

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

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

And Related Matters

Application 08-11-001
(Filed November 4, 2008)

Rulemaking 06-02-013
Rulemaking 04-04-003
Rulemaking 04-04-025
Rulemaking 99-11-022

**COMMENTS OF JOINT PETITIONERS ON PROPOSED DECISION OF ALJ
YIP-KIKUGAWA GRANTING PETITION TO MODIFY DECISION 10-12-035**

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I. INTRODUCTION

Pursuant to Rule 14.3 of the Rules of Practice and Procedure of the California Public Utilities Commission (“Commission”), the California Municipal Utilities Association (“CMUA”) and the Settling Parties¹ (collectively, “Joint Petitioners”) file these comments on the proposed *Decision Granting Petition to Modify Decision 10-12-035* (“Proposed Decision” or “PD”) mailed June 14, 2011. Joint Petitioners fully support the Proposed Decision, subject to the correction of the clerical errors appearing on page 9 and in Ordering Paragraphs 2(a) and 3 of the

¹ Settling Parties refers to those Parties who supported the “Qualifying Facility and Combined Heat and Power Program Settlement Agreement” (“Settlement”), which was approved by Decision (“D.”) 10-12-035: Southern California Edison Company, Pacific Gas and Electric Company, San Diego Gas & Electric Company, The Utility Reform Network, the California Cogeneration Council, the Independent Energy Producers Association, the Cogeneration Association of California, the Energy Producers and Users Coalition, and the Division of Ratepayer Advocates. CMUA and the Settling Parties jointly filed the Petition which the Proposed Decision grants.

PD. Further, the Settling Parties are willing to accept the modifications to Section 13.1.2.2 to the extent these modifications reflect the corrections discussed in Section II below.

The Proposed Decision adopts the resolution that the Joint Petitioners negotiated to resolve cost allocation issues for municipal departing load (“MDL”) Customers that CMUA raised in its application for rehearing of D.10-12-035. More specifically, Section 13.1.2.2 of the Settlement Term Sheet provided for the allocation of non-bypassable charges (“NBC”) to MDL Customers. The negotiated resolution reflected in the Petition required changes and clarifications specifying whether and to what extent Transferred² and New³ MDL Customers would be responsible for NBCs associated with the Settlement. The Proposed Decision grants the Petition on grounds that the negotiated changes and clarifications reasonably address MDL Customers’ responsibility for new generation costs associated with the Settlement in a manner that is consistent with Commission precedent and overall principles for resolving NBC implementation issues. The Proposed Decision further notes that granting the Petition is consistent with the Commission’s policy favoring negotiated resolutions of disputed issues.⁴

II. DISCUSSION

The Proposed Decision: (1) revises the discussion on pages 52-53 of D.10-12-035 concerning MDL Customer responsibility for NBCs associated with the Settlement and makes corresponding changes to related Findings of Facts and Conclusions of Law, consistent with the Petition, and (2) modifies Section 13.1.2.2 of the Term Sheet to reflect the Petition’s proposed

² As described in the PD (*see* PD at 3, note 1), Transferred MDL refers to customers who had previously received generation and distribution services from an investor owned utility (“IOU”), but now receive service from a publicly owned utility (“POU”).

³ As described in the PD (*see* PD at 3, note 1), New MDL refers to a load that has never been served by an IOU but is located in an area that had previously been in the IOU’s service territory (as of February 1, 2001) and was annexed or otherwise expanded into a POU.

⁴ PD, *mimeo* at 7.

changes and clarifications. With respect to the latter, the Proposed Decision adds a new Paragraph 5 to Conclusions of Law to provide Settling Parties “an opportunity in their comments to the proposed decision to comment on whether they are willing to accept the proposed modification to Section 13.1.2.2 of the Term Sheet.”⁵

A. Clerical Errors Requiring Correction

The Proposed Decision includes clerical errors that require correction. These errors appear on page 9 of the Proposed Decision and in Ordering Paragraphs 2(a) and (3) under the sub-heading, “Transferred MDL.”

First, the Proposed Decision inadvertently references “Section 5.1.1.1” instead of “Section 5.1.1.”

Second, the Proposed Decision inadvertently omits the sentence addressing the situation in which the difference between the cost of CHP Settlement PPAs and their market value is positive. The omitted sentence should be inserted after the sentence ending, “Commission Proceeding.” The omitted sentence would read:

If the difference between the cost of CHP Settlement PPAs and their market value is positive (i.e., there are above-market costs), these costs will be allocated through the NBC for CHP Settlement PPAs.

For convenience, revised pages of the Proposed Decision, reflecting the corrections discussed above, are included in Attachment 1, hereto.

B. Conclusion of Law 5

Conclusion of Law 5 provides the Settling Parties with the opportunity to comment on whether they are willing to accept the proposed modification to Section 13.1.2.2 of the Term Sheet. The Petition reflects the negotiated resolution of the MDL issue between CMUA and the

⁵ *Id.* at 13.

Settling Parties. To the extent the Commission issues a Decision correctly reflecting the Petition's proposed modifications, as discussed herein, and correctly embodies those modifications in Section 13.1.2.2 of the Term Sheet, the Settling Parties would accept that modification.

III. CONCLUSION

In view of the foregoing, Joint Petitioners support the Proposed Decision and urge its adoption, subject to the corrections noted herein.

