the consolidated proceeding.

4.2.5. Staff Involvement in the Settlement Process

The joint motion for approval of the Proposed Settlement notes that Commission staff representatives were involved in the framing of settlement discussions in May 2009. In their reply comments, Joint Parties also note that during the actual settlement negotiations, staff representatives were involved in some but not all of the meetings. CARE states the following regarding staff participation:

> CARE objects to [Commission] staff exercising undue influence on the settlement as specific evidence of constructive retaliatory action against CARE and its members. We believe this is because we represent low-income, people of color and native people ratepayers in our complaints and pleadings before the FERC and CPUC which is a protected activity under both the Federal and State Constitutions and civil rights statutes. The [Commission] continues to seek to

> deny us our constitutional right to petition the government for grievances.[25]

CARE offers no evidence, argument, or other legal basis to support any allegation that staff involvement in the settlement discussions was in any way improper. In particular, CARE provides no evidence that staff exercised "undue influence," has or had any intent to retaliate against CARE, or actually retaliated against CARE. Likewise, CARE offers no evidence, argument, or other legal basis to support the allegation that the Commission seeks or has sought to deny CARE's right to petition government. CARE is admonished that making such groundless and frivolous claims is wholly inappropriate and may constitute a failure to maintain the respect that is due the Commission.

Therefore, we dismiss as baseless CARE's claims regarding staff participation in the settlement process and the alleged denial of its rights.

4.3. Review of the Proposed Settlement

4.3.1. Overview

As discussed below, the Proposed Settlement is reasonable in light of the record. It is the result of lengthy, arms-length settlement negotiations and compromise among divergent interests. The settling parties are experienced with Commission processes and well-represented, and we are convinced that their respective decisions to sign the Proposed Settlement were, in each case, the product of informed choices. None of the Joint Parties received everything it wanted, and each of them was required to compromise in specific areas so that an overall settlement could be reached.

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[25] CARE comments at 8-9.

The Joint Parties addressed the major issues regarding the development and operation of CHP in California historically and going forward. The Proposed Settlement resolves numerous complex and contentious disputes pending at the Commission. These disputes involve QF pricing, QF SOC terms and conditions, the amount of QF/CHP capacity included in long-term planning, retrospective SRAC price adjustments dating back to 2000, and numerous other disputes concerning the implementation of the Commission's current QF Program. The Proposed Settlement effectively resolves pending disputes by requiring the Joint Parties to either withdraw pending motions and applications or release certain claims.

In addition, the Proposed Settlement precludes the Joint Parties from raising new retrospective SRAC adjustment claims as long as certain conditions are met. Thus, the Settlement not only resolves past disputes, but it also limits potential future disputes regarding SRAC energy prices.

Additionally, the Proposed Settlement provides a comprehensive framework for a QF/CHP Program in California that will encourage the development of efficient CHP, and provide environmental benefits through reduced GHG emissions.

From the standpoint of the IOUs, QF representatives, and ratepayer advocates that signed the Proposed Settlement, the case in favor of adopting it is compelling. The relationship among these parties has been contentious and litigious for most of the last 30 years. It is apparent that the disputes arising from this relationship impose large costs upon the parties as well as the Commission, the FERC, and the courts. The uncertainty may also be delaying implementation of state policy goals for CHP and GHG emissions reductions. It is clearly in the public interest to adopt a settlement framework that resolves the ongoing

controversies in a manner that is acceptable to the settling parties, provided that the settlement otherwise meets our criteria for approval. To the extent that consideration of the Proposed Settlement requires balancing the interests of various parties, including non-settling parties, we find that significant weight should be given to this public interest benefit.

4.3.2. Elements of the Proposed Settlement

4.3.2.1. CHP Goals and Objectives

The state policy objectives addressed by the Proposed Settlement include requirements of Pub. Util. Code Section 372(a):

> It is the policy of the state to encourage and support the development of cogeneration technology as an efficient, environmentally beneficial, competitive energy resource that will enhance the reliability of local generation supply, and promote local business growth.

The Proposed Settlement is also intended to address the policy objective of the Energy Action Plan II, which states:

> The loading order identifies energy efficiency and demand response as the State's preferred means of meeting growing energy needs. After cost effective efficiency and demand response, we rely on renewable sources of power and distributed generation, such as combined heat and power applications. To the extent efficiency, demand response, renewable resources, and distributed generation are unable to satisfy increasing energy and capacity needs, we support clean and efficient fossil-fired generation.

The Proposed Settlement explicitly provides that the purpose of the State CHP Program is to encourage the continued operation of the state's existing CHP facilities, and the development, installation, and interconnection of new, clean and efficient CHP Facilities, in order to increase the diversity, reliability, and environmental benefits of the energy resources available to the State's electricity consumers. The State CHP Program is designed to retain existing efficient CHP,

support the change in operations of inefficient CHP to provide greater benefits to the State, and replace CHP that will no longer be under contract with the IOUs with new, efficient CHP. Thus, with respect to implementation of state policy objectives for CHP, the Proposed Settlement is consistent with state and Commission policy and law.

4.3.2.2. GHG Emissions Reductions from CHP Facilities

Enacting AB 32 to reduce California's GHG emissions, the Legislature declared that global warming caused by GHG emissions poses a serious threat to California.[26] Since AB 32 was enacted, the Commission has repeatedly indicated that reduction in GHG emissions is a key policy objective for the utility industry.[27] The Commission, CARB and the CEC have all recognized that efficient and clean CHP can reduce GHG emissions.[28] CARB has made CHP one element in its Scoping Plan to implement AB 32 and reduce GHG emissions in California.

The State CHP Program created by the Proposed Settlement is both intended and designed to secure additional GHG emissions reduction benefits, consistent with the reduction targets of AB 32, by adding new, efficient CHP. It would do so by:

- Setting GHG Targets for all Commission-jurisdictional LSEs, including the IOUs, ESPs and CCAs. The targets are intended to facilitate LSEs meeting CARB's CHP goals by December 31, 2020.

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[26] Cal. Health and Safety Code, § 38501, *et seq*.

[27] *See e.g.*, D.07-12-052 at 2-5, 243; D.08-10-037 at 2-3.

[28] D.08-10-037 at 237-238, CARB Scoping Plan at 43-44, 2009 IEPR at 97-98.

To the extent CARB modifies its CHP goals, the Settlement provides flexibility to incorporate any modification in them.

