

Combined Heat and Power Program Settlement

October 7, 2010

QF Summit

- Initiated in May 2009
- Goal: to resolve existing disputes and future issues associated with Combined Heat and Power (CHP) QFs
- Parties:
 - QF/CHP trade groups: CAC, EPUC, CCC, IEP
 - Consumer advocates: DRA, TURN
 - Investor-owned utilities (IOUs): PG&E, SCE, SDG&E
- Negotiations lasted 16 months
- Settlement anticipated to be filed at CPUC for adoption this year.

Settlement Overview

- Resolution of pending litigated issues before the CPUC and Courts;
- Design and development of a new State CHP Program; and
- For QFs greater than 20 MW, transition from a PURPA-authorized program to a new State CHP Program that includes competitive solicitations.

New State CHP Program Goals and Objectives

Section 1 of the Term Sheet establishes the goals and objectives of the new State CHP Program:

- CHP Facility Owner Benefits;
- Societal Benefits;
- Retail Customer Benefits;
- GHG Emissions Reduction Benefits; and
- Regulatory Certainty.

Results of CHP Settlement

- **CHP procurement program through 2020**
 - MW targets
 - GHG reduction targets
- **Establishes new energy pricing for QFs**
 - Transitions Short Run Avoided Cost Energy Pricing to a market-based formula by 2015
- **New form contracts**
 - CHP RFO form contract
 - Transition contract
 - PURPA contract for 20 MW or smaller
 - As-available contract
 - Legacy energy pricing amendment
- **Parties support utilities' FERC PURPA 210 (m) application**
- **Settlement of pending CPUC cases and court litigation**

CHP Procurement Program: MW Targets

- **3000 MW of CHP contracts resulting from CHP Program Procurement Processes**
- **Initial Program Period (2,949 MW over 4 yrs after Settlement Effective Date)**
 - SCE: 1,402 MW
 - PG&E: 1,387 MW
 - SDG&E: 160 MW
- **Second Program Period (end of Initial Program Period-2020):**
 - SDG&E: additional 51 MW
 - All IOUs: any shortfall from the Initial Program Period Targets
 - Any additional amounts established in the long-term procurement plan (LTPP) proceeding at CPUC

CHP Procurement Program: GHG Reduction Targets

- Target is 6.7 million metric tons (MMT) of GHG annual reductions from CHP statewide, by 2020, subject to review and modification
- Targets are based on:
 - ARB's AB 32 Scoping Plan
 - Maintenance of the GHG reductions from Existing CHP facilities
 - Individual LSE targets based on percent of statewide retail sales
 - Program allocates GHG reduction targets to ESPs and CCAs
- GHG Reduction Accounting
 - The Settlement includes accounting mechanisms based on: avoided GHG emissions assumptions, facility efficiency, must-take status, new or existing capacity, repowering, conversion to prescheduled, and shut-downs with or without continuation of thermal application

Non IOU Load Serving Entity GHG Targets

- IOUs, ESPs and CCAs have GHG Targets allocated on proportional share of retail sales.
- Targets will be adjusted over Settlement term as CEC publishes data on
 - Departing or returning load and will be based on updated CEC data
 - Shift in proportional share of retail sales
- Mechanisms to meet target discussed below.

Cost Allocation and Departing Load Charges

- Settlement conditioned on CPUC Decision providing:
 - Recovery of relevant costs of this CHP Program through Non-Bypassable Charges; and
 - Cost recovery for the full term of the CHP PPA (up to 12 years)
- CPUC can choose between:
 - **Plan A:** ESPs and CCAs procure CHP for their customers going forward and IOUs recover any above market costs of existing CHP PPAs on a vintaged basis from future direct access (DA), CCA and all Departing Load customers, except CHP Departing Load Customers
 - **Plan B:** IOUs purchase CHP generation for all customers and recover the net costs after accounting for the energy and AS value of CHP generation from all bundled, DA, CCA and all Departing Load Customers, except CHP Departing Load customers, on a non-vintaged basis

Procurement Options under CHP Program

CHP MW and GHG Targets can be met through:

- **RFOs**
 - CHP RFOs conducted by IOUs during Settlement Term
 - Participation by Independent Evaluator, Procurement Review Group, and evaluation by CHP Auditor, where applicable.
- **Optional As-Available PPAs**
- **PPAs for QFs 20 MW or less**
- **AB 1613 PPAs**
- **Bilaterally negotiated PPAs and amendments**
- **IOU-owned CHP for GHG targets, capped at 10% of GHG targets**
- **Utility Prescheduled Facilities**
- **New behind the meter CHP facilities**

Energy Price During the Floor Test

If there is a cap-and-trade program in California for the regulation of GHG, then, during the Floor Test Term (3 years), the SRAC energy price will be the higher of the two formulas provided below:

1. Energy Price \$/kWh = ((Market Heat Rate * BTGP/1,000,000) + VOM) * TOU + LA

Market Heat Rate = Determined under the current MIF methodology using 12 month forward prices.

2. Energy Price \$/kWh =
((Applicable Heat Rate * (BTGP + GHG Allowance Price) /1,000,000) + VOM) * TOU + LA + GHG Charges

Applicable Heat Rate = (A) 8,225 Btu/kWh through December 31, 2012, (B) 8,125 Btu/kWh from January 1, 2013 through December 31, 2014; and (C) Actual HR from January 1, 2015 until the end of the Floor Test Term.

Actual Heat Rate = The average daily heat rate of the two year period immediately preceding the commencement of the First Compliance Period.

New Form Contracts

- **CHP RFO *Pro Forma* Contract**
- **Transition Contract**
- **QF PURPA Contract for facilities equal to or under 20 MW**
- **Optional As-available Contract**
- **Amendment to existing Legacy Contracts**

Transition Contract

- Provides a bridge for CHP QFs with expired or expiring contracts to PPA options under the CHP Program or exit from IOU QF PPAs
- Term: Up to July 1, 2015
- Eligibility: CHP currently selling to IOU under QF PPA
- Capacity pricing pursuant to D. 07-09-040
 - Firm Capacity at \$91.97 / kW-yr
 - As-Available Capacity of \$41.22 / kW-yr escalating each year
- Pricing for SRAC Energy according to values and formulas in Settlement
- Updated scheduling provisions, CAISO metering

PURPA Contract for Under 20 MW

- Must take purchase obligation will continue for QFs 20 MW and under
- Term: Up to 7 years for existing capacity, Up to 12 years for new capacity
- Capacity pricing pursuant to D. 07-09-040
 - Firm Capacity at \$91.97 / kW-yr
 - As-Available Capacity of \$41.22 / kW-yr escalating each year
- SRAC Energy Pricing
- Project Development Security, Performance Assurance for New/ Repowered facilities

Optional As-Available Contract

- Intended for CHP that export less than 131400 MWh in an IOU's service territory each year.
- IOUs may but are not required to sign additional PPAs after reaching average MW delivery cap
 - SCE: 75 average MW
 - PG&E: 75 average MW
 - SDG&E: 10 average MW
- Term: up to 7 years, Seller's election
- Energy pricing for scheduled energy: SRAC for up to 20 MW in any hour; Day Ahead Pnode price for amounts greater than 20 MW
- Real Time Pnode price for unscheduled energy
- As-Available Capacity of \$41.22/ kW-yr escalating annually

Resolution of Certain Pending Claims

QF-related claims at CPUC and Court of Appeals are withdrawn or closed:

- Retroactive Adjustment of SRAC Prices: the IOUs will withdraw with prejudice all SRAC retroactive price adjustment claims and challenges and will not raise new claims
- QFs over 20 MW will not have the right to new 5 year and 10 year PPAs ordered in D. 07-09-040
- CCC motion for an order on prospective QF program PPA options adopted in D. 07-09-040
- All retroactive claims for energy and capacity adjustments by any party
- Petition for Writ of Review of D. 07-09-040 and D. 08-07-048 at California Court of Appeals (Case B210398) and all related cross claims

