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PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Item 52 ID#4048

ENERGY DIVISION **RESOLUTION E-3898**

November 19, 2004

R E S O L U T I O N

Resolution E-3898. Pacific Gas and Electric Company request for approval of the Settlement Agreements, and in particular the Definitive Agreement and the Amended Power Purchase Agreement (PPA) as reasonable, which would, among other things, shorten the Current PPA, a contract with a Qualifying Facility (QF), by six years to the benefit of ratepayers. Approved.

By Advice Letter (AL) 2537-E Filed on August 4, 2004.

SUMMARY

The settlement agreements amending the Power Purchase Agreement (PPA) between PG&E and POSDEF Power Company, L.P. (POSDEF) are approved.

The Settlement Agreements and the Amended PPA are the result of a dispute over the Project's Qualifying Facility status at FERC.

This Resolution approves the attached Settlement Agreements (Appendix A to AL 2537-E) that amend the Power Purchase Agreement (PPA) based on Interim Standard Offer #4 (ISO4) between PG&E and POSDEF Power Company, LP (POSDEF) together with its prior amendments and agreements (Confidential Appendix B to AL 2537-E) that constitute the Current PPA.

The Amended PPA shortens the current PPA by six years, which benefits ratepayers and provides shareholders an incentive.

The Amended PPA would, among other things, shorten the Current PPA, a contract with a Qualifying Facility (QF), by six years to the benefit of ratepayers.

Specifically, PG&E requests that the Commission adopt a resolution that:

1. Approves the Settlement Agreements, and in particular the Definitive Agreement[1] and the Amended PPA[2] as reasonable;

2. Authorizes recovery of all payments under the Amended PPA in PG&E's Energy Resource Recovery Account (ERRA) including an above-market portion in the Ongoing Competition Transition Charge (Ongoing CTC), or any other cost recovery mechanism subsequently authorized by the Commission, subject only to PG&E's prudent administration of the Amended PPA; and

3. Authorizes the recovery of a shareholder incentive amount associated with this PPA restructuring, which is set forth in the confidential version of AL 2537-E. Receipt of shareholder incentives for Qualifying Facility (QF) contract restructurings was authorized by the Commission in D.95-12-063 as modified by D.96-01-009.

Our approval today of PG&E's AL 2537-E allows PG&E to obtain final regulatory approval[3] from this Commission within 240 days after the date the Definitive Agreement was signed (i.e. by February 9, 2005). Absent such approval, the Definitive Agreement terminates automatically.

Approval of this resolution discloses confidential information filed by PG&E under Section 583.

Confidential Attachment C-1 to this resolution has been prepared which sets forth the detailed benefits of the settlement, such as the ISO4 firm capacity prices paid under the Current PPA. By approving this resolution the Commission determines that the public interest in disclosing the confidential information outweighs the public interest in confidentiality.

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[1] The Definitive Agreement is located in AL 2537-E, Appendix A, Attachment F.

[2] The Amended PPA (a.k.a., the Third Amendment) is located in AL 2537-E, Appendix A, Attachment F, Attachment A.

[3] PG&E obtained regulatory approval from the Federal Energy Regulatory Commission (FERC), which is described in Section 14.1 of the Definitive Agreement on October 27, 2004, as set forth in 109 FERC ¶ 61,076 in Docket No. QF85-311-004 and EL04-26-000.

BACKGROUND

The Commission encouraged QF contract restructuring and implementation through an expedited advice letter process

The Commission sought to encourage QF contract restructuring in its Preferred Policy Decision, D.95-12-063, as modified by D.96-01-009, by proposing an incentive mechanism to encourage the restructuring of QF contracts so that total transition costs might be reduced. Specifically, shareholders would be allowed to retain 10% of the net ratepayer benefits resulting from a renegotiation:

> "We endorse an approach that involves both a monetary incentive to shareholders and conditions which foster voluntary, nondiscriminatory negotiations. We will allow shareholders to retain 10% of the net ratepayer benefits resulting from a renegotiation, which will be reflected by an adjustment to the transition cost total." (D.95-12-063, p.132)

In D.96-12-088 (the Roadmap 2 Decision), the Commission stated its interest in "establishing a generic and possibly expedited process by which we can assess the reasonableness of contract restructuring in a manner which respects the principles outlined in our Preferred Policy Decision" (D.96-12-088, p.79-80).

