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PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

I.D.# 8520

ENERGY DIVISION **RESOLUTION E-4242**

June 24, 2010

R E S O L U T I O N

Resolution E-4242. Pacific Gas and Electric Company (PG&E), San Diego Gas and Electric Company (SDG&E), and Southern California Edison Company (SCE) request approval of their Standard Offer Contract for Qualifying Facilities pursuant to Decision 07-09-040. The standard contract is approved with modifications.

By PG&E Advice Letter (AL) 3197-E, SDG&E AL 1958-E and SCE AL 2200-E, filed on January 14, 2008,
Supplemental advice letters PG&E AL 3197-E-A, SDG&E AL 1958-E-A and SCE AL 2200-E-A, filed on July 11, 2008, and
Supplemental Advice Letters PG&E (AL) 3197-E-B, SDG&E AL 1958-E-B, and SCE AL 2200-E-B, filed on December 10, 2008.

SUMMARY

This Resolution adopts, with modifications, the standard offer contract (SOC or the Contract) for use by qualifying facilities (QFs) proposed by PG&E, SDG&E and SCE (IOUs or Utilities) as ordered by Decision 07-09-040. The standard offer contract will replace the existing standard QF contracts upon their expiration, and new QFs shall sign the SOC. The SOC is a standard contract to be used by all three Utilities. Utility-specific Capacity Allocation Factors and Time of Delivery periods for energy and capacity, found in Exhibit D, shall be used in each Utility's contract. Upon adoption of this resolution, the Utilities are ordered to submit within 15 days a Tier 2 advice letter containing an updated contract that reflects the findings of this resolution. The SOC will go into effect upon approval of the Tier 2 Advice Letter.

BACKGROUND

The Commission ordered the IOUs to submit a proposed qualifying facility (QF) standard offer contract to replace expiring QF contracts.

Decision (D.) 07-09-040, hereafter referred to as 'the Decision', created new California qualifying facility processes. The Decision, among other policy changes, ordered the IOUs to submit a Tier 3 advice letter with a proposed qualifying facility standard contract. The Decision ordered a technical workshop within 60 days of its adoption to, among other things, consider the draft contract proposed by the Cogeneration Association of California and the Energy Producers and Users Coalition (CAC/EPUC) in their Opening Comments on the Alternative Proposed Decision of Commissioner Grueneich, filed on September 10, 2007. Energy Division held the workshop on November 14-15, 2007, and the Utilities were ordered by D.07-09-040 to file a Tier 3 advice letter with their proposed standard offer contracts within 60 days of the workshop.

Three applications for rehearing of D.07-09-040 were filed at the CPUC on October 25, 2007. The first was filed by the Utilities, The Utility Reform Network (TURN), and the Division of Ratepayer Advocates (DRA). A joint application for rehearing was also filed by the Cogeneration Association of California and the Energy Producers and Users Coalition (CAC/EPUC). Finally, an application for rehearing was filed by the California Cogeneration Council (CCC). On July 31, 2008, D.08-07-048 was adopted and addressing all three applications for rehearing of D.07-09-040.

On March 3, 2008, the Independent Energy Producers Association (IEP) and CAC/EPUC filed a joint petition for modification. D.08-09-024, addressing the joint petition for modification of IEP and CAC/EPUC, was adopted on September 18, 2008. The decision addressed a number of QF issues including one relating to the standard offer contract. Specifically, D.08-09-024 clarified the Commission's intention regarding a standard offer contract for small QFs (those under 20MW), stating that once standard offer contracts were adopted for large QFs, those contracts would be simplified and applied to small QFs.

Parties negotiated over contract terms resulting in the Filing of Supplemental Advice letters.

The Utilities filed advice letters numbered PG&E AL 3197-E, SDG&E AL 1958-E, and SCE AL 2200-E on January 14, 2008. Parties representing QFs filed protests challenging various aspects of the proposed standard offer contracts on February 19, 2008. The Utilities filed separate responses to the protests on March 11, 2008. In its reply protest, SCE proposed a two-phase process to seek resolution of all outstanding issues. In an email dated April 4, 2008, Energy Division adopted a two-phase approach to resolve outstanding issues. The first phase involved negotiations solely among the Utilities, in which they were tasked with developing a single standard offer contract across the three Utilities. The second phase included the Utilities and the QF parties working together to narrow the scope of outstanding issues. Energy Division direction required the Utilities to submit a matrix of agreed upon terms and conditions resulting from the two-phase negotiations on June 30, 2008. In a letter dated July 3, 2008, CAC/EPUC submitted its own version of the matrix stating its support or opposition to many of the terms and conditions agreed upon by the remaining parties. The Utilities circulated an updated draft of the Contract and solicited feedback before submitting supplemental advice letters on July 11, 2008. Furthermore, an additional matrix, known as the "Friday Night Matrix" in this resolution, was also developed but not officially submitted at the Commission until the Utilities filed the second supplemental advice letter filings. The Friday Night Matrix reflected the agreements among parties directly before the filing of the June 30th matrix. It is so named because the agreements were reached among the negotiation participants on the last Friday evening during the initial negotiation period. It is the Friday Night Matrix that is ultimately adopted with modifications in this resolution.

On July 11, 2008, PG&E, SDG&E and SCE filed supplemental advice letters, AL 3197-E-A, AL 1958-E-A, and AL 2200-E-A, respectively. The supplemental ALs contained an updated version of the SOC reflecting the agreements made during the negotiation process. On August 7, 2008, the QF parties protested the Utilities' supplemental advice letters. SCE filed a response to protests on August 28, 2008 in which it adopted several of the changes proposed by CCC in its protest.

Upon review by Energy Division, further negotiations were held in November of 2008 to discuss specific contract language related to the June 30th matrix as well as all outstanding issues not covered during the earlier negotiations. Meetings were held in San Francisco and Los Angeles between November 5, 2008 and November 19, 2008. On December 1, 2008, SCE circulated a draft SOC to parties for comment.

On December 10, 2008, PG&E, SDG&E and SCE filed supplemental advice letters, AL 3197-E-B, AL 1968-E-B, and AL 2200-E-B, respectively. In the supplemental ALs, the Utilities submitted an updated standard offer contract reflecting the agreements from the November and December, 2008 negotiations as well as the original agreements from the "Friday Night Matrix". QF parties filed protests on December 16, 2008, and SCE and the California Independent System Operator (CAISO) filed reply comments on December 23, 2008.

This resolution addresses the shortened list of remaining issues from the second supplemental advice letters filed by the Utilities, AL 3197-E-B, AL 1958, E-B and AL 2200-E-B. All outstanding party concerns from the original and first supplemental advice letters were either resolved in subsequent contract versions or have been carried over into the second supplemental advice letter filings and protests.

The QF Standard Offer Contract offers QFs one option, in addition to participating in the Utilities' competitive solicitations or negotiating bilateral contracts, for selling energy and capacity to the Utilities pursuant to Public Utilities Regulatory Policy Act (PURPA) requirements. The adopted contract options are available to new QFs and QFs with existing contracts, as well as QFs that are, or were, on contract extensions set forth in D.02-08-071, D.03-12-062, D.04-01-050, and D.05-12-009. The SOC offers QFs the option of signing a contract up to 5 years duration for as-available capacity and up to 10 years duration for firm capacity pursuant to D.07-09-040. In addition, as a result of the negotiation process, this resolution adopts the proposal that QFs may also sign a 'hybrid' contract of up to 10 years duration for facilities offering both as-available and firm capacity.

One product of the negotiations is a matrix reflecting agreements on disputed issues. It was filed in the Supplemental B Advice Letter filings and is known as the "Friday Night Matrix."

On June 30, 2008, SCE submitted to Energy Division a matrix representing all areas of agreement among those parties that participated in the first round of negotiations with the exception of CAC/EPUC, who agreed with some of the proposed terms and conditions and opposed others. However, the SCE June 30th matrix included some notable changes from the agreement reached with the parties at the conclusion of negotiations. During the November, 2008 negotiations, the parties and the Utilities reverted back to the original agreement, which became known as the "Friday Night Matrix." Located below is a table reflecting those stipulations included in the Friday Night Matrix. The matrix is divided into three columns: (1) issues; (2) proposed terms and conditions to resolve the issues; and (3) comments. At the bottom of the Term column for each issue is a list of parties agreeing to the proposed provisions. Parties in brackets were, at that time, unable to commit to the final language but agreed to the stipulations in principle or wanted to reserve their right to comment further on the proposed language in protests. The Utilities agree to the terms and conditions presented below and have included them in their second supplemental advice letter filings. Not all parties agree with all of the terms and conditions in the matrix. All parties had the opportunity to file protests and to the extent that their concerns were not addressed in subsequent Utility contract filings, they are addressed in this resolution. In addition, all outstanding issues relevant to parties not addressed in this matrix are addressed in this resolution.

Phase II Resolution Process Issues Matrix
To Resolve Party Differences Concerning the New QF Standard Contracts

Phase II Issues Matrix		
ISSUE	**TERMS**	**COMMENTS**
PRODUCT & ELIGIBILTY		
1) Product Definition	Product is Net Contract Capacity; all electric energy net of Station Use, Site Host Load and any over-the-fence sales conducted pursuant to PU Code Section 218(b) ("Over-the-Fence Sales"), Resource Adequacy Benefits (RA), Green Attributes; GHG attributes (but not GHG compliance costs) and all other attributes associated with electric energy or capacity of the Generating Facility. Notwithstanding the foregoing, Seller retains: • RA (but not including RA associated with the firm capacity committed to the IOU) to the extent such RA attributes are used or in meeting a known and established RA obligation applicable to the Generating Facility, the Site Host or an Over-the-Fence Sales buyer at the site in which the sale takes place. • Seller retains all attributes, including Green Attributes and GHG attributes, to the extent such attributes are used or banked for use in meeting a known and established other regulatory obligation applicable to the Generating Facility, the Site Host or an Over-the-Fence Sales buyer at the site in which the sale takes place. **Parties Agreeing: PG&E, SDG&E, SCE, CCC, [CAC, EPUC, IEP]**	
2) QF Status of Generating Facility	QF must take all action to maintain QF status of the Generating Facility under PURPA. It shall be an Event of Default if the Generating Facility fails to maintain its status as a Qualifying Facility, as determined by FERC; provided that if such failure results from a change in the requirements for QF status implemented after the Effective Date, then such failure shall not constitute an Event of Default so long as Seller uses commercially reasonable efforts (not to exceed $20,000 annually over the Term) to maintain its QF status. Seller's compliance with Public Utilities Code Section 216.6 is not a requirement of this contract. **Parties Agreeing: PG&E, SDG&E, SCE, CCC, [CAC, EPUC, IEP]**	

3) Firm/As Available	A hybrid QF may execute a contract of up to ten (10) years if (i) 90% or more of the Generating Facility's Net Contract Capacity is committed as firm capacity under the PPA, or (ii) less than 90% of the Max Capacity (but more than zero %) is committed as firm capacity under the PPA solely as a result of the requirements of the Host or Over-the-Fence customers The Parties agree to the following parameters governing the capacity payment: • QF may set differing firm capacity levels for each month. • 95% performance requirement is applicable to each TOD period of each month. • Performance, for capacity payment purposes, is to be measured by applicable TOD Period by month. • QF entitled to receive a 100% capacity payment for any monthly TOD Period if it meets the 95% performance for the monthly TOD Period. • Production to be truncated hourly for capacity payment/performance purposes. • Slope of adjustment: two (2) percent for each one (1) percent of reduction in available capacity below 95%, subject to the QF receiving a zero payment if available capacity is below the "cliff" level set below. • Capacity payment in any TOD period will not go below $0. • Cliff (i.e. zero capacity payment) for a TOD Period where availability in the TOD Period is below 60%. • No other impact in contract for missing 95% performance standard other than reduction in capacity payment. • Generating Facility (i.e. committed, and separately metered and scheduled, generating units as set forth Exhibit B) cannot sell energy or capacity to any purchaser other than the IOU, the host or to Over-the-Fence purchasers. CPUC-approved capacity allocation factors applied to each monthly TOD period as set forth in Exhibit F of the PPA, not to be adjusted. • PG&E to use four peak months, June through September. SDG&E to use its current five months, May through September. SCE to use four peak months, June through September. **Parties Agreeing: PG&E, SDG&E, SCE, CCC, [CAC, EPUC, IEP]**	
4) Delivery Point	Point of Interconnection of the Generating Facility with the CAISO grid. Seller bears responsibility, risk and expense of getting product to the CAISO grid. For imports, QF is required to bring power into CAISO grid, and bears congestion risk and losses to and at the delivery point.	CAC, EPUC: Existing Points of Delivery should continue to be used to preserve Rule 21 interconnection status (generating unit bus bar).

	Parties Agreeing: PG&E, SDG&E, SCE, CCC, [IEP]	
5) Term	Purely firm QFs may execute a contract of up to 10 years. Purely as-available QFs may execute a contract of up to 5 years. See above for hybrid QFs. **Parties Agreeing: PG&E, SDG&E, SCE, CCC, [CAC, EPUC, IEP]**	
6) Resource Location	A QF can contract with any California IOU regardless of where the Generating Facility is located. **Parties Agreeing: PG&E, SDG&E, SCE, CCC, [CAC, EPUC, IEP]**	
7) Dedication of Entire Output	Other than Host and Over-the-Fence sales, entire electrical output of the Generating Facility (look to Product definition) will be dedicated to the IOU. Generating Facility will be defined as including the specific units committed to the Buyer under the PPA (Exhibit B, separate meter, separate resource ID). **Parties Agreeing: PG&E, SDG&E, SCE, CCC, [CAC, EPUC, IEP]**	
8) New QFs vs. Existing QFs (significance relates to credit requirements and to QF expansion rights during the PPA term)	Addition to Section 3.07: 1. QFs to notify utility of any change (other than a routine fluctuation in output or consumption) to the facility or thermal host, or their respective operations, that could change (i) capacity by greater of 1 MW or 5% of nameplate rating, (ii) energy output by 5% of expected annual production, (iii) fuel source, or (iv) materially the electrical characteristics (to be defined) of the Generating Facility. 2. A QF that is modified, repaired or repowered will not be considered a new QF if (i) the capacity added as a result of the modification, repair or repower is within the applicable MW limit set forth in the chart set forth (5) below (including addition of steam turbine) , or (ii) in the event of a change in law or regulation, or Force Majeure, an IE verifies that the modification, repair or repower is not oversized relative to other equipment on the market, with the Independent Engineer cost being borne by the IOU. QF is responsible for securing all studies and upgrades necessitated by or associated with the modification, repair or repower. 3. An example of 2 (ii), based on technologies existing as of the preparation date of this matrix, would be a basic model (e.g., no STIG) LM 2500 that is repowered to an LM 2500+. CURRENT TURBINE NAME PLATE — INCREASE TO TURBINE NAME PLATE Less than 10MW — 5MW 10MW-20MW — 10MW	

	20MW-25MW 15MW 25MW-50MW 20MW 50MW-100MW 25MW 100-200MW 35MW 200-350MW 45MW Greater than 350MW 50MW **Parties Agreeing: PG&E, SDG&E, SCE, CCC, [CAC, EPUC, IEP]**	

ISSUE		COMMENTS
FIRM CAPACITY & DELIVERY REQUIREMENTS		
9) Energy Price – Generally	Energy Price is set according to Decision 07-09-040, as implemented and/or modified by the CPUC from time-to-time. **Parties Agreeing: PG&E, SDG&E, SCE, CCC, [CAC, EPUC, IEP]**	
10) Energy Price – Basis for Measuring Quantity	When IOU is SC, QF is paid on metered amounts. When IOU is not SC, QF is paid on Inter SC Trades in the IFM (day ahead scheduled amounts), subject to mechanism to be agreed upon to address potential gaming of schedules (e.g., sales from market rather than from Generating Facility). **Parties Agreeing: PG&E, SDG&E, SCE, CCC, [CAC, EPUC, IEP]**	
11) Energy Price – Losses or Other Adjustment Factors	CPUC adopted loss factors will apply. **Parties Agreeing: PG&E, SDG&E, SCE, CCC, [CAC, EPUC, IEP]**	
12) Capacity Price – Basis for Measuring Quantity	Capacity payments will be based upon Metered Amounts, truncated hourly, in each monthly TOD Period. **Parties Agreeing: PG&E, SDG&E, SCE, CCC, [CAC, EPUC, IEP]**	
13) Capacity Payment Calculation – Establishing level of As-Available Capacity	QF may designate monthly capacity amount up to PMax or its equivalent for Generating Facilities without a PMax. **Parties Agreeing: PG&E, SDG&E, SCE, CCC, [CAC, EPUC, IEP]**	
14) Capacity Payment Calculation – Firm Contract Capacity, generally (incl., allocation factors)	See discussion of capacity payment method above. **Parties Agreeing: PG&E, SDG&E, SCE, CCC, [CAC, EPUC, IEP]**	
15) Capacity Payment Calculation – Factors Which Are Used to Calculate	See discussion of capacity payment method above. **Parties Agreeing: PG&E, SDG&E, SCE, CCC, [CAC, EPUC, IEP]**	

Availability Adjustment (incl. outages)		
16) Capacity Payment Calculation – Methodology For Incorporating Adjustment Factors – Calculations Used to Determine Amount of Availability Adjustment for Nonavailability	See discussion of capacity payment method above. **Parties Agreeing: PG&E, SDG&E, SCE, CCC, [CAC, EPUC, IEP]**	

ISSUE		COMMENTS
OPERATIONAL REQUIREMENTS AND CAISO TARIFF		
17) Forecasting Requirements – IOU is SC & QF is not in PIRP	1. Utility to pay QF based upon Metered Amounts. 2. Utility to absorb CAISO charges and credits attributable to generator imbalance for deviations within bandwidth that is greater of (a) 3% of Seller's Energy Forecast (most recent) or (b) 1 MW, in any Settlement Interval. 3. For deviations outside of bandwidth: (a) utility to pass deviation charge/payment equal to product of (i) volume of deviation outside of bandwidth and (ii) difference between (x) CAISO uninstructed deviation charge and (y) contract price (See spreadsheet for illustration); and (b) QF to pay CAISO Uninstructed Deviation GMC Rate times volume of deviation outside of bandwidth. 4. If CAISO imposes UDP or other restriction to limit generator imbalances, QF will pay this charge and 3 above will no longer apply. 5. MAE: Seller shall be subject to Mean Absolute Error ("MAE") penalty arising from deviations between day-ahead forecast and Metered Amounts (plus quantities associated with a forced outages), as follows. In any month where the MAE, as calculated in the SCE PPA, is greater than fifteen percent (15%) and where the average absolute deviation from the day-ahead schedule over the month is greater then 3 MW. Seller shall pay to the IOU 2X the monthly scheduling coordinator fee ("SC Fee") for the month. If the MAE exceeds fifteen percent (15%) in any two additional months in any twelve month period following initial failure, for a total of three months in any twelve month period, SC fee is also double for each of those two additional months, and the capacity payment converts to an as-available payment for all of the following months unless and until Seller achieves two consecutive months where the MAE is less than fifteen percent (15%), in which case, starting with the second of such months, Seller's capacity payment reverts back to the firm capacity payment; *provided*, that if the QF demonstrates to Buyer's reasonable satisfaction that the failure to achieve an MAE of less than fifteen percent (15%) in any month for which the MAE exceeded fifteen percent (15%) was the result of unexpected changes in electrical or steam demand from thermal host or any Over-the-Fence Purchaser, that month shall not count as a failure to meet the MAE. If IOU not the SC, QF pays the SC fee. **Parties Agreeing: PG&E, SDG&E, SCE, CCC, [CAC, EPUC, IEP]**	
18) Forecasting Requirements – IOU is SC & QF is PIRP Eligible	MAE mechanism applies to availability forecasts. IOU absorbs CAISO charges and takes the benefits. **Parties Agreeing: PG&E, SDG&E, SCE, CCC, [CAC, EPUC, IEP]**	

19) Forecast Accuracy & Financial Consequences – IOU is SC & QF Provides Firm Contract Capacity & is not PIRP Eligible	See first forecasting box above. **Parties Agreeing: PG&E, SDG&E, SCE, CCC, [CAC, EPUC, IEP]**	
20) Pre-MRTU Forecasting & Scheduling – IOU is not SC	SC to SC trade, pay on schedule. MAE penalty applies as stated above. QF to bear CAISO charges (positive and negative). **Parties Agreeing: PG&E, SDG&E, SCE, CCC, [CAC, EPUC, IEP]**	
21) Post-MRTU Forecasting & Scheduling – IOU is not SC (incl. converted physical trades and load uplift obligation)	IST-PHY (Inter-Scheduling Coordinator Trade with Physical Trades), pay on IST IFM scheduled amounts. MAE penalty applies as stated above. QF to bear CAISO charges/revenues. **Parties Agreeing: PG&E, SDG&E, SCE, CCC, [CAC, EPUC, IEP]**	
22) Testing/Demonstration	1. Utility or QF may call a Capacity Test if: (a) there is a Material Change in the facility ("Material Change" means a change in equipment that is expected to remain in effect for at least three full months and that results in a change in the generating capacity of the facility in excess of the lesser of 5 MW or 5% of the net generating capacity of the facility); (b) a Force Majeure event affecting directly the generating capacity of the facility or a Forced Outage affects the facility and lasts for more than two weeks; or (c) the facility fails, during a peak month, to meet the performance requirements during the peak TOD Period. 2. Only a six hour demonstration will apply to annual demonstrations. 3. Test results will be adjusted for ambient conditions. 4. Firm Capacity may be increased within to be agreed upon limits (chart limits). **Parties Agreeing: PG&E, SDG&E, SCE, CCC, [CAC, EPUC, IEP]**	
23) Maintenance Hours and other Allowable Outages	• No credits for maintenance in the on peak months, except for twelve (12) hours per month in the off-peak hours in the on-peak months for turbine washing. • No paid scheduled outage in the on peak months, but if taken, not an event of default, subject to the turbine washing as provided above. • 550/year with ability to carry over up to 50 hours to be applied to later years' annual maintenance	