Respectfully submitted on behalf of the Joint Petitioners,

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On Behalf of the Joint Petitioners:

Pacific Gas and Electric Company, Southern California Edison Company, San Diego Gas & Electric Company, The Utility Reform Network, the Division of Ratepayer Advocates, the California Cogeneration Council, the Independent Energy Producers, the Cogeneration Association of California, the Energy Producers and Users Coalition and the California Municipal Utilities Association

July 5, 2011

Attachment 1

basis. The net capacity costs of the CHP Program shall be defined as the total costs paid by the IOU under the CHP Program less the value of the energy and any ancillary services supplied to the IOU under the CHP Program. No energy auction shall be required to value such energy and ancillary services. In exchange for paying a share of the net costs of the CJP Program, the LSEs serving DA and CCA customers will receive a pro-rata share of the RA credits procured via the CHP Program.

Relevant costs associated with the CHP Program and of new Power Purchase Agreements entered into pursuant to the Program may only be recovered from MDL Customers as follows:

Transferred MDL

Transferred MDL Customers who have departed IOU service as of the Settlement Effective Date will not be responsible for any non-bypassable costs (NBC) associated with the Settlement Agreement, but will remain responsible for whatever other charges they will incur at the time of departure under the Status Quo (e.g., Ongoing Competition Transition Charge, etc.).

Transferred MDL Customers who depart IOU service after the Settlement Effective Date will be responsible for any NBC for Settlement PPAs, namely, and NBC associated with PPAs entered into to meet the 3,000 MW Target established in Section 5.1.1.1 of the Settlement Agreement (CHP Settlement PPAs) executed before the date of the Transferred MDL Customer's departure (i.e., on a vintage basis). The NBC for CHP Settlement PPAs will be determined by comparing the cost of the CHP Settlement PPAs to market value of those using the market price benchmark adopted in R.07-05-025 or subsequent Commission Proceeding. If the difference between the cost of CHP Settlement PPAs and their market value is positive (i.e., there are above-market costs), these costs will be allocated through the NBC for CHP Settlement PPAs. If the difference between the cost of CHP Settlement PPAs and their market value is negative (i.e., the cost of the CHP Settlement PPAs is below market) the negative amount

pursuant to the Program may only be recovered from MDL Customers as follows:

Transferred MDL

Transferred MDL Customers who have departed IOU service as of the Settlement Effective Date will not be responsible for any non-bypassable costs (NBC) associated with the Settlement Agreement, but will remain responsible for whatever other charges they will incur at the time of departure under the Status Quo (e.g., Ongoing Competition Transition Charge, etc.).

Transferred MDL Customers who depart IOU service after the Settlement Effective Date will be responsible for any NBC for Settlement PPAs, namely, an NBC associated with PPAs entered into to meet the 3,000 MW Target established in Section 5.1.1-4 of the Settlement Agreement (CHP Settlement PPAs) executed before the date of the Transferred MDL Customer's departure (i.e., on a vintage basis). The NBC for CHP Settlement PPAs will be determined by comparing the cost of the CHP Settlement PPAs to market value of those using the market price benchmark adopted in R.07-05-025 or subsequent Commission Proceeding. If the difference between the cost of CHP Settlement PPAs and their market value is positive (i.e., there are above-market costs), these costs will be allocated through the NBC for CHP Settlement PPAs. If the difference between the cost of CHP Settlement PPAs and their market value is negative (i.e., the cost of the CHP Settlement PPAs is below market) the negative amount will be tracked in a memorandum account and be available to offset future above-market costs of CHP Settlement PPAs.

In no event shall the NBC for CHP Settlement PPAs apply to Transferred MDL Customers after July 1, 2027. Moreover, after July 1, 2022, the cost of Existing CHP Facilities shall not be included in the NBC for CHP Settlement PPAs applicable to Transferred MDL Customers.

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Transferred MDL Customers who have departed IOU service as of the Settlement Effective Date will not be responsible for any non-bypassable costs (NBC) associated with the Settlement Agreement, but will remain responsible for whatever other charges they will incur at the time of departure under the Status Quo (e.g., Ongoing Competition Transition Charge, etc.).

Transferred MDL Customers who depart IOU service after the Settlement Effective Date will be responsible for any NBC for Settlement PPAs, namely, an NBC associated with PPAs entered into to meet the 3,000 MW Target established in Section 5.1.1.4 of the Settlement Agreement (CHP Settlement PPAs) executed before the date of the Transferred MDL Customer's departure (i.e., on a vintage basis). The NBC for CHP Settlement PPAs will be determined by comparing the cost of the CHP Settlement PPAs to market value of those using the market price benchmark adopted in R.07-05-025 or subsequent Commission Proceeding. If the difference between the cost of CHP Settlement PPAs and their market value is positive (i.e., there are above-market costs), these costs will be allocated through the NBC for CHP Settlement PPAs. If the difference between the cost of CHP Settlement PPAs and their market value is negative (i.e., the cost of the CHP Settlement PPAs is below market) the negative amount will be tracked in a memorandum account and be available to offset future above-market costs of CHP Settlement PPAs.

In no event shall the NBC for CHP Settlement PPAs apply to Transferred MDL Customers after July 1, 2027. Moreover, after July 1, 2022, the cost of Existing CHP Facilities shall not be included in the NBC for CHP Settlement PPAs applicable to Transferred MDL Customers.

Transferred MDL Customers who have departed IOU service after the Settlement Effective Date will also be responsible for whatever other charges they would incur at