In 1998, the Commission adopted the Restructuring Advice Letter Filing (RALF)[4] process in D.98-12-066:

> "The restructuring Advice Letter [filing] process attached as Attachment B to this decision, shall be adopted subject to the modifications and clarifications set forth in Section 7 of this decision." (D.98-12-066, Ordering Paragraph 1).

The Restructuring Advice Letter Filing (RALF) requirements include a <u>statement of support or neutrality</u> from ORA of the QF contract restructuring advice letter and Energy Division review and resolution of the advice letter

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[4] Restructuring Advice Letter Filing ("RALF") Procedure For Review of QF Contract Restructurings.

The Commission adopted the RALF process with modifications that were not included in Attachment B to D.98-12-066 but were instead set forth in the decision. The RALF requirements are reproduced here as Attachment 1 to Resolution E-3898, a modified version of Attachment B to D.98-12-066, which reflect the following determinations made in D.98-12-066:

- "We will require that a statement of support or neutrality from ORA be attached to any restructuring Advice Letter filing. We will not limit the use of the restructuring Advice Letter in any other way, such as by dollar size or by type of QF (including affiliates of utilities). (D.98-12-066, p.27, and Conclusion of Law 9)
- "While an ORA statement must be included with the restructuring Advice Letter, any other party may file a protest to the Advice Letter in the proper timeframe. We believe the procedural safeguards set forth in Attachment B, as modified by the following discussion, will ensure fairness in addressing the protests. Energy Division will review such protests (and any responses), and prepare a Resolution for the Commission pursuant to Section 9 of Attachment B [to D.98-12-066]. However, we modify Section 9 so that Energy Division, at its discretion, may advise the utility that the matter is too complex and should be filed as an Application. Energy Division may also advise the utility to file an Application even if there are no protests, should the Division determine that there are complexities to the filing that the Division does not believe it is in the best position to resolve. The Energy Division should discuss any such recommendation with the Coordinating Commissioner for QF matters before advising the utility to file an Application." (D.98-12-066, p.17)
- "We do not adopt Section 4 in Attachment B addressing confidentiality. Confidentiality issues shall be consistent with the current practice for utility Advice Letters." (D.98-12-066, p.28).

PG&E purchases power from the POSDEF QF under the terms of an amended ISO4 contract

PG&E's power purchases from the POSDEF QF (Log. No. 16C007) are currently made in accordance with the terms and conditions of an amended Interim Standard Offer #4 (ISO4) contract. The Current PPA was entered into pursuant to the Public Utility Regulatory Policies Act of 1978 (PURPA), the Federal Energy Regulatory Commission (FERC) regulations implementing PURPA (18 C.F.R. §

292.101 et seq. (2002)), and decisions and orders of the Commission implementing PURPA in California.

As described in PG&E AL 2537-E, the POSDEF QF (the Project) is located in Stockton, California. PG&E originally entered into a 30-year PPA with this facility on October 18, 1984. PG&E had agreed to purchase energy and capacity generated by this 44 MW cogeneration unit which is fueled by coal, petroleum coke, refuse derived fuel and biomass located at the Port of Stockton.

The unit's boiler is a percolating fluidized bed combustion unit primarily fueled by coal that is supplemented by other fuels primarily composed of petroleum coke. The boiler produces steam to turn the 44 MW single cycle generator. The Project is designed to operate on a 24-hour per day, 7-day per week basis, providing baseload electrical generation to PG&E's local 60 kV transmission lines.

The Project successfully demonstrated its ability to reliably deliver firm capacity to PG&E on October 26, 1989. The terms of the Current PPA extend to October 25, 2019, 30 years after that demonstration date. Under the Amended PPA, the contract term would be shortened by six years, remaining in effect until October 25, 2013 (Amended PPA, p.2).

The Settlement Agreements and the Amended PPA are the result of a dispute over the Project's QF status at FERC

A cogeneration or small power production facility QF may jeopardize its QF status at FERC if "more than 50 percent of the equity interest in the facility is held by an electric utility or utilities, or by an electric utility holding company, or companies, or any combination thereof" 18 CFR 292.206(b).