	• Annual maintenance credit will never exceed 600 in any contract year. • Credit for one major overhaul during any year during a contract of five or more years, and a second one at any time after forty-eight months following the first major overhaul, with a limit of two during the term of the contract. 750 hours for each one. • Good faith coordination on timing of maintenance, with IOU option to request shift in schedule based on agreement from and payment to QF. • If in major overhaul, and run out of hours, can convert remaining annual maintenance hours to major overhaul hours. • All limits are on a per unit basis. **Parties Agreeing: PG&E, SDG&E, SCE, CCC, [CAC, EPUC, IEP]**	
24) Curtailment Provisions	Revise Section 3.16 as follows and strike Section 3.17 or sign FERC jurisdictional IFA: <u>3.16Power Product Curtailments at Transmission Provider's or CAISO's Request</u> (a) Seller shall promptly curtail the production of the Power Product upon receipt of a notice or instruction from the Transmission Provider or the CAISO (which may be communicated by Buyer if Buyer is the SC) which notice shall only be provided when it reasonably believes that curtailment of the Power Product is required to comply with: *(i) Transmission Provider's maintenance requirements and operating orders;* *(ii) CAISO declared or Transmission Provider declared System Emergency.* (b) Notwithstanding the above, except as may be required in order to respond to any Emergency, SCE shall: *(i) Use reasonable good faith efforts to coordinate Transmission Provider's*	

	curtailment needs with Seller to the extent it can influence such needs; or (ii) Request the Transmission Provider and CAISO limit the curtailment duration. **Parties Agreeing: PG&E, SDG&E, SCE, CCC, [CAC, EPUC, IEP]**	
25) CAISO Tariff Requirements	PPA to state that Seller will comply with the CAISO Tariff, including that Seller will execute all agreements required by the CAISO Tariff. IOUs to remove specific provisions in the PPA which attempt to restate or may conflict with the provisions of the CAISO Tariff. IOUs reviewing PPA. **Parties Agreeing: PG&E, SDG&E, SCE, CCC, [IEP]**	
26) CAISO Charges or Other Mechanisms to Address Deviations	See above. **Parties Agreeing: PG&E, SDG&E, SCE, CCC, [CAC, EPUC, IEP]**	
27) Scheduling Coordinator Fee	Monthly fees based on Net Contract Capacity: $2,500; under 10 MW. $5,000; 10 MW to 100 MW $7,500; above 100 MW. **Parties Agreeing: PG&E, SDG&E, SCE, CCC, [CAC, EPUC, IEP]**	
28) NERC Reliability	1. Revise SCE PPA Section 3.14(y) and (z) as follows: Seller to register with NERC as the Generating Facility's Generator Owner and Generator Operator if Seller is required to so register by NERC; and Seller to maintain documentation of all procedures applicable to the testing and maintenance of the Generating Facility protective devices as necessary to comply with NERC reliability standards applicable to protection systems for electric generators, if Seller is required to maintain such documentation by NERC. 2. Revise SCE PPA Section 3.25 as follows: <u>NERC Electric System Reliability Standards</u>. During the Term, for purposes of complying with any NERC Reliability Standards that are applicable to the Generating Facility, Seller (or an agent of Seller as agreed to by SCE in its reasonable discretion) must be registered with NERC as the Generator Operator and the Generator Owner for the Generating Facility and must perform all Generator Operator	

	Obligations and Generator Owner Obligations except those Generator Operator Obligations that Buyer, in its capacity as Scheduling Coordinator, is required to perform under this Agreement or under the CAISO Tariff. Notwithstanding anything to the contrary set forth in this Section 3.25 and subject to the indemnity obligations set forth in Section 9.03(g), each Party acknowledges that such Party's performance of the Generator Operator Obligations or Generator Owner Obligations may not satisfy the requirements for self-certification or compliance with the NERC Reliability Standards, and that it shall be the sole responsibility of each Party to implement the processes and procedures required by NERC, WECC, the CAISO, or a Governmental Authority in order to comply with the NERC Reliability Standards. 3. Revise SCE PPA Section 9.03(g) as follows: Seller is solely responsible for any NERC Standards Non-Compliance Penalties arising from or relating to Seller's failure to perform the Generator Operator Obligations or the Generator Owner Obligations, for which Seller is responsible in accordance with Section 0, and will indemnify, defend and hold SCE harmless from and against all liabilities, damages, claims, losses, and reasonable costs and expenses (which shall include reasonable costs and expenses of outside or in-house counsel) incurred by SCE arising from or relating to NERC Standards Non-Compliance Penalties or an attempt by any Governmental Authority, person or entity to assess such NERC Standards Non-Compliance Penalties against SCE. SCE will indemnify, defend and hold Seller harmless from and against all liabilities, damages, claims, losses, and reasonable costs and expenses (which shall include reasonable costs and expenses of outside or in-house counsel) incurred by Seller for any NERC Standards Non-Compliance Penalties to the extent that they are due to SCE's fault or negligence in performing its role as Seller's Scheduling Coordinator during the Term. 4. Buyer as SC will reasonably cooperate with Seller to the extent necessary to enable Seller to comply and for Seller to demonstrate Seller's compliance with the NERC standards stated above. This cooperation shall include the provision of information in Buyer's possession that Buyer as SC has provided to the CAISO related to Seller's Generating Facility or actions Buyer has taken as SC related to Sellers NERC compliance standards stated above. **Parties Agreeing: PG&E, SDG&E, SCE, CCC, [CAC, EPUC, IEP]**	

ISSUE		COMMENTS
CREDIT AND COLLATERAL		
29) Pre-Operating Security for New QFs	IOUs propose $20/kw 18 months; $60/kw **Parties Agreeing: PG&E, SDG&E, SCE, CCC, [CAC, EPUC, IEP]**	
30) Operating Period Security for New QFs	12 months of revenue; no second lien. **Parties Agreeing: PG&E, SDG&E, SCE, CCC, [CAC, EPUC, IEP]**	
31) Financial Reporting Requirements for New QFs	QFs to review SCE proposed responsible officer certification for QFs who don't have audited financials. IOUs to limit distribution to Risk Management group or other groups as necessary to administer and enforce the contract. **Parties Agreeing: PG&E, SDG&E, SCE, CCC, [CAC, EPUC, IEP]**	
32) Credit & Collateral Covenants for New QFs	IOUs to delete debt to equity ratio, 2nd lien and covenants related to 2d lien, including Exh. O Sections: 1.06(b), (c), (d), (e), (f) and (g). If a QF opts to provide a second lien, appropriate collateral covenants would be reinserted. **Parties Agreeing: PG&E, SDG&E, SCE, CCC, [CAC, EPUC, IEP]**	
33) FASB 46 Financial Information	Agree to provide information if project falls outside of safe-harbor. **Parties Agreeing: PG&E, SDG&E, SCE, CCC, [CAC, EPUC, IEP]**	
34) Insurance	IOUs: propose $5MM for each occurrence/$10MM aggregate. Self insurance provision (in most recent PPA draft from SCE). Limits on deductibles reflecting commercially reasonable standard. **Parties Agreeing: PG&E, SDG&E, SCE, CCC, [CAC, EPUC, IEP]**	

ISSUE		COMMENTS
EVENTS OF DEFAULT, TERMINATION, LEGAL		
35) Events of Default	The following SCE Events of Default are to be modified as follows: No default for overdeliveries if deliveries on an annual basis are greater than 120% of Expected Annual Net Energy Production, as that figure may be revised based upon acceptable facility modifications during the contract term as described above (needs engineer's stamp on reason for forecast change), but utility need not pay for deliveries above 120%. Following change to be made to Section 6.01(c)(iii): The total quantity of Metered Energy, in any calendar year is less than ten percent (10%) of the Expected Annual Net Energy Production amount set forth in Section 1.03(a)(vi), and Seller fails to demonstrate, within ten (10) Business Days after Notice from SCE, a legitimate reason for such failure QFs to review SCE redraft of Section 6.01 (c) (v) to reflect Over-the-Fence sales. **Parties Agreeing: PG&E, SDG&E, SCE, CCC, [CAC, EPUC, IEP]**	
36) Relief from Purchase Obligations if QF Defaults	If QF defaults neither SCE, PG&E nor SDG&E is obligated for one year to enter into a new agreement with defaulting QF or its affiliates with a tie to the management or more than 20% ownership of the defaulting QF. **Parties Agreeing: PG&E, SDG&E, SCE, CCC, [CAC, EPUC, IEP]**	
37) Termination Rights	Refer to issues list below	
38) Dispute Resolution Procedures	Confidentiality provisions to allow mutual disclosure of all contract information for any regulatory purpose, excluding financial statements, but including efficiency data of QFs subject to appropriate redaction and protection provisions. **Parties Agreeing: PG&E, SDG&E, SCE, CCC, [CAC, EPUC, IEP]**	

39) Payment (incl. invoicing, timing, methods & offset rights)	IOU can net claims arising under the PPA. IOUs also require the right to net other claims, disputed or not, against the Seller related to the Generating Facility. **Parties Agreeing: PG&E, SDG&E, SCE, CCC, [CAC, EPUC, IEP]**	
	UNRESOLVED ISSUES	
40) GHG Compliance costs	IOU willing to pay for GHG compliance costs associated with dispatchable capacity. Parties disagree on whether Seller or Buyer should bear such costs to the extent associated with nondispatchable capacity.	This remains unresolved as of second supplemental filing.
41) Termination Rights	Parties agree to disagree re termination right tied to a FERC elimination of the MPO and re: termination right tied to recovery of above-market costs from departing load.	This remains unresolved as of second supplemental filing.
42) Treatment of small QFs	IOUs will review proposal from CAC on specific provisions. Contract form will accommodate appropriate provisions or checked boxes.	This remains unresolved as of second supplemental filing.

PG&E, SDG&E and SCE urge the Commission to adopt the proposed standard offer contract without modification.

PG&E, SDG&E and SCE request that the Commission adopt the standard QF contract submitted in their second supplemental advice letter filings without modification, except of the differences in Exhibit D that reflect utility-specific information for PG&E and SDG&E. The contract submitted by all three Utilities reflects SCE specific information in Exhibit D. The Utilities feel the contracts are just and reasonable and reflect the outcome of a lengthy negotiation process. As such, the Utilities do not see the need for any additional modifications to the proposed contract.

NOTICE

Notice of ALs 3197-E, 1958-E and 2200-E; ALs 3197-E-A, 1958-E-A, and 2200-E-A, and ALs 3197-E-B, 1958-E-B, and 2200E-B were made by publication in the Commission's Daily Calendar. PG&E, SDG&E and SCE state that a copy of the

Advice Letter was mailed and distributed in accordance with Section 3.14 of General Order 96-B.

PROTESTS

Advice Letters 3197-E, 1958-E and 2200-E were protested.

PG&E, SDG&E and SCE's Advice Letters AL 3197-E, 1958-E, and 2200-E, respectively, were timely protested by CAC/EPUC, CCC, IEP, and the CAISO.

PG&E, SDG&E and SCE responded to the protests of CAC/EPUC, CCC, IEP and the CAISO on March 11, 2008. The CAISO responded to the protests of CAC/EPUC and CCC on March 4, 2008. The Utility Reform Network (TURN) responded to the protests of CAC/EPUC and CCC on March 11th, 2008.

All of the protests submitted to the original AL filings were rendered moot due to subsequent supplemental filings of the advice letters and/or through the negotiation process that resulted in the subsequent filings. All issues not resolved by the supplements were raised in protests to the first or second supplemental advice letter filings.

Advice Letters 3197-E-A, 1958-E-A and 2200-E-A were protested.

PG&E, SDG&E and SCE's Advice Letters AL 3197-E-A, 1958-E-A, and 2200-E-A, respectively, were timely protested by IEP, CAC/EPUC (with an errata added on August 25, 2008), CCC, the CAISO and The Utility Reform Network (TURN) on August 7, 2008.

SCE, PG&E, SDG&E and the CAISO responded to the protests of IEP, CAC/EPUC and CCC on August 28, 2008.

CCC, CAC/EPUC and the CAISO filed protests to the first supplemental filing (Supplemental Filing A) of the above utility advice letters. However, given that all three entities filed additional comments on Supplemental Filing B detailing any outstanding issues at the time of that filing, their protests shall not be summarized here. IEP and TURN, however, did not file subsequent protests to the second supplemental filing. Their arguments remain in effect after the second supplemental filings; therefore, they are summarized below.

IEP proposes the elimination of Section 2.02 (a)(i) and (ii), Buyer Termination Rights (same section number in current version of the contract). This concern remains an issue after the Second Supplemental Filings.

IEP states that the ability of the Utilities to terminate the contract upon FERC elimination of the mandatory QF purchase obligation or a change in the cost treatment in unrelated proceedings make the contract commercially unviable. IEP asserts that such termination rights undermine the purpose of a CPUC approved standard offer contract, which is that both buyer and seller can enter into this agreement with confidence that no action by the CPUC or other regulatory authority will cause it to be terminated prior to the expiration of the contract term.

IEP requests removal or modification of Section 5.03, Termination for Extended Force Majeure (same section in current version of the contract). This concern remains an issue after the Second Supplemental Filings.

As proposed, either party may terminate the Agreement on Notice, which will be effective five business days after such notice is provided, in the event of a force Majeure that materially interferes with a party's ability to perform its obligations under the Agreement that extends for more than 365 consecutive days or for more than a total of 365 days in a consecutive 540-day period.

IEP argues that if a party asserting force majeure has a valid force majeure claim and is working to fix it, the other party should not have the right to terminate. IEP states that an event of force majeure may take more than a year to rectify, and so long as the party is diligently working to rectify the problem, IEP sees no reason for an a priori limitation on such events.

IEP requests the removal or modification of Section 6.01 (a) (ii), Termination for Inability to cure an Event of Default within 120 Days (same section in current version of the contract). This concern remains an issue after the Second Supplemental Filings.

This section of the contract absolutely caps the remedy period for an Event of Default to 120 days. IEP states that this cap is insufficient, offering as an example that the amount of time needed to replace faulty equipment often exceeds 120 days. IEP notes that such an imposition of a cap is, in essence, depriving the generator of any cure period. IEP suggests that the limitation be removed or, at a minimum, made flexible such that if the defaulting party is acting reasonably and is on the path to restoring operations, the party should be allowed sufficient time to cure the default.

IEP argues that there is no mechanism to reimburse the Seller for Greenhouse Gas (GHG) compliance costs. This concern remains an issue after the Second Supplemental Filings.

IEP states that there is an assumption that the GHG compliance costs will eventually be included in the Market Index Formula (MIF) price upon the implementation of Market Redesign and Technology Upgrade (MRTU); however IEP notes that there can be no assurance that such a market effect will be included in the MIF.

TURN agrees with the Utilities that QFs should not be able to "pass through" their GHG costs to the Utilities.

TURN supports the utility position that any future costs associated with GHG compliance shall be reflected in the market price of electricity that the Utilities avoid by purchasing QF power. Therefore, the QFs will recover the costs of GHG compliance through their energy payments.

Advice Letters 3197-E-B, 1958-E-B and 2200-E-B were protested.

PG&E, SDG&E and SCE's Advice Letters AL 3197-E-B, 1958-E-B, and 2200-E-B, respectively, were timely protested by CAC/EPUC, CCC and the California ISO (CAISO).

SCE responded to the protests of CAC/EPUC, CCC and CAISO, on December 23, 2008. CAISO also responded to the protests of CAC/EPUC on December 23, 2009.

<u>**Issues Associated with Entering into the Standard Offer Contract**</u>

CCC requests that Section 1.01 be revised to change the Amount of Notice Required to Revise the term Start Date from one year to three months.

Section 1.01 provides that the QF, upon signing the contract, elect a date on which the Term will start. Section 1.01 also allows the QF to revise the start date provided that the QF gives the utility notice of such change at least one year in advance. CCC states that the one year advance notice requirement is neither necessary nor reasonable, and they suggest that three months advance notice is adequate and appropriate.

CCC mentions that the contract, as structured, will not allow the utility to purchase any power from the QF prior to the Term Start Date, therefore it is very important for the QF to select the right date. Under the current structure, if the QF sets the Term Start Date too late, the QF will not be able to sell its power to the utility under PURPA, which CCC asserts federal law requires and the Commission intends. If the QF sets the Term Start Date too early, the predetermined Term of the contract will begin, regardless of whether the Generating Facility is actually producing power, and could result in the QF being in default under Section 6.01(c)(xv).

CCC asserts that it is not practical for a new or repowering QF to know a full year in advance when the Term Start Date will occur given the number of contingencies present. CCC states that three months advance notice is far more reasonable in this case.

SCE replies that CCC's request to change the Amount of Notice Required to Revise the term Start Date from one year to three months should be rejected.

In its December 23, 2008 reply protest, SCE states that CCC's request to shorten the start date revision to three months before the proposed on-line date will inhibit SCE's ability to adequately plan for and purchase needed power. SCE states that IOUs typically purchase power through routine all-source solicitations, and power is purchased before year-ahead resource adequacy filings are due. Allowing the QF to give less than one year's advance notice may result in the Utilities over or under procuring, which would disadvantage the Utility's customers. Furthermore, SCE states that existing QFs should have no difficulty in providing one year advance notice.

SCE also notes that a seller that has a FERC-jurisdictional interconnection agreement may sell power under a separate agreement (to the Buyer or others) if the generator comes online before its projected online date.

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CCC requests revisions of Section 1.01(a), Section 1.01(b) and Exhibit F, Sections 4(c)(i) and 4(d)(i).

CCC states that the above sections pertaining to the Term Start Date may be extended by a Force Majeure event affecting the QF. However, CCC suggests that the above sections rely on Section 5.03 as providing for the extension of the Term Start Date. Section 5.03, as written, does not provide for an extension of the Term Start Date. As such, CCC proposes the following modifications of Sections 1.01 (a) and 1.01 (b) and Exhibit F, Sections 4(c)(i) and 4(d)(i):

"extension of the Term start Date as a result of a Force Majeure as to which Seller is the Claiming Party (subject to Section 5.03)."

CCC states that the Utilities have reviewed and agree with the proposed language changes.

SCE replies that it agrees with CCC's proposed revisions to Section 1.01(a), Section 1.01(b) and Exhibit F, Sections 4(c)(i) and 4(d)(i).

SCE agrees with CCC's proposed revisions and has submitted replacement pages in its reply comments reflecting the changes.

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CCC requests clarification of Section 1.02(f), Site Host Load, to reflect variations in site host load over time.

Section 1.02(f), as written, requires the QFs to estimate the amount of Site Host Load in kWh on an annual basis and in kW on an instantaneous average basis. CCC notes that the QF has no control over the Site Host Load, Site Host Load can change over time depending on the thermal host's business requirements and that it is impossible to accurately predict the Site Host Load. Therefore, CCC wishes to add clarifying language saying that these estimates do not lead to any binding obligations or other contract ramifications for the QFs. Specifically, CCC proposes the addition of the following language at the end of Section 1.02(f):

> Buyer acknowledges that the Site Host Load may vary from time to time from the expectations set forth above, and such expectations shall in no way limit the amount of Site Host Load, As-Available Contract Capacity, Firm Contract Capacity or Net Contract Capacity or energy that may be delivered hereunder.

SCE replies that CCC's request to reflect variations in site host load over time should be rejected (Section 1.02(f)).

SCE states that CCC's request is duplicative and ambiguous. SCE notes that Section 1.02(f) already states that the designated Site Host Load is what is "expected" "on average." SCE feels that CCC's language conflicts with Exhibit D, which states that the amount of energy that the Buyer would be required to purchase from the Seller would be no more than 120% of the Expected Term Year Net Energy Production.

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CCC requests elimination of limits on QF's rights prior to the Term, Section 3.01(d), Retained Benefits.

Prior to the Term, the current contract prohibits the QF from selling its power to any entity if the QF has not executed a FERC jurisdictional interconnection agreement unless FERC determines that the QFs can sell their output to someone other than the utility.

CCC objects to this provision because under current rules, QFs operate under CPUC jurisdictional interconnection agreements and they sell energy and capacity to their thermal host and up to two contiguous neighbors under Public Utilities Code Section 218(b). CCC states that FERC should not have to make an affirmative statement to allow the QFs to do what they already have the right to do. Furthermore, CCC states that this provision is over-kill given that the standard offer contract requires QFs to have a FERC jurisdictional interconnection, as written.

SCE requests that CCC's modification of Section 3.01(d), Retained Benefits, be rejected.

SCE states that CCC's request conflicts with applicable laws. SCE states that FERC has exclusive jurisdiction over agreements permitting wholesale sales of power to parties other than the interconnecting utility. SCE further states that the agreed upon definition of Power Product in this contract allows for sales to the Site Host Load and Station Use. Thus, even those generators without FERC-jurisdictional interconnections can serve the Site Host Load and use power to supply Station Use.

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CAC/EPUC proposes a contract modification to allow the QF Seller, rather than the utility Buyer, to determine the Generating Facility capacity that is to be sold under the terms of the Standard Offer contract.

The SOC as written requires that the entire output of the generating facility be dedicated to the utility regardless of the cogeneration configuration or the economics associated with that configuration. CAC/EPUC suggests that this places a significant amount of CHP generation in California at risk. CAC/EPUC offers as an example a facility in Los Angeles that has 50 MW of steam turbine generation located in a load pocket that at times offers available power to the grid. The facility cannot offer this as Firm Capacity given the penalties associated with failure to meet a 95% capacity factor standard, yet at as-available prices, the unit will not be economic to run. CAC/EPUC states that this capacity could, when not serving the thermal host, be dispatched as a peaking resource given the correct economic signal. CAC/EPUC proposes adding a Section 1.10, which states:

> *Related Products and Net Contract Capacity Associated Generating Capacity.* Notwithstanding anything to the contrary in this Agreement, the generating capacity of the Generating Facility associated with the Power Product, the Related Products or the Net Contract Capacity shall not include that portion of the generating capacity of the Generating Facility designated by Seller in this Section 1.10.
>
> a) [Seller designated generating capacity]
> b) Nothing in this Agreement obligates Buyer to Schedule or make payments for capacity and energy associated with Seller's generating capacity set forth in this Section 1.10(a).

SCE requests that the Commission reject CAC/EPUC's proposed addition of Section 1.10(a).

SCE states that exclusive dedication of the output to the utility has been a fundamental assumption of the QF contract since the beginning. It would be impractical to serve as a Scheduling Coordinator for a QF that is engaging in market sales. Finally, SCE notes that the above situation pertains only to one QF party as discussed in the November, 2008 negotiations. SCE is willing to negotiate a bilateral agreement with a party that has unique circumstances; however, SCE feels that the contract should not be made unnecessarily complex to administer to account for one unique circumstance.