Schedule and Process

- **Submittal of Settlement to CPUC October 2010**
- **Settlement Effective Date as of:**
 - CPUC approves Settlement
 - FERC approves IOUs' application to terminate the PURPA put obligation for > 20 MW Qualifying Facilities
- **First CHP RFOs to be issued within 90 days of Settlement Effective Date**

APPENDIX: Additional Options for Legacy Contracts

Pricing Option Terms	A (SRAC)	B	C2	C3	C1
	This is the default energy price for existing QFs and would be based on market price indices beginning 2015	Fixed heat rate transitioning to market-based heat rate; Seller assumes all GHG risk	Discount to Option B Heat Rate; GHG costs based on a fixed emissions rate for energy delivered and an allowance price capped at \$20 per tonne	Discount to Option B Heat Rate, GHG costs based on facility specific emissions, capped at Base Year emissions, and an allowance price capped at \$12.50 per tonne.	Negotiated conversion to Utility Prescheduled facility
2011 Heat Rate	8,700	8,700	~8,435	~8,435	
2012 Heat Rate	8,225	8,600	~8,335	~8,335	
2013 Heat Rate	8,125	8,500	~8,135	~8,135	
2014 Heat Rate	8,125	8,500	~8,135	~8,135	
2015 - Term Heat Rate	Market Heat Rate (MHR) proxy	MHR proxy	MHR proxy	MHR proxy	
GHG	- GHG Charges - Floor Test	N/A	Energy at 8000 Btu/ KWh	Facility Specific, up to the cap	
Allowance Valuation	Most recent Allowance Auction Price	N/A	Lower of (i) \$20 per MT GHG, and (ii) Estimated Allowance Cost.	Lower of (i) \$12.5 per MT GHG, and (ii) Estimated Allowance Cost.	

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

Order Instituting Rulemaking to Promote Policy and Program Coordination and Integration in Electric Utility Resource Planning	Rulemaking 04-04-003 (Filed April 1, 2004)
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)
Application of Southern California Edison Company (U 338-E) for Applying the Market Index Formula and As-Available Capacity Prices Adopted in D.07-09-040 to Calculate Short-Run Avoided Cost for Payments to Qualifying Facilities Beginning July 2003 and Associated Relief	Application 08-11-001 (Filed November 4, 2008)
Order Instituting Rulemaking into Implementation of Public Utilities Code Section 390	Rulemaking 99-11-022 (Filed November 18, 1999)
Order Instituting Rulemaking to Integrate Procurement Policies and Consider Long-Term Procurement Plans	Rulemaking 06-02-013 (Filed February 16, 2006)

**JOINT MOTION
FOR APPROVAL OF QUALIFYING FACILITY AND
COMBINED HEAT AND POWER PROGRAM SETTLEMENT AGREEMENT**

The relationship among qualifying facilities (“QFs”), the investor-owned utilities (“IOUs”) and ratepayer advocate groups has been contentious and litigious for most of the last thirty years. After more than a year and a half of intensive negotiations, QF representatives, the IOUs, and ratepayer advocate groups have developed a proposed combined heat and power (“CHP”) settlement agreement (“Settlement Agreement”) that resolves numerous outstanding

approximately 30,000 GWh of demand from other power generation sources.¹²

Although CARB has not yet issued final GHG regulations, the CARB Scoping Plan indicates support for the development of efficient CHP.

D. Description Of the Settlement Process

Recognizing the need to resolve outstanding disputes and to establish a new CHP program for California going forward, in May 2009, the Joint Parties and Commission representatives met to lay out a settlement framework. Since that time, the Joint Parties have conducted frequent and lengthy meetings and worked diligently to negotiate the Settlement Agreement now presented to the Commission. The Joint Parties had divergent interests, many of which had been escalated in proceedings at the Commission and before the appellate court, which had to be accommodated. As a result, the Settlement Agreement represents a compromise that should be evaluated as an integrated package. The Settlement Agreement is over 75 pages long and provides a detailed and comprehensive framework for a QF/CHP Program in California. In addition to the Settlement Agreement Term Sheet (“Term Sheet”), the Joint Parties also negotiated four *Pro Forma* PPAs and standard amendments for Legacy QF PPAs for each of the IOUs that will be used as a part of the QF/CHP Program.

Taken as a whole, the Settlement Agreement, including the *Pro Forma* PPAs and amendments described in more detail below, represent a reasonable and appropriate resolution of the many QF issues presently under consideration before the Commission and in other forum. Consequently, the Commission should adopt the Settlement Agreement in its entirety and without change.

Consistent with Rule 12.1(b), the Joint Parties, on September 24, 2010, provided notice to the service lists in these proceedings of a formal settlement conference.¹³ The conference was

¹² CARB Scoping Plan, at pp. 42-43 (footnotes omitted).

conducted on October 7, 2010. An overview of the proposed Settlement Agreement was presented, participants were able to ask questions and provide comments. Those that were interested in joining to support the Settlement Agreement were invited to do so. After the settlement conference was completed and participants were given an opportunity to review and comment on the Settlement Agreement, this Joint Motion was filed.

II. SUMMARY OF THE PROPOSED SETTLEMENT AGREEMENT

This section includes a summary of the key terms of each section of the Term Sheet, as well as the *Pro Forma* PPAs and the *Pro Forma* PPA amendments included with the Settlement Agreement.¹⁴ Given the length of the Settlement Agreement, this section is only intended to be a summary of key terms. Any inconsistencies between this summary and the Term Sheet should be governed by the Term Sheet.

A. Section 1 – Goals and Objectives

This section outlines the goals and objectives of the Settlement Agreement.

B. Section 2 – Settlement Periods

This section describes the three periods covered by the Settlement Agreement – the Transition Period, the Initial Program Period, and the Second Program Period. The Transition Period is designed to facilitate the transition from the existing QF Program to the new QF/CHP Program. During the Initial Program Period, which overlaps with the Transition Period, the IOUs have specific Megawatt (“MW”) Targets (“MW Targets”) for entering into new PPAs with

¹³ Because of widespread interest in matters at issue in these proceedings, notice of potential settlement was also provided to the service lists in R.03-10-003, R.07-05-025, and R.08-06-024.

¹⁴ The fact that a specific provision in the Settlement Agreement is not discussed here does not explicitly or implicitly imply that any provision or term of the Settlement Agreement is more or less important. Moreover, if there is any unintended ambiguity created by the summary below as compared to specific Settlement Agreement terms, the specific provisions in the Settlement Agreement or applicable PPAs and amendments are controlling. The Settlement Agreement is an integrated package and each provision and term was carefully negotiated as a part of that integrated package.

MW, respectively. SDG&E has a specified MW Target during the Second Program Period. If the IOUs have not fulfilled the MW Targets assigned to them for the Initial Program Period they will also need to procure MWs during the latter period to fulfill those targets.

Section 5.1.4 provides that the IOUs are required to conduct three CHP RFOs during the Initial Program Period to seek CHP PPAs to meet the MW Targets. The number of CHP RFOs during the Second Program Period will be established in the LTPP proceedings.¹⁸

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

Section 5.4 addresses justifications for an IOU's failure to meet its MW Target. These justifications include lack of sufficient offers in the RFOs, the efficiency of CHP participating in the procurement programs, excessive offer prices¹⁹, and the amount of GHG reductions.

F. Section 6 – GHG Emissions Reduction Targets

One of the key benefits of the Settlement Agreement is the implementation of a CHP Program designed to reduce GHG, consistent with the CARB Scoping Plan. Section 6.1 describes the Settlement Agreement strategy for reducing GHG, including maintaining existing, efficient CHP facilities, adding new, efficient CHP resources and achieving the GHG Targets by December 31, 2020. Section 6.2 addresses maintaining the GHG emissions reductions from existing CHP and establishing new targets for GHG reductions from new facilities. In particular, the Settlement Agreement establishes a GHG Emissions Reduction Target or “GHG Target” of 4.3 million-metric tons (“MMT”) for the IOUs and 0.5 MMT for Energy Service Providers

¹⁸ Term Sheet, § 5.1.4.7.

¹⁹ An IOU claiming that RFO offer prices are excessive must support its claim with information from independent or publicly available sources. *Id.*, § 5.4.1.