- Creating incentives for upgrading existing, inefficient CHP facilities, or, alternatively, for facilities that cannot participate or are unsuccessful in the CHP Program, providing an orderly exit strategy. All CHP facilities will be able to participate in the CHP RFOs, and some will be able to participate in other procurement processes and obtain contracts that facilitate the financing, construction and operation of upgraded and/or new facilities. The CHP RFO PPA includes efficiency performance obligations.
- Requiring all Commission-jurisdictional LSEs to file semi-annual compliance reports that include GHG emissions information. This will allow the Commission and other interested parties to monitor the GHG emissions resulting from the QF/CHP Program and to determine if LSEs are obtaining the GHG benefits expected, and to address any shortfalls in expected GHG emission reduction benefits in a timely manner.

With respect to its design for achieving state policy objectives for GHG emissions reductions, the Proposed Settlement is consistent with the law. We address below claims that setting GHG Targets and reporting requirements for all LSEs contravenes the law in other respects.

4.3.2.3. Competitive Procurement

The Commission has repeatedly stated a policy preference for competitive wholesale energy markets and competitive solicitations to procure new resources in those markets.[29] Yet, currently, CHP QF contracting is not conducted through a competitive solicitation process. The Commission's early QF Program involved the issuance of standard offer contracts that a QF of any technology could sign. In recent years, the CHP QF Program has primarily been sustained by extensions

[29] D.04-01-050 at 63, D.07-12-052 at 205, D.08-11-008 at 20.

of existing contracts and the availability of short-term contracting options. In D.07-09-040, however, the Commission ordered the IOUs to offer QFs five-year as-available and ten-year firm PPAs. Despite considerable efforts, those contracts have never been finalized or made available to QFs.

Under the Proposed Settlement, a new, competitive procurement process will be adopted in lieu of the Commission-ordered contracts. In particular, the Proposed Settlement creates a CHP RFO process that allows the IOUs to run competitive, transparent RFOs for CHP resources. This is a significant change in CHP procurement. It puts CHP resources into a process similar to the one currently used for conventional and RPS procurement. This process will result in competitive prices that are ultimately subject to Commission approval.

The Commission has also provided for other methods for utility procurement, such as bilateral contracting.[30] The Proposed Settlement provides similar additional flexibility to the IOUs in the CHP procurement process by including not only RFOs, but also other processes such as bilateral contracting, AB 1613 feed-in tariffs, a PURPA Program for QFs under 20 MW, utility-ownership, and other procurement options. The Proposed Settlement also includes a regulatory approval process for CHP PPAs that result from these procurement options. In short, the Proposed Settlement adopts a procurement process for QF and CHP resources that is competitive, flexible, and allows for sufficient regulatory oversight to ensure that the IOUs are able to minimize costs and select appropriate resources for California customers. It is consistent with,

[30] *See e.g.* D.03-12-062 at 38-40.

and gives effect to, the Commission's preference for competitive procurement, and in this respect it is consistent with the law.

4.3.2.4. Energy and Capacity Prices

The Proposed Settlement has several pricing and contracting options. First, CHP PPA prices will be set on a contract-specific basis through a competitive RFO process subject to Commission approval. Allowing CHP developers to bid into the RFO will allow them to propose prices that are sufficient to finance and develop their facilities, while at the same time allowing the IOUs to pick the best offers based on a number of criteria, including price. An RFO procurement process, similar to the processes currently used for conventional and RPS contracts, will result in competitive prices that are ultimately subject to Commission approval. The Proposed Settlement expressly provides that an IOU may use excessive RFO prices as a justification for failing to meet the MW Targets and GHG Targets.

Second, the Proposed Settlement establishes SRAC prices for the Transition PPAs, Legacy PPAs, QF contracts that are still available under PURPA for facilities less than 20 MW, and the Optional As-Available PPAs. The SRAC included in the Proposed Settlement is based on the current Commission-approved SRAC pricing formula[31] and achieves the goal of ultimately transitioning to a market heat rate to determine SRAC by January 1, 2015.[32] The Joint Parties point out that there is a long history of setting SRAC prices through

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[31] D.07-09-040 at 67, Resolution E-4246 (July 10, 2009) (adopting Market Index Formula).

[32] D.07-09-040 at 68.

settlements, and that the Proposed Settlement resolves this very contentious issue through an arms-length negotiation among adverse parties. As such, we concur that the established SRAC prices are reasonable and in the public interest.

Finally, the Proposed Settlement includes capacity prices that have already been approved by the Commission in D.07-09-040 or are already incorporated in existing contracts.

We find that the energy and capacity pricing provisions of the Proposed Settlement are reasonable and consistent with recent commission decisions.

4.3.2.5. QF/CHP Targets

The Proposed Settlement establishes MW Targets for each IOU. In addition, it establishes a GHG Target for all Commission-jurisdictional LSEs. These targets are consistent with the CHP targets included in CARB's Scoping Plan, but they can be adjusted to reflect changes by CARB in CHP targets for GHG emissions reductions and if a lack of need is asserted by an IOU and determined by the Commission.

The Joint Parties state that the MW Targets are the result of heated and protracted negotiations among parties with divergent interests. As noted earlier, the Commission has recognized that a settlement of contested issues among parties with divergent interests is reasonable and in the public interest. That is the case here. We address concerns regarding the applicability of the targets to all LSEs below.

4.3.2.6. Reporting and Auditing

The Commission has encouraged transparency in RFO and procurement processes.[33] The Proposed Settlement includes several provisions that promote such transparency. Commission-jurisdictional LSEs are required to submit semi-annual reports concerning their progress toward achieving the MW Targets and GHG Targets. The Proposed Settlement contains detailed requirements for the type of information to be included in the semi-annual reports. This will provide the Commission and interested parties with information concerning the progress of the QF/CHP Program, and do so with sufficient frequency that the Commission will have an opportunity to address issues and concerns as they arise, rather than waiting until the end of the program to address these issues.

The Proposed Settlement also provides for a CHP Auditor to be used for the CHP RFOs if an IOU does not or anticipates that it will not meet its MW Targets or GHG Targets. The CHP Auditor provisions provide the auditor with access to confidential IOU information, to review the CHP RFO process, while including appropriate safeguards to prevent the disclosure of confidential information. The CHP Auditor can review the results of the IOU CHP RFOs, and raise any concerns about the RFOs to the Commission or the Energy Division. This provides an additional level of transparency in the implementation of the QF/CHP Program.

The Proposed Settlement's provision for semi-annual reports and a CHP Auditor Process are consistent with Commission policies supporting greater public information and transparency. We address concerns about applicability

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[33] *See e.g.* D.07-12-052 at 148-151.

of reporting requirements to all jurisdictional LSEs below. The first semi-annual progress report should be filed on the first business day of the month following the Settlement Effective Date.