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CAC/EPUC requests that QFs shall only be subject to the Resource Adequacy obligations defined in the Resource Adequacy rulings effective at the time the Decision was rendered.

CAC/EPUC states that the pricing structure determined in D.07-09-040 was developed in context of the Resource Adequacy program effective at the time. They argue that future rulings in the Resource Adequacy program could impose a significant cost to QF resources that would be unaccounted for under the current payment structure. As such, CAC/EPUC proposes contract language that defines the Resource Adequacy program as those rulings effective at the time of D.07-09-040. CAC/EPUC further suggests adding a new Section 1.09 that would insure that any new RA obligations do not unnecessarily conflict with continued service to the thermal host. Furthermore, CAC/EPUC proposes changes to Section 3.01(c) that read:

> Seller shall, subject to Section 1.09 and at Buyer's sole cost, take all commercially reasonable actions necessary to effectuate the use of the Related Products for Buyer's benefit throughout the Term…

These changes, CAC/EPUC argues, along with other proposed changes to Section 3.02 and Exhibit A, ensure that the contract achieves the objectives of 1) committing the contract capacity to the utility for the purposes of Resource Adequacy; 2) preventing the QF from simultaneously committing the same Generating Facility capacity to a third party for Resource Adequacy purposes and 3) obligating the QF to cooperate with the Utilities to maximize the RA benefits of the capacity to the Utilities.

SCE requests that the Commission reject CAC/EPUC's proposed contract changes pertaining to the Resource Adequacy program.

SCE states that CAC/EPUC's proposed changes are duplicative of Section 3.13(b), which allows the Seller to challenge a CPUC ruling if it unnecessarily inhibits their obligations to the thermal host.

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CAC/EPUC requests that Section 3.08(d), Multiple Points of Metering at a Single Customer Site, be altered such that consent of Buyer is not needed nor is compliance with the tariffs, rules and regulations of Buyer and the CAISO (including the CAISO Tariff).

CAC/EPUC argues that the current metering scheme dictates a "one size fits all" that is too inflexible to accommodate the entire complex metering configurations at large industrial facilities. CAC/EPUC provides an example of a resource that has multiple metering sites within one facility where one meter would register a sale of power out (the as-available power) while another meter would show purchase of power into the system. CAC/EPUC asserts that this is a fictitious account of what is actually occurring at the site, rather, the generator is not actually selling power to the grid, nor is it buying the full amount of power from the second meter. Instead, the power produced from the first point would offset the power purchased from the second, therefore resulting in a netting of power (regardless of whether the outcome is more power purchased from the utility or sold to the utility). CAC/EPUC argues that the economics of redesigning the facility to alleviate this scenario are infeasible; therefore, the QF should be permitted to net meter multiple metering points for a single industrial site.

SCE requests that the Commission reject CAC/EPUC's proposed changes to Section 3.08(d).

SCE feels that Section 3.08(d) already provides reasonable flexibility to address the situations introduced by CAC/EPUC. There may be situations where netting is appropriate, and SCE notes that CAISO already has provisions to accommodate such situations. If multiple sites are netted contractually and not recognized by the CAISO for scheduling purposes, the scheduling coordinator would bear excessive deviation costs. Since the QF has the right to select its scheduling coordinator, the burden of such deviation costs should not be bourn by the utility's customers. Furthermore, SCE notes that CAC/EPUC's request could result in conflicts with existing tariffs, rules and regulations, and that the act of "netting" is significantly more complex than CAC/EPUC eludes.

CAISO opposes CAC/EPUC's proposal to delete references to the need to comply with the CAISO Tariff in the event the QF wishes to establish multiple points of metering.

The CAISO Tariff includes provisions for the netting of generation under various programs and provisions including the CAISO's Station Power Protocol and the QF PGA, which permits the net metering of generation "behind-the-fence" load of QFs.

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CAC/EPUC proposes modifying the Performance Tolerance Band in Exhibit K, Section 1 to three percent of the Seller's PMax rather than three percent of the Seller's forecast load.

The issue raised by CAC/EPUC pertains to CAISO charges for producing power outside of a bandwidth around the forecasted load. To minimize damages associated with an error in forecasting and to account for changes in ambient conditions and changes in Site Host demand, which can result in an output that deviates from the forecasted load, CAC/EPUC propose basing the 3% bandwidth on the maximum output of the facility (PMax) rather than the forecasted output.

SCE opposes CAC/EPUC's proposed modification of the Performance Tolerance Band in Exhibit K.

SCE states that CAC/EPUC's proposed changes alter the schedule deviation risk from the QF to the IOU and its customers. Many QFs have net metering configurations where generation is netted against host and other allowed loads prior to any excess being delivered to CAISO; therefore, there can be a significant difference between the Generating Facility's PMax versus the net output forecast.

SCE states that the seller is in the best position to manage Site Host Load and the ambient impacts on expected generation forecasts and should therefore be expected to forecast accurately. SCE also states that CAC/EPUC fails to acknowledge the various tools that are available to control output to compensate for such conditions. Finally, SCE states that CAC/EPUC's comments are an attempt to portray gas turbine technology as an intermittent resource for the purposes of scheduling.

CAISO opposes the changes proposed by CAC/EPUC to Exhibit K.

CAISO supports the measures in Exhibit K and I that improve the accuracy of advance forecasts of QF generation to be delivered to the grid and improve the consistency of actual deliveries to advance forecasts. CAISO opposes CAC/EPUC's proposed changes to the extent that they undermine the intent of the provisions for accuracy.

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CAC/EPUC proposes clarification of the testing requirements in Exhibit C, Section 9.

CAC/EPUC argues that the language proposed by the Utilities is vague and does not facilitate the proper ambient conditioned testing necessary to perform required testing calculations. CAC/EPUC notes that the level of power generation from a CHP facility is affected by ambient conditions, and ambient adjustments were agreed to by all parties to test the output of new units. CAC/EPUC proposes several additions to Exhibit C to clarify and expand upon the existing language.

SCE requests the Commission adopt Exhibit C as submitted in its Supplemental AL Filing.

SCE notes that turbine specific ambient parameters and manufacturer's curves would not be applicable to all QF technologies; therefore CAC/EPUC's proposal to add specific testing measurements should be rejected. SCE states that there was agreement among the parties that testing procedures must apply to the specific technology employed and should be worked out in a written agreement between the Parties upon contract execution. It would be impractical to outline all requirements for ambient corrections for every technology within the framework of a "standard contract."

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Issues Associated with Termination of the Contract and Associated Payments/Penalties

CCC, IEP (from its earlier protest to the first supplemental advice letter filings), and CAC/EPUC request removal of Section 2.02(a), Buyer Termination Rights.

The Utilities include two Buyer termination rights in the standard offer contract: (1) if, at any time, the Commission eliminates or diminishes the rights of the utility under D.04-12-048 or other Applicable Law to collect any above-market costs of this agreement from departing load customers; and (2) if, at any time after the Effective Date, the FERC eliminates the mandatory purchase obligation under PURPA as applied to the Buyer, or if FERC determines that the Buyers does not have such obligation to purchase electric power from QFs.

CCC, IEP and CAC/EPUC request that these causes for Buyer contract termination should be removed. They argue that inclusion of such a provision makes the contracts unfinancable and commercially unreasonable. CCC argues that the Commission did not provide for any termination clauses anywhere in the relevant QF proceedings. CAC/EPUC argue that such provisions are contrary to the Commission's intent in mandating the Prospective QF CHP Program and that such terms remove all certainty associated with execution of the SOC. CAC/EPUC further argue that the Utilities' position is legally flawed, stating that EPAct of 2005 protests the QFs from Section 210(m) termination if the pending state obligation was opened prior to adoption of EPAct of 2005. CAC/EPUC argue that the California QF program is included because the current QF proceedings, R.04-04-025 and R.04-04-003 opened prior to adoption of EPAct of 2005.

CAC/EPUC suggest, as an alternative to the proposed standard offer contract, the Commission could choose to extend existing contracts with updated terms and conditions to reflect recent Commission QF policy decision.

SCE request that CAC/EPUC, CCC and IEP's suggestion to remove Sections 2.02(a)(i) and 2.02(a)(ii) be rejected.

SCE states that Section 2.02(a)(i) is justified because, if the CPUC subsequently changes the IOU's ability to recover QF contract costs from departing customers, bundled customers will be burdened with potential above-market costs. SCE notes that D.04-12-048, along with other CPUC filings, provide the IOUs the right to recover the above-market costs associated with new resource additions from all customers, including departing load customers.

SCE continues with an argument in support of Section 2.02(a)(ii). SCE states that if the PURPA mandatory purchase obligation is eliminated by FERC, such a determination would be based on the FERC's finding that the QFs have other sufficient market opportunities. Therefore, SCE states that a mandatory contract would no longer be necessary.

Finally, SCE requests that the Commission deny CAC/EPUC's suggestion to amend and extend existing contracts because it is in direct conflict with D.07-09-040, which mandated a new form of a standard QF contract for the prospective QF program.

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<u>Issues Associated with Regulatory Matters</u>

CCC requests additional language to Section 1.06(a), Firm Capacity Price, to reflect their reservation of rights for a potential change to the firm capacity price pending CCC's March, 2008 Petition for Modification to D.07-09-040.

As written, the contract states that the Firm Capacity Price paid to the QF shall be the firm capacity price adopted by the Commission and in effect on the contract Effective Date. In March, 2008, CCC filed a Petition for Modification of D.07-09-040 asking the Commission to increase the firm capacity price to reflect a documented increase in avoided IOU capacity costs. At the time that CCC submitted comments, the Petition for Modification had not yet been voted on by the Commission. As such, CCC requested to retain its right for a potential change pending the Commission's decision. CCC requested that the following language be added to the end of the first sentence of Section 1.06(a).

> ";provided that if the CPUC modifies such price in response to the March 3, 2008 petition of the California Cogeneration Council for modification of Decision 07-09-040, then the Firm Capacity Price shall be such modified value."

SCE states that CCC's requested additional language to Section 1.06(a) is duplicative.

SCE suggests that CCC's proposed modification of Section 1.06(a) is duplicative and could override Section 9.08(o), which reserves all rights, claims and defenses with respect to the QF contract, D.07-09-040 and any application for rehearing or appeal filed with respect to D.07-09-040. SCE states that CCC's language could also be seen as limiting other parties' rights and reservations.

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CCC requests limitations on compliance with regulatory data requests, Section 3.10(c).

The Utilities require that the QFs use all commercially reasonable efforts to provide the utility with any information it may need to comply with a data requests from the CPUC, CEC, FERC, a court or a legislative body. CCC states that the QFs are not regulated and are therefore not required to provide sensitive or proprietary information to regulators. CCC does not object to a requirement that the QF must provide any information requested concerning operational characteristics or past performance of the generating facility. CCC proposes to modify Section 3.10 (c) by inserting after "all documentation" the words "concerning the operational characteristics or past performance of the Generating Facility."

SCE states that CCC's request on limitations for Section 3.10(c) should be rejected.

SCE states that CCC's request places an unreasonable burden on the IOUs. The IOUs should not be expected to deny, on behalf of the Seller, a request for information, rather, Seller should bear the risk itself if it wishes not to provide information. SCE further states that Section 9.09 provides confidentiality protection to CCC for any disclosure of information.

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Greenhouse Gas Regulatory Concerns

CCC requests relief from change of law risk pursuant to the Greenhouse Gas Emissions Performance Standard (EPS), Sections 2.01(i), 9.02(g) and Exhibit A (Definition of "GHG EPS").

The current SOC requires that the QF comply with the Commission's EPS, adopted in D.07-01-039 for contracts over 5 year's duration, regardless of any changes that the Commission may make to the EPS during the contract term. CCC states that this is an unreasonable risk for QFs to take given that there is a risk of being in default under the contract if the GHG EPS is changed and the QF is unable, after it signs the contract, to comply with the new standard.

In support of their argument, CCC offers that in D.07-11-025, the Commission stated that renewable generators that sign a long term contract under the Renewable Portfolio Standard should not be required to comply with changes in the definition of an eligible renewable resource. The Commission should offer the same protection to QFs in regard to the GHG EPS. CCC states that QFs shall comply with the GHG EPS in effect at the time of contract execution.

CCC proposes the following modification to the definition of "GHG EPS" in Exhibit A by inserting at the end of the definition the following words: ",in each case as in effect as of the Effective Date." Following this train of argument, CCC suggests that Section 9.02(g) should be modified to read: "The Generating Facility meets the GHG EPS."

SCE request that the QFs be required to meet the EPS standard both at the time of contract execution and throughout the contract term. (Sections 2.01(i) and 9.02(g)).

SCE notes that QFs are must-take suppliers and have control over their GHG emissions, of which SCE does not. Furthermore, SCE cannot dispatch the QF in accordance with least-cost and environmental protection principles. Therefore, SCE states that QFs should comply with the GHG emissions performance standard both at the time of contract execution and throughout the contract term because to do otherwise could place SCE's customers at risk of bearing additional GHG compliance costs if the requirements change during the term of the contract.

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CCC, CAC/EPUC and IEP (in its earlier protest) request that Section 8.02, Governmental Charges, be modified such that GHG compliance costs incurred by Seller shall be passed through to Buyer.

As noted in its earlier protest, IEP states that there is an assumption that the GHG compliance costs will eventually be included in the Market Index Formula (MIF) price upon the implementation of Market Redesign and Technology Upgrade (MRTU); however IEP feels that there can be no assurance that such a market effect will be included in the MIF.

CCC states that the Utilities may receive significant GHG emissions reductions benefits by contracting with the QFs, yet the QFs are being asked to bear all the costs associated with these benefits. CCC suggests that if the Commission's QF energy price methodology fully compensated QFs for the avoided GHG compliance costs, CCC would not seek further payments; however, given the infrequency with which the Commission reviews avoided cost payments, CCC is concerned that the QFs will not be fully and fairly compensated. CCC requests that the contract be modified by requiring the Utilities to compensate QFs for avoided GHG compliance costs. CCC suggests that the easiest way to do this would be to add a GHG compliance cost adder to the energy payment in Exhibit D(2), not unlike the Operation and Maintenance (O&M) adder.

CAC/EPUC states that the potential costs associated with GHG compliance are unknown, potentially significant, and could render an existing or new QF project financially incapable of continuing operations or receiving financing. CAC/EPUC acknowledges that double recovery of costs from a pass through to the Buyer and received market revenues should be avoided. CAC/EPUC includes a number of exhibits to show the potential impacts on QF revenue at various CO_2 prices stating that the impacts could be significant. CAC/EPUC suggests modifying Section 8.02 as follows:

> Seller shall pay or cause to be paid all taxes imposed by any Governmental Authority ("Governmental Charges") on or with respect to the Generating Facility, Monthly Contract Payments made by Buyer to Seller, or the Power Product before the Delivery Point, including ad valorem taxes and other taxes attributable to the Generating Facility, the Site or land rights or interests in the Site or the Generating Facility. All costs imposed by any Governmental Authority ("Governmental Charges") directly or indirectly on Seller that pertain to climate change, including without limitation any tax, imposition or obligation based directly or indirectly on greenhouse gas emissions, and that are attributable to the production and delivery of the Power Product to the Delivery Point shall be the sole obligation of the Buyer during the Term; provided, however, that Buyer shall be released from the obligation to the extent Buyer conclusively demonstrates and the CPUC finds following a public hearing that the Governmental Charges have been recovered by Seller through the TOD Period Energy Payment paid to Seller.

SCE states that the Utilities should not be required to assume the risks of GHG regulations.

SCE offers three main reasons for rejecting parties' suggestion that Buyer compensate Seller for GHG compliance costs. First, change of law risk should reside with the party that is best suited to mitigate those risks. SCE cannot dispatch a QF unit; therefore, it cannot mitigate any GHG risks. Second, requiring the IOUs' customers to bear the GHG costs of the QFs would, essentially, subvert the intention of a GHG cost imposition by, in essence, indemnifying a class of generators. QFs should be required to make a cost/benefit analysis just as other generators in the market. Third, SCE states that the costs of GHG regulations will be internalized in the market price of energy and therefore will be reflected in the market-based component of the Market Index Formula.

TURN agrees with the Utilities that QFs should not be able to "pass through" their GHG costs to the Utilities. (From TURN's protest to the July 11, 2008 first supplemental filings).

TURN supports the utility position that any future costs associated with GHG compliance shall be reflected in the market price of electricity that the Utilities avoid by purchasing QF power. Therefore, the QFs will recover the costs of GHG compliance through their energy payments.

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<u>Issues Associated with Interconnection/CAISO Tariff/Other CAISO Matters</u>

CCC proposes striking "at its sole cost" from Sections 3.05(b), Seller's Responsibility (for interconnection costs) and Section 4.05.

CCC states that the Utility's proposal that the QF must, at its own cost, obtain all interconnection and transmission rights and agreements, is in conflict with FERC-approved interconnection procedures, which state that the utility may be required to pay for certain of the transmission facilities needed to interconnect a QF. CCC proposes that the words "at its sole cost" in the first sentence of Section 3.05(b) be stricken and a similar removal applied to Section 4.05. CCC states that the Utilities are in agreement with this proposed change.

SCE states that the Utilities agree with CCC's proposed changes to Section 3.05(b) and Section 4.05.

SCE agrees that "at its sole cost" should be removed from Sections 3.05(b) and Section 4.05. SCE has provided replacement pages with its reply comment filing that reflect these changes.

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CCC requests that language of Section 3.18, Notice of Cessation or Termination of Service Agreements, return to an earlier version allowing notice of termination within one day of occurrence.

The SOC requires the QFs to provide one day advance notice of termination of, or cessation of service under, any agreement required for interconnecting the Generating Facility, transmitting power from the Generating Facility or owning and operating the CAISO-approved meter. CCC points out that the QF will not know in advance that one of these events may occur; therefore, CCC requests that the Utilities revert back to language in a previous version of the contract stating that "Seller shall provide to Buyer Notice within at least one Business Day if there is…." CCC has stated that the Utilities have been informed and accept this change.

SCE agrees with CCC's proposed changes to Section 3.18, Notice of Cessation or Termination of Service Agreements.

SCE has adopted CCC's proposed languages and provided replacement pages in its reply comment filing.

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CAC/EPUC requests that the CPUC retain jurisdiction over the QF program by removing the obligation of QFs to sign the CAISO Tariff and allowing QFs to continue to interconnect through the state Rule 21 interconnection process. Furthermore, CAC/EPUC offer several curtailment provisions to protect the unique operating characteristics of QFs.

CAC/EPUC states that the SOC provisions, which require a QF to sign the CAISO Tariff and interconnect under CAISO, are misguided and potentially harmful to maintaining California's CHP program. CAC/EPUC suggests that signing the CAISO Tariff could potentially result in federal law pre-empting the desire of the State to maintain and grow a robust CHP program. Accordingly, CAC/EPUC recommends that the Commission clarify the following in order to maintain jurisdiction over the QF Program:

1) Compliance with the CAISO tariff provision will be accomplished by assuring the interconnected utility has necessary information to meet applicable tariff provisions;
2) Applicable CAISO tariff provisions are only those that are expressly applicable to the transaction between the utility and a CHP facility;
3) Existing interconnections are maintained under Rule 21 or QFs are allowed to elect to sustain interconnections under Rule 21; and
4) Any application of the CAISO tariff through the interconnected utility shall not be allowed to unreasonably or unnecessarily impede industrial thermal host operations except in system emergencies.

CAC/EPUC argues that D.07-09-040 expressly states the CPUC's intention to maintain jurisdiction by stating that the "CAISO and RA counting rules will have to accept this power as must take…" Furthermore, CAC/EPUC suggests that the CAISO agrees in its comments to D.07-09-040 that even if the QF regulatory must-take status is removed, CAISO will respect the QFs preexisting status and not subject them to burdensome tariff requirements. Finally, CAC/EPUC argues that requiring the QFs to sign the CAISO tariff goes against the provisions in Energy Action Plan II, which state that removal of barriers to encourage the development of environmentally-sound combined heat and power resources is necessary.

CAC/EPUC further argues that the Utilities and CAISO have not adequately shown how failure to interconnect through the CAISO will cause disruptions. Furthermore, CAC/EPUC notes that the Commission has expressly retained jurisdiction over Small QFs; therefore, Small QFs connecting under Rule 21 and not making sales into the CAISO Market should not be required to adhere to any CAISO provisions. Finally, CAC/EPUC argues that no provision should require them to alter deliveries in any way except in the case of an emergency. To this effect, CAC/EPUC proposes several revisions to sections throughout the SOC to resolve its concerns.

SCE states that CAC/EPUC's request to revise provisions of the contract so that Seller does not have to comply with the CAISO Tariff is in conflict with D.07-09-040.

SCE offers that CAC/EPUC's request to allow QFs to interconnect either under Rule 21 or through the CAISO Tariff is in direct conflict with the findings of D.07-09-040. Sections 7.2.5 and 7.4 of D.07-09-040 consider CAC/EPUC's arguments and rejects them by stating "[T]he contracts shall be updated to require compliance with CAISO tariffs, including the Resource Adequacy Tariff." Furthermore, SCE argues that D.07-09-040 established performance standards in order to establish a more market-based QF program, which would require compliance with the CAISO Tariff.

SCE continues that CAC/EPUC's request regarding hardwiring of Rule 21 interconnection provisions should not be allowed because the form of interconnection agreement should not be specified in the QF contract. To do so could potentially usurp other CPUC, CAISO or FERC jurisdiction to address the appropriate form of interconnection agreements. Furthermore, SCE argues, if any entity should have the right to choose the form of interconnection agreement, it should be the IOU, which is consistent with the CPUC's implementation of AB 1969 that allows the IOUs to choose the form of interconnection agreement.

Finally, SCE argues that CAC/EPUC's proposed modifications to Section 3.15 should be rejected as these provisions were agreed upon in the Friday Night Matrix.

CAISO supports the SOC as written, including implementation of the CAISO Tariff.

CAISO submitted comments supporting the provisions of the Standard Offer Contract, stating that QFs complying with the CAISO Tariff is consistent with the mandates of D.07-09-040. CAISO further lent its support to Exhibit I, Seller's Forecasting Submittal and Accuracy Requirements, and Exhibit K, Scheduling and Delivery Deviation Adjustments, stating that any efforts to improve accuracy of advance forecasts of QF generation and consistency of output with such forecasts is essential. CAISO recognizes that many QFs do not have much control over their electrical output due to obligations to their thermal hosts. CAISO is open to engaging with stakeholders to consider possible tariff changes that would take into account the operational limitations and circumstances affecting QFs.