When PG&E originally contracted with the Project, it was owned by Cogeneration National Corporation (CNC) and had no utility ownership. In 1988, CNC became an indirect, wholly-owned subsidiary of Sithe Energies, Inc. (Sithe), which like CNC, was a non-utility for QF purposes at that time. In 1993, the project ownership was restructured into its current limited partnership form. The general partner, Acme, was originally 90 percent indirectly owned by FPL. In 1995 FPL acquired the remaining interest in Acme. After both transactions in 1993 and 1995, FERC recertified the project as a QF following the changes in the ownership structure for the Project. On December 18, 2000, Exelon acquired a

49.9 percent indirect interest in ExRes SHC, Inc. (the Exelon Transaction), which in turn had a 100 percent indirect ownership interest in Sithe, and consequently CNC. POSDEF did not seek FERC recertification after the Exelon Transaction until approximately three years later. On November 25, 2003, Exelon's indirect interest in CNC increased to 50%.

On November 18, 2003, FERC's Enforcement Staff and Sithe entered into a Stipulation and Consent Agreement that "any possible non-compliance" with QF ownership requirements by POSDEF was "inadvertent." On November 20, 2003, FERC approved the Stipulation and Consent Agreement. On the same day, FERC issued a separate order initiating an investigation into Sithe and two QFs in which it held an ownership interest, including the POSEF project.

On December 5, 2003, PG&E filed a motion to intervene in that docket, EL04-26-000 and QF85-311-004. In opposition to the position of the project and its owners, PG&E took the position that effective upon the Exelon Transaction, the POSDEF project was no longer in compliance with the requirement under federal law limiting public utility ownership of QF projects to no more than 50%. PG&E thus disputed the initial positions of Sithe and FERC Staff. On April 14, 2004, after several settlement conferences held during the first quarter of 2004, PG&E, POSDEF, Acme, Sithe, CNC, and Exelon entered into a Memorandum of Understanding (MOU) which memorialized the essential terms contained in the Settlement Agreements filed in AL 2537-E. On June 14, 2004 POSDEF filed the Settlement Agreements with FERC on behalf of all the parties to the PPA and FERC Trial Staff.

On October 27, 2004, FERC issued order 109 FERC ¶ 61,076 in Docket No. QF85-311-004 and EL04-26-000 which approved the June 14, 2004 filing by POSDEF Power Company, L.P. (POSDEF), on behalf of itself, Pacific Gas & Electric Company (PG&E), Acme POSDEF Partners, L.P., Sithe Energies, Inc. (Sithe), Cogeneration National Corporation (CNC), Exelon SHC, Inc. (Exelon) and Commission Trial Staff. The approved filing, a "Definitive Agreement, a Consent Agreement, and a Release Agreement" (collectively referred to by FERC as the "Offer of Partial Settlement") resolved all issues set for hearing in FERC's

November 20, 2003 Order[5] in Docket Nos. EL04-26-000, QF85-311-004 and QF86-734-006 insofar as the POSDEF generating facility (POSDEF facility) is concerned.

NOTICE

Notice of AL 2537-E was made by publication in the Commission's Daily Calendar. Pacific Gas and Electric Company states that a copy of the Advice Letter was mailed and distributed in accordance with Section III-G of General Order 96-A.

PROTESTS

No party protested PG&E's AL 2537-E

Advice Letter AL 2537-E was filed on August 4, 2004. The protest period ended August 24, 2003. No protests were filed.

DISCUSSION

The Commission's vote to make contract information public is in the public interest.

Energy Division recommends that the certain material filed under seal pursuant to Public Utilities (Pub. Util.) Code Section 583 and General Order (G.O.) 66-C, and considered for possible disclosure**,** should be disclosed as the public interest in disclosure outweighs public interest in confidentiality. Accordingly, Confidential Attachment C-1, marked redacted in the draft resolution, should be made public upon Commission approval of this resolution.

PG&E has complied with the RALF requirements

Energy Division has reviewed both the public and confidential versions of PG&E AL 2537-E. PG&E AL 2537-E included information required in Section 3 of the RALF procedure, and PG&E has complied with the other RALF filing requirements. The RALF requirements are reproduced here as Attachment 1 to

[5] *Sithe Energies, Inc., et al.*, 105 FERC ¶ 61,240 (2003) (Hearing Order).

E-3898, a modified version of Attachment B to D.98-12-066, which reflect determinations made in D.98-12-066.