4.3.2.7. *Pro Forma* PPAs and Legacy of QF PPA Amendment

The Commission has previously approved the use of *Pro Forma* PPAs for QFs, as well as for use in RFOs for conventional and RPS resources. The Proposed Settlement includes the following four *Pro Forma* PPAs that were developed for specific circumstances and a *Pro Forma* Legacy QF PPA Amendment for each IOU:

- **Legacy QF PPA Amendments:** These *Pro Forma* Amendments offer QFs under unexpired Legacy QF PPAs as of the Settlement Effective Date (Legacy QFs) the option of amending the energy payment terms of their QF PPAs by selecting one of several payment options and executing the Legacy Amendment within 180 days of the Settlement Effective Date.
- **Transition PPA:** This *Pro Forma* PPA offers an existing CHP facility whose existing QF PPA or extension thereof is scheduled to expire prior to 2015 the option to continue existing deliveries until July 1, 2015.
- **CHP RFO PPA:** This *Pro Forma* PPA will be issued in the CHP RFOs to procure deliveries from CHP and other eligible generators larger than five MW.
- **Optional As-Available CHP PPA:** This *Pro Forma* PPA offers gas-fired CHP facilities with nameplates greater than 20 MW, but annual average deliveries less than 131,400 megawatt-hours (MWh), the option to make as-available deliveries to meet criteria specified in the Proposed Settlement. The facilities procured under this contract would be subject to a program cap and measured on a deliver basis.
- **PPA for QFs of 20 MW or Less:** This *Pro Forma* PPA offers QFs of 20 MW or less, including small power producers and

renewable energy resources, the option to make firm or as-available sales to the IOUs.

The establishment of these PPAs and amendments represents a significant achievement that provides the foundation for a new QF/CHP program. This element of the Proposed Settlement is consistent with Commission policy and in the public interest.

4.3.2.8. Operationally Flexible Resources

Recognizing the amount of intermittent, renewable resources that will be added in California as a result of the RPS requirements, the Commission has encouraged the development of operationally flexible conventional resources to assist with renewables integration.[34] One of the challenges for CHP facilities is that they are often operated as baseload facilities and/or need to operate consistent with the needs of a thermal host. Accordingly, these facilities often lack significant operational flexibility. Under the Proposed Settlement, the IOUs can contract with a limited group of existing CHP facilities that convert from a QF facility to a dispatchable generation facility. The dispatchable generating facility is referred to in the Proposed Settlement as a "Utility Prescheduled Facility."

This aspect of the Proposed Settlement has important benefits and thus is in the public interest. If an existing CHP facility converts to a dispatchable facility, it gives the IOU the ability to dispatch the resource when it is needed, rather than the facility providing baseload generation or operating based on a thermal host's needs. This is similar to the contracts the IOUs have with peaking

[34] *See e.g.* D.07-12-052 at 106, 111-112, 115.

and other existing conventional generation facilities. It should prevent any incentive to maintain a facility as a CHP resource, when a thermal need no longer exists, simply because of an overall CHP program target. Also, conversion to a dispatchable facility may ultimately result in GHG emission reductions. If an existing CHP facility operates as a baseload facility and is not efficient, its GHG emissions may be higher than a new conventional facility or other resource options. By giving the IOU the flexibility to dispatch a facility, the utility can optimize its GHG emissions reductions by choosing to operate facilities with the lowest total GHG emissions.

4.3.3. Contested Issues

4.3.3.1. Introduction

Most elements of the Proposed Settlement are uncontested by most of the parties in these proceedings. Four of the five parties that filed comments in opposition to one or more aspects of the Proposed Settlement (CCSF, CMUA, Shell Energy, and CCA/Direct Access Parties addressed those portions of the settlement that pertain to procurement requirements and reporting obligations for ESPs and CCAs, and cost allocation issues, including non-bypassable charges for departing load customers. These parties recommend rejection of the Proposed Settlement only if it is not modified to address their proposed changes. Only CARE urges rejection of the Proposed Settlement as a whole. In Section 4.3.3 we address the recommendations and arguments of these parties.

4.3.3.2. Commission Jurisdiction Regarding ESPs and CCAs

Under the Proposed Settlement, the CARB CHP goal is allocated among Commission-jurisdictional LSEs based on their respective percentage of total retail sales. This allocation is used to establish GHG Targets for all LSEs, including the IOUs, ESPs and CCAs. The Proposed Settlement provides that the

Commission can require that ESPs and CCAs procure their portion of the GHG Emissions Reduction Targets for their own customers. While it does not dictate the procurement method by which ESPs and CCAs will need to comply with this requirement, it does require semi-annual reporting to ensure that these Commission-jurisdictional entities are making progress toward their targets. Alternatively, the Proposed Settlement provides that the Commission can require the IOUs to procure the ESP and CCA customers' portion of the GHG Emissions Reduction Targets, in which case the ESPs and CCAs will pay the net capacity costs associated with the CHP procured on their behalf.

Parties representing ESPs and CCAs contend that the Commission lacks jurisdiction to require them to participate in the QF/CHP Program or to procure a share of the GHG emissions reduction targets established under the Proposed Settlement. As explained below, there are several statutory provisions and other reasons that we have the requisite jurisdiction to require ESP and CCA participation in the QF/CHP Program.

First, the QF/CHP Program in part implements CARB's CHP goals for the electrical sector. Under Pub. Util. Code Section 365.1(c)(1), enacted as part of Senate Bill (SB) 695,[35] ESPs should be subject to the same GHG emissions net reduction requirements as the IOUs. The Proposed Settlement provides for this by requiring either that ESPs procure their share of CHP to meet the GHG

[35] Stats. 2009, Ch. 337. Section 365.1(c), by its own terms, becomes effective "[o]nce the commission has authorized additional direct transactions pursuant to subdivision (b) … " D.10-03-022 authorized and implemented a plan for increased limits in the allowed level of direct access transactions within the IOUs' service territories.

Emissions Reduction Targets, or that the customers of the ESPs pay their share of the costs attributable to the IOUs' procurement of CHP on the ESPs' behalf.

Second, notwithstanding the opponents' argument that SB 695 only applies to "requirements" adopted by CARB, and not to the CARB Scoping Plan, the Scoping Plan itself indicates (at ES-1) that "the measures in this Scoping Plan will be developed over the next two years and be in place by 2012." To the extent that CARB modifies the CHP portion of the Scoping Plan in any final AB 32 rules or regulations, these changes will be reflected in adjustments to the GHG Emissions Reduction Targets. To the extent the GHG Emissions Reduction Targets are modified, the ESP and CCA obligations will also be modified to reflect any final CARB rules or regulations. Thus, whatever CHP-related rules and regulations CARB ultimately adopts for all LSEs as a part of its implementation of AB 32, the Proposed Settlement allows for the incorporation of these final rules and regulations for the IOUs, ESPs and CCAs.