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

L. Section 12 – CAISO Tariff Compliance

Section 12 provides that all CHP facilities subject to the CAISO Tariff shall comply with CAISO requirements when the facility begins deliveries under a CHP PPA. Section 12 also includes requirements for the installation of metering and telemetry equipment at existing CHP facilities within six (6) months of the execution of a CHP PPA. The Joint Parties also acknowledge that the CAISO may condition, waive or modify certain requirements for QF and CHP facilities.

M. Section 13 -- IOU Cost Recovery For CHP PPAs

Section 13 addresses cost allocation if the Commission determines that IOUs should purchase CHP generation on behalf of ESPs and CCAs.²⁹ In this circumstance, the IOUs are authorized to recover “net capacity costs” from all bundled, direct access (“DA”) and CCA customers on a non-by-passable basis. Net capacity costs are the total costs paid by the IOU under the QF/CHP Program less the value of the energy and ancillary services supplied to the IOU under the program.

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

²⁹ Term Sheet, § 13.1.2.2.

P. Section 16 – Conditions Precedent and Settlement Effective Date

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

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

Q. Section 17 – Glossary

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

R. Attachments

The Settlement Agreement attaches the Term Sheet and Exhibits 1-11 below:

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

9. List of Members of CAC

10. List of Members of CCC

11. List of Members of EPUC

Exhibits 1-7 containing the PPAs are described in more detail below in Section III.A.6. An additional attachment to this Joint Motion, offered for the Commission's information, is the Letter Agreement between the CAISO and the three utilities describing their understanding concerning the utilities' responsibilities concerning CHP/QF compliance with CAISO Tariffs and Protocols under the PPAs attached in Exhibits 4-7.

In addition, included as Attachment B to this Joint Motion is a letter agreement between the CAISO and the IOUs regarding implementation of the Settlement Agreement.

III. THE SETTLEMENT AGREEMENT IS REASONABLE AND IN THE PUBLIC INTEREST

The Commission will approve a settlement if it finds the settlement "reasonable in light of the whole record, consistent with law, and in the public interest."³¹ The proposed Settlement Agreement readily meets these criteria. The Joint Parties negotiated in good faith, bargained aggressively, compromised, and agreed to the Settlement Agreement as an interrelated package; the resolution of any one issue cannot be assessed discreetly. Due to the divergence of the interests of the Joint Parties that had to be accommodated, the Settlement Agreement with regard to each issue represents compromises by various Parties. The Commission, in evaluating the Settlement Agreement, should evaluate it as a package. Each element of the Settlement Agreement is related to all others, any change to the resolution of any one issue may offset the balance that the entire package strikes and represents.

³¹ Rule 12.1(d); *see also* D.09-10-017 (applying Rule 12.1(d) criteria).

Factors that the Commission has considered in reviewing settlements include: (1) the risk, expense, complexity and likely duration of further litigation, (2) whether the settlement negotiations were at arms-length, (3) whether major issues were addressed, and (4) whether the parties were adequately represented.³² In this case, the Settlement Agreement resolves complex and contentious litigation on QF and SRAC pricing matters presently before the Commission and the Court of Appeal. The lengthy settlement negotiations were at arms-length and addressed the major issues regarding the development and operation of CHP in California historically and going forward.

A. The Settlement Agreement Is Reasonable And Consistent With Existing Law

1. Consistent With State And Commission Policy, The Settlement Agreement Is Intended To Facilitate CHP Goals and Objectives.

As set forth in the Settlement Agreement, the policy objectives addressed by the Settlement Agreement include requirements under:

- Section 372(a) of the California Public Utilities Code which states: “it is the policy of the state to encourage and support the development of cogeneration technology as an efficient, environmentally beneficial, competitive energy resource that will enhance the reliability of local generation supply, and promote local business growth.”
- The Energy Action Plan II which states: “The loading order identifies energy efficiency and demand response as the State’s preferred means of meeting growing energy needs. After cost effective efficiency and demand response, we rely on renewable sources of power and distributed generation, such as combined heat and power applications. To the extent efficiency, demand response, renewable resources, and distributed generation are unable to satisfy increasing energy and capacity needs, we support clean and efficient fossil-fired generation.”

According to the Settlement Agreement;

“The purpose of the State CHP Program is to encourage the continued operation of the State’s Existing CHP Facilities, and the development, installation, and interconnection of new, clean and efficient CHP Facilities, in order to increase the diversity, reliability, and environmental benefits of the energy resources available to the State's electricity

³² *Re Pacific Gas & Electric Company*, 30 CPUC 2d 189, 222.

3. The QF/CHP Program Procurement Process Is Consistent With The Commission’s Preference For Competitive Procurement.

The Commission has repeatedly stated a policy preference for competitive wholesale energy markets and competitive solicitations to procure new resources in those markets.⁴² Currently, CHP QF contracting is not conducted through a competitive solicitation process. The Commission’s early QF Program involved the issuance of standard offer contracts that a QF of any technology could sign. In recent years, the CHP QF Program has primarily been sustained by extensions of existing contracts and the availability of short-term contracting options. In D.07-09-040, however, the Commission ordered the IOUs to offer QFs five (5) year as-available and ten (10) year firm PPAs. Despite considerable efforts, those contracts have never been finalized or made available to QFs.

Under the Settlement Agreement, a new, competitive procurement process will be adopted in lieu of the Commission ordered contracts. In particular, the Settlement Agreement creates a CHP RFO process that allows the IOUs to run competitive, transparent RFOs for CHP resources.⁴³ This is a significant change in CHP procurement and puts CHP resources into a process similar to the one currently used for conventional and Renewable Portfolio Standard (“RPS”) procurement. This process will result in competitive prices that are ultimately subject to Commission approval.

In addition, the Commission has also provided for other methods for utility procurement, such as bilateral contracting.⁴⁴ The Settlement Agreement provides similar additional flexibility to the IOUs in the CHP procurement process by including not only RFOs, but also other processes such as bilateral contracting, AB 1613 feed-in tariffs, a PURPA Program for QFs

⁴² D.04-01-050 at p. 63 (discussing competitive solicitations); D.07-12-052 at p. 205 (discussing development of functional competitive energy market); D.08-11-008 at p. 20 (same).

⁴³ Term Sheet, § 4.2.

⁴⁴ See e.g. D.03-12-062 at pp. 38-40 (approving bilateral contracting under certain conditions).

6. The Semi-Annual Reports And CHP Auditor Process Are Consistent With Commission Policies Supporting Greater Public Information And Transparency.

The Commission has encouraged transparency in RFO and procurement processes.⁵⁵ The Settlement Agreement includes several provisions that promote transparency. First, Commission-jurisdictional LSEs are required to submit semi-annual reports concerning their progress toward achieving the MW Targets and GHG Targets.⁵⁶ The Settlement Agreement contains detailed requirements for the type of information to be included in the semi-annual reports. This will provide the Commission and interested parties with information concerning the progress of the QF/CHP Program, and will provide this information with sufficient frequency that the Commission will have an opportunity to address issues and concerns as they arise, rather than waiting until the end of the program to address these issues.

Second, the Settlement Agreement provides for a CHP Auditor to be used for the CHP RFOs if an IOU does not or anticipates that it will not meet its MW Targets or GHG Targets.⁵⁷ The CHP Auditor provisions provide the auditor with access to confidential IOU information, to review the CHP RFO process, while including appropriate safeguards to prevent the disclosure of confidential information. The CHP Auditor can review the results of the IOU CHP RFOs, and raise any concerns about the RFOs to the Commission or the Energy Division. This provides an additional level of transparency in the implementation of the QF/CHP Program.

7. The *Pro Forma* PPAs and Legacy QF PPA Amendment.

The Commission has previously approved the use of *Pro Forma* PPAs for QFs, as well as for use in RFOs for conventional and RPS resources. The Settlement Agreement includes the

⁵⁵ See e.g. D.07-12-052 at pp. 148-151 (discussing transparency in RFO process).

⁵⁶ Term Sheet, § 8.

⁵⁷ *Id.*, § 9.