Ratepayers will benefit from the contract restructuring

The primary difference between the Amended PPA and the Current PPA will be a contract term shortened by six years. The Amended PPA will expire six years earlier, on October 25, 2013, rather than on October 25, 2019 under the Current PPA. Ratepayers will benefit from this contract restructuring to the extent that PG&E will no longer be obligated to pay significant ISO4 firm capacity payments[6] during the final six years of the Current PPA. Confidential Attachment C-1 to this resolution has been prepared which sets forth the detailed benefits of the settlement.

Under the terms of the Settlement Agreements between PG&E and the POSDEF QF, the Project will operate and sell capacity and energy to PG&E under essentially the same terms as provided under the original PPA until October 25, 2013, when the PPA will terminate. The POSDEF QF waives on behalf of itself and its successors in interest any right to require PG&E to purchase the electrical output of the Project other than under the Amended PPA.

In exchange for terminating the PPA six years early and waiving any further QF "put" right as to PG&E, PG&E agrees not to assert any claim that the project has violated the utility ownership requirements for QFs without any admission it was wrong, agrees to release POSDEF from all requirements related to maintaining QF status, and agrees to support POSDEF's application for market-based rate authority at FERC.

The settlement agreements resolve complex litigation proceedings at FERC

There are three agreements that comprise the Settlement Agreements: (1) the Definitive Agreement between POSDEF, Acme, and PG&E under the PPA, which includes the Third Amendment; (2) the Release Agreement between PG&E and Sithe, CNC, and Exelon SHC; and (3) the Consent Agreement among

[6] See Confidential Appendix B to AL 2537-E, First Amendment to the Current PPA, p.2-3.

all of the Parties, including FERC Trial Staff. These Settlement Agreements resolve the complex litigation in FERC proceedings.

ORA supports the contract restructuring

The RALF procedure requires a statement of support or neutrality from ORA be attached to any restructuring Advice Letter filing. On July 29, 2004, ORA issued a letter in support of the contract restructuring, now proposed by PG&E in AL 2537-E.

The POSDEF QF has not experienced any operational problems

With regard to historical performance, the POSDEF QF has not experienced any operational issues such as probation or deration. According to AL 2537-E, the POSDEF QF has consistently delivered its firm capacity to PG&E pursuant to the PPA terms and has not been placed on probation for failing to meet its minimum performance requirements even once. Generation from the Project has ranged from 254 GWh to 362 GWh per year (excluding years including start-up and 2001 when the PPA was suspended during the energy crisis). Forecasted generation is based on the most recent five years of historic operating data for years that didn't include impacts for the energy crisis (2001 – 2002) or pay-for-curtailment agreements (1996 – 1998). The average generation over the years 1994, 1995, 1999, 2000 and 2003 is 321.5 GWh. Historical deliveries are provided in Confidential Appendix D to AL 2537-E.

There are no current legal or regulatory disputes between POSDEF and PG&E

Section 3f. of the RALF procedure requires disclosure of any significant, pending legal or regulatory disputes between the utility and the QFs. In AL 2537-E, PG&E states that, other than the FERC proceeding that the settlement agreement addresses, there are no current legal or regulatory disputes between POSDEF and PG&E. In fact, the Settlement Agreements waive all claims that PG&E may have regarding utility ownership interests in POSDEF and/or maintaining QF status in the future.

The POSDEF project is economically viable

PG&E states that the Project is economically viable. The *pro forma* spreadsheet prepared by PG&E projects positive income from the operation of the POSDEF

QF in every year to the end of the PPA, and a positive net-prevent-value (NPV) under the Status Quo scenario as well as the five sensitivity scenarios (AL 2537-E, Confidential Appendix F). PG&E concluded that the Project is well maintained by examining its operating record over more than 14 years of operation. PG&E determined that the Project has a long-established record of making reliable firm capacity deliveries under the PPA and has never been placed on probation due to not meeting its firm capacity performance requirements.

The restructured contract results in ratepayer benefits and PG&E's request for a 10% shareholder benefit should be approved

As was mentioned, the primary ratepayer benefit that would result from the proposed contract restructuring is that PG&E will no longer be obligated to pay significant ISO4 firm capacity payments[7] during the final six years of the Current PPA. By terminating the PPA six years earlier, PG&E estimates significant savings for ratepayers (see AL-2537, Confidential Appendix E). PG&E calculates ratepayer benefits as the difference between the payments avoided in the final six years of the Current PPA vis-à-vis the cost of replacing the same amount of power that would have been provided by POSDEF at market prices. The analysis assumes that the market cost to replace the capacity and energy provided in the Current PPA is equal to SRAC energy, and that ratepayers would save the total stream of projected firm capacity payments. The net present value (NPV) of these benefits is detailed in Confidential Appendix E to the advice letter.