Third, Pub. Util. Code section 365.1(c)(2), enacted as part of SB 695, requires the Commission to allocate the net capacity costs and resource adequacy benefits to all customers, including CCAs, ESP and CCA customers, when it authorizes or directs the IOUs "to obtain generation resources that the commission determines are needed to meet system or local area reliability needs for the benefit of all customers in the electrical corporation's distribution service territory." By approving the Proposed Settlement and directing the IOUs to meet the CHP procurement targets included on behalf of all retail customers in their service territories, the Commission would trigger this provision of SB 695, since CHP resources provide system and local area reliability benefits, commensurate with their Net Qualifying Capacity.

Fourth, under Pub. Util. Code Section 366.2(f)(2), the Commission is required to ensure that CCA customers reimburse the IOUs for their share of procurement costs attributable to the customer. Accordingly, CCA customers should be responsible for their share of the costs of the QF/CHP Program.

Fifth, the Commission has determined that where DA and CCA customers benefit from procurement, these customers should pay their share of the procurement costs. For example, it has authorized the allocation of new generation resource costs to DA and CCA customers because these customers benefitted from the system reliability provided by the new generation resources.[36] It has also allocated GHG compliance costs and certain locational costs associated with CHP facilities developed under AB 1613 to DA and CCA customers because these customers benefitted from the AB 1613 program.[37]

Finally, we note that in 2006 the Commission adopted a load-based cap for GHG emissions and indicated that it intended to develop a GHG reduction program in the longer term.[38] At that time, ESPs asserted that the Commission did not have jurisdiction to apply GHG-related requirements to them.[39] The Commission rejected these arguments, noting that "[a]s a general policy, we believe it is imperative that GHG reduction goals and responsibilities be shared as broadly as possible."[40] In addition, the Commission determined that it had

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[36] D.06-07-029 at 7.

[37] D.09-12-042 at 21-25, aff'd, D.10-04-055 at 11-18.

[38] D.06-02-032 at 2-3.

[39] *Id*. at 25-27

[40] *Id.* at 26.

"direct authority" to regulate CCA and ESP procurement activities related to GHG insofar as the determination of those targets is "germane to the regulation of public utilities" and promotes equity.[41] On rehearing the Commission again rejected the argument that it has no jurisdiction over ESPs and CCAs on GHG-related issues, citing, in part, its general authority over "public utilities" in Public Utilities Code section 701.[42] It also noted that exempting ESPs and CCAs from GHG-related requirements would give these LSEs an improper competitive advantage over the IOUs.[43]

We concur with the Joint Parties that the same argument applies in this proceeding, and that if the ESPs and CCAs were exempted from the GHG Emissions Reduction Targets, they would potentially have an improper competitive advantage because they would not be required to procure CHP. For this reason we reject Shell Energy's argument that the Proposed Settlement puts ESPs at a competitive disadvantage because they cannot compete with the IOUs for CHP resources. Similarly, we reject the CCA/Direct Access Parties' assertion that the Proposed Settlement is "fundamentally unfair" because it imposes GHG Emissions Reduction Targets on the ESPs and CCAs and not just IOUs.

We conclude that both California statutory law and Commission precedent fully support the Commission's jurisdiction to adopt the portions of the Proposed Settlement that are applicable to the ESPs and CCAs.

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[41] *Id*.

[42] D.06-06-071 at 20.

[43] *Id*.

4.3.3.3. Cost Allocation Issues

The CCA/Direct Access Parties assert that if the Commission determines that the IOUs should procure CHP on behalf of the ESPs and CCAs, the Proposed Settlement improperly applies the SB 695 cost allocation methodology set forth in Pub. Util. Code section 365.1(c)(2). According to the CCA/ Direct Access Parties, the statute requires a determination that a generation resource is needed for reliability, and such a determination has not been made for CHP. However, CHP resources count toward resource adequacy requirements and provide system and local reliability benefits commensurate with their Net Qualifying Capacity. The "Goals and Objectives" section of the Proposed Settlement specifically cites the reliability benefits of CHP procurement. Thus, a requirement for procurement of CHP by the IOUs fits squarely within the parameters of SB 695.

CCSF argues that the non-bypassable charge approved in D.08-09-012 should not be extended from 10 years to 12 years. In response, the Joint Parties note that they are not seeking a blanket modification of the D.08-09-012 requirements to expand the recovery period for all PPAs from 10 years to 12 years. Rather, because some PPAs under the QF/CHP Program can have a duration of up to 12 years, the Joint Parties contend that it is appropriate for purposes of the Proposed Settlement to permit extending the 10 years in D.08-09-012 to 12 years to ensure recovery of the QF/CHP program costs that will be incurred over the entire term of the PPAs. We concur that the extension is reasonable and will therefore approve it. The Commission has extended the 10-year non-bypassable charge limitation in other areas, most notably with RPS

contracts, which are recovered over the life of the PPA and thus may be recovered for a period substantially longer than 10 years.[44]

We conclude that the cost allocation provisions of the Proposed Settlement are fair, reasonable, and consistent with California law.

4.3.3.4. CMUA's Requested Modifications

CMUA proposes modification to the language in Section 6.3.4 and the deletion of Section 6.3.5. We find these modifications to be unnecessary and decline to make them. The Proposed Settlement recognizes that the POUs are not subject to Commission jurisdiction, and it does not impose any GHG Emissions Reduction Targets on them. Section 6.3.4 simply acknowledges that entities not regulated by the Commission should be responsible for a portion of the GHG Emissions Reduction Targets. In approving the Proposed Settlement, the Commission will not be imposing a GHG Emissions Reduction Target on the POUs. Similarly, Section 6.3.5 simply states that the Joint Parties support GHG Emissions Reduction Targets for the POUs. Again, this does not impose an obligation on the POUs.

CMUA also proposes deleting provisions in the Proposed Settlement that would require IOU bundled customers who depart bundled service to become municipal utility customers (MDL) to bear a share of the IOU costs incurred on their behalf. CMUA bases its argument primarily on D.08-09-012. In the context of the Proposed Settlement, we concur with the Joint Parties that it is appropriate to permit a deviation from D.08-09-012 related to MDL as a part of our approval of the Proposed Settlement. In D.08-09-012, the Commission exempted MDL

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[44] D.04-12-048 at 63.

from stranded cost responsibility for new generation resources because the load forecast to determine new resource needs takes into account the departure of customers for municipal service. Here, however, the GHG Emissions Reduction Targets are not based on load forecasts that exclude MDL, but rather on actual retail sales data that includes all current bundled service customers, even if some of those customers later depart for municipal service. Because the IOUs' GHG Emissions Reduction Targets obligations are based on their current bundled service customers' retail sales (as compared to future load forecasts that account for departing customers), to the extent that a customer departs, that customer should bear its share of the costs incurred on its behalf. The Proposed Settlement's methodology for allocating the GHG Emissions Reduction Targets reflects a fair allocation of these targets among all customers.