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CCC and CAC/EPUC request the removal of Section 3.14(o), prohibition of QF participation in CAISO's Station Power Protocol.

The contract, as written, prohibits the QF from participating in CAISO's Station Power Protocol, a program where a generator may self-supply power for station use from on-site generation or remote generating units under the same ownership, or purchase power for station use at wholesale prices rather than under the utility's retail tariffs. CCC and CAC/EPUC feel that QFs should not be restricted from taking advantage of CAISO programs.

SCE requests that the Commission uphold the prohibition of participation in the CAISO's Station Power Protocol.

SCE notes that the CASIO Station Power Protocol has significant issues that have been raised by the IOUs and the CPUC. Furthermore, the costs and risks of operating a QF under the protocol have not been fully explored and may lead to a continued discussion of impacts through the QF contract. Furthermore, SCE states that the payment methodology and administration of the capacity performance requirements will need to be revised to reduce the energy and capacity amounts to reflect energy and capacity diverted during CAISO settlements to serve Station Use.

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__Credit and Collateral Provisions in the Standard Offer Contract__

CAC/EPUC requests that Section 1.07(a)(ii), Performance Assurance Amount, be modified to change the Performance Assurance from 12 months of expected revenue to 12 months of expected Firm Capacity Payment.

CAC/EPUC states that a performance assurance amount equal to 12 months of expected revenue of the Generating Facility represents a potentially unlimited risk that cannot be quantified nor planned for by CHP developers. Furthermore, CAC/EPUC suggests that the performance assurance requirement should not be applied to as-available generators given that an as-available resource is under no obligation to deliver power.

CAC/EPUC suggests a solution that would cap the Performance Assurance Amount equal to 12 months of expected Firm Capacity Payment revenue of the Generating Facility. This would result in a known amount for providers of firm capacity and would eliminate the performance assurance requirement for as-available providers.

Additionally, CAC/EPUC propose a new section 1.07(c), which reads:

> *Reductions to Seller's Obligations*. Notwithstanding anything to the contrary in this Agreement, the Seller may reduce any credit and collateral requirement or obligation by the amount that Buyer owes Seller; provided that such amount shall be no less than the most recent two months of total

revenue owed or otherwise accrued and payable (regardless of whether such amounts have been or could be invoiced) to Seller.

SCE argues that the Performance Assurance, as stipulated in the contract, is necessary to help recover a portion of the costs for replacing capacity products that have been contracted for and relied upon to meet load serving obligations.

SCE states that both Firm and As-Available generators comprise the contract agreements and a Performance Assurance is needed to assure such availability. CAC/EPUC's argument that As-Available providers should be exempt from Performance Assurance requirements because, by definition, they do not have to provide power is erroneous. SCE argues that while As-Available providers do not have a minimum delivery requirement, they receive a capacity payment because the CPUC deems them to have value. The Performance Assurance is needed to help recover a portion of the costs for the IOU's customers replacing all capacity products that have been contracted for and relied upon to meet load serving obligations.

SCE suggests that CAC/EPUC's argument that the Performance Assurance requirement poses a potentially unlimited risk for the Seller is false. Exposure is capped by what the Seller expects to provide to the Buyer and can be revised based on changes in the Expected Term Energy Production. Finally, SCE argues that CAC/EPUC's reference to the Performance Assurance amounts in the Walnut Creek and KRCC contracts, mark-to-market performance amounts, is misleading because the IOUs offered such a configuration and the QFs rejected the proposal.

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CAC/EPUC requests modification of Sections 6.01(b)(iv), Cross Default Provisions.

The current version of the SOC removes Section 6.01(b)(v), contained in an earlier version; however, CAC/EPUC states that this action will be for naught without modification of Section 6.01(b)(iv). CAC/EPUC argues that the current language is overly broad, the proposed terms could cause a default where no real harm is done to Buyer and no inadequate performance of Seller occurs, and the language creates privity between the Guarantor and other parties which have no real effect on the ability of the Guarantor with regards to the contract. As an example, CAC/EPUC mentions that multinational companies may have legitimate disagreements in other countries of operation and choose to default as a strategy, which could result in the seller exceeding the cross-default amount specified in this contract. Such an event would trigger a default of this contract although there would be no underperformance of the Seller in regards to its ability to meet the requirements of this contract, nor would there be any real damages to the Buyer. CAC/EPUC propose that Section 6.01(b)(iv) read as follows:

> The occurrence and continuation of a default, or event of default under one or more agreements or instruments, individually or collectively, relating to indebtedness for borrowed money, except an obligation for borrowed money where the creditor's recourse on the obligation is limited to assets for which the money was borrowed, and which results in such indebtedness becoming immediately due and payable and replacement credit support is not provided within three Business Days after Notice.

SCE requests that Section 6.01(b)(iv), Cross Default Provision, remain unchanged in the standard offer contract.

SCE states that the guarantor cross-default provision applies when the QF proposes, and the IOU accepts, a guarantor to satisfy its collateral requirement, rather than providing a letter of credit. The purpose of the cross-default amount is to set a marker to show when the guarantor is facing financial difficulty such that it is no longer a reliable source of collateral for the QF contract. SCE argues that it is not necessarily a valid conclusion that when a guarantor's debt default is greater than the cross-default amount, there will be no impact on the QF Generator's ability to perform. SCE notes that the cross-default amount will be set for each guarantor and is sufficiently high such that exceeding the cross-default amount would almost certainly be a sign of serious financial difficulty.

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CCC requests that Section 6.01(c)(xii), occurrence of a default, be eliminated or, at a minimum, applied only to new QFs.

The proposed SOC states that a QF will be in default under the contract if the QF defaults under any loan agreement to a Lender or under any related agreement with a Lender, unless the QF, the IOU and the Lender have entered into a

Collateral Assignment Agreement under the terms set forth in Section 9.05 and the provisions of such agreement conflict with the provisions of Section 6.01 (c)(xii). CCC offers several arguments against this section. First, a QF is required under Section 9.05 to enter into a Collateral Assignment Agreement with a Lender, thus the exception stated in 6.01 (c)(xii) should always be the case. Second, in the case that the exception is not the rule, this provision is onerous and renders the contract unfinanciable. Third, CCC notes that the provision is overly broad in that it states that any default under any loan document or related agreement that results in indebtedness becoming due is an Event of Default under the Standard Contract regardless of whether the QF is still performing under the Contract or if the amount at issue with the Lender is immaterial. Finally, CCC states that the Utilities seek to apply this provision to all QFs; however, under D.07-09-040, the Utilities are only allowed to impose credit requirements upon new QFs. (D.07-09-040 at pp. 120,122). While CCC prefers that the section be removed in its entirety, at a minimum, it should only be applied to new QFs.

SCE requests that the Commission reject CCC's proposed changes to 6.01(c)(ii).

SCE offers three arguments against CCC's reasoning. First, it is reasonable to assume that a default on indebtedness in excess of the cross-default amount will have a detrimental effect on the project's availability of financing necessary for continued successful operation. Second, the IOUs have found, based upon their experience, that Section 6.01(c)(xii) does not make the QF contract unfinanceable. Finally, SCE notes that the Seller has the right, but not the obligation, to enter into a Collateral Assignment Agreement.

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CCC requests that Section 6.01(c)(xvi)(2), Pledge of Equity in Seller, be eliminated or restructured to allow greater flexibility of the QF to pledge stock or equity ownership in the QF as collateral for a party other than the Lender.

As written, Section 6.01(c)(xvi)(2) deems it to be an Event of Default if the QF pledges or assigns as collateral or otherwise the stock or equity ownership interest in the QF to any party other than the Lender. CCC suggests that this requirement may be overly onerous and requests that it be deleted. However, CCC recognizes the Utilities' concern that pledging the stock of the QF to a non-Lender third party could place the QF at an increased risk of being taken over by a third party with whom the utility may not wish to contract. As such, CCC offers the following language as a compromise, marked in italics at the end of the existing language:

> The stock or equity ownership interest in Seller has been pledged or assigned as collateral or otherwise to any Party other than Lender without Buyer's consent, *which consent shall not be withheld, delayed or conditioned unreasonably.*

CCC states that the addition of this language offers the utility flexibility in withholding its consent if its position is compromised; however, the proposal allows the QF flexibility to engage in reasonable and appropriate conduct. CCC states that the Utilities have already agreed to a similar provision in Section 9.04, Assignment.

SCE agrees with CCC's proposed changes to Section 6.01(c)(xvi)(2).

SCE has adopted CCC's proposed languages and provided replacement pages in its reply comment filing.

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CCC and CAC/EPUC propose modifications to Section 9.04, Assignment. CCC proposes the removal of the need for Buyer consent in the case of an indirect change of control. CAC/EPUC requests that the QF be able to transfer or assign the Agreement to an Affiliate of the Seller if the Affiliate has the credit support of a creditworthy affiliate in addition to other provisions set out in Section 9.04.

Section 9.04 relates to assignment of the Agreement to another party. As written, the QF may not assign the Agreement or its rights under the Agreement without the prior consent of Buyer, which shall not be unreasonably withheld or delayed. The Utilities state in the Contract that any direct or indirect change of control of the QF (whether voluntary or by operation of law) will be deemed a change of assignment and will require the consent of the Buyer. CCC proposes that this provision should only apply to a direct change in control as application of the provision to an indirect change of control prevents the ultimate parent of the QF from merging with another company without the utility's consent, a provision that CCC suggests is beyond the jurisdiction of the utility. CCC proposes striking the words “or indirect change of” and “whether voluntary or by operation of law” from the second sentence of Section 9.04.

CAC/EPUC raises concern with a later provision in Section 9.04, namely the transfer of assignment a QF may make without the consent of the Buyer. Under the current provisions, the QF may transfer, sell pledge, encumber or assign this Agreement in accordance with Section 9.05, Consent to Collateral Assignment, or the QF may assign or transfer the Agreement to an Affiliate of the QF if the Affiliate's creditworthiness is equal to or higher than that of the seller. CAC/EPUC suggets adding an addition to the end of the final sentence that states “or has the credit support of a creditworthy affiliate.” Thus provision (b) would read:

> “transfer or assign this Agreement to an Affiliate of Seller which Affiliate's creditworthiness is equal to or higher than that of Seller *or has the credit support of a creditworthy affiliate.”*

SCE requests that the Commission reject both CCC's and CAC/EPUC's proposed change to Section 9.04.

SCE offers several arguments against CCC's proposal. First, SCE states that it is reasonable for a party to expect that it will continue to deal with the organizations with which it entered into the contract. Changes in upstream ownership often can result in changes of the identity of the contracting party. SCE further notes that Section 9.04 only establishes the right to provide consent, not an automatic veto power over ownership changes. SCE notes that if the transfer is to a solvent, experienced party, obtaining Buyer's consent is not ordinarily an issue. Second, SCE argues that the right to provide consent for an indirect change of ownership does not prevent the parent of a company from merging with another entity. Rather, SCE has the right to withhold consent, but notes that the Contract states that consent shall not be unreasonably withheld. Third, SCE states that disallowing consent for anything but an immediate upstream change in ownership could result in the Seller creating a corporate structure where the immediate owner of QF is a shell entity, and operation and control is exercised further up the ownership chain. Finally, SCE states that the words “operation of law” must remain in the contract. A merger essentially achieves the same goals as an asset or stock sale (which would require Buyer's consent). However, a merger is a statutory transaction that transfers all the rights and liabilities of a merging entity to the surviving entity by “operation of law." Therefore, SCE states that such language is necessary for Buyer to retain its rights in this case.

SCE does agree with CCC that the contract as written would consider it to be an event of default if a publicly traded company that owns the QF were acquired. SCE has offered a carve-out for this scenario by offering the following language at the end of Section 9.04:

> Notwithstanding anything to the contrary in this Section 9.04, Seller does not need to obtain Buyer's consent to any change of control described in this Section 9.04 if such change of control results from a purchase of the outstanding shares of a publicly traded company.

SCE requests that the Commission reject CAC/EPUC's proposed changes to Section 9.04 because the language appears to be duplicative and will create ambiguity.

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CCC and CAC/EPUC request modifications to Section 9.05, Consent to Collateral Assignment. CCC wishes to remove the need for Buyer consent if a Lender forecloses on the QF and wishes to sell the Generating Facility to recoup the loan amount (Section 9.05 (i)). CAC/EPUC takes issue with Section 9.05 (e) and 9.05 (h).

CAC/EPUC states that Section 9.05(e) unduly limits the Lender to cure an Event of Default only if the Lender sends a written notice to Buyer before the end of any cure period. In addition, CAC/EPUC states that the lender may only cure within the cure period as defined by the SOC, which places unnecessary limitations on the Lender to effect a cure, thus making it harder for the QF to secure a loan. CAC/EPUC state that Section 9.05 (h), which requires the Lender to assume all of the Seller's obligations in the event of default, also is unduly restrictive and limits the ability of the QF to secure financing. CAC/EPUC suggests that Section 9.05 should be replaced with the modified language as follows:

> Notwithstanding anything in Section 9.04, Seller has the right to assign this Agreement as collateral for any financing or refinancing of the Generating Facility.

CCC requests the removal of the provision in Section 9.05 (i) requiring Buyer consent for the Lender to sell the Generating Facility in an event of foreclosure. CCC states that this provision is unnecessary and burdensome as the provision already states that the purchaser of the Generating Facility must have financial qualifications and operating experience equal to or better than that of the QF at the time the QF and the utility entered into the contract. CCC suggests that this provision will inhibit the ability of the QF to secure financing. As such, CCC requests that the words "satisfactory to Buyer in its sole discretion" be removed from the last sentence of Section 9.05(i).

SCE requests that the Commission reject CAC/EPUC's proposed changes to Section 9.05. SCE offers a compromise to CCC's requested changes.

SCE, in response to CAC/EPUC's proposal to strike the lettered section of 9.05, states that it is customary and appropriate to enumerate the terms pursuant to which the Buyer will consent to the agreement of collateral for a financing of Seller.

SCE offers to modify the last sentence of 9.05(i) to read as follows. "Such sale or transfer (excluding a foreclosure) may be made only to a Person reasonably acceptable to Buyer."

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<u>Issues Associated with Small or As-Available Resources</u>

CAC/EPUC request that certain contract provisions be eliminated or modified for as-available and small CHP resources.

CAC/EPUC states that there are fundamental operating distinctions between as-available and firm resources. Furthermore, CAC/EPUC requests that small CHP facilities be offered relief from the complexities of the SOC, and submits a small QF contract for consideration.

CAC/EPUC notes that as-available sales to the Utilities are at the discretion of the QF, and therefore the seller should not be subjected to certain provisions in the contract that, they feel, only apply to firm-capacity resources. For example, the SOC as written denies QFs the option of termination on notice, which

CAC/EPUC notes was a historical option for QFs. Additionally, it requires as-available sales to post and maintain a Performance Assurance Amount equivalent to that of a firm resource and fails to refund the full amount of the security if the Generating Facility fails or is not of sufficient size to generate the full amount of As-Available Contract Capacity. Specifically, CAC/EPUC suggests that contract provisions relating to the following should be modified: termination penalties; credit and collateral; performance assurance; development security and expected term year energy production. CAC/EPUC recommends:

1) An appropriate provision be included in the IOU contract to make clear that certain provisions do not apply to as-available sales;
2) The Performance Assurance Amount be restructured to equal 12 months Firm Contract Capacity revenue rather than 12 months total revenue;
3) As-available capacity be required to post the Development Security specified in the IOU contract but require a full refund contingent only on the seller's Generating Facility being operational within X months of the start date. Specifically, CAC/EPUC recommends that the daily delay liquidated damages to extend the term start date only apply to firm contract capacity (Exhibit F (4)(c)(ii). Extension of the Term Start Date shall be subject to the limitations set forth in Section 1.01(a), and seller may not extend the Term Start Date for more than 180 days.

In addition, CAC/EPUC recommends that the Seller may terminate the contract upon 30 days written notice to Buyer. Furthermore, CAC/EPUC suggests striking the words "sufficient to provide the entire As-Available Contract Capacity designated by Seller" from Exhibit F(4)(d)(i)(2) and all of Exhibit F(4)(e)(ii) pertaining to Deficient Installation of Net Contract Capacity; Partial Forfeiture and Partial Return of the Development Security. CAC/EPUC proposes many additional changes to the SOC to reflect the desired differentiation between as-available and firm resources. Finally, CAC/EPUC submitted a proposed Small QF Standard Offer Contract for generators less than 20MW.

SCE requests that all of CAC/EPUC's proposed modifications for As-Available resources be rejected.

SCE first addresses CAC/EPUC's proposal to allow 30-day notice for contract termination by As-Available generators. SCE argues that the CPUC, by determining a capacity payment for As-Available generators, deemed the capacity to be of value; therefore, the IOUs make planning assumptions based upon contractual commitments with QFs. For this reason, and because D.07-09-040 did not authorize any such provision for contract termination, CAC/EPUC's proposal should be rejected.

SCE next addressed various performance provisions proposed by CAC/EPUC for As-Available Generators. Noting that D.07-09-040 does not specify any special provisions for as-available generators, SCE feels that as-available producers should have performance obligations and limitations on its actions just as apply to firm generators. SCE notes that an as-available contract is still a contract and should necessarily bind each party in a commercially reasonable fashion. Furthermore, whether as-available or firm, if a Seller does not meet its obligations under the contract, the IOU will be negatively impacted as noted above.

Finally, SCE requests that the Commission ignore CAC/EPUC's submission of a proposed Small QF contract as inconsistent with D.08-09-024, which modified D.07-09-040. D.08-09-024 specifically states that once standard offer contracts are adopted for large QFs, Energy Division is directed to hold a workshop to begin drafting a simplified version for small QFs.

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<u>Changes to Exhibit A, Definitions of Contract Terms</u>

CCC notes a typographical error in the definition of "Generator Owner"

CCC requests that the Utilities remove the first occurrence of the word "applicable" in this definition. CCC states that the Utilities concur.

SCE agrees with CCC and has modified the definition of "Generator Owner."

SCE, in its reply comments, has modified the definition of "Generator Owner" to reflect CCC's proposed changes.

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CCC requests that the definition of "Interconnection Study" be modified to narrow the scope of the definition.

CCC suggests that the definition of "Interconnection Study," as written, is overly broad. CCC suggests that the words "study to evaluate" should be changed to "a study prepared by or on behalf of the Transmission Provider or the CAISO to evaluate." CCC states that the Utilities concur with this change.

SCE agrees with CCC and has modified the definition of "Interconnection Study."

SCE, in its reply comments, has modified the definition of "Interconnection Study" to reflect CCC's proposed changes.

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CAC/EPUC requests modifications to the definition of Resource Adequacy Benefits and Resource Adequacy Rulings such that QFs are only obligated to the Resource Adequacy Rulings existing at the time of passage of D.07-09-040.

CAC/EPUC requests the definition of Resource Adequacy Benefits be changed such that "any" Resource Adequacy Rulings is changed to "the" Resource Adequacy Rulings, and "associated with" is changed to "ascribed to."

CAC/EPUC requests that the language "and any subsequent CPUC ruling or decision, or any other resource adequacy laws, rules or regulations enacted, adopted or promulgated by any applicable Government Authority, as such CPUC decisions, rulings, laws, rules or regulations may be amended or modified from time to time during the Term" be stricken from the definition of Resource Adequacy Rulings.

SCE requests that the Commission reject CAC/EPUC's proposed changes to the definition of "Resource Adequacy Rulings."

SCE states that CAC/EPUC's proposed changes make the product being purchased (in this case RA benefits) ambiguous. They continue that they are purchasing the Related Products in order to comply with Resource Adequacy Rulings. Limiting those products to only certain existing CPUC rulings could render the product valueless if future CPUC rulings change the resource adequacy rulings. SCE further states that the Seller is in the best position to assume the risk of future resource adequacy rulings because it is best suited to mitigate and comply with those risks.

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CAC/EPUC requests that the definition of "Related Products" be modified for clarification.

CAC/EPUC agrees with the compromise of products to be retained by seller or transferred to Buyer that was proposed in the "Friday Night Matrix"; however, CAC/EPUC wishes to clarify the definition of product and related products in order to 1) appropriately convey to Buyer the products and benefits purchased; and 2) assure that certain specific attributes are retained by Seller, a Site Host or Section 218(b) entitled user or Buyer.

The agreement among parties was that additional attributes and benefits would be part of the product being sold, so long as the Seller could retain those attributes and benefits needed for future use or compliance with regulations. During the November negotiations, CAC/EPUC raised the point that there had been significant Commission determinations (relating to the auction of carbon credits) since the time the June 30th matrix was submitted by the Utilities (and the subsequent matrix submitted by CAC/EPUC to the Commission. Furthermore, CAC/EPUC states that there was general agreement that certain credits (such as existing generator credits associated with nitrogen oxide) would not be appropriately included in the attributes and credits conveyed to Buyer.

CAC/EPUC argues that the ability to retain attributes and benefits required by the Seller, the Site Host, or an Over-the-Fence Sales buyer for use or future regulatory compliance is a critical part of the "Friday Night Matrix," and therefore feels that the definition of Related Products must be clarified to ensure retention of those attributes and benefits. As such, CAC/EPUC proposes the following definition of "Related Products":

> "Related Products" means (i) with respect to Resource Adequacy Benefits (a) that portion of the Resource Adequacy Benefits that are associated with the Firm Contract Capacity, and (b) to the extent that there are Resource Adequacy Benefits associated with the generating capacity of the Generating Facility other than the Firm Contract Capacity, that portion of

the Resource Adequacy that are not associated with the Firm Contract Capacity and that are in excess of those Resource Adequacy Benefits used by Seller or by a Site Host, both in connection with the Host Site, to meet a known and established, at the point in time when the Resource Adequacy Benefits are to be used, resource adequacy obligation under any Resource Adequacy Rulings; (ii) any Capacity Attributes and all other attributes associated with the electric energy or capacity of the Generating Facility (but not including any Financial Incentives) that are in excess of those Capacity Attributes or other attributes used, or retained for future use, by Seller or a Site Host, both in connection with the Host Site, to meet a known and established, at the point in time when the relevant attribute(s) are to be used or retained, obligation under Applicable Law; (iii) any Green Attributes.