PG&E requests recovery a shareholder incentive amount associated with this PPA restructuring, as detailed in the confidential version of AL 2537-E. Receipt of shareholder incentives for Qualifying Facility (QF) contract restructurings was authorized by the Commission in D.95-12-063 as modified by D.96-01-009. PG&E is requesting a shareholder incentive award amounting to 10% of the net present value (NPV) savings in projected firm capacity payments.

In addition, PG&E requests recovery of all payments under the Amended PPA in PG&E's Energy Resource Recovery Account (ERRA) including an above-market

[7] See Confidential Appendix B to AL 2537-E, First Amendment to the Current PPA, p.2-3.

portion in the Ongoing Competition Transition Charge (Ongoing CTC), or any other cost recovery mechanism subsequently authorized by the Commission, subject only to PG&E's prudent administration of the Amended PPA. This is a reasonable request given that the pricing terms in the Current PPA and the Amended PPA are the same, aside from the reduced contract term.

COMMENTS

The 30 day comment period is waived

Public Utilities Code section 311(g)(1) provides that this resolution must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. However, Section 311(g)(2) provides that this 30-day period may be reduced or waived upon the stipulation of all parties in the proceeding, or if the resolution grants the relief requested in an uncontested matter.

All parties in the proceeding have stipulated to reduce the 30-day waiting period required by PU Code section 31l(g)(1) to 7 calendar days. Accordingly, this matter will be placed on the first Commission's agenda at least 7 calendar days prior to the Commission meeting scheduled for November 19, 2004. By stipulation of all parties, comments shall be filed no later than Monday, November 15, 2004, 5 calendar days following the mailing of this draft resolution. There will be no reply comments.

FINDINGS

1. The Commission adopted the Restructuring Advice Letter Filing (RALF) process in D.98-12-066.

2. On August 4, 2004, PG&E filed Advice Letter 2537-E pursuant to the RALF process for approval of Settlement Agreements (Appendix A to AL 2537-E) that amend the Power Purchase Agreement (PPA) based on Interim Standard Offer #4 (ISO4) between PG&E and POSDEF Power Company, LP (POSDEF) together with its prior amendments and agreements (Confidential Appendix B to AL 2537-E) that constitute the Current PPA. The Amended PPA would,

among other things, shorten the Current PPA by six years to the benefit of ratepayers.

3. AL 2537-E was not protested.

4. On July 29, 2003, ORA issued a letter in support of the contract restructuring, now proposed by PG&E in AL 2537-E.

5. PG&E complied with RALF filing requirements.

6. With regard to historical performance, the POSDEF QF has not experienced any operational issues such as probation or deration.

7. Other than the FERC proceeding that the Settlement Agreement addresses, there are no current legal or regulatory disputes between the POSDEF QF and PG&E.

8. The primary ratepayer benefit that would result from the proposed contract restructuring is that PG&E will no longer be obligated to pay significant ISO4 firm capacity payments during the final six years of the Current PPA. The avoided capacity payments are shown in Confidential Attachment C-1 to this resolution.

9. PG&E requests approval of a shareholder incentive award as a result of this contract restructuring equal to 10% of the expected savings resulting from the terminated ISO4 firm capacity payments during the final six years of the Current PPA. The specific award amount is shown in Confidential Attachment C-1 to this resolution.

10. We should approve, as reasonable, the Settlement Agreements (Appendix A to AL 2537-E) that amend the Power Purchase Agreement (PPA) based on Interim Standard Offer #4 (ISO4) between PG&E and POSDEF Power Company, LP (POSDEF) together with its prior amendments and agreements (Confidential Appendix B to AL 2537-E) that constitute the Current PPA. The Amended PPA would, among other things, shorten the Current PPA by six years to the benefit of ratepayers.

11. PG&E should be allowed to recover all payments made pursuant to the Amended PPA in PG&E's Energy Resource Recovery Account (ERRA)

including an above-market portion in the Ongoing Competition Transition Charge (Ongoing CTC), or any other cost recovery mechanism subsequently authorized by the Commission, subject only to PG&E's prudent administration of the Amended PPA.