As requested by CMUA, we clarify here that adoption of the Proposed Settlement does not alter existing non-bypassable charge (NBC) agreements between POUs and IOUs. NBC payment provisions in existing NBC agreements are deemed to cover all CHP Program costs and no additional NBCs or other CHP Program costs will be imposed on customers covered by existing NBC agreements.

4.3.3.5. Federal Preemption Claims

CARE reargues portions of a complaint that it recently filed at the FERC, asserting that the Commission does not have authority to approve the Proposed Settlement or any of the underlying *pro forma* PPAs or amendments. We find the arguments proffered by CARE unpersuasive and therefore reject them. The Proposed Settlement is intended to resolve disputes that are currently pending at the Commission, and CARE fails to explain why Commission review of a settlement to resolve these pending disputes is improper. Also, the Proposed

Settlement establishes a QF/CHP Program for the State, consistent with California statutory law and policy, yet CARE provides no explanation as to why the Commission does not have jurisdiction to approve a settlement that establishes a QF/CHP Program pursuant to California statutes and policy.

CARE also claims that approval of the Proposed Settlement would constitute approval of a PPA without FERC approval and thus not be lawful. However, approval of the *pro forma* PPAs and amendments is clearly distinguishable from mandating that a contract's rate be set at a specific price. Moreover, the prices included in the Proposed Settlement were negotiated between the Joint Parties and were not mandated by the Commission. In addition, the Commission's preapproval of a PPA, which will be set at market rates, is pursuant to Pub. Util. Code sections 380 and 454.4(d), ensuring that the utilities' resource adequacy needs are met and determining that the IOU will not later be subject to a reasonable review proceeding.

Finally, CARE asserts that the Proposed Settlement violates a recent FERC order, which granted the Commission's request for clarification of the FERC's declaratory order involving the AB 1613 feed-in tariffs.[45] In particular, the FERC's clarification order has recognized that states are allowed a "wide degree of latitude" in setting avoided cost rates.[46] However, in terms of the SRAC terms of the Proposed Settlement, CARE fails to explain how the Proposed Settlement would violate the FERC's regulations concerning avoided cost rates.

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[45] *See, California Public Utilities Commission, et al.,* 133 FERC ¶ 61,059.

[46] *See, id.* at 24.

4.3.3.6. FERC Review of PURPA 210(m) Application

CARE asserts that FERC should review the Proposed Settlement before it is considered by the Commission. We reject this argument. The Proposed Settlement resolves certain state law disputes that are outstanding at the Commission and establishes a California QF/CHP Program, and is therefore appropriately subject to review by the Commission at this time.[47] Also, the Joint Parties' proposal to seek Commission approval of the Proposed Settlement first, before filing the PURPA termination application at FERC, is entirely appropriate. As a part of their PURPA termination application, the IOUs will reference the Proposed Settlement among other facts to demonstrate that the statutory requirements of Section 210(m) are satisfied. This Commission first needs an opportunity to review and approve the Proposed Settlement before it can be referenced in any PURPA application filed at FERC.

Finally, CARE asserts that its federal due process rights will be violated as a result of the Commission reviewing the Proposed Settlement before the PURPA application is filed at FERC. However, as we have discussed earlier in this decision, CARE has been provided due process in this proceeding to challenge the Proposed Settlement. If the Proposed Settlement is approved and the IOUs file their PURPA application at FERC, CARE will have an opportunity to challenge that application at FERC consistent with FERC's rules and regulations. We find no basis for CARE's assertion that its federal due process rights will be violated.

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[47] Under the Proposed Settlement, the Joint Parties agree that the IOUs may file an application to terminate the IOUs' PURPA obligations for QFs exceeding 20 MW under Section 210(m) and 18 C.F.R. §§ 292.309 – 292.310.88.

4.3.4. Alternatives for Cost Allocation to ESPs and CCAs

As noted earlier, the Proposed Settlement provides for the Commission to choose one of two alternative approaches for allocating CHP procurement costs to ESPs and CCAs. One alternative, preferred by the Joint Parties, is to require these entities to meet their portion of the GHG Target by procuring CHP resources. Alternatively, if it is found that ESPs or CCAs are unable or unwilling to meet their portion of the GHG Targets by contracting with CHP facilities, the IOUs have agreed under the terms of the Proposed Settlement to procure CHP resources on behalf of these entities. In this case, however, ESP and CCA customers would be responsible for the costs of CHP resources procured on their behalf by the IOUs. As noted above, this is consistent with the Commission's recent decisions on cost allocation when ESP and CCA customers benefit from IOU procurement on their behalf.

We are persuaded that, at this time, we should provide for IOU procurement of CHP resources on behalf of non-IOU LSEs and allocation of net capacity costs and associated benefits as described in Section 13.1.2.2 of the Term Sheet. This approach is reasonable as it addresses concerns regarding the ability of ESPs and CCAs to procure CHP resources. The administrative burden for the Commission would also be reduced since it would only need to monitor the IOUs for compliance. We remain open to consideration, in a future proceeding, of proposals whereby ESPs and CCAs may opt out of IOU procurement and procure CHP resources on their own behalf.

4.3.5. Conclusion

In the foregoing discussion we have touched upon several public interest benefits of the Proposed Settlement. We restate the benefits here.

- It resolves numerous pending disputes, motions and applications and will likely limit disputes in the future. Settlements of disputes benefit the public by reducing the costs and expense of litigation and conserving Commission resources.
- The Proposed Settlement creates a framework for a QF/CHP Program going forward that is aligned with other Commission-approved procurement processes. For example, under the Proposed Settlement, the IOUs will initiate a CHP RFO process, which is similar to how conventional and RPS resources are now procured. The Proposed Settlement also includes *Pro Forma* PPAs, which will allow CHP developers and the IOUs to reduce transaction costs and resources, which they would otherwise be expended in the time-consuming process of negotiating individual PPAs.
- The Proposed Settlement will encourage the continued operation of the State's existing CHP facilities and the development, installation and interconnection of new, clean, and efficient CHP facilities in order to increase the diversity, reliability and environmental benefits of the CHP energy resources.
- The Proposed Settlement creates a framework for achieving CARB's current CHP goals for the reduction of GHG emissions. GHG emissions pose a serious threat to the California economy, environment and the health and welfare of California's citizens. By providing a framework for the implementation of one aspect of the CARB Scoping Plan, the Proposed Settlement will facilitate efforts for California to meet its ambitious AB 32 goals. It encourages the retirement of existing, inefficient CHP facilities or repowering existing CHP facilities to make them more clean and efficient, and the development of new, clean and efficient CHP.
- The Proposed Settlement adopts a methodology for determining SRAC energy prices that is consistent with Commission decisions. The Proposed Settlement also provides for CHP PPA energy prices that are determined as a part of a competitive process, so that the prices accurately reflect a market price. Customers will benefit from clearly established SRAC prices, or prices determined through a competitive process. In addition,

the capacity prices adopted in the Proposed Settlement have already been approved by the Commission.