Under the CHP RFO PPA, the delivery term for existing facilities and expanded facilities that elect not to satisfy the credit and collateral requirements of the RFO is up to seven (7) years; for new, repowered or expanded facilities that elect to meet the credit and collateral requirements in the RFO, the term is up to 12 years. Terms in the CHP RFO PPA may be modified on a bilateral basis during negotiations for a particular CHP PPA. If the Seller’s offer is accepted, the offer will establish the terms of the PPA.

d. Optional As-Available CHP PPA.

The As-Available CHP PPA is one of several commercial alternatives available to new, existing, or repowered gas-fired CHP facilities with nameplates greater than 20 MW that meet certain requirements, including the following: the CHP facility’s average annual deliveries may not exceed 131,400 MWh; the project host(s) must consume at least 75% of the total electricity generated by a Topping Cycle CHP Facility or at least 25% of the total electricity generated by a Bottoming Cycle CHP Facility; and for Topping Cycle or Bottoming Cycle with supplemental firing, the facility must meet a 60% efficiency standard.⁵⁹

Seller will be paid an as-available capacity price set forth in Exhibit D, Section 3, and a time of delivery (“TOD”) energy price set forth in Exhibit D, Section 2. If the generating facility is a new CHP facility, it must maintain Development Security and Performance Assurance in accordance with scheduled amounts or as negotiated between Seller and Buyer. Seller may terminate the Agreement if Seller’s facility is selected in a competitive solicitation.

As-available capacity payments will be paid for deliveries of up to 20 MW in any hour. The Seller is required to schedule all deliveries with the IOU on a day-ahead basis sufficiently in advance to allow the IOU to schedule energy into the CAISO day-ahead market. Energy scheduled on a day-ahead basis and delivered up to 20 MW per hour will be priced at Settlement

⁵⁹ There is no efficiency requirement for a Bottoming Cycle CHP Facility with no supplemental firing.

As an alternative to the allocation of costs for CHP resources procured on behalf of ESP and CCA customers, if these entities are required to procure their own CHP resources, then the Settlement Agreement provides for the allocation of any stranded CHP costs to future DA and CCA departing load customers.⁶⁵ This allocation of costs is consistent with the Commission’s recent departing load cost allocation decisions.⁶⁶ However, because PPAs under the Settlement Agreement can have up to a 12-year duration, a condition precedent of the Settlement Agreement becoming effective is that the Commission affirmatively supersede the 10-year limitation in D.08-09-012⁶⁷ and determine that PPA above-market costs can be recovered from departing load customers for the entire 12-year term.⁶⁸

9. The Settlement Resolves Numerous Pending And Anticipated Disputes.

The Commission has a long-standing policy of supporting settlements.⁶⁹ “The Commission favors settlements because they generally support worthwhile goals, including reducing the expense of litigation, conserving scarce Commission resources, and allowing parties to reduce the risk that litigation will produce unacceptable results.”⁷⁰ In this case, rather than resolving a single dispute, the Settlement Agreement resolves numerous disputes pending at both the Commission and in the California Court of Appeal.⁷¹ These disputes involve QF pricing, QF SOC terms and conditions, the amount of QF/CHP capacity included in long-term planning, retroactive SRAC price adjustments dating back to 2000, and numerous other disputes

⁶⁵ *Id.*, § 13.1.1.

⁶⁶ *See e.g.* D.04-12-048 at pp. 56-58; D.08-09-012 at p. 37 (allocating new QF contract costs to DA and CCA departing load customers).

⁶⁷ D.08-09-012 at pp. 52-55 (discussing 10-year limitation).

⁶⁸ Term Sheet, § 16.2.5.

⁶⁹ D.05-03-022 at pp. 7-8; D.10-06-031 at p. 12.

⁷⁰ D.10-06-031 at p. 12.

⁷¹ Term Sheet, § 14.

to a dispatchable generation facility.⁷⁵ The dispatchable generating facility is referred to in the Settlement Agreement as a “Utility Prescheduled Facility.” This aspect of the Settlement Agreement has several benefits.

First, if an existing CHP facility converts to a dispatchable facility, it gives the IOU the ability to dispatch the resource when it is needed, rather than the facility providing baseload generation or operating based on a thermal host’s needs. This is similar to the contracts the IOUs have with peaking and other existing conventional generation facilities.

Second, conversion to a dispatchable facility may ultimately result in GHG emission reductions. If an existing CHP facility operates as a baseload facility, and is not efficient, its GHG emissions may be higher than a new conventional facility or other resource options. By giving the IOU the flexibility to dispatch a facility, the utility can optimize its GHG emissions reductions by choosing to operate facilities with the lowest total GHG emissions.

B. The Settlement Agreement Is In The Public Interest

The Settlement Agreement is clearly in the public interest for a number of reasons. First, the Settlement Agreement resolves numerous pending disputes, motions and applications and will likely limit disputes in the future. As explained above, settlements of disputes benefit the public by reducing the costs and expense of litigation and conserving Commission resources. In addition, because there are pending disputes at the California Court of Appeal and likely will be disputes at FERC, the Settlement Agreement also preserves the resources of the courts and FERC.

Second, the Settlement Agreement creates a framework for a QF/CHP Program going forward that is much more closely aligned with other Commission-approved procurement processes. For example, under the Settlement Agreement, the IOUs will initiate a CHP RFO

⁷⁵ Term Sheet, § 4.8.

necessary, the Joint Parties request that such hearings be held at the earliest opportunity, and concluded in a speedy and efficient manner.

VI. TIMING FOR REVIEW OF THE SETTLEMENT AGREEMENT AND CONDITIONS PRECEDENT FOR THE SETTLEMENT AGREEMENT TO BECOME EFFECTIVE

In a separate Motion for Expedited Consideration, which is being filed concurrently with this Motion, the Joint Parties have requested the Commission expeditiously review and approve the Settlement Agreement. Expeditious review and approval of the Settlement Agreement will allow the IOUs to proceed with filing of the FERC application described in Section 15 of the Settlement Agreement and to obtain written support from CARB. FERC approval of an application for termination of the PURPA purchase obligation and CARB written support are conditions precedent to the Settlement Agreement becoming effective. However, because the IOUs cannot file an application at FERC until after the Commission approves the Settlement Agreement,⁷⁶ expeditious review of the Settlement Agreement by the Commission is a necessary first step in satisfying all of the conditions precedent.

One of the conditions precedent for the Settlement Agreement to become effective is a Commission decision approving the Settlement Agreement “as submitted for approval without revisions unacceptable to any Party or in an alternative form that is acceptable to all Parties.”⁷⁷ The Joint Parties strongly urge the Commission to adopt the Settlement Agreement as is, without modification, and to select one of the two identified options for participation by ESPs and CCAs and their customers. If a Commission decision proposes modifications to the Settlement Agreement, the Joint Parties will then need to review and agree to the modifications before the condition precedent of Commission approval is satisfied. Given that it has taken the Joint Parties

⁷⁶ Term Sheet, § 15.1.6.

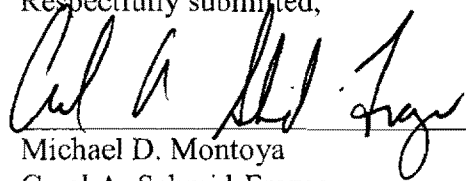
⁷⁷ *Id.* at § 16.2.2.

more than a year and a half to negotiate the Settlement, and the Settlement Agreement involves a complex series of compromises and agreements, a Commission modification of the Settlement Agreement is likely to result in months of additional delay and may ultimately result in the Joint Parties being unable to agree to the modifications and the Settlement Agreement terminating. In light of the substantial benefits of the Settlement Agreement, the Commission should approve the Settlement Agreement as is, without modification, to avoid further delay negotiating the modifications or, potentially, termination of the Settlement Agreement as a result of the proposed modifications being unacceptable to the Joint Parties.

