



STATE OF CALIFORNIA

GAVIN NEWSOM, Governor

**PUBLIC UTILITIES COMMISSION**

505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3298

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January 17, 2025

**Agenda ID #23266**  
**Quasi-Legislative**

TO PARTIES OF RECORD IN RULEMAKING 08-06-024:

This is the proposed decision of Commissioner John Reynolds. Until and unless the Commission hears the item and votes to approve it, the proposed decision has no legal effect. This item may be heard, at the earliest, at the Commission's February 20, 2025, Business Meeting. To confirm when the item will be heard, please see the Business Meeting agenda, which is posted on the Commission's website 10 days before each Business Meeting.

Parties of record may file comments on the proposed decision as provided in Rule 14.3 of the Commission's Rules of Practice and Procedure.

/s/ MICHELLE COOKE  
Michelle Cooke  
Chief Administrative Law Judge

MLC: asf

Decision PROPOSED DECISION OF COMMISSIONER JOHN REYNOLDS  
(Mailed 1/17/2025)

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking on the  
Commission's Own Motion into  
combined heat and power Pursuant to  
Assembly Bill 1613.

Rulemaking 08-06-024

**DECISION DENYING SOUTHERN CALIFORNIA EDISON COMPANY AND  
SAN DIEGO GAS AND ELECTRIC COMPANY'S JOINT PETITION FOR  
MODIFICATION OF DECISION 10-12-055**

**Summary**

This decision denies the petition for modification of Decision 10-12-055, filed by Southern California Edison Company and San Diego Gas & Electric Company.

This proceeding is closed.

**1. Background**

The Commission issued Decision (D.) 10-12-055 on December 17, 2010. The decision, among other things, revised the methodology for setting the price that electrical corporations may offer to utilize pricing inputs from the most

recent Market Price Referent (MPR).<sup>1</sup> The decision also modified D.09-12-042 to be consistent with Federal Energy Regulatory Commission (FERC) orders that clarified that the Commission could require California utilities to offer contracts at Commission-determined wholesale rates to eligible combined heat and power (CHP) systems that participate in the Assembly Bill (AB) 1613 (Ch. 713, Stats. 2007) program, as long as rates do not exceed the purchasing utilities' avoided costs and the CHP systems obtained Qualifying Facility (QF) status under FERC's regulations.<sup>2</sup>

On August 16, 2024, San Diego Gas & Electric Company (SDG&E), and Southern California Edison Company (SCE) (collectively, Joint Investor-Owned Utilities (IOUs)) filed a petition for modification of D.10-12-055 (petition). Responses to the petition were filed on September 16, 2024 by Pacific Gas and Electric Company (PG&E) and the Commission's Public Advocates Office (Cal Advocates). With the permission of the Administrative Law Judge (ALJ), the Joint IOUs filed a reply to parties' responses on September 27, 2024.

## **2. Summary of Petition**

In their petition, the Joint IOUs state that they could not have submitted the petition within one year of the issuance of D.10-12-055, as required by Rule 16.4 of the Commission's Rules of Practice and Procedure (Rules), because the MPR was available at that time.<sup>3</sup>

In their petition, the Joint IOUs request approval for a new methodology for the Fixed Price Component for the Joint IOUs' AB 1613 contracts for 2024 -

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<sup>1</sup> D.10-12-055 at Ordering Paragraph (OP) 2.

<sup>2</sup> *Id.* at OP 8.

<sup>3</sup> Joint IOUs Petition for Modification of D.10-12-055 (Petition) at 4.

2030 for excess electricity from eligible CHP systems' QFs of 20 megawatts (MW) or less. The Joint IOUs state that Ordering Paragraph (OP) 2 of D.09-12-042 required that the Joint IOUs base "pricing on the costs of a combined cycle gas turbine" for the Fixed Price Component beyond 2023 for AB 1316 standard contracts.<sup>4</sup> The Joint IOUs further state that OP 2 of D.09-12-042 was modified by OP 2 of D.10-12-055, which required that "[i]nputs from the most recently adopted Market Price Referent must be used in the pricing formula for the Assembly Bill 1613 standard and simplified contracts, as long as the Market Price Referent is calculated based on the costs of a proxy natural gas generation resource."<sup>5</sup> The Joint IOUs state that OP 4 of D.10-12-055 ordered that "[e]ach year, upon adoption by this Commission, of a new Market Price Referent calculation, each California investor-owned utility must file a Tier-1 Advice updating its Assembly Bill 1613 tariffs and standard contracts with the new Market Price Referent inputs."

