

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

Order Instituting Rulemaking to Promote  
Consistency in Methodology and Input  
Assumptions in Commission Applications of  
Short-run and Long-run Avoided Costs,  
Including Pricing for Qualifying Facilities.

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

**POST-WORKSHOP REPLY COMMENTS OF  
THE COGENERATION ASSOCIATION OF CALIFORNIA AND  
THE ENERGY PRODUCERS AND USERS COALITION**

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Pursuant to the Electronic Rulings issued on July 14, 2004 and July 26, 2004, the Cogeneration Association of California<sup>1</sup> and the Energy Producers and Users Coalition,<sup>2</sup> (CAC/EPUC) submit these post-workshop reply comments.

**I. INTRODUCTION AND SUMMARY**

The Commission expressly established this proceeding to examine Qualifying Facilities (QF) pricing issues. These issues must be addressed now, and in a manner that complies with federal law. As previously demonstrated, federal law requires this

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<sup>1</sup> CAC represents the power generation, power marketing and cogeneration operation interests of the following entities: Coalinga Cogeneration Company, Mid-Set Cogeneration Company, Kern River Cogeneration Company, Sycamore Cogeneration Company, Sargent Canyon Cogeneration Company, Salinas River Cogeneration Company, Midway Sunset Cogeneration Company and Watson Cogeneration Company.

<sup>2</sup> EPUC is an ad hoc group representing the electric end use and customer generation interests of the following companies: Aera Energy LLC, BP America Inc. (including Atlantic Richfield Company), Chevron U.S.A. Inc., and ExxonMobil Power and Gas Services Inc.

Commission to make available to QFs utility cost data that leads to a determination of the utility's avoided costs.<sup>3</sup>

The E3 Report proposed an avoided cost methodology reflecting the calculation and various components of avoided cost. After the workshop, the Commission requested proposed revisions to the E3 Report in post-workshop comments; the revisions were to develop a consistent and comprehensive methodology for evaluating the cost-effectiveness of various demand and supply side programs and for establishing standard payment for purchases from QFs. These reply comments respond to the post-workshop opening comments of Southern California Edison Company (SCE), San Diego Gas & Electric Company and Southern California Gas Company (SDG&E/SoCalGas), Pacific Gas & Electric Company (PG&E), and the California Cogeneration Council (CCC).

CAC/EPUC make the following points in these post-workshop reply comments:

- An expedited schedule for QF pricing issues must be set now;
- PURPA does not limit the costs that may be included in utility avoided costs, contrary to SCE assertions;
- The elements of the E3 methodology related to the environmental, transmission and distribution and reliability adders should apply for QF LRAC pricing contrary to SDG&E/SoCalGas assertions otherwise; and
- As noted previously by CAC/EPUC, CCC and SDG&E/SoCalGas Electric forward market prices are too thinly traded to be the basis for the generation long run avoided cost (LRAC) component; LRAC generation should be based on the "all-in" costs of an avoidable resource such as a combined cycle combustion turbine.

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<sup>3</sup> CAC/EPUC incorporate by reference herein their previous comments on this topic filed in this proceeding on June 4, 2004, June 18, 2004, and August 20, 2004.

## II. THE COMMISSION MUST SET AN EXPEDITED SCHEDULE FOR QF PRICING ISSUES NOW.

CAC/EPUC concur with PG&E and SCE that QF SRAC pricing must be dealt with “*promptly*” and “*immediately*,” to use the respective utility terms. A Pre-Hearing Conference should be set as soon as possible. As discussed at the workshop, QF issues are complex and will require evidentiary hearings; therefore, hearing dates also need to be scheduled. This Commission indicated at the end of last year that it would be, “*moving forward to examine and propose appropriate modifications to the QF pricing methodology in the near future.*”<sup>4</sup> The “near future” is here, and QF pricing methodologies must be addressed by this Commission now.

To that end, several parties have proposed a bifurcation of QF issues from the consideration of the application of the E3 methodology to the areas of energy efficiency, demand side management, and distributed generation.<sup>5</sup> Any such bifurcation of QF issues must not delay Commission consideration of the QF issues or result in the disparate treatment of QF resources. Importantly, the OIR explicitly noted that QF pricing issues must be considered in conjunction with the other areas to be addressed in this proceeding, stating:

*[C]ohesive and rational policy making for resource procurement requires that we develop a common methodology for assessing avoided costs*

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<sup>4</sup> OIR, at 7 (citing D.03-12-062 and D.04-01-050).

<sup>5</sup> Parties making such proposals include PG&E, SCE, SDG&E/SoCalGas, and CCC. See Comments of Pacific Gas & Electric Company on the Draft E3 Report and its Potential Applicability to 1) Demand Response, 2) Distributed Generation, 3) Renewables, and 4) Qualifying Facility, filed August 20, 2004, at 2; see also Comments of Southern California Edison Company on E3 Report on Avoided Cost Methodology (SCE Comments), filed August 20, 2004, at 23; see also Post-Workshop Comments of San Diego Gas & Electric Company and Southern California Gas Company on Energy and Environmental Economics, Inc. Report Entitled a Forecast of Cost Effectiveness Avoided Costs And Externality Adders, filed August 20, 2004, at 35; see also Redline Comments of the California Cogeneration Council on the E3 Report, filed August 20, 2004, at 15.