12. PG&E should be allowed to recover the shareholder incentive amount associated with this PPA restructuring, as identified in the confidential version of AL 2537-E. Receipt of shareholder incentives for Qualifying Facility (QF) contract restructurings was authorized by the Commission in D.95-12-063 as modified by D.96-01-009.

13. Certain material filed under seal pursuant to Public Utilities (Pub. Util.) Code Section 583 and General Order (G.O.) 66-C, and considered for possible disclosure, should be disclosed. Accordingly, Confidential Attachment C-1, marked redacted in the draft resolution, should be made public upon Commission approval of this resolution.

THEREFORE IT IS ORDERED THAT:

1. Pacific Gas and Electric Company's request for approval of the Settlement Agreements (Appendix A) that amend the Power Purchase Agreement (PPA) based on Interim Standard Offer #4 (ISO4) between PG&E and POSDEF Power Company, LP (POSDEF) together with its prior amendments and agreements (Confidential Appendix B to AL 2537-E) that constitute the Current PPA, as requested in Advice Letter (AL) 2537-E, is approved.

2. PG&E may recover all payments made pursuant to the Amended PPA in PG&E's Energy Resource Recovery Account (ERRA) including an above-market portion in the Ongoing Competition Transition Charge (Ongoing CTC), or any other cost recovery mechanism subsequently authorized by the Commission, subject only to PG&E's prudent administration of the Amended PPA.

3. PG&E may recover the shareholder incentive amount associated with this PPA restructuring, as identified in the confidential version of AL 2537-E. Receipt of shareholder incentives for Qualifying Facility (QF) contract

restructurings was authorized by the Commission in D.95-12-063 as modified by D.96-01-009.

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 November 19, 2004; the following Commissioners voting favorably thereon:

_____
STEVE LARSON
Executive Director

Attachment 1 to Resolution E-3898 [8]

Formerly ATTACHMENT B to D.98-12-066

**[Modified Here in Attachment 1 to Resolution E-3898
To Reflect Modifications Set Forth In D.98-12-066]**

Revised Exhibit A

RESTRUCTURING ADVICE LETTER FILING ("RALF") PROCEDURE FOR REVIEW OF QF CONTRACT RESTRUCTURINGS

THIS ATTACHMENT B IS SUBJECT TO THE MODIFICATIONS SET FORTH IN SECTION 7 OF D.98-12-066, INCLUDING:

- "We will require that a statement of support or neutrality from ORA be attached to any restructuring Advice Letter filing. We will not limit the use of the restructuring Advice Letter in any other way, such as by dollar size or by type of QF (including affiliates of utilities). (D.98-12-066, p.27, and Conclusion of Law 9)
- "While an ORA statement must be included with the restructuring Advice Letter, any other party may file a protest to the Advice Letter in the proper timeframe. We believe the procedural safeguards set forth in Attachment B, as modified by the following discussion, will ensure fairness in addressing the protests. Energy Division will review such protests (and any responses), and prepare a Resolution for the Commission pursuant to Section 9 of Attachment B [to D.98-12-066]. However, we modify Section 9 so that Energy Division, at its discretion, may advise the utility that the matter is too complex and should be filed as an Application. Energy Division may also advise the utility to file an Application even if there are no protests, should the Division determine that there are complexities to the filing that the Division does not believe it is in the best position to resolve. The Energy Division should discuss any such recommendation with the Coordinating Commissioner for QF matters before advising the utility to file an Application." (D.98-12-066, p.17)

[8] This Attachment 1 to Resolution E-3898 also appeared as Attachment 1 to Resolution E-3848 regarding SCE Advice Letter 1726-E.

- "We do not adopt Section 4 in Attachment B addressing confidentiality. Confidentiality issues shall be consistent with the current practice for utility Advice Letters." (D.98-12-066, p.28).

1. The utility will submit a restructuring advice letter to the Commission's Energy Division which will contain the essential information necessary to establish the reasonableness of the proposed voluntarily negotiated QF restructuring. Each such filing, and all protests, responses and replies concerning the filing, shall indicate a postal address and (where appropriate) a FAX number or e-mail address at which the advice letter filer, protestant or respondent, agrees to receive subsequent documents and notices relevant to the advice letter. Each such filing will be reported in the Daily Calendar.