Notwithstanding any other provision of this Agreement, Related Products shall not include, for the purposes of combined heat and power projects, emission credits, allowances, offsets, benefits, permits or rights of any kind, including greenhouse gas allowances or related auction proceeds provided to the Seller as a retail provider that are acquired on or after the Effective Date; provided that they are encumbered or used by the Project, or its Site Host or banked for future compliance by these entities with local, state, regional or federal greenhouse gas regulations, operating permits or air quality permits.

SCE opposes modification of the definition of "Related Products."

SCE states that the definition of "related products" as it appears in the proposed contract is the result of many negotiations and reflects an understanding among the majority of the parties. They assert that CAC/EPUC's revisions to the definition make what was clearly stated vague and ambiguous and can be read to contradict what was agreed upon by the parties. SCE states the definition of related products and the associated provisions in the contract allow the Seller to retain those environmental and other attributes necessary for plant or related site operations. Because the IOU is purchasing the entire output of the Generating Facility, it should follow that they are also purchasing all other environmental attributes beyond those noted above. SCE notes that this is similar to the treatment of "green attributes" in renewable contracts, under which the IOU receives all of the environmental attributes of the facility.

DISCUSSION

The Commission adopts the IOU's QF Standard Offer Contract as submitted, except where noted in this resolution.

The QF Standard Offer Contract presented by PG&E, SCE and SDG&E represents the result of a year-long negotiation and drafting process. The outcome is a contract that allows both the IOUs and the QFs to enter into an agreement that improves forecasting of load, offers substantial flexibility, adjusts to the changing wholesale market and grid operation rules, and is generally a step in the right direction in the evolution of the QF Program. The Commission acknowledges that the contract as modified by this resolution will not fully assuage the concerns presented by the QFs or the IOUs; however, the contract as adopted will represent a balance of views and is deemed to be the most prudent.

QFs, by definition, are comprised of many technologies with vastly different operating characteristics; therefore no standard offer contract can possibly account for the unique circumstances of individual generators. For this reason, the QFs and the IOUs are encouraged to continue engaging in RFOs and bilateral negotiations in order to meet the requirements of PURPA. Finally, recognizing the unique characteristics of combined heat and power (CHP) technology, the parties are encouraged to participate in the upcoming CHP proceeding ordered by D.08-10-037.

The Commission adopts the QF Standard Offer Contract in its entirety, except where noted. The terms and conditions included in the "Friday Night Matrix," while deviating at times from D.07-09-040, have been deemed to strengthen rather than weaken the provisions of that decision. The main occurrence of such deviations pertains to the 90/95% performance standard adopted in the Decision. The Decision states that the firm power contract will begin imposing penalties to the capacity payment for failure to deliver 95% of the contract power during on-peak months and 90% of the contract power during off-peak months (not counting scheduled outages).[1] During contract negotiations, parties agreed to meet a 95% performance standard during all peak operation hours throughout

[1] D.07-09-040 at p 97.

the year rather than only during peak hours of peak months. In order to meet this strict requirement, QFs shall be allowed to commit to ambiently adjusted capacities for each month, rather than one fixed capacity for the entire year. For example, a QF may be able to provide 105 MWs of power in the winter, but only 100 MWs during the summer peak due to inefficiencies caused by increased ambient temperatures. This agreement allows the IOUs to more precisely predict load forecasts while allowing the QFs to achieve a higher performance standard. The Commission feels this arrangement strengthens the intent of the decision and therefore adopts the proposed 95% performance standard for all peak hours of all months combined with the ability to make ambient adjustments for each month of the year.

In order to maintain a QF program that functions to its highest ability, the Commission makes a minor adjustment to one provision in the "Friday Night Matrix."

> *Issue # 2, QF Status of Generating Facility*. In this provision, the matrix provides that a QF must take all actions necessary to maintain QF status of the Generating Facility under PURPA. The provisions of this contract and D.07-09-040 were determined based upon the QF operating characteristics currently contained under PURPA. Any loosening of such characteristics could render certain provisions moot and could challenge the assumptions under which the California QF program was established. Therefore, the contract shall be revised to add clarifying language to state that, in the unlikely case that PURPA requirements loosen, the QF shall maintain the operating characteristics required by PURPA at the time of contract execution.

The IOUs are ordered to submit a Tier 2 Advice Letter within 15 days of the adoption of this resolution.

The Utilities are ordered to submit within 15 days a Tier 2 Advice Letter containing an updated contract that reflects the Commission's findings in this matter. Upon approval of the Standard Offer Contract submitted by the Tier 2 advice letter, the SOC will be the vehicle for new and existing QFs to contract with the IOUs under PURPA. QFs who do not sign the SOC will retain the ability to enter IOU RFOs or separate bilateral deals as participating generators.

<u>Issues Associated with Entering into the Standard Offer Contract</u>

Existing, new or repowering generators will be allowed to revise the start date one year prior to the originally selected start date.

CCC argues that an incorrect start date may negatively impact a generator either by being prohibited from selling power to the IOU if it comes online early or being penalized by losing part of its term agreed upon under the contract if it comes online late. CCC asserts that it is not practical for a new or repowering QF to know a full year in advance when the term start date will occur, and it requests that the allowed revision of the start date be changed to three months rather than one year.

SCE replies that a shortening of the start date revision to three months from one year will negatively impact its ability to adequately plan for and purchase power. Furthermore, power is usually purchased before year-ahead resource adequacy filings are due. Finally, SCE notes that a seller that has a FERC-jurisdictional interconnection agreement may sell power under a separate agreement (to Buyer or others) if the generator comes online before its projected online date. For these reasons, SCE requests that the Commission maintain the one year in advance start date revision.

The Commission recognizes the uncertainty that results from various contingencies in the development process. Many new or repowering projects must select start dates many years in advance that may not account for unforeseen delays such as delays in turbine delivery, etc. However, we agree with SCE that an inability to rely on the start date of new generation negatively impacts the IOU's ability to plan and may result in under or over-procurement at a disadvantage to the ratepayer. As such, we deny CCC's request. New or repowering generators will be allowed to revise the start date one year prior to the originally selected start date. We feel that most unknown contingencies should be accounted for within one year of the originally selected start date. We note that existing generators, by virtue of the fact that they are already online, should have no difficulty adhering to the original stated start date. Therefore, existing generators may also only revise the start date one year in advance of the originally agreed upon date.

The Commission adopts CCC's proposed changes to Sections 1.01(a), 1.01(b) and Exhibit F, Sections 4(c)(i) and 4(d)(i).

CCC states that the above sections pertaining to the Term Start Date may be extended by a Force Majeure event affecting the QF. However, as written, the above sections rely on Section 5.03, which does not provide for any such extension.

SCE agrees with CCC and provided revised sections in its reply comment filing.

The Commission adopts the changes proposed by CCC and agreed to by SCE. The proposed changes clear up an inconsistency in the filed contract. Therefore Sections 1.01(a), 1.01(b) and Exhibit F, Sections 4(c)(i) and 4(d)(i) shall be modified to include the words "extension of the Term Start Date as a result of Force Majeure as to which Seller is the Claiming Party (Subject to Section 5.03)."

The Commission adopts the intent of CCC's proposed modification of Section 1.02(f), Site Host Load, to reflect variations in the site host load over time.

In its protest, CCC states that providing an estimate of Site Host Load in kWh on an annual basis and kW on an instantaneous average basis should in no way lead to any binding obligations or other contract ramifications due to the fact that the QF has no direct control over Site Host Load.

SCE argues that CCC's proposed language is unnecessary give that Section 1.02(f) already states that the designated Site Host Load is what is "expected" "on average." Furthermore, SCE suggests that CCC's language conflicts with Exhibit D, which states that the amount of energy that the Buyer would be required to purchase from the Seller would be no more than 120% of the Expected Term Year Net Energy Production.

The Commission agrees that the language in the contract does provide for an expectation of Site Host Load on average; however, we feel that additional clarification is needed to explicitly state that the estimate is not binding. In response to SCE's concern regarding a potential conflict with Exhibit D, we agree that CCC's proposed language, as written, could result in the Buyer being obligated to purchase more than 120% of the Expected Term Year Net Energy Production. For this reason, we do not adopt CCC's proposed language, rather we concur with the intent of the proposed modifications. Therefore, we modify Section 1.02(f) to add a sentence at the end that states Site Host Load estimates are not binding. In doing so we also acknowledge that the IOU must rely on the Expected Term Year Net Energy Production provided in the contract. While Site

Host Load is out of the control of the QF, it is the responsibility of the QF to estimate, to the best of its ability, the Firm, As-Available or Net contract capacity. The QF should take into consideration possible fluctuations in Site Host Load when making these commitments.

The Commission adopts CCC's request to eliminate the limits on QF's rights prior to the Term, Section 3.01(d), Retained Benefits, subject to applicable laws.

CCC argues that Section 3.01(d) is unneeded given that all QFs will be required to file a FERC jurisdictional interconnection agreement. As written, the contract states that any QF without a FERC jurisdictional interconnection may not sell power to any other entity unless FERC determines that the QFs can sell their power to someone other than the utility. CCC states that a QF not under a FERC jurisdictional interconnection may sell power to their thermal host and up to two contiguous neighbors under Public Utilities Code 218(b).

SCE argues that CCC's request violates applicable laws because FERC has exclusive jurisdiction over agreements permitting wholesale sales of power to parties other than the interconnecting utility. SCE further notes that the definition of Power Product agreed upon in the contract allows for sale to the Site Host Load and Station Use; therefore even those generators without a FERC-jurisdictional interconnection can serve the site Host Load and use power to supply Station Use.

The Commission agrees with CCC's argument that, as written, Section 3.01(d) may be overly restrictive. Upon adoption of this resolution, all QFs greater than 20 MW will be required to interconnect under FERC; however, those under 20 MW will still interconnect through Rule 21 and will therefore be subject to Public Utilities Code 218(b). We acknowledge that there are certain laws that govern the sale of wholesale power under FERC, and QFs must comply with all applicable laws. Therefore, we revise Section 3.01(d) to reflect that the QF must comply with all applicable FERC regulations regarding the sale of wholesale power prior to the term and the IOU must also comply with the Public Utilities Code. Any specific reference to a FERC jurisdictional interconnection is unnecessary and could be rendered moot if FERC modifies such laws anytime during the term of the contract. Therefore, Section 3.01(d) is revised as follows: "*Retained Benefits.* Seller shall retain for its own use or disposition all financial incentives and all attributes, benefits and credits associated with the Generating

Facility and the electrical or thermal energy produced there from, other than the Power Product and the Related Products.

(i) Nothing in this Agreement restricts Seller's ability to use, provide and convey any energy, Green Attributes, Capacity Attributes, Resource Adequacy Benefits, or any other product or benefit associated with the Generating Facility or the output thereof before the term.

(ii) Notwithstanding anything to the contrary in this Agreement, as of the Effective Date and until the Term End Date, Seller may not use, provide or convey any of the Power Product and the Related Products to any Person other than Buyer except as allowed by Public Utilities Code Section 218 (b)."

CAC/EPUC's request to allow the QF seller to determine the Generating Facility capacity or to designate a portion of its resources on a unit contingent basis as dispatchable is denied. All generation from the QF that is not used to serve the thermal host shall be dedicated to the utility.

CAC/EPUC request that the seller be allowed to designate the amount of output that is dedicated to the utility rather than being required to dedicate all output to the utility regardless of the QF configuration or the economics of producing such generation. CAC/EPUC offer an example of a facility that has 50MW of steam turbine generation that at times offers power to the grid. This 50 MW of power cannot be allocated as Firm Capacity given the fact that it may not always be available to serve utility load. Furthermore, the economics of the as-available pricing structure make it such that this 50 MW of power, while technically offered as an as-available resource, will never be economic to run at as-available prices. In essence, this 50 MW of power will never be available; therefore, there will be 50 MW less power available to the grid.

SCE states that the exclusive dedication of output to the utility has been a fundamental assumption of the QF contract since the beginning. Furthermore, SCE states that it would be impractical to serve as a Scheduling Coordinator for a QF that is engaging in market sales.

While CAC/EPUC's example was the only one put forth during the negotiations, we do not assume that it is the only generator that finds itself in a situation of being able to offer a dispatchable peaking resource given the correct economic signals. Furthermore, the IOUs have a stated preference for dispatchable resources and a flexible capacity configuration allows the QF to potentially meet the IOUs need for peaking resources. However, PURPA mandates that as-available pricing structure be based on utility avoided cost, not QF economics. Thus, we encourage QFs willing to offer dispatchable power to negotiate and enter into a mutually agreed-upon contract with the IOU.

We recognize SCE's concern regarding the impracticality of serving as a Scheduling Coordinator for a QF engaging in market sales. For this reason, and in recognition of the agreements made during the negotiation process, all QF capacity at the site will be dedicated to the IOU. Thus, the IOU shall have the sole right to call upon the dispatchable unit upon executing the SOC; no power shall be sold on the market.

QFs shall comply with all Resource Adequacy (RA) obligations effective throughout the term of the contract. Future Resource Adequacy rulings may provide for grandfathering of existing contracts, but that shall not be mandated in this resolution.

CAC/EPUC argues that the pricing structure determined in D.07-09-040 was developed in context of the Resource Adequacy program effective at that time. They argue that future rulings in the Resource Adequacy program could impose a significant cost to QFs that is unaccounted for under the current payment structure. Furthermore, CAC/EPUC argues that future Resource Adequacy rulings could cause conflict with the QFs obligation to serve the host; therefore, a provision should be added to the contract to insure that any new RA obligations do not unnecessarily interfere with the QF's ability to serve the thermal host. For these reasons, CAC/EPUC request that QFs only be subject to the Resource Adequacy obligations effective at the time D.07-09-040 was rendered and be insured against any interruptions to the thermal host that could result from complying with RA rulings.

SCE argues that CAC/EPUC's request for an additional section to protect against unnecessary interruptions from serving the thermal host is duplicative of Section 3.13(b), which allows the Seller to challenge a CPUC ruling if it unnecessarily inhibits their site host obligations.

As a general rule of practice, generators who enter into contracts with a regulated utility are subject to change of law provisions unless it is explicitly stated otherwise. In this case, the Commission does not wish to preclude QFs from any as of yet unknown Resource Adequacy program modification. We note that in an individual RA proceeding, a provision to allow grandfathering of existing contracts may be included; however, we make no orders to this effect at this time. We highly encourage QFs to participate in future RA proceedings to minimize any chances of a conflict occurring.

We agree with SCE that CAC/EPUC's request to add a Section 1.09 is duplicative of Section 3.13(b). Therefore, CAC/EPUC's request is denied. In addition, we modify Section 3.13(b) to clarify its intent:

> Seller shall comply with any demonstration required under the Commission's Resource Adequacy program; provided, however, if such demonstrations could interfere with the operations of Seller, Seller shall be entitled to challenge such requirements with the CPUC or other relevant agency. Absent a ruling or other action granting a stay, compliance shall be required pending resolution of the challenge.

Section 3.08(d), Multiple Points of Metering at a Single Customer Site, shall be modified such that consent of Buyer is not needed to net multiple meters at one industrial site. Such net metering shall occur on specified CAISO billing intervals and shall be accounted for only within each billing interval. In addition, CAISO could install an additional meter that nets the results of the multiple meters on the industrial site. At no point shall this provision allow for net metering of different entities on one site.

CAC/EPUC request that Section 3.08(d) be altered such that Buyer consent is not needed to allow for netting of multiple points of metering within one generating facility. They further request that compliance with the tariffs, rules and regulations of the Buyer and the CAISO is unnecessary. In support of the first request, CAC/EPUC offers the example of a facility that has multiple meters such that one meter could register a sale of power while another meter would show purchase of power into the system. The reality, however, is that, once netted, the result could be an overall sale of power into or out of the facility that would not be reflected by the individual meters. This configuration often occurs at large industrial sites that were previously owned by the IOUs and were then purchased by private developers who built CHP facilities. CAC/EPUC argues that to redesign this metering configuration, some of which was implemented based on different rules and regulations at the time, would be economically infeasible.

SCE suggests that CAC/EPUC's request is unnecessary as section 3.08 already provides reasonable flexibility to address such situations. Furthermore, if netting is appropriate, CAISO has provisions to accommodate these configurations. SCE argues that CAC/EPUC is attempting to avoid necessary interconnection, metering and transmission or distribution use charges already on record. Furthermore, SCE notes that if the sites are netted contractually but are not recognized by the CAISO for scheduling purposes, then excessive deviations costs could be levied upon the scheduling coordinator for the generating facility. CAISO does not support CAC/EPUC's request to delete all references to the need to comply with the CAISO Tariff in the event that the QF wishes to establish multiple points of metering.

SCE raises valid concerns; however, we are not convinced that the IOU is ultimately the entity who is best situated to decide whether or not a seller can net meter at a particular facility. We are not convinced by SCE's argument that net metering would, by definition, result in excessive deviation charges. We do agree, however, that such deviation charges could occur if the CAISO does not recognize the net metering configuration. Therefore, if CAISO recognizes the net metering configuration for scheduling purposes, the seller may decide to net the input and output of multiple meters on one site. We encourage the CAISO to consider installing an additional meter at these large industrial sites to sum the input and output of the multiple meters. Furthermore, we note that net metering cannot occur over some unspecified period of time. In order to ensure the simultaneous measurement of input from one train versus output from another, we limit net metering such that readings may only be summed within one CAISO billing interval. For example, if one train produces a certain amount of power during one CAISO billing internal, that output may not be counted against the input of another train during a different billing interval. However, it may be counted against input within the same billing interval.

We caveat this provision such that net metering can only occur on sites with one facility. If multiple facilities exist on one site, it would be impossible to determine if the net metering was only capturing the input and output of that particular facility. CAC/EPUC's request that the QF not be subject to the tariffs, rules and regulations of the Buyer and the CAISO is rejected. This request is overly broad and reaches beyond the scope of this issue. QFs are required by law to adhere to all applicable tariffs and provisions, of which the CAISO Tariff is included for generators larger than 1 MW.

The Performance Tolerance Band shall remain at three percent of the Seller's Forecasted output.

CAC/EPUC requests that the Performance Tolerance Band, which creates a bandwidth around forecasted load in which the QF's delivered load can fluctuate, be changed to create a bandwidth around the maximum output of the facility (PMax). The bandwidth is set such that if a generator produces power outside of the bandwidth (currently proposed at plus or minus 3% of forecasted load or 1MW, whichever is greater), certain CAISO charges will apply. To reduce the potential for these charges, CAC/EPUC proposes creating a 3% bandwidth around the maximum load (PMax). As an alternative, CAC/EPUC assert that the IOUs should revert to the agreements they assert were included in the Friday Night Matrix, which CAC/EPUC argues allowed for adjustments to the forecast based on changes in ambient conditions along with Site Host Load related adjustments.

SCE and CAISO oppose CAC/EPUC's proposed changes. SCE argues that many QFs have net metering configurations where generation is netted against host and other allowed loads prior to any excess being delivered to CAISO. For this reason, there can be a significant difference between a facility's PMax versus net output forecast. Applying the bandwidth to the PMax could result in a very large Performance Tolerance Bandwidth, which would greatly diminish the accuracy and purpose of forecasting. CAISO states that they oppose any changes to Exhibit K that undermine the intent of the provision for accuracy in delivered versus forecasted load.

Improved accuracy of forecasting was called for in D.07-09-040 and is a central theme of the standard offer contract. As such, we recognize the importance of matching delivered load to forecasted load as closely as possible. The IOUs have accepted the burden of the CAISO charges associated with an inaccurate forecast delivered to CAISO along with associated revenues from accurate Seller forecasts. Therefore, the IOUs require that the QFs operate within a strict forecasting schedule, and they are subject to stiff penalties outlined in the "Friday Night Matrix" for missing a forecast by more than the 3% or 1MW bandwidth, whichever is greater. We recognize the difficulty some facilities may have in meeting these requirements; however, we are convinced by SCE's argument that in the case of netting the output forecast, the bandwidth difference between PMax and forecasted output could deviate substantially. In an effort to minimize opportunities for such discrepancies, we adopt the 3% deviation from forecasted output as presented in the Utilities' standard offer contract.

We caveat this decision with several clarifications. First, the contract should make explicitly clear that the deviation provisions related to forecasting requirements only apply if the QF made the error. While this may seem obvious, we note that at times the scheduling coordinator may make an error despite the correct information being submitted by the QF. In this case, the QF shall not be subject to any penalties under this contract.

Second, the proposed compromise in the matrix for handling multiple Mean Average Error (MAE) failures within one calendar year (any three months in a twelve month period) is to reduce the capacity payment to the as-available payment for all of the following months unless and until the QF achieves two consecutive months where there is not an MAE failure, at which point, starting with the second month, Seller's capacity payments shall revert back to the firm capacity payment. We note that nowhere in D.07-09-040 is there a provision to allow for the changing of payments from firm to as-available capacity payments. However, we recognize that this arrangement is the result of a compromise among all parties, and we have not received any indications of disagreement with this provision in comments. Furthermore, we do not find that the proposed provision in any way weakens, rather it strengthens, the intent of D.07-09-040, which is to increase forecasting reliability. Therefore, we adopt the provisions described above as they pertain to this contract.

Finally, we recognize that this requirement could be burdensome for small, as-available QFs. These types of QFs will have difficulty creating a day-ahead forecast within the tight guidelines of the bandwidth because any deviation could represent a large percentage of the total output. We note that a 1 MW bandwidth protection for generators has been built into the contract, which should serve to lessen the potential impact of deviations. The CAISO Tariff requires that forecasts be made at the generator level, thus we find ourselves unable to make exceptions for small as-available generators. The provisions in the contract offer some protection to small generators; however, it is far from ideal. We encourage the CAISO to consider allowing the aggregation of small as-available generators within the IOU's portfolio as currently occurs with small

QFs that have not signed the CAISO Tariff and are interconnected through Rule 21.

Exhibit C, Demonstration for Firm Contract Capacity, shall remain as submitted in the IOU's Standard Offer Contract.