- The Proposed Settlement creates a transparent procurement process, benefitting the Commission, interested parties and the public.
- The Proposed Settlement establishes clear rules for pricing and treatment of existing QF PPAs. For example, under the Settlement, QFs with existing PPAs are encouraged to provide forecasting information to the IOUs so that the IOUs can more accurately forecast QF generation. QFs also have greater certainty as the SRAC formula is clearly established rather than being subject to continued and ongoing disputes.
- The Proposed Settlement provides for the equitable allocation of costs associated with the QF/CHP program to all Commission-jurisdictional LSEs.

The Proposed Settlement resolves several past and ongoing disputes and will likely resolve potential future disputes among the settling parties. It establishes a framework for a QF/CHP Program going forward that advances state policies encouraging efficient CHP operations and promoting GHG emissions reductions. It provides for reasonable cost allocation of QF/CHP program compliance among all Commission-jurisdictional LSEs. Taken as a whole, it constitutes a reasonable and appropriate resolution of the many QF issues presently under consideration before the Commission and in other forums. We have reviewed the elements of the Proposed Settlement and find that it does not contravene any provision of law. The Commission has a long-standing policy of supporting settlements:

> The Commission favors settlements because they generally support worthwhile goals, including reducing the expense of litigation,

> conserving scarce Commission resources, and allowing parties to reduce the risk that litigation will produce unacceptable results.[48]

We will therefore approve the Proposed Settlement without modification.

Rule 12.5 states the following regarding limits on the future applicability of a settlement:

> Commission adoption of a settlement is binding on all parties to the proceeding in which the settlement is proposed. Unless the Commission expressly provides otherwise, such adoption does not constitute approval of, or precedent regarding, any principle or issue in the proceeding or in any future proceeding.

The Joint Parties request that the Commission expressly find that the Term Sheet is precedential. For good cause shown, we do so here.

5. Disposition of Proceedings

In approving the Proposed Settlement, we set in motion a series of steps that should lead to eventual closure of each of the captioned proceedings. However, under the terms of the Proposed Settlement, these actions include approval by the FERC of a waiver of the IOUs' obligations under Section 210(m) of PURPA following approval of the settlement by this commission as well as written support by the CARB. It is therefore premature to close the proceedings. Accordingly, the proceedings will remain open but, subject to the discretion of the assigned Commissioner or ALJs, held in abeyance at this time. When the conditions precedent to the settlement effective date have been met, Joint Parties should so inform the Commission by filing a motion(s) for closure of these proceedings.

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[48] D.10-06-031 at 12.

6. Comments on the Proposed Decision

The proposed decision (PD) of ALJ Wetzell in this matter 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 by the CAISO, CCA/Direct Access Parties, CCSF, CMUA, Joint Parties, and Shell Energy. Reply comments were filed by CCA/Direct Access Parties, CCSF, Joint Parties, and Shell Energy.

In response to the comments and replies, we have made several non-substantive revisions to the PD that do not affect the recommended outcome, i.e., approval of the Proposed Settlement. In addition, as discussed in Section 4.3.4 above, we have made one substantive change: where the PD adopted the alternative cost allocation method set forth in Section 13.1.2.1 of the Term Sheet, we instead adopt the alternative method set forth in Section 13.1.2.2 of the Term Sheet.

7. Assignment of Proceedings

Michael R. Peevey is the assigned commissioner in A.08-11-001, R.06-02-013, R.04-04-003, R.04-04-025, and R.99-11-022. Amy Yip-Kikugawa is the co-assigned ALJ in A.08-11-001, R.04-04-003, and R.04-04-025. Douglas Long is the co-assigned ALJ in R.06-02-013. Bruce DeBerry is the co-assigned ALJ in R.99-11-022. Mark S. Wetzell is the co-assigned ALJ in A.08-11-001, R.06-02-013, R.04-04-003, R.04-04-025, and R.99-11-022.

Findings of Fact

1. Since the QF program was implemented in the 1980s, there have been numerous disputes between the QFs, IOUs, and ratepayer advocates involving contract terms, SRAC pricing, capacity payments, contract extensions and

terminations, and the availability of new contracts. Many of these disputes are still pending at the Commission.

2. To implement the QF program going forward, the Commission must address the impact of the CAISO's MRTU on SRAC and the QF program, disputes over the terms and conditions of the new QF Standard Offer Contract, and the amount of QF capacity to include in the LTPP.

3. State policy embodied in Pub. Util. Code Section 372(a) and Energy Action Plan II supports the development of efficient, environmentally beneficial CHP.

4. In adopting the CARB Scoping Plan pursuant to AB 32, the CARB noted that the widespread development of efficient CHP systems would help displace the need to develop new, or expand existing, power plants.

5. The CARB Scoping Plan sets a target of an additional 4,000 MW of installed CHP capacity by 2020, enough to displace approximately 30,000 GWh of demand from other power generation sources.

6. On September 24, 2010, parties in these proceedings and in R.03-10-003, R.07-05-025, and R.08-06-024 were given notice that a formal settlement conference would be convened on October 7, 2010 and that settlement documents would be posted on the IOUs' websites prior to the settlement conference.

7. The Term Sheet setting forth in detail the elements of the Proposed Settlement was posted on the IOUs' respective websites on October 4, 2010, as were the *pro forma* agreements and amendments.

8. Parties had opportunity to participate and ask questions about the Proposed Settlement at the October 7, 2010 settlement conference and to propound data requests.

9. The settlement rules do not require that all parties participate in settlement discussions.

10. The process followed in this proceeding for review of the Proposed Settlement is in conformance with the Commission's settlement rules.

11. The issues of cost allocation to LSEs and GHG emissions reductions for the LSEs, including the question of Commission jurisdiction over CCAs and ESPs for purposes of GHG emissions reductions, were addressed in one or more of the consolidated proceedings.

12. The Proposed Settlement is the result of arms-length settlement negotiations and compromise among divergent interests.

13. The settling parties are experienced with Commission processes and well-represented, and their respective decisions to sign the Proposed Settlement were, in each case, the product of informed choices.

14. The Joint Parties addressed the major issues regarding the development and operation of CHP in California historically and going forward.