*across the full range of supply- and demand-side technologies. **QF pricing is part of this mix, and should not be addressed in isolation.***

OIR, at 14 (emphasis added). The Commission's promise to move forward with QF pricing issues utilizing a common methodology must be fulfilled now. Moreover, this common methodology can and should include all components that reflect utility avoided costs for QF pricing.

### **III. PURPA SETS A MINIMUM LIST OF UTILITY COSTS TO BE CONSIDERED, NOT AN EXHAUSTIVE LIST.**

SCE asserts that the only costs that may be included in the calculation of utility avoided costs for QF purposes are those specifically listed in PURPA regulations, *i.e.*, line losses, capacity, energy and reduction in fossil fuel use.<sup>6</sup> SCE claims that PURPA thus precludes inclusion of the following components in determining utility avoided costs: transmission and distribution; environmental externalities; reliability; and price elasticity of demand.<sup>7</sup> A plain reading of the very regulation cited by SCE belies SCE's assertion. The regulation simply states that the factors it lists "*shall*" be considered; it does not forbid consideration of other factors.

Long-standing principles of statutory construction hold that federal statutes are to be interpreted by determining congressional intent.<sup>8</sup> This determination begins with the plain language of the statute.<sup>9</sup> The statute says, "*In determining avoided costs, the*

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<sup>6</sup> See SCE Comments, at 22-23.

<sup>7</sup> *Id.*

<sup>8</sup> See *Bedroc Ltd. v. U.S.*, 314 F.3d 1080, 1083 (9<sup>th</sup> Cir. 2002).

<sup>9</sup> See *U.S. V. Hackett*, 311 F.3d 989, 991 (9<sup>th</sup> Cir. 2002).

*following factors shall, to the extent practicable, be taken into account...*<sup>10</sup> The statute does not say *only* the following factors shall be considered, or these factors *and no others* shall be considered. Indeed, nowhere does the statute state that its list comprises the exhaustive list of factors to be considered to the exclusion of all others. The statute does not expressly forbid the consideration of other factors which would also contribute to the determination of utilities' avoided costs. Thus, "*statutory language suggesting exclusiveness is missing,*" and therefore, the *expressio unius est exclusio alterius* principle, which holds that the enumeration of one thing excludes another if it is clear Congress considered and intended to exclude the other, does not apply.<sup>11</sup>

The intent behind the regulation is clear: those factors shall be considered, to the extent practicable, in the determination of utility avoided costs. 18 CFR Sec. 292.304(e) does not preclude the consideration of additional factors in the determination of avoided utility cost for QF pricing. Indeed, such other factors must be included to reflect the true avoided utility costs, as required by PURPA.

#### **IV. THE E3 METHODOLOGY COMPONENTS FOR ENVIRONMENTAL COSTS, TRANSMISSION AND DISTRIBUTION, AND RELIABILITY SHOULD APPLY TO QF LRAC PRICING.**

CAC/EPUC disagree strongly with the SDG&E/SoCalGas position that the environmental, transmission and distribution, and reliability externalities should not apply to QF LRAC. LRAC properly includes (1) avoided generation-related costs, (2)

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<sup>10</sup> 18 CFR 292.304(e).

<sup>11</sup> Bannhart v. Peabody Coal Co., 537 U.S. 149, 168, 123 S.Ct. 748, 760, 154 L.Ed.2d 653 (2003) ("As we have held repeatedly, the canon *expressio unius est exclusio alterius* does not apply to every statutory listing or grouping; it has force only when the items expressed are members of an associated group or series, justifying the inference that items not mentioned were excluded by deliberate choice, not inadvertence."); see also Woodbury v. Brown-Dempsey, 134 Cal.Rptr.2d 124, 133, Cal.App. 4 Dist. (2003).

avoided transmission and distribution costs, (3) environmental externalities, and (4) reliability adders on a case-by-case basis. Moreover, the use of the all-in combined cycle combustion turbine (CCCT) cost remains the appropriate proxy for generation LRAC; provided, that the cost of owning and operating the CCCT is based on parameters established at the time the QF enters into the long-term obligation with the utility and the costing parameters harmonize with Commission adopted CCCT resource costs and with the Market Price Referent determination.

**V. THE GENERATION LONG RUN AVOIDED COST COMPONENT SHOULD BE BASED ON THE “ALL-IN” COST OF A COMBINED CYCLE COMBUSTION TURBINE, NOT THINLY TRADED FORWARD ELECTRIC MARKETS.**

CAC/EPUC agree with CCC and SDG&E that the generation avoided cost component should not be based on electric forward market prices. To date, these market prices are not yet sufficiently robust to serve this purpose. Instead, the Commission should use the all-in cost of a combined cycle combustion turbine as a proxy for generation LRAC.

**VI. CONCLUSION**

CAC/EPUC urge the Commission to set an expedited schedule for QF pricing issues promptly. PURPA does not restrict the costs that may be used in the determination of utility avoided costs. Indeed, the elements of the E3 methodology related to the environmental, transmission and distribution and reliability adders should apply for QF LRAC pricing, and the generation avoided cost component should be

based not on electric forward market prices but on the “all-in” costs of an avoidable resource such as a combined cycle combustion turbine.

Dated: September 3, 2004

Respectfully submitted,

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