During the negotiations, it was agreed among parties that testing for accuracy of firm capacity offerings was only required of new facilities providing firm capacity. These new QF facilities may choose from two options:

1) Perform the 20-day and Six Hour Demonstration;
2) Elect to perform one of the following demonstrations:

    a. The 20-day demonstration and six hour demonstration adjusted using the ambient factors (1) employed in the Commissioning Test, so long as Buyer is permitted to attend the Commissioning Test and subject to Buyer's reasonable satisfaction that such ambient Factors are applicable to the Demonstration, or (2) obtained pursuant to the Performance Test Code on Overall Plant Performance (PTC 46-1996) established by the American Society of Mechanical Engineers, or any successor thereto, or;

    b. The Commissioning Test, subject to Buyer's reasonable satisfaction that the Commissioning Test accurately demonstrates the Firm Contract Capacity.

CAC/EPUC argue that the language proposed by the Utilities in Exhibit C is vague and does not facilitate proper ambient conditional testing necessary to perform the required testing calculations. CAC/EPUC proposes several additions to Exhibit C to clarify and expand on the testing parameters. SCE argues that turbine specific ambient parameters and manufacturer's curves would not be applicable to all QF technologies; therefore, it would be impractical to outline all requirements for ambient corrections for all technologies within the framework of a "standard contract."

We agree with SCE. While the goal of a standard offer contract is to minimize negotiations between parties, there are certain cases, such as designing the appropriate testing parameters outlined in Exhibit C, where some level of negotiation must occur. The Commission finds Exhibit C to be satisfactory in the level of detail provided. The specifics of testing procedures for particular technologies will be worked out in a written agreement between parties, as stated in Exhibit C, upon execution of the contract. Therefore, we adopt Exhibit C as written in the IOU's second Supplemental Advice Letter Filings.

Issues Associated with Termination of the Contract and Associated Payments/Penalties

The IOUs shall remove the Termination Provisions in Section 2.02(a)(i) and Section 2.02(a)(ii). CAC/EPUC's request to extend and amend existing QF contracts is denied.

In the proposed standard offer contract, the IOUs include two Buyer termination rights: (1) if, at any time, the Commission eliminates or diminishes the rights of the utility under D.04-12-048 or other applicable law to collect any above-market costs of this agreement from departing load customers; and (2) if, at any time after the effective date, the FERC eliminates the mandatory purchase obligation under PURPA as applied to the Buyer, or if FERC determines that the Buyer does not have the obligation to purchase electric power from QFs.

CCC, IEP and CAC/EPUC strongly oppose any such termination rights. They claim such broad termination provisions make contracts unfinanceable and commercially unreasonable. CCC points out that nowhere in D.07-09-040 or any other relevant proceeding did the Commission provide for termination clauses. CAC/EPUC propose that the Utilities' logic under the second provision is legally flawed, stating that EPAct of 2005 protects the QFs from the PURPA Section 210(m) termination if the pending state obligation was open prior to adoption of EPAct of 2005. CAC/EPUC argues that because R.04-04-025 and R.04-04-003 opened prior to the adoption of EPAct of 2005, the California QF Program is exempt from the provisions of Section 210(m). CAC/EPUC suggests that a solution to this problem would be to amend existing contracts to adhere to the findings of D.07-09-040 and extend those contracts.

The first proposed termination clause allows the IOU to terminate the contract if, at any time, the Commission eliminates or diminishes the rights of the utility under D.04-12-048 (and we would add D.08-09-012, which addressed non-bypassable charges) or other applicable law to collect any above-market costs of this agreement from departing load customers. We recognize the significance of potential stranded costs on the Utilities from departing load customers; however, adoption of the IOUs' proposed termination language would pre-determine the handling of stranded costs by future Commissions. This Commission will not bind future Commissions in how they address potential stranded costs. If a future Commission chooses to change the IOUs' ability to recover above market costs that Commission will need to address the issue and its potential impact on ratepayers. Furthermore, it will be at the discretion of that Commission whether termination of the standard QF contract is allowable. For these reasons, we order the IOUs to remove this termination provision from the QF standard offer contract.

EPAct 2005, enacted on August 8, 2005, amended Section 210 of PURPA by providing for termination of the so-called mandatory purchase obligation upon a FERC finding that a QF has nondiscriminatory access to wholesale markets, as more fully defined in EPAct 2005. To date, the FERC has not made any such finding in regards to the California QF program. While such a ruling could potentially occur during the term of an executed contract, we do not feel that such a ruling should immediately end all contracts currently in progress. Just as many provisions allow for the grandfathering of existing contracts, we will allow for such grandfathering here. To do otherwise would all but preclude any QF from securing financing to enter into this agreement. We do acknowledge, however, that if the FERC makes such a finding in California, Utilities will not be required under PURPA to contract with new facilities or re-contract with existing facilities not covered by a mandatory purchase obligation. We acknowledge the potential validity of CAC/EPUC's argument that Section 210m does not apply to existing QFs because the rulemakings under which this contract are housed opened prior to 2005; however, such a determination would fall under FERC's jurisdiction and cannot be made here.

CAC/EPUC's request to extend and amend the existing QF contracts is denied. D.07-09-040 clearly set that new standard offer contracts should be designed to reflect the changing rules and regulations pertaining to the QF program. The Commission was unequivocal in its intent that QFs signing this contract would be considered to have signed a new contract.

Issues Associated with Regulatory Matters

The Commission grants the intent of CCC's request to add language to Section 1.06(a) reflecting their reservation of rights for a potential change to firm capacity price. The specific language offered by CCC is denied.

CCC filed a Petition for Modification (PFM) before the Commission in March of 2008. In its PFM, CCC asked the Commission to increase the firm capacity price to reflect a documented increase in avoided IOU capacity costs. At the time CCC filed comments, the Commission had not yet ruled on CCC's PFM. However, the Commission issued a decision (D.09-04-034) in this matter on April 16, 2009. In its comments to the Utilities' supplemental filings, CCC requested to add language to the end of Section 1.06(a) to allow CCC to retain its right for a potential change in firm capacity price. As written, the contract states that the firm capacity price paid to the QF shall be the firm capacity price adopted by the Commission and in effect on the contract effective date. SCE states that CCC's language is duplicative and unnecessary as it could override Section 9.08(o), which reserves all rights, claims and defenses with respect to the QF contract, D.07-09-040 and any application for rehearing or appeal filed with respect to D.07-09-040. Further, SCE suggests that CCC's language could be seen as limiting other parties' rights and reservations.

As is often the case when new pricing structures are introduced, PFMs and applications for rehearing are often filed. As such, CCC's language appears to be overly prescriptive in that its request was rendered moot by D.09-04-034. We feel that language specifically related to CCC's PFM does not belong in the standard offer contract. Such language is out of date, and, as SCE implied, can be seen as limiting other parties' rights and reservations. Furthermore, we feel that Section 9.08(o) adequately covers CCC's concerns and should address any potential future Petitions for Modification.

CCC's request to place limitations on compliance with regulatory data requests is granted in part, and denied in part. .

In Section 3.10(c), CCC is concerned that by requiring QFs to use all commercially reasonable efforts to provide the utility with any information it may need to comply with data requests from CPUC, CEC, FERC, a court or legislative body, the Utilities have overstepped their boundaries. CCC asserts that since QFs are not a regulated body, they are not required to provide sensitive information to regulators; however, they are willing to provide any information regarding the operational characteristics or past performance of the generating facility. SCE, on the other hand, states that CCC's request places an unreasonable burden on the IOUs. SCE argues that the IOUs should not be expected to deny, on behalf of the seller, a request for information. SCE further states that Section 9.09 provides confidentiality protection to CCC for any disclosure of information.

CCC is correct in stating that the QFs, as non-regulated entities, do not have to provide sensitive or proprietary information to the CPUC. However any party to a contract can agree to provide any information deemed necessary to properly execute the contract. We do not wish to put the burden of deciding what can and cannot be shared with a regulatory body on the Utility. Under CPUC jurisdiction, the Utilities are required to comply with any data requests in a timely manner. As such, we agree that it is the responsibility of the QF to decline to respond to such requests; the utility, however, is required to ask for any information contained in a CPUC data request. However, the CPUC may require information regarding the operational characteristics and past performance of the Generating Facility, as suggested by CCC. Therefore, a precondition of signing this contract is that, at a minimum, the QF agrees to provide at the CPUC's request information regarding the operational characteristics and past performance of the Generating Facility. Finally, we do not wish to provide in this contract for any limitations that apply to other regulatory bodies. CCC has the responsibility and the right to deny information requests from these bodies based upon applicable laws. We deny CCC's exact proposed modification of Section 3.10(c) as overly restrictive. We also agree with SCE that Section 9.09 provides adequate protection to CCC for any disclosure of information under this contract; therefore, occurrence of such issues should be rare.

Greenhouse Gas Regulatory Concerns

New QFs signing agreements of five years or more shall meet the Emissions Performance Standard (EPS) in effect on the date of contract execution.

The standard offer contract, as written, requires that QF's signing contracts of five years or more duration to comply with the Emissions Performance Standard adopted in D.07-01-039 or any subsequent EPS requirement changes determined by the Commission at a future date. CCC argues that such a provision creates unreasonable risk because a QF may be in default of the contract if the EPS is changed during the contract term and the QF is unable, after it signs the contract, to comply with the new standard.

SCE argues that because QFs are must-take suppliers, they, and not the Utility, have control over their GHG emissions. As such, the IOUs cannot dispatch the

QF in accordance with least-cost and environmental protection principles. For these reasons, the Utilities argue that the QF should have to meet the EPS at the time of contract execution and throughout the term. To do otherwise would place the Utilities' customers at risk of bearing additional GHG compliance costs if the requirements change during the term of the contract.

We disagree with SCE's line of reasoning. The Emissions Performance Standard adopted in D.07-01-039 represents an entry point for new generation contracts. Simply put, this is a threshold that must be met by new baseload generation and renewal generation seeking contracts of five years or greater. The regulation establishes that the GHG emissions rate for these facilities must be no higher than the GHG emissions rate of a combined-cycle gas turbine (CCGT) power plant. The Commission does not foresee a change to this number as it represents an interim standard before AB 32 laws become fully applicable. However, even if the standard were to change, it would only represent an entry point and would therefore not apply to generators with executed contracts. As such, the QF is only required to meet the EPS in effect at the time of contract execution. Any changes to the EPS, while unlikely, would not be applicable to facilities that have already executed a contract.

We require the IOUs to revise the Sections 2.01(i) and 9.02(g) to read:

"Qualifying Facilities executing a contract with a term of five years or more shall meet the Greenhouse Gas Emissions Performance Standard. Upon request, Seller shall provide to the CPUC documentation evidencing its compliance with the applicable EPS at the time of the effective date of this contract."

CCC, CAC/EPUC and IEP's (in its earlier protest) request that Section 8.02, Governmental Charges, be modified such that GHG compliance costs incurred by Seller shall be passed through to Buyer is denied.

Greenhouse gas compliance costs present a new challenge to generators in California. The question of who bears the risk for, as of now, unknown GHG costs remains in question. The QF parties argue that there can be no guarantee that GHG compliance costs will be reflected in the Market Index Formula under MRTU. CCC argues that the IOUs may receive significant GHG emissions reductions from QFs, yet the QFs are being asked to bear all of the costs associated with these benefits. CCC argues that it would not seek additional recovery of costs if GHG compliance costs were fully embedded in the avoided cost payments; however, given the relative infrequency with which the

Commission reevaluates avoided cost pricing, this scenario is unlikely. Therefore, CCC asks that a GHG adder, much like the Operation and Maintenance adder, be added to the avoided cost payment formula. CAC/EPUC argues that the potential costs of GHG are unknown and could be significant; therefore, existing or new QF projects may be financially incapable of continuing operations or receiving financing. CAC/EPUC acknowledges that double recovery of GHG costs should be avoided.

SCE argues that change of law risk should reside with the party best able to mitigate such risk, in this case, the QFs. Second, asking the IOU's customers to bear the risk would, in essence, indemnify a class of generators. Finally, SCE argues that the costs of GHG regulations will be internalized in the market price of energy and therefore will be reflected in the market-based component of the Market Index Formula.

In D.07-09-040, The Commission adopted an interim hybrid approach, the Market Index Formula, as the best proxy of Utilities' avoided cost. The formula is divided such that 50% of the calculation is administratively determined and the other 50% is based on the market price of energy. The Commission determined that a hybrid formula was needed because the market in existence at that time only reflected about five percent of the total power purchases by Utilities, the market may have been subject to manipulation, and FERC had declined to make a finding that QFs have nondiscriminatory access to competitive wholesale markets in California. All of these factors remain at issue today in determining who should bear the risk of greenhouse gas compliance costs.

The Commission further found in D.07-09-040 that the MIF would change when the CAISO's MRTU becomes operational. MRTU became operational on April 1, 2009. A six month transition was built in during which Energy Division in consultation with the CAISO's market monitoring group would determine if the market price of energy fully reflects the Utilities' avoided cost. If this is the case, then the MIF shall be modified to remove the administrative heat rate component and base the incremental energy rate exclusively on MRTU market prices. If the Assigned Commissioner, in consultation with Energy Division does not find that market prices adequately reflect the Utilities' avoided cost, the hybrid MIF shall continue to be used for up to six additional months.

There are many possible scenarios that could occur once GHG compliance costs go into effect. At this time, it is impossible to speculate on exactly what scenario will be in play; however, the Commission acknowledges that it must ensure that the avoided GHG compliance costs are accounted for in the avoided cost payment in order to comply with PURPA regulations. Depending on what scenario is in play, this could involve a possible review of the MIF formula.

There is insufficient evidence in the record of these advice letters to make a determination regarding whether the MRTU price for energy will fully reflect avoided greenhouse gas compliance costs. As a result, the proposed SOC makes no allowances for a GHG compliance cost pass-through as requested by the QFs, which in effect takes the position that GHG costs will be fully reflected in the MRTU energy price. However, we recognize that there is a reasonable degree of uncertainty at this time as to whether this will be the case, and it may take some period of time after the onset of the compliance obligation on January 1, 2012 to make such a determination. Consequently, if, after the onset of the GHG compliance obligation, it becomes apparent that avoided cost payments do not fully reflect avoided GHG compliance costs, parties may file at the Commission a Petition to Modify the MIF that is in effect at the time of the alleged GHG avoided cost discrepancy. The PFM must clearly show how and by what amount the MRTU avoided cost payment does not fully reflect GHG costs and propose how the MIF should be modified to include these costs. Finally, we remind combined heat and power facilities (CHP) that the Commission will soon be opening an order instituting rulemaking to reexamine the role of CHP in California as stated in D.08.10.037.

We recognize that this position creates uncertainty for QFs as GHG compliance costs are currently unknown; however, potential financiers of new and existing QFs should feel secure in knowing that the avoided GHG costs will be recovered. In response to CAC/EPUC's argument that some existing QFs will be unable to continue operations depending on the magnitude of the GHG compliance costs, we agree with SCE that each individual generator will have to conduct a cost-benefit analysis to determine what actions to take going forward. That is, in fact, the very purpose of having GHG compliance costs; generators will clearly know the full cost of operating their units and can make decisions accordingly. It was never the intention of this Commission to compensate QFs for their individual GHG compliance costs, as was correctly noted by TURN in its protest. In fact, to do so would violate PURPA. If particular QFs find that their own GHG compliance costs exceed the remuneration contained in the avoided cost of energy price, they will have to make the decision whether to continue operating.

<u>Issues Associated with Interconnection/CAISO Tariff/other CAISO Matters</u>

CCC's request to remove the words "at its sole cost" from Sections 3.05(b) and Section 4.05 is granted.

The issue at hand is whether to remove the words "at its sole cost" from Sections 3.05(b) and 4.05. CCC states that the IOU's proposal that the QF must, at its own cost, obtain all interconnection and transmission rights and agreements is in conflict with FERC-approved interconnection procedures, which state that the utility may be required to pay for certain transmission facilities needed to interconnect a QF. SCE, in its reply comments, indicated that it agreed with CCC's line of reasoning and is willing to strike the words "at its sole cost" from the sections in question. The Commission finds that removing the words "at its sole cost" from Sections 3.05(b) and 4.05 accurately reflects the FERC-approved interconnection procedures and therefore grants CCC's request.

CCC's requested changes to Section 3.18, Notice of Cessation or Termination of Service Agreements, is granted.

The standard offer contract, as written, requires that the QFs provide one day advance notice of termination of, or cessation of service under, any agreement required for interconnecting the Generating Facility, transmitting power from the Generating Facility or owning and operating the CAISO-approved meter. CCC argues that the QF will not know in advance if one of these events will occur and asks that the contract read "Seller shall provide to Buyer Notice within at least one Business Day if there is…." SCE has indicated in its reply comments that it agrees with CCC's request. We agree with CCC that a QF cannot possibly know in advance that one of the above mentioned events will occur and therefore adopt CCC's proposed changes to Section 3.18.

All QFs greater than 1 MW shall comply with the CAISO Tariff.

CAC/EPUC argues that requiring QFs to sign the CAISO Tariff could potentially result in federal law pre-empting the desire of the state to grow and maintain a robust CHP program. As an alternative, CAC/EPUC suggests that the Commission adopt contract language that would require the QF to provide the information needed under the CAISO Tariff without signing the Tariff itself. CAC/EPUC suggests that the CAISO Tariff is unnecessarily burdensome and contradicts Energy Action Plan II (EAP II), which states that removal of barriers to encourage the development of environmentally-sound combined heat and power resources is necessary.

SCE argues that compliance with the CAISO Tariff was mandated in D.07-09-040 and is a necessary step in moving toward a more market-based QF program, which would require compliance with the CAISO Tariff. The CAISO submitted comments to the same effect while offering to continue to engage stakeholders to consider possible tariff changes that would take into account the operational limitations and circumstances affecting QFs.

In Section 7.4.3 of D.07-09-040, the Commission unequivocally states that "QFs should generally be required to comply with CAISO tariff requirements." It continues: "We adopt PG&E's recommendation that QFs one MW or greater should be required to comply with CAISO Tariffs. In support of this finding, the Commission relies on Key Action Item 7 of Section 4 of EAP II, which states: "Adopt a long-term policy for existing and new qualifying facility resources, including better integration of these resources into CAISO tariffs and deliverability standards." We find no reason to adjust the findings of D.07-09-040 and note that a resolution adopting a contract is not the appropriate place to revisit provisions of prior decisions. Therefore, we reiterate that all QFs one MW or greater, whether existing or new, shall comply with the CAISO Tariff; however, we do not expect existing QFs to be required to complete new interconnection studies.

All QFs greater than 20MW shall interconnect through CAISO. QFs 20 MWs and under may continue to interconnect through Rule 21.

For the same reasons listed in the section on the CAISO Tariff, CAC/EPUC suggests that existing QF interconnections should be maintained under Rule 21 and/or existing QFs shall be allowed to elect to sustain interconnections under Rule 21. In support of its argument, CAC/EPUC asserts that neither the IOUs nor CAISO have adequately shown how failure to interconnect through CAISO will cause disruptions. In rebuttal, SCE states that CAC/EPUC's request is in direct conflict of the findings of D.07-09-040. Furthermore, SCE states that any hardwiring of Rule 21 interconnection provisions should not be allowed in the QF contract. To do so could potentially usurp other CPUC, CAISO or FERC jurisdiction to address the appropriate form of interconnection agreements.

Again, we return to the findings of D.07-09-040, which clearly state that this contract shall be updated to require compliance with CAISO Tariffs, of which interconnection under CAISO is included. We reiterate that new QFs under 20 MW shall be exempt from this requirement and will interconnect under Rule 21. The Commission was clear in its intention that compliance with CAISO Tariffs will be mandatory for generators greater than 1MW; therefore, we shall not revisit the issue here. Again, CAC/EPUC is reminded that the appropriate mechanism for making changes to existing Commission decisions is through the Petition for Modification process.

No special provisions to protect the unique operating characteristics of QFs shall be included in this contract. The CAISO QF Participating Generator Agreement (PGA) was designed to address such provisions. QFs and CAISO are urged to continue collaborating to ensure that the needs of both entities are met under this new configuration.

CAC/EPUC requests that a provision be added to the contract to state that the application of the CAISO Tariff shall not be allowed to unreasonably or unnecessarily impede industrial thermal host operations except in system emergencies. CAC/EPUC notes that CHP facilities are not in the merchant generator business; their primary obligation is to their thermal host. In response, CAISO stated that it recognizes that QFs do not have much control over their electrical output due to obligations to their thermal hosts. CAISO continues that it is open to engaging with stakeholders to consider possible tariff changes that would take into account the operational limitations and circumstances affecting QFs.

The Commission recognizes that many QFs have unique operating characteristics and have an obligation to serve their thermal host before all others. However, we do not feel that this contract is the appropriate place to address any needed or possible changes to any CAISO tariffs or agreements. To do so would preempt the jurisdiction of CAISO. We recognize the comments of CAISO and further note that CAISO, in coordination with QF parties, developed a QF Participating Generator Agreement (PGA) to address such concerns. We acknowledge CAISO's continued willingness to work with QF stakeholders to consider possible tariff changes to take into account the unique operating characteristics of QFs. Therefore, the Commission recommends that QF parties continue to engage with CAISO to address any outstanding concerns with CAISO tariffs or agreements. No specific exceptions for QF facilities shall be included in this contract.

QFs shall be allowed to participate in CAISO's Station Power Protocol.

Both CAC/EPUC and CCC request the removal of Section 3.14(o), which prohibits QFs from participating in the CAISO's Station Power Protocol. The

CAISO Station Power Protocol permits a generator to self-supply power for station use from on-site generation or remote generating units under the same ownership or purchase power for station use at wholesale prices rather than under the utility's retail tariffs. Both CCC and CAC/EPUC argue that QFs should not be restricted from taking advantage of CAISO programs. SCE argues that the CAISO Station Power Protocol has significant issues that have been raised by the IOUs and the CPUC. Furthermore, SCE argues that the costs and risk of operating a QF under the protocol have not been fully explored and may lead to continued discussions of impacts through the QF contract. Finally, SCE states that the payment methodology and administration of the capacity performance standard will need to be revisited to reduce the energy and capacity amounts to reflect energy and capacity diverted during CAISO settlements to serve station use.

SCE raises valid concerns about the impacts of allowing QFs to participate in the CAISO's Station Power Protocol. The impacts of the program have not been fully vetted and outstanding issues have not been resolved. This alone, however, is not a strong enough line of reasoning to explicitly prohibit QFs from participating in the Station Power Protocol. We note that the appropriate place to raise and resolve concerns with CAISO programs is with the CAISO itself and not in this contract. Therefore, we order the IOUs to remove Section 3.14(o) from the QF standard offer contract.