The Joint Parties are proposing in their Motion for Expedited Consideration the following schedule for consideration of the Settlement Agreement:

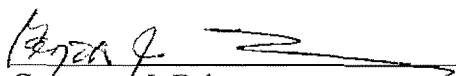
Event	Dates Per The Commission's Rules	Proposed Dates
Motion for Approval of Settlement Agreement		Filed October 8, 2010
Comments on Motion for Approval of Settlement Agreement (Rule 12.2.)	November 8, 2010	October 25, 2010
Reply Comments on Motion for Approval of Settlement Agreement (Rule 12.2.)	November 23, 2010	November 1, 2010
ALJ's Proposed Decision (Rule 14.2.)		November 16, 2010
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Reply comments on Proposed Decision (Rule 14.3(d).)	5 days after opening comments on Proposed Decision	December 13, 2010
Commission vote on Proposed Decision		December 16, 2010

Respectfully submitted,



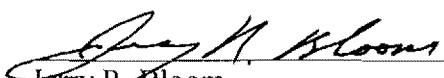
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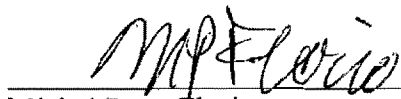
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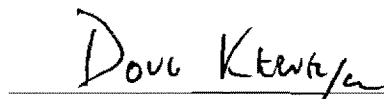
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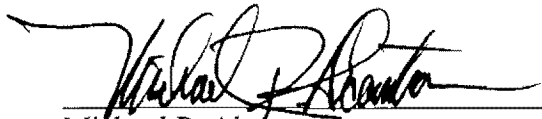
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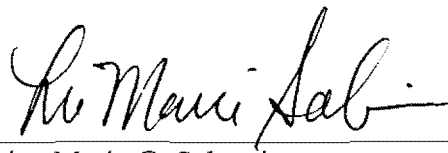
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October 8, 2010

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

Order Instituting Rulemaking to Promote Policy and Program Coordination and Integration in Electric Utility Resource Planning	Rulemaking 04-04-003 (Filed April 1, 2004)
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)
Application of Southern California Edison Company (U 338-E) for Applying the Market Index Formula and As-Available Capacity Prices Adopted in D.07-09-040 to Calculate Short-Run Avoided Cost for Payments to Qualifying Facilities Beginning July 2003 and Associated Relief	Application 08-11-001 (Filed November 4, 2008)
Order Instituting Rulemaking into Implementation of Public Utilities Code Section 390	Rulemaking 99-11-022 (Filed November 18, 1999)
Order Instituting Rulemaking to Integrate Procurement Policies and Consider Long-Term Procurement Plans	Rulemaking 06-02-013 (Filed February 16, 2006)

**MOTION FOR EXPEDITED CONSIDERATION OF JOINT MOTION FOR
APPROVAL OF QUALIFYING FACILITY AND COMBINED HEAT AND POWER
PROGRAM SETTLEMENT AGREEMENT**

**BEFORE THE PUBLIC UTILITIES COMMISSION
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Order Instituting Rulemaking to Integrate Procurement Policies and Consider Long-Term Procurement Plans	Rulemaking 06-02-013 (Filed February 16, 2006)

**MOTION FOR EXPEDITED CONSIDERATION OF JOINT MOTION FOR
APPROVAL OF QUALIFYING FACILITY AND COMBINED HEAT AND POWER
PROGRAM SETTLEMENT AGREEMENT**

Pursuant to California Public Utilities Commission (“Commission”) Rule 11.1, Pacific Gas and Electric Company (“PG&E”), Southern California Edison Company (“SCE”), San Diego Gas & Electric Company (“SDG&E”), the California Cogeneration Council (“CCC”), the Independent Energy Producers Association (“IEP”), the Cogeneration Association of California (“CAC”), the Energy Producers

and Users Coalition (“EPUC”), the Division of Ratepayer Advocates (“DRA”), and The Utility Reform Network (“TURN”) (the parties are referred to hereinafter collectively as the “Joint Parties”) request that the Assigned Administrative Law Judge (“ALJ”) and the Commission expedite consideration of the *Joint Motion For Approval Of Qualifying Facility And Combined Heat And Power Program Settlement Agreement* (“Joint Motion”) that is being filed concurrently with this Motion for Expedited Consideration of Joint Motion for Approval of Qualifying Facility and Combined Heat and Power Program Settlement Agreement (“Motion to Expedite”). The Joint Parties request that the Assigned ALJ issue an order adopting the expedited schedule provided below.

As explained in detail in the Joint Motion, there are several conditions precedent to the Settlement Agreement becoming effective. The first condition precedent is Commission approval of the Settlement Agreement.¹ After Commission approval, the investor-owned utilities (“IOUs”) will submit an application to the Federal Energy Regulatory Commission (“FERC”) seeking waiver of their Public Utility Regulatory Policies Act (“PURPA”) obligations under Section 210(m) of the Federal Power Act.² The Settlement Agreement does not become effective until after FERC approves the PURPA waiver application.³ Because the IOUs cannot file an application at FERC until after the Commission approves the Settlement Agreement,⁴ expeditious review is a necessary first step in satisfying the

¹ See Settlement Agreement, § 16.

² *Id.*, § 15.1.6.

³ *Id.*, § 16.2.1.

⁴ *Id.*, § 15.1.6.

conditions precedent. Given the substantial benefits of the Settlement Agreement, as explained in detail in the Joint Motion, expeditious consideration and review is warranted.

In addition, no party will be prejudiced by expedited review. The Joint Parties issued a settlement conference notice on September 24, 2010 and provided the Settlement Agreement term sheet and *pro forma* agreements and amendments on the IOUs' websites on October 4, 2010. Thus, non-settling parties have been on notice of the Settlement Agreement and have had copies of the term sheet and associated *pro forma* agreements and amendments before the Joint Motion was filed. In addition, the Joint Parties presented the Settlement Agreement at a settlement conference held on October 7, 2010.

The Joint Parties are proposing the following schedule for consideration of the Settlement Agreement:

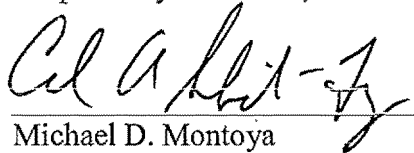
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Commission vote on Proposed Decision		December 16, 2010

Based on the foregoing, the Joint Parties respectfully request that the Assigned ALJ adopt the schedule proposed in this Motion to Expedite.

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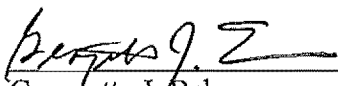
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Respectfully submitted,



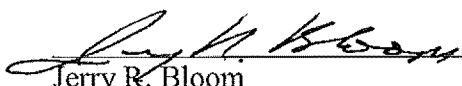
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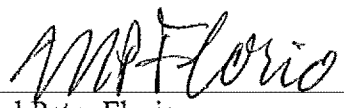
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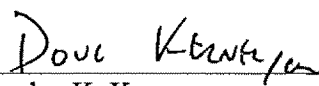
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Attorney for **Independent Energy Producers Association**

CERTIFICATE OF SERVICE BY ELECTRONIC MAIL OR U.S. MAIL

I, the undersigned, state that I am a citizen of the United States and am employed in the City and County of San Francisco; that I am over the age of eighteen (18) years and not a party to the within cause; and that my business address is Pacific Gas and Electric Company, Law Department B30A, 77 Beale Street, San Francisco, CA 94105.

I am readily familiar with the business practice of Pacific Gas and Electric Company for collection and processing of correspondence for mailing with the United States Postal Service. In the ordinary course of business, correspondence is deposited with the United States Postal Service the same day it is submitted for mailing.

On the 8th day of October, 2010, I caused to be served a true copy of:

MOTION FOR EXPEDITED CONSIDERATION OF JOINT MOTION FOR APPROVAL OF QUALIFYING FACILITY AND COMBINED HEAT AND POWER PROGRAM SETTLEMENT AGREEMENT

[XX] By Electronic Mail – serving the above via e-mail transmission to each of the parties listed on the official service list for R.99-11-022, R.04-04-003, R.04-04-025, R.06-02-013 and A.08-11-001.

I certify and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on this 8th day of October, 2010, at San Francisco, California.