2. Service of the restructuring advice letter shall be as follows:

On or before the date a restructuring advice letter is submitted for filing, and unless otherwise directed by Commission order, the utility shall serve the restructuring advice letter (1) on the Consumer Services Division and the Office of Ratepayer Advocates (service on these parties may be made by Internet); and (2) on the utility's restructuring advice letter service list and any other third parties as specified by the Energy Division, other Commission order, or statute.

The utility's restructuring advice letter service list shall include the postal and e-mail address, as appropriate, of persons on the list. The utility shall include on the requested list any person that requests such inclusion and may periodically confirm the desire of any currently listed person to remain on the list.

After the filing of a restructuring advice letter, and pending its disposition, the utility shall promptly provide a copy of the advice letter to anyone so requesting. Such provision shall be without charge to anyone who is a current customer for utility services from the utility, or to anyone receiving the advice letter by Internet.

3. The restructuring advice letter shall contain the following categories of information, including all relevant work papers and other relevant supporting documents:

a. Identification of the QF, location of the QF's generating facility, brief description of the generating facility size, type of technology and other pertinent or unique characteristics.

b. Ownership of the QF project and related companies, including affiliate relationships of the parties involved in the transaction, if any.

c. A detailed description of the historical operational performance of the project, including historical production and compliance with performance and efficiency monitoring standards.

d. A summary of the proposed contract restructuring.

e. A summary of the ratepayer benefits.

f. A description of any significant, pending legal or regulatory disputes between the Utility and the QF, and their resolution or status.

g. An assessment of the QF's projected economic and operational viability under the existing contract.

h. A detailed description of ratepayer benefits, shareholder incentive, and sensitivity analyses.

i. A copy of the QF's existing contract, including any amendments.

j. A copy of the executed or unexecuted restructured agreement for which approval is sought and copies of all related agreements between the QF and the Utility.

~~4. The publicly available version of the restructuring advice letter may be redacted to delete the following types of confidential information, which redaction would be approved in advance by the Commission in its orders authorizing the use of the advice letter process:~~

~~a. The schedule of any restructuring payments to be made to the QF, including the total amount thereof.~~

~~b. The Utility's non-public projection of replacement energy and capacity costs.~~

~~c. The Utility's projection of future production by and payments to the QF under the existing contract.~~

~~d. Non-public financial and operating data provided on a confidential basis by the QF to the Utility.~~

~~e. The Utility's assessment of the QF's financial and operating viability under the existing contract.~~

~~f. The Utility's analysis of ratepayer savings under expected, best case and worst case scenarios (except that the projected range of savings under each scenario shall not itself be deemed confidential).~~

~~g. Portions of restructuring agreements that are deemed to be confidential by the parties and which, if made public, would place the Utility and/or the QF at a competitive disadvantage.~~

~~h. Other information which constitutes a protectable trade secret of a party or which, if publicly disclosed, would place the Utility or the QF at a competitive disadvantage.~~
[Deleted per D.98-12-066, p.18]

5. The restructuring advice letter shall only take effect upon Commission approval.

6. Any person may protest or respond to a restructuring advice letter as follows:

Within 20 days after the date that the advice letter is reported in the Daily Calendar, the protest or response shall be submitted to the Energy Division and served on the same day on the utility filing the restructuring advice letter. After filing a protest, and pending disposition of the restructuring advice letter, the protestant shall promptly provide a copy of the protest to anyone so requesting.

A restructuring advice letter may be protested on one or more of the following grounds:

a. The utility did not properly serve or give notice of the restructuring advice letter;

b. The relief requested in the restructuring advice letter would violate statute or Commission order;

c. The restructuring advice letter contains material errors, or does not follow the Commission's approved methodology, if any.

In addition, a restructuring advice letter may be protested on the grounds that the proposed restructuring is unjust, unreasonable, or discriminatory, provided, however, that a restructuring advice letter is not subject to protest on these grounds where such protest would require relitigating a prior order of the Commission.

The utility filing the restructuring advice letter shall reply to each protest and may reply to any response. Any such reply shall be submitted to the Energy Division not later than five business days after the last day to serve a protest or response, and shall be served on the same day on the person making the protest or response. If there are multiple protests or responses to a restructuring advice letter, the utility's reply may be to all such protests and responses.