15. The Proposed Settlement resolves numerous complex and contentious disputes pending at the Commission.

16. The Proposed Settlement provides a comprehensive framework for a QF/CHP Program in California that will encourage the development of efficient CHP and provide environmental benefits through reduced GHG emissions, consistent with the reduction targets of AB 32.

17. The Proposed Settlement adopts a procurement process for QF and CHP resources that is competitive, flexible, and allows for sufficient regulatory oversight to ensure that the IOUs are able to minimize costs and select appropriate resources for California customers.

18. The Proposed Settlement includes several provisions that promote the Commission's objective of transparency in RFO and procurement processes.

19. Converting an existing CHP facility to a dispatchable facility gives the IOU the ability to dispatch the resource when it is needed and may ultimately result in GHG emission reductions.

20. To the extent the GHG Emissions Reduction Targets are modified, the ESP and CCA obligations will also be modified to reflect any final CARB rules or regulations.

21. The Commission has determined that where DA and CCA customers benefit from procurement, these customers should pay their share of the procurement costs.

22. The Commission has allocated GHG compliance costs and certain locational costs associated with CHP facilities developed under AB 1613 to DA and CCA customers because these customers benefitted from the AB 1613 program.

23. The Commission has determined that GHG reduction goals and responsibilities be shared as broadly as possible.

24. The Commission has determined that it has authority to regulate CCA and ESP procurement activities related to GHG insofar as the determination of those targets is "germane to the regulation of public utilities" and promotes equity.

25. The Commission has determined that exempting ESPs and CCAs from GHG-related requirements would give these LSEs an improper competitive advantage over the IOUs.

26. The Proposed Settlement recognizes that the POUs are not subject to Commission jurisdiction and it does not impose any GHG Emissions Reduction Targets on them.

27. D.08-09-012 exempted MDL from stranded cost responsibility for new generation resources because the load forecast to determine new resource needs takes into account the departure of customers for municipal service.

28. The GHG Emissions Reduction Targets are based on actual retail sales data that includes all current bundled service customers, not load forecasts that exclude MDL.

29. Approval of the *pro forma* PPAs and amendments is distinguishable from mandating that a contract's rate be set at a specific price.

30. The Proposed Settlement resolves disputes that are outstanding at the Commission and establishes a California QF/CHP Program.

31. The cost allocation method set forth in Section 13.1.2.2. of the Term Sheet addresses concerns about the ability of ESPs and CCAs to procure CHP resources and reduces the administrative burden on the Commission.

32. The Proposed Settlement has numerous public interest benefits that include resolution of disputes, a QF/CHP Program that is aligned with Commission-approved procurement processes, continued operation of existing CHP facilities and the development of new CHP facilities, a framework for achieving CARB's current CHP goals for the reduction of GHG emissions, encouraging the retirement or repowering of inefficient CHP facilities, competitively determined CHP PPA energy prices, a transparent procurement process, and equitable allocation of costs associated with the QF/CHP program to all Commission-jurisdictional LSEs.

33. Pending action by the FERC and CARB and a determination that the Conditions Precedent to the Settlement Date have been met, it is premature to close the proceedings.

Conclusions of Law

1. In reviewing the Proposed Settlement, it would be inappropriate to apply the review standards for all-party settlements.

2. There is no connection between the evidentiary hearings held in R.06-02-013 in 2007 and the pending petition for modification that would warrant the strict application of Rule 12.1(a) to this proceeding.

3. Parties who did not join in the Proposed Settlement had adequate time to review and comment on it, and were not unreasonably burdened or prejudiced by the expedited comment schedule.

4. Because parties were given notice of the settlement and had the opportunity to be heard, the process followed in this proceeding for review of the Proposed Settlement meets due process requirements.

5. The Proposed Settlement is within the noticed scope of these consolidated proceedings.

6. Evidentiary hearings and/or workshops on the Proposed Settlement are not necessary for fair resolution of the issues.

7. With respect to implementation of state policy objectives for CHP and GHG emissions reductions, the Proposed Settlement is consistent with state and Commission policy and law.

8. Under Pub. Util. Code Section 365.1(c)(1), enacted as part of SB 695, ESPs should be subject to the same GHG emissions reduction requirements as the IOUs.

9. By approving the Proposed Settlement and directing the IOUs to meet the CHP procurement targets included on behalf of all retail customers in their service territories, the Commission would trigger Pub. Util. Code Section 365.1(c)(2), enacted as part of SB 695, which requires the Commission to allocate

the net capacity costs and resource adequacy benefits to all customers, including ESP and CCA customers.

10. Since Pub. Util. Code Section 366.2(f)(2) requires the Commission to ensure that CCA customers reimburse the IOUs for their share of procurement costs attributable to the customer, CCA customers should be responsible for their share of the costs of the QF/CHP Program.

11. Both California statutory law and Commission precedent fully support the Commission's jurisdiction to adopt the portions of the Proposed Settlement that are applicable to the ESPs and CCAs.

12. Because CHP resources count toward resource adequacy requirements and provide system and local reliability benefits commensurate with their Net Qualifying Capacity, a requirement for procurement of CHP by the IOUs is consistent with SB 695.

13. It is appropriate to provide an exception to the D.08-09-012 conditions to ensure recovery of the QF/CHP program costs that will be incurred over the entire term of the PPAs.

14. The cost allocation provisions of the Proposed Settlement, including provisions that allocate the costs of the QF/CHP Program among all LSEs, are fair, reasonable, and consistent with California law.

15. The Proposed Settlement's methodology for allocating the GHG Emissions Reduction Targets reflects a fair allocation of these targets among all customers.

16. Requiring MDL customers to bear a share of the IOU costs incurred on their behalf is appropriate, and it is therefore appropriate to approve an exception to D.08-09-012 related to MDL.

17. The Proposed Settlement resolves Commission-jurisdictional issues and is subject to review by the Commission.

18. Taken as a whole, the Proposed Settlement balances the interests at stake and constitutes a reasonable and appropriate resolution of the many QF issues presently under consideration before the Commission and in other forums.

19. The Proposed Settlement promotes state policy for CHP and GHG and does not contravene any provision of law.

20. The Term Sheet attached to the Proposed Settlement is precedential.

21. The Proposed Settlement is reasonable in light of the whole record, consistent with the law, and in the public interest.

22. The Proposed Settlement and attached *pro forma* PPAs and amendments should be approved without modification.

23. The cost allocation method set forth in Section 13.1.2.2. of the Term Sheet should be adopted.

24. Upon the effective date of the QF/CHP Program, exceptions to D.06-07-029, D.08-09-012, and D.07-12-052 should be allowed to the extent set forth in the order.

25. Upon the effective date of the QF/CHP Program, Commission-jurisdictional LSEs should be subject to and be governed by the provisions of the program.