The Joint IOUs assert that the Commission no longer adopts the MPR and therefore, the methodology for determining the Fixed Price Component, adopted in D.10-12-055, is no longer available for AB 1613 standard contracts starting in 2024. The Joint IOUs state that the prices identified in the most recently adopted Tier 1 Advice Letters for the Joint IOUs' AB 1613 standard contracts ended in 2023. The Joint IOUs attach an Appendix to their petition that proposes that a new pricing methodology for 2024-2030 be "based on extrapolating and

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<sup>4</sup> *Id.* at 2 (citing D.09-12-042 at OP 2).

<sup>5</sup> *Id.* (citing D.10-12-055 at OP 2).

escalating the price at the same annual rate currently shown for years 2016 to 2023 at \$0.0216/MWh each year.”<sup>6</sup>

### **3. Summary of Responses to Petition**

PG&E and Cal Advocates recommend denying the petition. PG&E and Cal Advocates contend that the question of which pricing is applicable to AB 1613 contracts if the Commission ceases to adopt MPRs is specifically addressed in D.10-12-055.<sup>7</sup> The parties assert that D.10-12-055 provides that if the MPRs cease to exist entirely, “then the most recent MPR inputs that were developed using a proxy conventional natural gas generation resource shall continue to apply to AB 1613 contracts unless otherwise modified by this Commission.”<sup>8</sup> PG&E and Cal Advocates assert that the Commission contemplated the current situation where MPRs are no longer adopted and directed the continuance of the most recent MPR developed using a proxy gas generation resource. Therefore, PG&E and Cal Advocates state that the Joint IOUs’ proposed methodology is unnecessary and inconsistent with D.10-12-055.

PG&E further comments that the petition requests modification of OP 4, which would require IOUs to update the Fixed Price Component of AB 1613 program contracts on an ongoing basis. PG&E is concerned that the proposed revision to OP 4 would obligate IOUs to offer AB 1613 contracts to emitting resources indefinitely without regard to an IOU’s compliance with the state’s greenhouse gas (GHG) emission rules. PG&E notes that significant changes were made to state law following AB 1613’s enactment in 2007, changes that highlight

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<sup>6</sup> Petition, Appendix A, at A-1.

<sup>7</sup> PG&E Response to Petition at 1, Cal Advocates Response to Petition at 1.

<sup>8</sup> PG&E Response to Petition at 3 (citing D.10-12-044 at 10), Cal Advocate Response to Petition at 2.

the state's need to transition from GHG-emitting resources. PG&E recommends considering whether changes in state law support continuance of or modification to the AB 1613 program.

Cal Advocates adds that if the Commission is considering a new pricing methodology for CHP contracts, a rulemaking should be opened to allow parties an opportunity to evaluate a new methodology.<sup>9</sup> Cal Advocates states that this is especially important because the Joint IOUs do not actually propose a methodology in their petition but rather, propose to "extrapolate and escalate" the price at the same annual rate currently shown for 2016-2023. Cal Advocates states that the existing pricing methodology applies to all three IOUs but it is unclear from the petition whether a new methodology would apply to PG&E. Cal Advocates states that any new methodology should apply to all IOUs in a consistent manner.

In its reply, the Joint IOUs concur with PG&E and Cal Advocates that continued use of the last MPR as the Fixed Price Component of the AB 1613 contracts would resolve the issue of the need for a new Fixed Price Component of the AB 1613 contracts.<sup>10</sup> The Joint IOUs support either the petition's proposal or the recommendation of Cal Advocates and PG&E. The Joint IOUs agree with Cal Advocates that the same methodology should be applied to all three IOUs. Whether the Commission or Legislature considers the continuation of AB 1613, the Joint IOUs note that the AB 1613 program is small with a few signed contracts with each IOU. The Joint IOUs assert that there is no reason to open a new rulemaking at this time.