PAMELA J. DAWSON-SMITH

Cogeneration Association of California and all of its members (“CAC”), Energy Producers and Users Coalition and all of its members (“EPUC”), and the Independent Energy Producers Association (“IEP”) (hereinafter collectively referred to as qualifying facilities (“QF”) parties (“QF Parties”)). All of these entities are hereinafter referred to collectively as the “Parties” or individually as a “Party.”

RECITALS

The IOUs are all investor-owned public utilities in the State of California and all are subject to the jurisdiction of the California Public Utilities Commission (“Commission”) with respect to providing electric service to their customers.

The Consumer Interest Groups consist of DRA and TURN. DRA is an independent division of the Commission that advocates solely on behalf of utility ratepayers. TURN is an independent, non-profit consumer advocacy organization that represents the interests of residential and small commercial utility customers.

The QF Parties consist of CCC, CAC, EPUC, and IEP. The QF Parties are organizations that represent, *inter alia*, the interests of cogeneration Qualifying Facility operations and combined heat and power (“CHP”) facilities in the State of California. On September 20, 2007, the Commission issued D.07-09-040, in R.04-04-025/R.04-04-003, that established Short-Run Avoided Cost (“SRAC”) energy and as-available and firm capacity pricing for QFs and ordered the IOUs and QF Parties to work together to develop a Standard QF Contract through negotiations in which the Commission’s Energy Division took an active role. On August 1, 2009, the SRAC energy and as-available capacity pricing established in D.07-09-040 was implemented pursuant to Resolution No. E-4246, dated July 9, 2009.

On October 25, 2007, the IOUs and TURN filed an Application for Rehearing of D.07-09-040, CAC and EPUC filed an Application for Rehearing of D.07-09-040, and CCC filed an Application for Rehearing of D.07-09-040. In response to these

California Court of Appeal in Southern California Edison Co. v. Public Utility Commission, 101 Cal.App 4th 982 (2002) (Remand Dispute). On May 1, 2009, Opening Comments on the Proposed Principles were filed with the Commission, and, on May 15, 2009, Reply Comments on the Opening Comments were filed with the Commission.

On April 16, 2009, the Commission issued D.09-04-032 which modified D.08-07-048 concerning the showing that the IOUs must make in support of any requests for retroactive application of changes to SRAC. D.09-04-032 also allowed SCE to amend its SRAC Update Application by May 7, 2009 which SCE did, and gave PG&E and SDG&E 45 days to submit their applications. On May 7, 2009, SCE filed its amended SRAC Update Application. PG&E and SDG&E have requested and been granted by the Commission's Executive Director multiple extensions for the filing of their applications to accommodate settlement negotiations.

The IOUs plan to submit an application to the Federal Energy Regulatory Commission ("FERC") pursuant to Section 210(m) of the Public Utility Regulatory Policies Act ("PURPA") to terminate the IOUs' QF purchase obligation.

On May 18, 2009, the Parties commenced settlement negotiations of outstanding QF and CHP issues before the Commission and FERC, and resulting from the CARB AB 32 Scoping Plan. These negotiations continued for over a year. This Settlement Agreement is the result of those negotiations.

TERMS OF AGREEMENT

In consideration of the mutual obligations, promises, covenants, and conditions contained herein, the Parties agree to the terms and conditions of this Settlement Agreement and agree to support its approval by the Commission.

Each Party shall review any Commission orders regarding this Settlement Agreement to determine if the Commission has changed, modified, or severed any portion of the Settlement Agreement, deleted a term, or imposed a new term. If a Party is

unwilling to accept such change, modification, severance, deletion, or addition of a new term of the Settlement Agreement, that Party shall so notify the other Parties within ten (10) business days of issuance of any such Commission order regarding this Settlement Agreement. The Parties shall thereafter promptly discuss each change, modification, severance, deletion or new term found unacceptable and negotiate in good faith to achieve a resolution acceptable to all Parties and promptly seek Commission approval of the resolution so achieved. Failure to resolve such change, modification, severance, deletion, or new term to this Settlement Agreement to the satisfaction of all Parties within ninety (90) calendar days of notification, and to obtain Commission Approval of such resolution promptly thereafter, shall cause this Settlement Agreement to terminate.

This Settlement Agreement is the result of extended negotiations. It represents a compromise of disputed claims between the Parties, which are identified in Section 14 of the Term Sheet. The Parties have reached this Settlement Agreement after taking into account the possibility that each Party may or may not prevail on any given issue. This Settlement Agreement is reasonable in light of the whole record, consistent with law, and in the public interest.

As provided under Rule 12.5 of the Commission's Rules of Practice and Procedure, the Parties request that the Commission expressly find the Settlement Agreement Term Sheet is precedential.

This Settlement Agreement includes the CHP Program Settlement Agreement Term Sheet ("Term Sheet") and Exhibits 1-11, each of which is attached and incorporated by reference into this document. Exhibits 1-11 are as follows:

1. Amendment to Legacy QF Power Purchase Agreement ("PPA") for PG&E;
2. Amendment to Legacy QF PPA for SCE;
3. Amendment to Legacy QF PPA for SDG&E;
4. Transition PPA;

5. CHP Request for Offer (“RFO”) Pro Forma PPA;
6. QF PPA for QFs 20 MW or Less;
7. Optional As-Available PPA;
8. Non-Disclosure Agreement (“NDA”) for CHP Auditor;
9. List of Members of CAC;
10. List of Members of CCC; and
11. List of Members of EPUC.

The Settlement Agreement contains the entire agreement and understanding between the Parties as to the subject matter of this agreement, and supersedes all prior agreements, commitments, representations, and discussions between the Parties. In the event there is any conflict between the terms and scope of the Settlement Agreement and the terms and scope of the accompanying *Joint Motion for Approval of the Qualifying Facility and Combined Heat and Power Settlement Agreement*, the Settlement Agreement shall govern. In the event there is any conflict between the terms and scope of the Term Sheet on contract issues and the attached PPAs (Exhibits 1-7), the PPAs shall govern.

None of the provisions of this Settlement Agreement shall be considered waived by any Party unless such waiver is given in writing. The failure of a Party to insist in any one or more instances upon strict performance of any of the provisions of this Settlement Agreement or to take advantage of any of their rights hereunder shall not be construed as a waiver of any such provisions or the relinquishment of any such rights for the future, but the same shall continue and remain in full force and effect.

This Settlement Agreement shall be interpreted, governed and construed under the laws of the State of California, including Commission decisions, orders and rulings as if executed and performed wholly within the State of California.

This Settlement Agreement is executed in nine counterparts, each of which shall be deemed an original. The undersigned represent that they are authorized to sign on behalf of the Party represented.

<p>PACIFIC GAS and ELECTRIC COMPANY A California Corporation</p> <p>By <u>Christopher P. Johns</u> Title <u>President</u> Date <u>10/8/10</u></p>	<p>SAN DIEGO GAS & ELECTRIC COMPANY A California Corporation</p> <p>By _____ Title _____ Date _____</p>
<p>SOUTHERN CALIFORNIA EDISON COMPANY A California Corporation</p> <p>By <u>W. R. Ulmer</u> Title <u>Vice President Renewable & Alternative Power</u> Date <u>10/8/2010</u></p>	<p>THE UTILITY REFORM NETWORK</p> <p>By _____ Title _____ Date _____</p>
<p>INDEPENDENT ENERGY PRODUCERS ASSOCIATION</p> <p>By _____ Title _____ Date _____</p>	<p>DIVISION OF RATEPAYER ADVOCATES</p> <p>By _____ Title _____ Date _____</p>

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<p>PACIFIC GAS and ELECTRIC COMPANY A California Corporation</p> <p>By _____ Title _____ Date _____</p>	<p>SAN DIEGO GAS & ELECTRIC COMPANY A California Corporation</p> <p>By _____ Title _____ Date _____</p>
<p>SOUTHERN CALIFORNIA EDISON COMPANY A California Corporation</p> <p>By _____ Title _____ Date _____</p>	<p>THE UTILITY REFORM NETWORK</p> <p>By <u>MP Florio</u> Title Senior Attorney Date October 8, 2010</p>
<p>INDEPENDENT ENERGY PRODUCERS ASSOCIATION</p> <p>By _____ Title _____ Date _____</p>	<p>DIVISION OF RATEPAYER ADVOCATES</p> <p>By _____ Title _____ Date _____</p>