26. These proceedings should remain open pending action on a motion for closure to be filed by Joint Parties if and when the conditions precedent to the settlement effective date set forth in the Settlement Agreement have been met.

O R D E R

IT IS ORDERED that:

1. The "Qualifying Facility and Combined Heat and Power Program Settlement Agreement," filed on October 8, 2010, is approved and adopted without modification.

2. The *Pro Forma* Purchase Power Agreements set forth in Attachment A, Exhibits 1 through 7 of the October 8, 2010 "Qualifying Facility and Combined Heat and Power Program Settlement Agreement" are approved and adopted without modification.

3. If and when the conditions precedent to the Settlement Effective Date set forth in the October 8, 2010 "Qualifying Facility and Combined Heat and Power Program Settlement Agreement" (Settlement Agreement) are met and the Qualifying Facility/Combined Heat and Power Program (QF/CHP Program) becomes effective, then exceptions to previous decisions are approved as follows:

(a) Exceptions to conditions in Decision (D.) 06-07-029 and D.08-09-012 will be permitted as set forth below:

(i) the relevant costs (either "above market costs" or "net capacity costs" as appropriate) of this QF/CHP Program can be recovered through Non-Bypassable Charges consistent with Section 13 of the Term Sheet attached to the Settlement Agreement; and

(ii) the same relevant costs of new Purchase Power Agreements entered into pursuant to the QF/CHP Program can be recovered through Non-Bypassable Charges for up to twelve (12) years consistent with Section 13 of the Term Sheet attached to the Settlement Agreement.

(b) The Procurement obligations in the Settlement Agreement and under the Renewables Portfolio Standard Program are permitted as exceptions to the Qualifying Facility Megawatts requirements set forth in D.07-12-052.

4. If and when the conditions precedent to the Settlement Effective Date set forth in the October 8, 2010 "Qualifying Facility and Combined Heat and Power Program Settlement Agreement" (Settlement Agreement) are met and the Qualifying Facility/Combined Heat and Power Program (QF/CHP Program) becomes effective, Pacific Gas and Electric Company, San Diego Gas & Electric Company, Southern California Edison Company, electric service providers, and community choice aggregators are subject to and shall be governed by the provisions of the QF/CHP Program set forth in the Settlement Agreement.

5. Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company shall procure combined heat and power resources on behalf of electric service providers (ESPs) and community choice aggregators (CCAs) and shall allocate the resource adequacy benefits and net capacity costs associated with this procurement to the ESPs and CCAs as described in Section 13.1.2.2 of the Term Sheet attached to the October 8, 2010 "Qualifying Facility and Combined Heat and Power Settlement Agreement."

6. Application 08-11-001, Rulemaking (R.) 06-02-013, R.04-04-003, R.04-04-025, and R.99-11-022 shall remain open pending action on a motion for closure to be filed by proponents, with the supporting documentation, of the October 8, 2010 "Qualifying Facility and Combined Heat and Power Program Settlement Agreement" (Settlement Agreement) if and when the conditions precedent to the settlement effective date set forth in the Settlement Agreement have been met. Subject to the discretion of the assigned Commissioner or Administrative Law Judge, the proceedings may be held in abeyance pending such motion and Commission action on such motion. The Settlement Agreement proponents shall file and serve, with copies also served on the Energy Division Director and the Chief Administrative Law Judge quarterly status reports, beginning three

months from today's order, and continuing until the motion for closure is filed, stating what actions have been completed and what actions remain to be completed before the conditions precedent have been met. The Commission decision that addresses the motion for closure will set the effective date of the Qualifying Facility/Combined Heat and Power Program set forth in the Settlement Agreement.

This order becomes effective today.

Dated _____, at San Francisco, California.

APPENDIX A

LINKS TO JOINT MOTION AND ATTACHMENTS, INCLUDING SETTLEMENT AGREEMENT, TERM SHEET, AND EXHIBITS

Joint Motion For Approval Of Qualifying Facility And Combined Heat And Power Program Settlement Agreement:

http://docs.cpuc.ca.gov/PUBLISHED/GRAPHICS/124871.PDF

Attachment A: Settlement Agreement:

http://docs.cpuc.ca.gov/PUBLISHED/GRAPHICS/124873.pdf

Attachment A: Settlement Agreement **Term Sheet:**

http://docs.cpuc.ca.gov/PUBLISHED/GRAPHICS/124875.PDF

Attachment A, **Exhibit 1: Amendment to Legacy QF PPA for PG&E:**

http://docs.cpuc.ca.gov/PUBLISHED/GRAPHICS/124877.PDF

Attachment A, **Exhibit 2: Amendment to Legacy QF PPA for SCE:**

http://docs.cpuc.ca.gov/PUBLISHED/GRAPHICS/124880.PDF

Attachment A, **Exhibit 3: Amendment to Legacy QF PPA for SDG&E:**

http://docs.cpuc.ca.gov/PUBLISHED/GRAPHICS/124884.PDF

Attachment A, **Exhibit 4: Transition PPA for existing Qualifying Cogeneration Facilities:**

http://docs.cpuc.ca.gov/PUBLISHED/GRAPHICS/124885.PDF

Attachment A, **Exhibit 5: CHP Request For Offers Pro-Forma PPA for CHP Facilities Participating in Solicitation:**

http://docs.cpuc.ca.gov/PUBLISHED/GRAPHICS/124886.PDF

Attachment A, **Exhibit 6: Qualifying Facility PPA for facilities 20 MW or less:**

http://docs.cpuc.ca.gov/PUBLISHED/GRAPHICS/124888.PDF

Attachment A, **Exhibit 7: Optional CHP PPA for eligible As-Available Facilities:**

http://docs.cpuc.ca.gov/PUBLISHED/GRAPHICS/124889.PDF

Attachment A, **Exhibit 8: Non-Disclosure Agreement for CHP Auditor:**

http://docs.cpuc.ca.gov/PUBLISHED/GRAPHICS/124890.PDF

Attachment A, **Exhibit 9: List of Members of Cogeneration Association of California:**

http://docs.cpuc.ca.gov/PUBLISHED/GRAPHICS/124891.PDF

Attachment A, **Exhibit 10: List of Members of California Cogeneration Council:**

http://docs.cpuc.ca.gov/PUBLISHED/GRAPHICS/124892.PDF

Attachment A, **Exhibit 11: List of Members of Energy Producers and Users Coalition:**

http://docs.cpuc.ca.gov/PUBLISHED/GRAPHICS/124893.PDF

Attachment B: Letter Agreement Between the CAISO and IOUs:

http://docs.cpuc.ca.gov/PUBLISHED/GRAPHICS/124894.PDF

(End of Appendix A)