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<sup>9</sup> Cal Advocates Response to Petition at 2.

<sup>10</sup> Joint IOUs Reply to Responses at 1.

#### 4. Discussion

Public Utilities (Pub. Util.) Code Section 1708 gives the Commission authority to “rescind, alter, or amend any order or decision made by it.” Modifying an existing decision, however, is an extraordinary remedy that must be carefully applied to keep with the principles of res judicata since “Section 1708 represents a departure from the standard that settled expectations should be allowed to stand undisturbed.”<sup>11</sup>

As a preliminary matter, the petition complies with Rule 16.4. Rule 16.4 provides that a petition for modification must be filed within one year of the effective date of the decision proposed to be modified.<sup>12</sup> If more than one year has elapsed, the petition must explain why the petition could not have been presented within one year. The Joint IOUs assert that the petition could not have been presented within one year of the issuance of D.10-12-055 because MPRs were available at that time. As such, the petition complies with Rule 16.4.

In the petition, the Joint IOUs state that the Commission no longer adopts MPRs and therefore, the methodology for determining the Fixed Price Component, adopted in D.10-12-055, is no longer available for AB 1613 standard contracts starting in 2024. In responses, PG&E and Cal Advocates assert that D.10-12-055 addressed the issue of which pricing is applicable to AB 1613 contracts if the Commission ceases to adopt MPRs, which is that if the MPRs cease to exist, the most recent MPRs shall continue to apply to AB 1613 contracts. In replies, the Joint IOUs agree with PG&E and Cal Advocates that continued use of the last MPR as the Fixed Price Component of the AB 1613 contracts “would

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<sup>11</sup> 1980 Cal. PUC LEXIS 785, 24; *see also* 2015 Cal. PUC LEXIS 278, 7.

<sup>12</sup> Rule 16.4 of the Commission’s Rules of Practice and Procedure.

resolve the issue of the need for a new Fixed Price Component of the AB 1613 contracts.”<sup>13</sup>

The Commission agrees that D.10-12-055 has addressed the situation of which pricing should be applicable if no MPR is available. D.10-12-055 provides that:

If, however, the MPR ceases to be based on a proxy natural gas generation resource or ceases to exist entirely, then the most recent MPR inputs that were developed using a proxy conventional natural gas generation resource shall continue to apply to AB 1613 contracts until otherwise modified by this Commission.<sup>14</sup>

As such, the Commission affirms that if the MPR ceases to exist, as it currently does here, “the most recent MPR inputs that were developed using a proxy conventional natural gas generation resource shall continue to apply to AB 1613 contracts,” unless otherwise modified by the Commission.<sup>15</sup> Therefore, we find that it is unnecessary to adopt a new pricing methodology to apply to AB 1613 program contracts. We also affirm that the direction provided by the Commission in D.10-12-055 is applicable to all three IOUs.

For these reasons, the Commission finds insufficient basis to modify D.10-12-055. Accordingly, the Joint IOUs’ petition is denied.

## **5. Comments on Proposed Decision**

The proposed decision of Commissioner John Reynolds in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code

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<sup>13</sup> Joint IOUs Reply to Responses at 1.

<sup>14</sup> D.10-12-055 at 10.

<sup>15</sup> *Id.*



and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on \_\_\_\_\_, and reply comments were filed on \_\_\_\_\_ by \_\_\_\_\_. instruction sheets fully).

**6. Assignment of Proceeding**

John Reynolds is the assigned Commissioner and Debbie Chiv is the assigned Administrative Law Judge in this proceeding.

**Findings of Fact**

1. D.10-12-055 addressed the situation of which pricing is applicable to AB 1613 program contracts if a Market Price Referent ceases to exist.

**Conclusions of Law**

1. The petition for modification fails to provide sufficient basis to warrant a modification of D.10-12-055.
2. The petition should be denied.

**O R D E R**

**IT IS ORDERED** that:

1. San Diego Gas & Electric Company and Southern California Edison Company's petition for modification of Decision 10-12-055 is denied.
2. Rulemaking 08-06-024 is closed.

This order is effective today.

Dated \_\_\_\_\_, at Sacramento, California