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PACIFIC GAS and ELECTRIC COMPANY A California Corporation By _____ Title _____ Date _____	SAN DIEGO GAS & ELECTRIC COMPANY A California Corporation By _____ Title _____ Date _____
SOUTHERN CALIFORNIA EDISON COMPANY A California Corporation By _____ Title _____ Date _____	THE UTILITY REFORM NETWORK By _____ Title _____ Date _____
INDEPENDENT ENERGY PRODUCERS ASSOCIATION By _____ Title _____ Date _____	DIVISION OF RATEPAYER ADVOCATES By <u><i>[Signature]</i></u> Title <u>Acting Director - Division of Ratepayer Advocate</u> Date <u>10/8/10</u>

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<p>PACIFIC GAS and ELECTRIC COMPANY A California Corporation</p> <p>By _____ Title _____ Date _____</p>	<p>SAN DIEGO GAS & ELECTRIC COMPANY A California Corporation</p> <p>By _____ Title _____ Date _____</p>
<p>SOUTHERN CALIFORNIA EDISON COMPANY A California Corporation</p> <p>By _____ Title _____ Date _____</p>	<p>THE UTILITY REFORM NETWORK</p> <p>By _____ Title _____ Date _____</p>
<p>INDEPENDENT ENERGY PRODUCERS ASSOCIATION</p> <p>By <u>Paul</u> Title <u>Attorney for</u> Date <u>10/08/10</u></p>	<p>DIVISION OF RATEPAYER ADVOCATES</p> <p>By _____ Title _____ Date _____</p>

by or on behalf of IOU, and without limiting the foregoing, any other information as well as any and all tangible and intangible embodiments thereof of any kind whatsoever that would reasonably be considered the confidential or proprietary information of IOU, its parent company, its subsidiaries or affiliates and/or third parties who have licensed or provided such information to IOU given the nature of the information or manner of disclosure, in each case disclosed by or on behalf of IOU to CHP Auditor or obtained by CHP Auditor through observation or examination of the foregoing, regardless of whether such information or embodiment has been marked as confidential or proprietary. Confidential Information shall not include information that:

- (a) has been publicly known prior to disclosure by IOU of such information to CHP Auditor;
 - (b) has become publicly known, without fault on the part of CHP Auditor or, subsequent to disclosure by IOU of such information to CHP Auditor;
 - (c) has been or is received by CHP Auditor at any time on a non-confidential basis from a source, other than IOU, lawfully having possession of and the right to disclose such information; or
 - (d) has been independently developed by CHP Auditor, which may include the written records of CHP Auditor, without use of Confidential Information.
2. Pursuant to Section 9.5.3 of the Settlement, at the initiation of the CHP audit for the subject RFO the CHP Auditor certifies that he/she is not currently engaged, and will not engage for a period of twenty four (24) months beginning on the date of delivery of Confidential Information associated with the subject CHP RFO directly in: (a) a transaction for the generation, purchase, sale or marketing of electrical energy, capacity, and/or related products, including but not limited to electricity related financial products (meaning derivatives, swaps or options), at wholesale in the State of California, (b) a transaction for the purchase, sale or marketing at wholesale of natural gas commodity, assets, including but not limited to natural gas related financial products, for electric generation purposes in the State of California, (c) preparing bids and/or bidding strategies, bidding on, or purchasing of power or power plants in the State of California (or the substantive supervision of any employee(s) whose duties include such responsibilities with regard to those activities, subject to the following Section 3), or (d) mergers and/or acquisitions of entities that own or control electric generation and/or natural gas assets or commodity associated with electric generation in the State of California, (e) consulting with or advising others in connection with any activity set forth in subparagraphs (a), (b), (c) or (d).
3. As provided in Section 9.5.4 of the Settlement, the CHP Auditor(s) may not share the Confidential Information with any third party, including any co-worker or employee, except to provide necessary technical, administrative and clerical support of no more than three (3) individuals for the Auditor's work; provided that such party is also subject to this Agreement. The CHP Auditor may directly supervise employees, office

colleagues or co-workers, but shall establish rules to eliminate any substantive supervision of activities identified in Section 2, above. A supervisor, employee, office colleague or co-worker of a CHP Auditor shall not have any substantive involvement in reviewing, providing guidance to or reviewing the results of the analysis derived from the Confidential Information

4. In the course of an audit, IOU may disclose certain Confidential Information to CHP Auditor. Each such disclosure shall be subject to the terms and conditions of this Agreement, provided that the limitations on engaging in specified activities in Section 2 shall begin on the date of initial delivery of any Confidential Information.
5. Subject to Sections 9.1.4.1, 9.1.4.2 and 9.1.4.3 of the Settlement, the CHP Auditor shall not disclose Confidential Information. CHP Auditor shall hold the Confidential Information in strict confidence and shall not, subject to Sections 9.1.4.1, 9.1.4.2 and 9.1.4.3 of the Settlement, directly or indirectly, without the prior written consent of IOU, disclose the Confidential Information to any third party other than CPUC Commissioners, Staff or Procurement Review Group (“PRG”) members. Moreover, disclosure of Confidential Information to the CPUC Commissioners, Staff or PRG members shall be accompanied by an appropriate declaration concerning its confidentiality. IOU acknowledges that CHP Auditor shall have the right to convey Confidential Information to CPUC Commissioners, Staff and PRG members. CHP Auditor shall keep the Confidential Information in a safe and secure location.
6. Notwithstanding the foregoing, in the event that CHP Auditor becomes legally compelled by notice of deposition, interrogatory, request for documents, subpoena, civil investigative demand or similar process to disclose any of the Confidential Information, CHP Auditor shall give IOU prompt prior written notice of such requirement so that IOU may seek a protective order or other appropriate remedy and/or waive compliance with the terms of this Agreement and if such protective order or other remedy is not obtained, or IOU waives compliance with the terms hereof, CHP Auditor agrees to provide only that limited portion of the Confidential Information that it is required by the legal request and to ensure that all Confidential Information that is so disclosed will be accorded confidential treatment. Prior to disclosure, CHP Auditor shall work with IOU to determine whether or not such information shall be marked confidential before being disclosed.
7. When the Confidential Information is no longer needed for the purpose of auditing the CHP RFO associated with a Target or due to a violation of this Agreement, the IOU may request in writing and the CHP Auditor shall promptly return all tangible items relating to Confidential Information, including all written material, photographs, models, compounds, compositions and the like made available or supplied by IOU to CHP Auditor, and all copies and derivatives thereof. CHP Auditor agrees that all Confidential Information shall, together with any copies, reproductions and other records, thereof, in any form, and all information and materials developed by CHP Auditor therefrom, be returned to IOU or destroyed by CHP Auditor, as IOU shall instruct, when no longer needed for the performance of CHP Auditor’s services or due