The Energy Division may consider a late-filed protest or response. If the Energy Division considers a late-filed protest or response, it shall notify the utility filing the restructuring advice letter, and the utility shall have five business days from the date of issuance of the notice within which to reply to the late-filed protest or response.

7. The utility filing the restructuring advice letter may make minor revisions or corrections to the filing at any time before the effective date by filing and serving a supplement or substitute sheet. The utility shall withdraw the advice letter without prejudice in order to make major revisions. Supplements, substitute sheets, and withdrawals shall be filed and served in the same manner and on the same persons as was the original advice letter.

Minor revisions do not automatically extend the protest period. The Energy Division on its own motion or at the request of any person, may issue a notice extending the protest period. Any protest during the extended period shall be confined to the substance of the revision.

8. A supplement to a restructuring advice letter may be used to make minor revisions. The following revisions are examples of what commonly, but not necessarily, qualify as minor: a modification in response to a protest; a language clarification; or a later effective date. The supplement shall bear the same identifying number as the original advice letter but shall have a letter suffix "A" for the first supplement, "B" for the second supplement, etc.

9. Upon completion of the protest, response and reply period, the Energy Division will have 40 days within which to review the proposed restructuring to determine whether the information provided under paragraph 2 above and in response to any protest establishes that the proposed restructuring is reasonable under the Commission's standards and should be approved.

> "Energy Division will review such protests (and any responses), and prepare a Resolution for the Commission pursuant to Section 9 of Attachment B. However, <u>we modify Section 9</u> so that Energy Division, at its discretion, may advise the utility that the matter is too complex and should be filed as an Application. Energy Division may also advise the utility to file an Application even if there are no protests, should the Division determine that there are complexities to the filing that the Division does not believe it is in the best position to resolve. The Energy Division should discuss any such recommendation with the Coordinating Commissioner for QF matters before advising the utility to file an Application." (D.98-12-066, p.17)

When such review has been completed, and within such 40-day period, the Energy Division will prepare and submit to the Commission for consideration at the Commission's next public meeting which is at least 10 days thereafter a proposed

resolution either approving or rejecting the restructuring advice letter. (To facilitate this process, the utility may submit a proposed form of resolution as part of the advice letter package.) A proposed resolution approving the restructuring advice letter shall make at least the following finding:

(a) That the restructuring is reasonable;

(b) That all payments to be made pursuant to the restructuring shall be recovered by the utility through its Annual Transition Cost Proceeding or other mechanism authorized by the Commission, subject only to the utility's prudent administration of the restructuring agreement.

The Commission may then adopt the proposed resolution or modify it in whole or in part. After the Commission has acted on the resolution, its action will be reported in the Daily Calendar and the resolution will be served on the utility filing the restructuring advice letter, the affected QF and on any person filing a protest or response to the restructuring advice letter.

10. Pursuant to Public Utilities Code Sections 1731 to 1736 and Rules 85 to 86.7 of the Commission's Rules of Practice and Procedure, the utility filing the restructuring advice letter, the affected QF, or any person filing a protest to the restructuring advice letter may apply for rehearing of a resolution approving or rejecting the restructuring advice letter pursuant to paragraph 9 above. The application for rehearing shall set forth specifically the grounds on which the applicant considers the resolution to be unlawful. Other than the affected QF, a person filing a response does not have standing to apply for rehearing.

The application for rehearing shall be submitted to the Commission's Docket Office, which will assign a docket number to the application, and with the Energy Division. If the applicant is the utility filing the restructuring advice letter, it shall serve all persons filing protests or responses to the restructuring advice letter. If the applicant is the affected QF or a person filing a protest, the applicant shall serve the utility and all other persons filing protests or responses to the restructuring advice letter.

11. If the Commission's final resolution does not approve the proposed restructuring in its entirety, then the terms of the agreement between the utility and the QF will determine whether or not the restructuring effort will terminate or whether the proposed restructuring will be resubmitted for consideration through a formal application process. Also, subject to its agreement with the QF, the utility will have the right to withdraw a restructuring advice letter without prejudice at any time prior to Commission action on the draft resolution prepared by the Energy Division, or to pursue a formal application process in lieu of the advice letter procedure.

12. Nothing in the restructuring advice letter filing procedure shall preclude the utility from electing not to use the advice letter process.