Credit and Collateral Provisions in the Standard Offer Contract

The Performance Assurance Amount shall remain at 12 months of expected generator revenues.

CAC/EPUC feels that posting a Performance Assurance amount equal to 12 months of expected revenue of the Generating Facility represents a potentially unlimited risk that cannot be adequately quantified or planned for by CHP developers. Furthermore, CAC/EPUC argues that the performance assurance amount should not apply to as-available generators given that an as-available resource is under no obligation to deliver power. As a solution, CAC/EPUC suggests capping the performance assurance amount equal to 12 months of firm capacity payment revenue of the generating facility.

SCE argues that the performance assurance is needed to help recover a portion of the costs for replacing capacity products that have been contracted for and relied upon to meet load serving obligations. Furthermore, SCE states that CAC/EPUC's argument that as-available generators should not be subject to a performance assurance amount is erroneous. They state that while as-available providers do not have a minimum delivery requirement, they receive a capacity payment because the CPUC deems them to be of value. Finally, SCE asserts that the performance assurance risk is not unlimited, as stated by CAC/EPUC. The exposure will be capped by the amount the seller expects to provide to the Buyer and can be revised based upon changes in the expected term energy production.

The performance assurance amount is in place to protect the IOUs from relying on QF power for planning purposes only to find that it is not available. We agree with SCE that as-available generators do have value, although their power is not deemed to be as valuable as firm capacity generators, hence the difference in firm versus as-available capacity pricing set in D.07-09-040. To suggest that an as-available producer should be exempt from posting a performance assurance because they do not, by definition, have to provide power to the Buyer, negates the value the CPUC has placed on as-available generation. Even though power is not guaranteed to be provided, the IOUs still account for and plan purchases in part based on the existence of as-available generators in their portfolios. We therefore find that as-available generators must post a performance assurance.

We now turn to the issue of what measurement should be used to determine the performance assurance amount. The IOUs propose using 12 months of expected revenue while CAC/EPUC proposes posting 12 months of expected firm capacity payments. We agree that 12 months of expected revenue is an appropriate measurement to use because it can be predicted in advance and can be adjusted. Furthermore, use of 12 months of expected revenue is inclusive of as-available generators where CAC/EPUC's proposed 12 months of firm capacity payments would exempt as-available generators from posting any performance assurance. This would be in direct conflict with the Commission's finding that as-available generators have value. CAC/EPUC's argument that the 12 months of expected revenue methodology presents a potentially uncapped risk that cannot be planned for by developers is erroneous. The performance assurance amount will, by definition, be capped based upon the generator's expected revenues, which are set by the generator. Furthermore, we believe that CAC/EPUC's concern about the application of 12 months of expected revenue for as-available generators, which are under no obligation to provide power, is easily assuaged. If an as-available generator anticipates that it will not provide any power to the IOU, its performance assurance amount will, by definition, be zero. Therefore, in essence, the as-available generator in this scenario will be exempt from posting any performance assurance. Finally, the performance assurance amount can be adjusted if the expected term energy amount changes. Existing as-available generators will certainly have a good idea of the amount of power they will offer to the IOUs during a 12 month period based upon prior experience. New as-available power generators should have some idea of the amount of expected revenues they will receive determined by the size of the facility built versus the average steam needs of the host. We therefore adopt the performance assurance amount currently in the IOU's proposed standard offer contract.

Section 6.01(b)(iv), Cross Default Provision, shall only apply to new QF generators.

Section 6.01(b)(iv) currently deems a QF to be in default if the guarantor defaults on other debts in the amount greater than or equal to the cross-default amount and the QF does not provide replacement credit support within three business days. CAC/EPUC states that this provision is unreasonable and overly broad stating that the provision could cause a default where no real harm is done to the Buyer and no inadequate performance of the seller occurs. As an example, CAC/EPUC suggests a multinational company may have a legitimate disagreement and choose to default as a strategy, which would cause no real damages to the Buyer or underperformance of the seller.

SCE argues that the cross-default amount is set at the time of contract execution and is sufficiently high enough to show that the guarantor is facing serious financial difficulty and is no longer a reliable source of credit for the QF contract. SCE further states that it is not necessarily a valid conclusion that when a guarantor's debt default amount is greater than the cross-default amount, there will be no impact on the generator's ability to perform.

It is the Commission's understanding that cross-default provisions have been included in many generator contracts when a guarantor is used in place of a letter of credit from the QF itself. Furthermore, the cross-default amount is set at the time of contract execution and is sufficiently high to indicate serious financial difficulty of the guarantor, not simply the presence of any financial difficulty. Therefore, we do not find the inclusion of Section 6.01(b)(iv) to be erroneous. We note, however, that D.07-09-040 at p122 exempts existing generators signing new contracts from having to provide additional credit support. This provision could be interpreted to be providing additional credit support in excess of the current credit support requirements. We therefore rule that the cross-default provision shall only apply to new generators.

Section 6.01(c)(xii) shall be clarified such that the default amount shall be read as the cross-default amount. Section 9.05 shall be clarified to state that seller has the right, but not the obligation, to enter into a collateral assignment agreement. Section 6.01(c)(xii) only applies to new QF generators.

Section 6.01(c)(xii) states that a QF will be in default under the contract if the QF defaults under any loan agreement to a lender or any related agreement with a lender unless the QF, the IOU and the lender have entered into a collateral assignment agreement subject to the provisions of Section 9.05 and the provisions of such agreement conflict with the provision of Section 6.01(c)(xii), in which case the provisions of the collateral assignment agreement control. CCC suggests that Section 9.05 requires the QF to enter into a collateral assignment agreement, thus the exception stated in 6.01(c)(xii) should always be the case. Second, if it is the case that the exception is not the rule, the provision renders the contract unfinanciable. Third, CCC feels the provision is overly broad in that it states that any default under any loan document or related agreement that results in indebtedness becoming due is an event of default regardless of whether the QF is still performing under the contract or if the amount at issue with the lender is negligible. Finally, CCC argues that this provision, if it is included, should only apply to new QFs as stated in D.07-09-040.

SCE argues that it is reasonable to assume that a default on indebtedness in excess of the cross-default amount will have a detrimental effect on the project's availability of financing necessary for continued operation. SCE continues that, in its experience, it has not found the inclusion of Section 6.01(b)(xii) to render QF contracts unfinanciable. Finally, SCE states that the seller is not obligated to enter into a collateral assignment agreement, as argued by CCC.

Section 6.01(c)(xii) should be clarified that the default amount in question is the cross-default amount. With this clarification CCC's concern regarding the magnitude of the indebtedness should be assuaged. This clarification should also assuage CCC's concern regarding the financeability of the contract. CCC's comment that Section 9.05 requires the QF to enter into a collateral assignment agreement does not agree with the Commission's interpretation of the provision.

Section 9.05 clearly states that the seller has the right to assign the agreement as collateral to a lender. We do not see a "right" as an obligation. However, to make sure the provision is abundantly clear, we direct the IOUs to add the words, "but not the obligation" after the word "right" to Section 9.05. Finally, we concur with CCC that this provision should only apply to new QFs pursuant to D.07-09-040 at p122.

Section 6.01(c)(xvi)(2) shall be modified to reflect that Buyer consent shall not be unreasonably withheld if the QF pledges stock or equity ownership in itself as collateral for a party other than the lender.

Section 6.01(c)(xvi)(2) deems it to be an event of default if the QF pledges or assigns as collateral or otherwise the stock or equity ownership interest in the QF to any part other than the Lender. CCC argues that the provision is onerous; however, CCC recognizes that pledging the stock of the QF to a non-lender third party could place the QF at an increased risk of being taken over by a third party with whom the utility may not wish to contract. CCC requests that the words, "which consent shall not be withheld, delayed or conditioned unreasonably" be added to the end of Section 6.01(c)(xvi)(2). SCE has indicated that it agrees with CCC's proposed changes.

The Commission views CCC's proposed additions to 6.01(c)(xvi)(2) as a method of clarifying and strengthening the provision while enabling maximum flexibility to the QF. We therefore adopt CCC's proposed changes to Section 6.01(c)(xvi)(2) as written.

Section 9.04 shall be clarified to state that consent will not be withheld if the QF can assure that it will perform the same under the agreement in the case of an indirect change of control.

As written, Section 9.04 prohibits the QF from assigning the agreement, or its rights under the agreement, without the prior consent of the Buyer, which shall not be unreasonably withheld. The contract states that any direct or indirect change of control of the QF (whether voluntary or by operation of law) shall be deemed a change of assignment and shall require the consent of the Buyer. CCC proposes that this provision only apply to a direct change in control. As written, the parent of a QF would be prevented from merging with another company without the utility's consent. CCC proposes striking the words "or indirect change of" and "whether voluntary of by operation of law" from the second sentence of Section 9.04.

SCE disagrees with CCC's proposal. First SCE states that it is reasonable to expect that it will continue to deal with the organizations with which it entered into a contract. Changes in upstream ownership can result in changes of the identity of the contracting party. SCE notes that withholding consent does not prohibit the merger of the parent company, and it further states that if the transfer is to a solvent, experienced party, obtaining consent should not be a problem. SCE further notes that disallowing consent for anything other than an immediate upstream change in ownership could result in the seller creating a corporate structure where the immediate owner of the QF is a shell entity, and operation and control is exercised further up the operation chain. Finally, SCE states that the words, "operation of law" must remain in the contract because a merger essentially achieves the same goals as an asset or stock sale, which would require Buyer's consent. A merger is a statutory transaction that transfers all the rights and liabilities of a merging entity to the surviving entity by "operation of law." SCE does agree that the contract should be changed to allow for a change in control of a publicly traded company without Buyer's consent.

Both parties raise valid concerns regarding the transfer of assignment of the contract. Ultimately, the IOU has the right to determine with whom it is contracting and should therefore have the option of withholding its consent for a particular merger. Withholding consent in no way prohibits the parent company from merging, as CCC proposes, rather it allows the IOUs the option of canceling the contract if it does not grant consent for the merger. Section 9.04 very explicitly states that consent will not be unreasonably withheld or delayed; therefore, CCC's concerns about the withholding of consent should be mostly assuaged. We do find that consent should not be unreasonably withheld if, in the event of an indirect change of control, the QF can prove that it will perform the same under the contract. We adopt SCE's proposed changes to allow flexibility for publicly traded companies as such changes are out of the control of the QF and often the publicly traded company itself. Finally, we agree with SCE that the words "by operation of law" should remain in the contract for the reasons stated in its argument. We order the IOUs to change Section 9.04 to allow for the provision that consent shall not be unreasonably withheld if the QF proves that it will perform the same under the contract and to allow for a change of control of a publicly traded company.

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The intent of CAC/EPUC's proposed language, regarding creditworthy affiliates, is adopted.

CAC/EPUC requests expanding the transfer of assignment a QF can make without the consent of the Buyer. Section 9.04, as written, allows for the transfer or assignment of the agreement to an affiliate of the seller if the affiliate's creditworthiness is equal to or higher than that of the seller. CAC/EPUC requests an addition to the provision that the affiliate may have the support of a credit worthy affiliate rather than the affiliate itself having to have creditworthiness equal to or higher than that of the seller. SCE feels that CAC/EPUC's proposed language should be rejected because it is duplicative and could create ambiguity.

The Commission's reading of CAC/EPUC's requested addition to Section 9.05 seems reasonable; however, we agree that the proposed language should be clarified. In our understanding of CAC/EPUC's request, transfer to an affiliate should be allowed if the affiliate has creditworthiness equal to or higher than that of the seller or if it can secure the support of another creditworthy affiliate. In our interpretation, one way this could occur is if the QF and the affiliate both operate under the same parent company. In this case, CAC/EPUC is requesting that, if the affiliate's parent offers credit support to the affiliate, then the transfer should be allowed to occur even if the affiliate itself does not have creditworthiness equal to or higher than the seller. We agree with the intent of CAC/EPUC's request. Just as a QF may secure a guarantor, the affiliate should be able to do the same. We therefore order the IOUs to incorporate the intent of CAC/EPUC's language into Section 9.05k to allow for the credit support of an affiliate.

Section 9.05 shall be modified to exclude the necessity of Buyer consent for transfers in the event of a foreclosure. All other proposed changes to Section 9.05 are denied.

CCC and CAC/EPUC propose changes to Section 9.05, Consent to Collateral Assignment. CCC requests the removal of the provision in Section 9.05(i) that requires Buyer consent for the lender to sell the generating facility in an event of foreclosure. CCC argues that the provision is unnecessary because it already states that the purchaser of the generating facility must have financial qualifications and operating experience equal to or better than that of the QF at the time the QF and the IOU entered into the contract. CCC feels the provision, as it is written, could hinder the QF's ability to secure financing and requests the removal of the words" satisfactory to Buyer in its sole discretion" from Section 9.05(i). SCE, in response, offers to change Section 9.05(i) to read as follows: "Such sale or transfer (excluding a foreclosure) may be made only to a Person reasonably acceptable to buyer."

One interpretation of SCE's proposed changes could appear to miss the heart of CCC's concern, which is that consent of the Buyer should not be needed given that the purchaser of the generating facility must have financial qualifications and operating experience equal to or better than the QF at the time of contract execution. However, SCE's language could also be interpreted to exempt foreclosures from the provision of requiring Buyer consent. It is this second interpretation that the Commission shall adopt. In this case, a transfer or sale requires the consent of the Buyer as stipulated in previous sections; however, in the event of a foreclosure, Buyer consent is not needed. We believe this interpretation of SCE's proposed language is consistent with the intent of CCC, and we adopt it.

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CAC/EPUC suggests that Section 9.05(e) unduly limits the lender to cure an event of default only if the lender sends a written notice to Buyer before the end of any cure period. CAC/EPUC further asserts that the contract provision which only allows the lender to cure within the cure period as defined by the contract places unnecessary limitations on the lender to effect a cure, therefore making it harder for the QF to secure a loan. CAC/EPUC also suggests that Section 9.05(h), which requires the lender to assume all of the seller's obligations in the event of a default, is unduly restrictive and limits the ability of the QF to secure financing. CAC/EPUC proposes striking all of the provisions of Section 9.05, of which there are 10, and replacing them with the language: "Notwithstanding anything in Section 9.04, Seller has the right to assign this Agreement as collateral for any financing or refinancing of the Generating Facility." In response, SCE states that it is customary and appropriate to enumerate the terms pursuant to which the Buyer will consent to the agreement of collateral for a financing of seller.

We are perplexed by both CAC/EPUC's proposed language and SCE's response. First, CAC/EPUC only raises issue with two of the ten provisions housed under

Section 9.05, but it then proposes striking all of the provisions and using only very general language in its place. While it is obvious that this solution would alleviate CAC/EPUC's concerns with Sections 9.05(e) and 9.05(h), we fail to understand why CAC/EPUC would wish to strike all other provisions under Section 9.05. SCE, on the other hand, disagrees with CAC/EPUC's proposed language, but fails to offer a rebuttal to the specific sections to which CAC/EPUC objects.

We deny CAC/EPUC's request to strike all provisions under Section 9.05 as being unwarranted and unnecessary. CAC/EPUC fails to show how the removal of all provisions, not just the ones to which it takes issue, would benefit QFs. We return, then, to CAC/EPUC's original concerns with Sections 9.05(e) and 9.05(h). Here, CAC/EPUC shows how the sections in question could cause harm to QFs; however, it does not offer any solutions to the problem and does not explicitly request the removal of the sections. The Commission finds itself in an awkward position of having to rule on credit provisions that lack a sufficient record. We, therefore, reject CAC/EPUC's request and adopt Section 9.05 as written, modified by the required changes to Section 9.05(i) mandated earlier.

Issues Associated with Small or As-Available Resources

As-available generators shall be subject to the same performance assurance and development security provisions as firm generators. As-available generators shall adhere to the same contract termination provisions as firm generators. CAC/EPUC's proposed small QF contract shall not be addressed in this resolution.

CAC/EPUC raises the concern that, as worded, the standard offer contract treats as-available and firm capacity generators the same in terms of termination rights and the required performance assurance amount. As noted in its comments, there are fundamental operating distinctions between as-available and firm resources, namely that as-available resources are not required to deliver any energy to the utility throughout the duration of the contract. For this reason, CAC/EPUC request that a provision be added to the contract to make clear that certain provisions do not apply to as-available sales.

CAC/EPUC argues that as-available generators should be allowed the provision of termination on 30 days notice, which was historically an option for these types of QF generators. In addition, CAC/EPUC again suggests that the performance assurance amount be limited to 12 months of firm contract capacity rather than 12 months of total expected revenue. CAC/EPUC further requests that as-available generators continue to be required to post the development security; however, the security amount should be returned if the generating facility comes on-line within a certain number of months of the start date. In regards to the start date, CAC/EPUC requests that daily-liquidated damages to extend the term start date only apply to firm capacity and that as-available generators only be allowed to extend the term start date by 180 days. Finally, CAC/EPUC requests that the words "sufficient to provide the entire As-Available Contract Capacity designated by Seller" be stricken from Exhibit F(4)(d)(i)(2) and all of Exhibit F(4)(e)(ii). This would protect the as-available QF if it fails or is not of sufficient size to generate the full amount of as-available contract capacity.

CAC/EPUC also requests that a simplified and separate standard offer contract be available for small QF facilities. CAC/EPUC submitted a sample contract with its comments.

SCE requests that the Commission reject all of CAC/EPUC's proposed modifications for as-available generators. Regarding termination on notice, SCE argues that the Commission deems as-available generators to have value and therefore set a capacity payment for such generators. IOUs make planning assumptions based upon contractual commitments of the QF and the right to terminate on notice could jeopardize the planning process. SCE continues that D.07-09-040 does not authorize any special provisions for as-available generators; therefore, SCE feels that as-available generators should have the same obligations and limitations on its actions that apply to firm generators. Finally, SCE requests that the Commission ignore CAC/EPUC's submission of a proposed small QF standard offer contract as inconsistent with D.08-09-024, which modified D.07-09-040. D.08-09-024 states that upon adoption of the large generator standard offer contract, Energy Division will hold a workshop to begin drafting a simplified contract for small QFs.

SCE is correct in stating that D.07-09-040 did not authorize any special treatment of as-available generators; however, the Decision did not delve into most of the specific terms and conditions of the standard offer contract. Some of these terms and conditions may necessarily differ for firm versus as-available generators. We first turn our attention to the provisions related to the generator's rights to terminate the contract. CAC/EPUC argues that because as-available generators are under no obligation to deliver power, they should be allowed to terminate the contract with 30 days notice to the IOU, as was previously allowed. We disagree. First, the purpose of designing a new standard offer contract is to update the terms and conditions to more accurately reflect the required QF operating characteristics under D.07-09-040. The existence of certain provisions under previous versions of the standard offer contract is not reason enough to include them in this version. Second, as rightly stated by SCE, the Commission has deemed as-available generators to have value and has set a capacity payment to reflect that fact. The existence of as-available capacity impacts the planning assumptions made by the IOUs. To remove an as-available generator from the portfolio with only 30 days notice could hinder the IOUs ability to replace such generation at a reasonable cost to the ratepayer. Finally, a contract is a binding agreement between parties. We see no reason that an as-available generator should receive special treatment and therefore be able to terminate the binding agreement without due cause, as specified in the contract. CAC/EPUC's request to allow for termination on notice for as-available generators is denied.

We next turn to the required performance assurance amount. CAC/EPUC's request that as-available generators be exempt from posting a performance assurance amount was previously addressed in this resolution; thus we shall not repeat those findings here.
The next issue raised by CAC/EPUC pertains to posting of development security. The contract, as written, requires generators to post a development security and outlines the terms and conditions for its forfeiture, whether partial or full. Failure to commence operating by the term start date results in full forfeiture of the development security, subject to the extensions and revisions allowed under the contract. Deficient installation of net contract capacity shall result in partial forfeiture of the development security. CAC/EPUC requests that as-available generators (1) be exempt from having to meet any net contract capacity amounts specified at the time of contract execution and (2) receive a full refund if the as-available generator comes online within some specified number of months of the term start date, not to exceed 180 days. Daily liquidated damages for failure to meet the term start date would not apply so long as the as-available generator did not exceed the 180 day limit.

We first address the issue of the term start date. Construction of firm versus as-available generation should be fundamentally the same in that both require the construction of a generating facility for the purpose of producing steam and electricity. We fail to be persuaded by CAC/EPUC's argument that as-available generators are somehow more likely to be unable to meet a term start date than firm generators. As-available generators and firm generators should be subject to the term start date agreed upon at the time of contract execution, subject to the extension provisions already included in the contract. As-available generators shall therefore be subject to daily liquidated damages for failure to meet the term start date and conversely shall be entitled to receive full return of the development security in accordance with the contract if the generator does meet the specified term start date.

We next turn our attention to CAC/EPUC's request to eliminate the need for an as-available generator to prove the installation of its designated capacity in order to receive a full refund of the development security. CAC/EPUC argues that because an as-available generator is under no obligation to deliver power to the IOU, it should not be subject to penalties bestowed upon firm generators for failure to prove that the facility is of sufficient size to generate the full amount of as-available capacity. We are not persuaded by CAC/EPUC's argument. CAC/EPUC seems to assert that the value of capacity is somehow synonymous with the generation of energy. If this were the case, then as-available generators would only receive the Commission designated capacity payment if and only if such generators delivered power to the grid. Furthermore, as-available generators would only receive a capacity payment commensurate with the number of MWhs delivered. Clearly, this is not the case. The Commission has deemed that the existence of as-available capacity has value and as-available generators receive capacity payments regardless of whether they deliver power to the grid. When the IOU signs a contract with an as-available generator, it makes planning assumptions based upon the capacity designated by the seller. If an as-available generator fails to construct a facility of appropriate size to generate the full amount of as-available contract capacity, it should be subject to forfeiture of the development security detailed in Exhibit F. We underscore that the as-available generator must simply prove that it is of sufficient size to meet the capacity designated in the contract in order to receive return of the development security. Nothing in the contract should require the as-available generator to deliver this power to the IOU in order to receive refund of the development security. We feel it important to note that there may be provisions in the standard offer contract that only apply to as-available generators that were not mentioned in comments. In this case, we recommend that the IOUs designate such provisions by noting that the as-available generator may mark such portions of the contract with the words "non applicable."