- to a violation of this Agreement. CHP Auditor shall provide IOU with a written certification of return or destruction signed by the CHP Auditor.
8. As between IOU and CHP Auditor, IOU's Confidential Information will remain the property of IOU. Nothing contained in this Agreement will be construed as obligating IOU to disclose Confidential Information to CHP Auditor, or as granting to or conferring on CHP Auditor, expressly or by implication, any rights to use the Confidential Information other than in the CHP Auditor's conduct of his/her duties under this Agreement, or pursuant to provisions of the Settlement, including Sections 9.1.4.1, 9.1.4.2 and 9.1.4.3 of the Settlement.
 9. CHP Auditor is aware of the restrictions imposed by the United States securities laws on the purchase or sale of securities by any person who has received material, non-public information from the issuer of such securities.
 10. Subject to Sections 9.1.4.1, 9.1.4.2 and 9.1.4.3 of the Settlement, CHP Auditor will not disclose any information or make any news release, advertisement, public communication, response to media inquiry or other public statement regarding this Agreement, the Confidential Information, any transactions, potential transactions, or bids contained in the Confidential Information and/or the potential commercial relationship between the parties or CHP Auditor's performance hereunder without the prior written consent of IOU.
 11. This Agreement shall last until and cover Confidential Information received by the CHP Auditor for five (5) years following the Effective Date. Notwithstanding the foregoing, all of the CHP Auditor's duties of confidentiality and non-use shall, with respect to Confidential Information, continue until such time that Confidential Information is no longer deemed confidential by IOU or falls within one of the exceptions set forth in Section 1.
 12. CHP Auditor may not transfer or assign all or part of this Agreement, whether by operation of law or otherwise, without the prior written consent of IOU.
 13. IOU makes no express or implied warranty or representation relating to the Confidential Information (including as to completeness) or its use, provided that, consistent with Section 9.4.2 of the Settlement, at a minimum the Confidential Information shall include all information provided to the subject RFO's Independent Evaluator. Notwithstanding anything to the contrary in this Settlement, the CHP Auditor is not entitled to review any proprietary models used by an IOU in an RFO, provided that all inputs and outputs of the model used in the RFO shall be provided to the CHP Auditor. IOU provides the Confidential Information on an "as is" basis and CHP Auditor's use of the Confidential Information shall be at its own risk.
 14. This Agreement represents the entire agreement between the parties regarding the subject matter hereof and shall supersede all previous communications, representations, understandings, acknowledgements and agreements, whether oral or written, by or

1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100. 101. 102. 103. 104. 105. 106. 107. 108. 109. 110. 111. 112. 113. 114. 115. 116. 117. 118. 119. 120. 121. 122. 123. 124. 125. 126. 127. 128. 129. 130. 131. 132. 133. 134. 135. 136. 137. 138. 139. 140. 141. 142. 143. 144. 145. 146. 147. 148. 149. 150. 151. 152. 153. 154. 155. 156. 157. 158. 159. 160. 161. 162. 163. 164. 165. 166. 167. 168. 169. 170. 171. 172. 173. 174. 175. 176. 177. 178. 179. 180. 181. 182. 183. 184. 185. 186. 187. 188. 189. 190. 191. 192. 193. 194. 195. 196. 197. 198. 199. 200. 201. 202. 203. 204. 205. 206. 207. 208. 209. 210. 211. 212. 213. 214. 215. 216. 217. 218. 219. 220. 221. 222. 223. 224. 225. 226. 227. 228. 229. 230. 231. 232. 233. 234. 235. 236. 237. 238. 239. 240. 241. 242. 243. 244. 245. 246. 247. 248. 249. 250. 251. 252. 253. 254. 255. 256. 257. 258. 259. 260. 261. 262. 263. 264. 265. 266. 267. 268. 269. 270. 271. 272. 273. 274. 275. 276. 277. 278. 279. 280. 281. 282. 283. 284. 285. 286. 287. 288. 289. 290. 291. 292. 293. 294. 295. 296. 297. 298. 299. 300. 301. 302. 303. 304. 305. 306. 307. 308. 309. 310. 311. 312. 313. 314. 315. 316. 317. 318. 319. 320. 321. 322. 323. 324. 325. 326. 327. 328. 329. 330. 331. 332. 333. 334. 335. 336. 337. 338. 339. 340. 341. 342. 343. 344. 345. 346. 347. 348. 349. 350. 351. 352. 353. 354. 355. 356. 357. 358. 359. 360. 361. 362. 363. 364. 365. 366. 367. 368. 369. 370. 371. 372. 373. 374. 375. 376. 377. 378. 379. 380. 381. 382. 383. 384. 385. 386. 387. 388. 389. 390. 391. 392. 393. 394. 395. 396. 397. 398. 399. 400. 401. 402. 403. 404. 405. 406. 407. 408. 409. 410. 411. 412. 413. 414. 415. 416. 417. 418. 419. 420. 421. 422. 423. 424. 425. 426. 427. 428. 429. 430. 431. 432. 433. 434. 435. 436. 437. 438. 439. 440. 441. 442. 443. 444. 445. 446. 447. 448. 449. 450. 451. 452. 453. 454. 455. 456. 457. 458. 459. 460. 461. 462. 463. 464. 465. 466. 467. 468. 469. 470. 471. 472. 473. 474. 475. 476. 477. 478. 479. 480. 481. 482. 483. 484. 485. 486. 487. 488. 489. 490. 491. 492. 493. 494. 495. 496. 497. 498. 499. 500. 501. 502. 503. 504. 505. 506. 507. 508. 509. 510. 511. 512. 513. 514. 515. 516. 517. 518. 519. 520. 521. 522. 523. 524. 525. 526. 527. 528. 529. 530. 531. 532. 533. 534. 535. 536. 537. 538. 539. 540. 541. 542. 543. 544. 545. 546. 547. 548. 549. 550. 551. 552. 553. 554. 555. 556. 557. 558. 559. 560. 561. 562. 563. 564. 565. 566. 567. 568. 569. 570. 571. 572. 573. 574. 575. 576. 577. 578. 579. 580. 581. 582. 583. 584. 585. 586. 587. 588. 589. 590. 591. 592. 593. 594. 595. 596. 597. 598. 599. 600. 601. 602. 603. 604. 605. 606. 607. 608. 609. 610. 611. 612. 613. 614. 615. 616. 617. 618. 619. 620. 621. 622. 623. 624. 625. 626. 627. 628. 629. 630. 631. 632. 633. 634. 635. 636. 637. 638. 639. 640. 641. 642. 643. 644. 645. 646. 647. 648. 649. 650. 651. 652. 653. 654. 655. 656. 657. 658. 659. 660. 661. 662. 663. 664. 665. 666. 667. 668. 669. 670. 671. 672. 673. 674. 675. 676. 677. 678. 679. 680. 681. 682. 683. 684. 685. 686. 687. 688. 689. 690. 691. 692. 693. 694. 695. 696. 697. 698. 699. 700. 701. 702. 703. 704. 705. 706. 707. 708. 709. 710. 711. 712. 713. 714. 715. 716. 717. 718. 719. 720. 721. 722. 723. 724. 725. 726. 727. 728. 729. 730. 731. 732. 733. 734. 735. 736. 737. 738. 739. 740. 741. 742. 743. 744. 745. 746. 747. 748. 749. 750. 751. 752. 753. 754. 755. 756. 757. 758. 759. 760. 761. 762. 763. 764. 765. 766. 767. 768. 769. 770. 771. 772. 773. 774. 775. 776. 777. 778. 779. 780. 781. 782. 783. 784. 785. 786. 787. 788. 789. 790. 791. 792. 793. 794. 795. 796. 797. 798. 799. 800. 801. 802. 803. 804. 805. 806. 807. 808. 809. 810. 811. 812. 813. 814. 815. 816. 817. 818. 819. 820. 821. 822. 823. 824. 825. 826. 827. 828. 829. 830. 831. 832. 833. 834. 835. 836. 837. 838. 839. 840. 841. 842. 843. 844. 845. 846. 847. 848. 849. 850. 851. 852. 853. 854. 855. 856. 857. 858. 859. 860. 861. 862. 863. 864. 865. 866. 867. 868. 869. 870. 871. 872. 873. 874. 875. 876. 877. 878. 879. 880. 881. 882. 883. 884. 885. 886. 887. 888. 889. 890. 891. 892. 893. 894. 895. 896. 897. 898. 899. 900. 901. 902. 903. 904. 905. 906. 907. 908. 909. 910. 911. 912. 913. 914. 915. 916. 917. 918. 919. 920. 921. 922. 923. 924. 925. 926. 927. 928. 929. 930. 931. 932. 933. 934. 935. 936. 937. 938. 939. 940. 941. 942. 943. 944. 945. 946. 947. 948. 949. 950. 951. 952. 953. 954. 955. 956. 957. 958. 959. 960. 961. 962. 963. 964. 965. 966. 967. 968. 969. 970. 971. 972. 973. 974. 975. 976. 977. 978. 979. 980. 981. 982. 983. 984. 985. 986. 987. 988. 989. 990. 991. 992. 993. 994. 995. 996. 997. 998. 999. 1000.