Finally, we address CAC/EPUC's submission of a sample contract for use by small QFs. We acknowledge CAC/EPUC's effort to develop such a contract; however, we agree with SCE that such action is premature. D.08-09-024, which modified D.07-09-040, states that upon adoption of the large generator standard offer contract, Energy Division will hold a workshop to begin drafting a simplified contract for small QFs. The decision did not suggest that a small QF contract would be adopted simultaneously with a large generator QF contract. Furthermore, to adopt CAC/EPUC's sample contract would deny parties of their right to participate fully in the development process. The Commission therefore will not consider CAC/EPUC's proposed small QF contract at this time.

Changes to Exhibit A, Definitions of Contract Terms

We adopt CCC's proposed removal of the first occurrence of the word "applicable" in the definition of "Generator Owner."

CCC requests that the IOUs remove the first occurrence of the word "applicable" in the definition of "Generator Owner" stating that this is a typographical error. SCE agrees with CCC and submitted an updated version of the definition in its reply comments. Given that this is solely a matter of a typographical error, the Commission adopts SCE's updated version of the definition of "Generator Owner" filed in its reply comments.

We adopt CCC's proposed modification to the definition of "Interconnection Study."

In its comments, CCC suggests that the words "study to evaluate" should be changed to "a study prepared by or on behalf of the Transmission Provider or the CAISO to evaluate" in order to narrow the scope of the definition. In its reply comments, SCE indicated its agreements with CCC's proposal. We feel that CCC's proposed modification appropriately narrows the scope of the definition of "Interconnection Study," thus reducing the potential for confusion regarding the interconnection study process.

We deny CAC/EPUC's request to modify the definition of Resource Adequacy Benefits and Resource Adequacy Rulings such that QFs are only obligated to the Resource Adequacy Rulings on record at the time of adoption of D.07-09-040.

CAC/EPUC requests that the language "and any subsequent CPUC ruling or decision, or any other resource adequacy laws, rules or regulations enacted, adopted or promulgated by any applicable Government Authority, as such CPUC decisions, rulings, laws, rules or regulations may be amended or modified from time to time during the Term" be stricken from the definition of Resource Adequacy Rulings. This request pertains to CAC/EPUC's argument that future resource adequacy rulings could impose a significant cost to QF resources that was unaccounted for under the payment structure adopted in D.07-09-040.

SCE states that CAC/EPUC's proposed changes make the product being purchased (in this case RA benefits) ambiguous. They continue that they are purchasing the Related Products in order to comply with Resource Adequacy Rulings. Limiting those products to only certain existing CPUC rulings could render the product valueless if future CPUC rulings change the resource adequacy rulings.

For the reasons stated under the section addressing CAC/EPUC's request to exempt QFs from adhering to future resource adequacy rulings beyond those in effect at the time of the adoption of D.07-09-040, we deny CAC/EPUC's proposed changes to the definition of "Resource Adequacy Benefits" and "Resource Adequacy Rulings." As a general rule of practice, generators who enter into contracts with a regulated utility are subject to change of law provisions unless it is explicitly stated otherwise. In this case, the Commission does not wish to preclude QFs from any as of yet unknown Resource Adequacy Rulings. We note that in an individual RA proceeding, a provision to allow grandfathering of existing contracts may be included; however, we make no orders to this effect at this time. We highly encourage QFs to participate in future RA proceedings to minimize any chances of a conflict occurring.

We reject CAC/EPUC's proposed modification to the definition of "Related Products." However, we order the IOUs to modify the definition such that QFs may retain any attributes to meet applicable future laws to which they are subject.

CAC/EPUC agrees with the intent of the definition of "Related Products" proposed by the IOUs; however, it wishes to clarify the definition in order to (1) appropriately convey to the Buyer the products and benefits purchased; and (2) assure that certain specific attributes are retained by Seller, a Site Host or Section 218(b) entitled Buyer or user. CAC/EPUC states that there have been significant

Commission determinations related to the auction of carbon credits that have occurred since the submission of the "Friday Night Matrix." Furthermore, CAC/EPUC states that there was general agreement that certain credits (such as existing generator credits associated with nitrogen oxide) would not be appropriately included in the attributes and credits conveyed to Buyer.

SCE states that CAC/EPUC's proposed modifications make the existing definition of "Related Products" ambiguous and vague. SCE states that the definition of "Related Products" clearly states that the Seller may retain those environmental and other attributes necessary for plant or related site operations, that is those attributes needed to comply with any obligations of applicable law known at the time of contract execution. Furthermore, SCE states that this is a similar treatment of "green attributes" in renewable contracts, under which the IOU receives all of the environmental attributes of the facility.

We rule here to maintain consistency across proceedings. SCE correctly states that the treatment of "green attributes" in this contract is similar to the treatment of such attributes under renewable generation contracts. We do acknowledge; however, that the Commission has made rulings that have an impact on the definition of related products, including the auctions of carbon credits mentioned by CAC/EPUC. Furthermore, we recognize that future rulings could subject QFs to additional environmental regulations; therefore, we order the IOUs to update the definition of "related product" to capture the notion that QFs also retain any attributes or benefits needed to comply with any future rulings.

COMMENTS

Public Utilities Code section 311(g)(1) provides that this resolution must be served on all parties subject to at least 30 days public review and comment prior to a vote of the Commission. Comments shall be filed no later than 20 days following the mailing of this draft resolution. Reply comments shall be filed no more than 5 business days later.

FINDINGS

1. Decision (D.) 07-09-040 directed Pacific Gas and Electric Company, San Diego Gas and Electric Company and Southern California Edison Company to file a

Tier 3 Advice Letter containing proposed standard offer contracts for qualifying facilities.

2. Any QF party request not explicitly addressed in this resolution is denied. Conversely, any contract provision not explicitly addressed in this resolution is adopted as put forth by the IOUs in their December 10th advice letter filings.
3. The Commission adopts the IOU's QF Standard Offer Contract as submitted in Supplemental ALs PG&E 3197-E-B, SDG&E AL 1958-E-B and SCE AL 2200-E-B except where noted in this resolution.
4. The IOU's QF Standard Offer Contract allows both the IOUs and the QFs to enter into an agreement that improves forecasting of load, offers substantial flexibility, adjusts to the changing wholesale market and grid operation rules, and is generally a step in the right direction in the evolution of the QF Program.
5. QFs, by definition, are compromised of many technologies with vastly different operating characteristics; therefore no standard offer contract can account for the unique circumstances of individual generators.
6. QFs and the IOUs are encouraged to continue engaging in RFOs and bilateral negotiations in order to meet the requirements of PURPA.
7. Parties are encouraged to participate in the upcoming CHP proceeding ordered by D.08-10-037.
8. The IOUs submitted a matrix of agreed upon terms and conditions by most parties, called the "Friday Night Matrix."
9. The terms and conditions included in the "Friday Night Matrix," while deviating at times from D.07-09-040, have been deemed to strengthen rather than weaken the provisions of that decision.
10. Not all parties agree with every provision in the "Friday Night Matrix."
11. QFs shall maintain the operating characteristics required by PURPA at the time of contract execution.
12. Existing Generators may revise the term start date no less than one year in advance of the initial elected start date. New Generators must also comply with the one year revision timeframe.
13. A QF that has a FERC-jurisdictional interconnection may sell power under a separate agreement if the generator comes online before the contract start date.
14. CCC's proposed changes to Sections 1.01(a), 1.01(b) and Exhibit F, Sections 4(c)(i) and 4(d)(i) are reasonable.
15. It is reasonable to adopt CCC's proposed modification of Section 1.02(f), Site Host Load, to reflect variations in the site host load over time.

16. CCC's request to eliminate the limits on QF's rights prior to the Term, Section 3.01(d), Retained Benefits, subject to applicable laws is reasonable.
17. QFs must comply with all applicable FERC regulations regarding the sale of wholesale power prior to the start of the term of the contract.
18. All generation from the QF is dedicated to the purchasing utility that is not used to serve the thermal host.
19. QFs shall comply with all Resource Adequacy (RA) obligations effective throughout the term of the contract. Future Resource Adequacy rulings may provide for grandfathering of existing contracts at the discretion of this or future Commissions.
20. Buyer consent is not needed for a single customer site to net-meter so long as the net metering does not conflict with any applicable CAISO Tariffs or regulations and the net metering is recognized by CAISO.
21. The Performance Tolerance Band shall remain at three percent of the Seller's Forecasted output.
22. Improved accuracy of forecasting was called for in D.07-09-040 and is a central theme of the standard offer contract.
23. The IOUs have accepted the burden of the CAISO charges associated with an inaccurate forecast delivered to CAISO along with associated revenues from accurate Seller forecasts.
24. Deviation provisions related to forecasting requirements only apply if the QF made the error.
25. The Commission adopts the proposed compromise in the "Friday Night Matrix" for handling multiple Mean Average Error (MAE) failures within one calendar year (any three months in a twelve month period) is to reduce the capacity payment to the as-available payment for all of the following months unless and until the QF achieves two consecutive months where there is not an MAE failure, at which point, starting with the second month, Seller's capacity payments shall revert back to the firm capacity payment.
26. The Performance Tolerance Band requirement could be burdensome for small, as-available QFs.
27. Any deviation from the tight guidelines of the Performance Tolerance Band could represent a large percentage of total output for small, as-available generators.
28. The CAISO Tariff requires that forecasts be made at the generator level, thus the Commission is unable to make exceptions for small as-available generators.
29. We encourage the CAISO to consider allowing the aggregation of small as-available generators within the IOU's portfolio as currently occurs with small

QFs that have not signed the CAISO Tariff and are interconnected through Rule 21.

30. Exhibit C, Demonstration for Firm Contract Capacity, shall remain as submitted in the IOU's Standard Offer Contract.
31. Testing to demonstrate firm contract capacity shall only apply to new generators.
32. The QF may select the test used to demonstrate firm contract capacity.
33. The specifics of testing procedures for particular technologies will be worked out in a written agreement between parties, as stated in Exhibit C, upon execution of the contract.
34. The Termination Provisions in Section 2.02(a)(i) and Section 2.02 (a)(ii) are unreasonable.
35. CAC/EPUC's request to extend and amend existing QF contracts is denied.
36. We recognize the significance of potential stranded costs on the Utilities from departing load customers.
37. This Commission will not bind future Commissions in how they address potential stranded costs.
38. EPAct 2005, enacted on August 8, 2005, amended Section 210 of PURPA by providing for termination of the so-called mandatory purchase obligation upon a FERC finding that a QF has nondiscriminatory access to wholesale markets.
39. To date, FERC has not made such a finding in regards to the California QF Program.
40. If the FERC makes such a finding during the term of executed QF contracts, such contracts will be grandfathered until their expiration.
41. If the FERC makes such a finding, IOUs will not be required to contract with new facilities or re-contract with existing facilities not covered by a mandatory purchase obligation.
42. CAC/EPUC's argument that Section 210m does not apply to existing QFs because the rulemakings under which this contract are housed opened prior to 2005 fall under FERC's jurisdiction and cannot be validated here by this Commission.
43. CCC's request to add language to Section 1.06(a) reflecting their reservation of rights for a potential change to firm capacity price is denied.
44. Specific language related to a pending petition for modification does not belong in a standard offer contract.
45. Section 9.08(o) adequately covers potential changes resulting from a petition for modification.

46. CCC's request to place limitations on compliance with regulatory data requests is denied.
47. Qualifying Facilities executing a contract with a term of five years or more shall meet the Greenhouse Gas Emissions Performance Standard.
48. The Emissions Performance Standard adopted in D.07-01-039 represents an entry point for generation contracts. It is a threshold that must be met by new baseload generation and renewal generation seeking contracts of five years or greater.
49. There is insufficient evidence in the record of this proceeding to make a determination regarding whether the MRTU price for energy will fully reflect avoided greenhouse gas compliance costs.
50. The QFs request to pass-through the GHG avoided cost to the Utility is denied.
51. Parties that feel that GHG avoided costs are not fully reflected in the avoided cost payments may file a formal complaint with the Commission demonstrating how and by what amount GHG avoided costs are not included in the avoided cost payment.
52. In D.07-09-040, the Commission adopted an interim hybrid approach to calculating short-run avoided costs, the Market Index Formula, as the best proxy of Utilities' avoided cost. The formula is divided such that 50% of the calculation is administratively determined and the other 50% is based on the market price of energy.
53. If the Market Index Formula (MIF) is still in effect at the time GHG costs begin to be imposed on the Utilities, the MIF may need to be revisited to adjust for carbon costs.
54. CCC's request to remove the words "at its sole cost" from Sections 3.05(b) and Section 4.05 is granted.
55. CCC's requested changes to Section 3.18, Notice of Cessation or Termination of Service Agreements, is granted.
56. All QFs greater than 1 MW shall comply with the CAISO Tariff.
57. All QFs greater than 20MW shall interconnect through CAISO. QFs 20 MWs and under may continue to interconnect through Rule 21.
58. The Commission recognizes that many QFs have unique operating characteristics and have an obligation to serve their thermal host before all others.
59. No special provisions to protect the unique operating characteristics of QFs shall be included in this contract.
60. The CAISO QF PGA was designed to address the unique operating characteristics of QFs.

61. QFs and CAISO are urged to continue collaborating to ensure that the needs of both entities are met under the QF PGA.
62. QFs shall be allowed to participate in CAISO's Station Power Protocol.
63. This contract is not the appropriate place to raise and resolve concerns with CAISO programs. Concerns with CAISO programs should be raised with CAISO.
64. The Performance Assurance Amount shall be 12 months of expected generator revenues.
65. As-available generators must post a performance assurance.
66. The performance assurance amount will be capped based upon the generator's expected revenues, which are set by the generator.
67. Section 6.01(b)(iv), Cross Default Provision, shall only apply to new QF generators.
68. It is appropriate to clarify Section 6.01(c)(xii) such that the default amount shall be read as the cross-default amount.
69. Section 6.01(c)(xii) only applies to new QF generators.
70. It is appropriate to clarify Section 9.05 to state that seller has the right, but not the obligation, to enter into a collateral assignment agreement.
71. It is reasonable to modify Section 6.01(c)(xvi)(2) to reflect that Buyer consent shall not be unreasonably withheld if the QF pledges stock or equity ownership in itself as collateral for a party other than the lender.
72. It is reasonable to clarify Section 9.04 to state that Buyer consent will not be withheld if the QF can assure that it will perform the same under the agreement in the case of an indirect change of control.
73. The intent of CAC/EPUC's proposed language regarding creditworthy affiliates is reasonable. Transfer to an affiliate should be allowed if the affiliate has creditworthiness equal to or higher than that of the seller or if it can secure the support of another creditworthy affiliate.
74. It is reasonable to modify Section 9.05 to exclude the necessity of Buyer consent for transfers in the event of a foreclosure.
75. As-available generators shall be subject to the same performance assurance and development security provisions as firm generators.
76. As-available generators shall adhere to the same contract termination provisions as firm generators.
77. It is inappropriate to address CAC/EPUC's proposed small QF contract in this resolution.
78. It is reasonable to accept CCC's proposed removal of the first occurrence of the word "applicable" in the definition of "Generator Owner."

79. CCC's suggested changes to the definition of Interconnection Study, changing from "study to evaluate" to "a study prepared by or on behalf of the Transmission Provider or the CAISO to evaluate" appropriately narrows the scope of the definition and should be adopted.
80. CAC/EPUC's proposed definition for Resource Adequacy Benefits and Resource Adequacy Rulings, which state that QFs are only obligated to the Resource Adequacy Rulings on record at the time of adoption of D.07-09-040, is unreasonable.
81. QFs shall be subject to all Resource Adequacy rulings throughout the duration of the contract unless explicitly exempted by the Commission.
82. It is appropriate to modify the definition of "Related Products" to capture the notion that QFs may also retain any attributes or benefits needed to comply with any future rulings.

THEREFORE IT IS ORDERED THAT:

1. The request of Pacific Gas and Electric Company, San Diego Gas and Electric Company and Southern California Edison Company to adopt the proposed standard offer contracts for qualifying facilities as requested in Advice Letters AL 3197-E-B, AL 1958-E-B and AL 2200-E-B, respectively, is conditionally approved pending modifications ordered in this resolution as summarized in the ordering paragraphs and detailed in the body of the resolution.

2. Pacific Gas and Electric Company, San Diego Gas and Electric Company and Southern California Edison are ordered to revise the QF Standard Offer Contract in accordance with the findings of this resolution within 15 business days of its adoption.

3. The IOUs are ordered to submit the updated contract as a Tier 2 Advice Letter. The QF Standard Offer Contract will go into effect upon the adoption of the Tier 2 Advice Letter.

4. The Standard Offer Contract will be the vehicle for new and existing QFs to contract with the IOUs under PURPA. QFs who do not sign the SOC will retain the ability to enter IOU RFOs or separate bilateral deals as participating generators.

5. QFs and the IOUs shall continue to engage in RFOs and bilateral negotiations in addition to the standard offer contract in order to meet the requirements of PURPA.

6. The IOUs shall modify the contract to add clarifying language that states that in the unlikely case that PURPA requirements loosen, the QF shall maintain the operating characteristics required by PURPA at the time of contract execution.

7. Existing, new or repowering generators will be allowed to revise the start date one year prior to the originally selected start date.

8. The IOUs shall modify the contract to state that a QF that has a FERC-jurisdictional interconnection may sell power under a separate agreement if the generator comes online before the contract start date.

9. Sections 1.01(a), 1.01(b) and Exhibit F, Sections 4(c)(i) and 4(d)(i) shall be modified to include the words "extension of the Term Start Date as a result of Force Majeure as to which Seller is the Claiming Party (Subject to Section 5.03)."

10. We order the IOUs to develop language that clarifies that Site Host Load estimates are not binding while acknowledging that the IOU must rely on the Expected Term Year Net Energy Production provided in the contract.

11. The Utilities shall revise Section 3.01(d) to read "Retained Benefits. Seller shall retain for its own use or disposition all financial incentives and all attributes, benefits and credits associated with the Generating Facility and the electrical or thermal energy produced there from, other than the Power Product and Related Products.
    (i) Nothing in this Agreement restricts Seller's ability to use, provide and convey any energy, Green Attributes, Capacity Attributes, Resource Adequacy Benefits, or any other product or benefit associated with the Generating Facility or the output thereof before the term.
    (ii) Notwithstanding anything to the contrary in this Agreement, as of the Effective Date and until the Term End Date, Seller may not use, provide or convey any of the Power Product and the Related

Products to any Person other than Buyer except as allowed by Public Utilities Code Section 218 (b)."

12. QFs shall comply with all Resource Adequacy (RA) obligations effective throughout the term of the contract unless exempted from such obligations by the Commission.

13. Section 3.08(d), Multiple Points of Metering at a Single Customer Site, shall be modified such that consent of Buyer is not needed so long as the resulting net metering is recognized by CAISO and occurs within standard CAISO billing intervals.

14. The IOUs shall remove the Termination Provisions in Section 2.02(a)(i) and Section 2.02 (a)(ii).

15. Utilities will not be required to contract with new facilities or re-contract with existing facilities not covered by a mandatory purchase obligation if FERC finds that QFs have nondiscriminatory access to wholesale markets.

16. We require the IOUs to revise the Sections 2.01(i) and 9.02(g) to read: "Qualifying Facilities executing a contract with a term of five years or more shall meet the Greenhouse Gas Emissions Performance Standard. Upon request, Seller shall provide to the CPUC documentation evidencing its compliance with the applicable EPS at the time of the effective date of this contract."

17. If, after the onset of the GHG compliance obligation, it becomes apparent that avoided cost payments do not fully reflect avoided GHG compliance costs, parties may file at the Commission a Petition to Modify the MIF that is in effect at the time of the alleged GHG avoided cost discrepancy.

18. If the Market Index Formula (MIF) that was adopted in D.07-09-040 is still in effect at the time GHG costs begin to be imposed on the Utilities, the MIF may need to be revisited to adjust for carbon costs.

19. The IOUs are ordered to remove the words "at its sole cost" from Sections 3.05(b) and Section 4.05.

20. The IOUs shall modify Section 3.18, Notice of Cessation or Termination of Service Agreements, to read "Seller shall provide to Buyer Notice within at least one Business Day if there is…."

21. All QFs greater than 1 MW shall comply with the CAISO Tariff as determined by D.07-09-040.

22. All QFs greater than 20MW shall interconnect through CAISO. QFs 20 MWs and under may continue to interconnect through Rule 21. The IOUs shall make any necessary changes to the contract to reflect this fact.

23. The IOUs shall remove Section 3.14(o). QFs shall be allowed to participate in CAISO's Station Power Protocol.

24. The Performance Assurance amount shall remain at 12 months of expected revenue.

25. The IOUs shall modify Section 6.01(b)(iv), Cross Default Provision, to reflect the finding of D.07-09-040, which finds that new credit provisions shall only apply to new QF generators.

26. The IOUs shall clarify Section 6.01(c)(xii) such that the default amount shall be read as the cross-default amount.

27. The IOUs shall clarify Section 9.05 to state that seller has the right, but not the obligation, to enter into a collateral assignment agreement.

28. The IOUs shall modify Section 6.01(c)(xii) to reflect the finding of D.07-09-040, which finds that new credit provision shall only apply to new QF generators.

29. The IOUs shall modify Section 6.01(c)(xvi)(2) to reflect that Buyer consent shall not be unreasonably withheld if the QF pledges stock or equity ownership in itself as collateral for a party other than the lender.

30. The IOUs shall change Section 9.04 to allow for the provision that consent shall not be unreasonably withheld if, in the case of an indirect change in control, the QF proves that it will perform the same under the contract.

31. The IOUs shall modify Section 9.04 to allow for a change of control of a publicly traded company.

32. The IOUs shall modify Section 9.04 such that transfer to an affiliate should be allowed if the affiliate has creditworthiness equal to or higher than that of the seller or if it can secure the support of another creditworthy affiliate.

33. The IOUs shall modify Section 9.05 to exclude the necessity of Buyer consent for transfers of the contract in the event of a foreclosure.

34. The IOUs shall remove the first occurrence of the word "applicable" in the definition of "Generator Owner."

35. The IOUs shall modify the definition of "Interconnection Study to read "a study prepared by or on behalf of the Transmission Provider or the CAISO to evaluate…"

36. The IOUs shall modify the definition of "Related Products" such that QFs may retain any attributes to meet applicable future laws to which they are subject.

This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on June 24, 2010 the following Commissioners voting favorably thereon:

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Paul Clanon
Executive Director