

**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

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

And Related Matters

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

**MOTION FOR REDUCTION IN COMMENT PERIOD
ON PROPOSED DECISION UNDER RULE 14.6(C)(9)**

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**MOTION FOR REDUCTION IN COMMENT PERIOD
ON PROPOSED DECISION UNDER RULE 14.6(C)(9)**

This *Motion for Reduction in Comment Period on Proposed Decision Under Rule 14.6(C)(9)* (“Motion”) is made pursuant to California Public Utilities Commission (“Commission”) Rules of Practice and Procedure (“Rules”) 11.1 and 14.6(c)(9), and in response to Administrative Law Judge (“ALJ”) Yip-Kikugawa’s August 24, 2011 e-mail. The August 24th email denied without prejudice the request for a shortened comment period on a Proposed Decision (“PD”) in response to the Joint Parties’ *Joint Petition for Modification of Decision 11-07-010 And Request To Establish Settlement Effective Date and Grant Motion for Closure* filed July 28, 2011 (“PFM”). Accordingly, the Joint Parties¹ respectfully request that the public review and comment period on the PD be reduced for initial comments on the PD to no later than September 23, 2011 and for reply comments to no later than September 28, 2011.

¹ The Joint Parties include Pacific Gas and Electric Company, Southern California Edison Company, San Diego Gas & Electric Company, the California Cogeneration Council, the Independent Energy Producers Association, the Cogeneration Association of California, the Energy Producers and Users Coalition, the Division of Ratepayer Advocates, The Utility Reform Network, and the California Municipal Utilities Association (“CMUA”).

I. FACTUAL BACKGROUND

The Joint Parties' PFM addresses two paragraphs and two conclusions of law inserted into the final version of Decision ("D.") 11-07-010 just before it was voted out by the Commission. Although these additions to D.11-07-010 may appear to be relatively benign, the impact of this language is substantial.² As a result of the factually and legally erroneous language added to D.11-07-010, the Qualifying Facility and Combined Heat and Power Settlement ("QF/CHP Settlement") approved by the Commission in D.10-12-035 has not yet become effective, and will not become effective until the Commission is able to act on the PFM.

As the Joint Parties explained in the Motion for Expedited Consideration, the QF/CHP Settlement is the culmination of more than a year of negotiation and almost another year of regulatory consideration in proceedings at the Commission and the Federal Energy Regulatory Commission. Numerous Qualifying Facilities ("QF") and Combined Heat and Power ("CHP") generators, as well as the Investor-Owned Utilities ("IOUs"), are waiting for the QF/CHP Settlement to become effective so that the commercial provisions and program measures included in this ground-breaking settlement can be implemented. No party opposed the Joint Parties' Motion for Expedited Consideration, and, in response to the motion, ALJ Yip-Kikugawa significantly shortened the comment period on the PFM. Only a single set of comments on the PFM was filed.

II. THE COMMENT PERIOD ON THE PD SHOULD BE SHORTENED UNDER RULE 14.6(C)(9).

ALJ Yip-Kikugawa has indicated to the parties that it will take several weeks for her to issue a PD on the PFM. Under the Commission's Rules, parties would normally have twenty (20) days to file comments on the PD and five (5) days to file reply comments. However, the

² See the PFM and the concurrently filed *Motion for Expedited Consideration of Joint Petition for Modification Of Decision 11-07-010 And Request To Establish Settlement Effective Date and Grant Motion for Closure* ("Motion for Expedited Consideration").

normal review and comment period can be shortened under Rule 14.6(c)(9) in a proceeding in which no hearings were conducted and where the Commission determines that “public necessity requires reduction or waiver of the 30-day period for public review and comment.” Public necessity is defined as “circumstances in which the public interest in the Commission adopting a decision outweighs the public interest in having the full 30-day period for review and comment.”³

The Commission has shortened the comment period on proposed decisions when doing so would facilitate subsequent conduct that was in the public interest. For example, in *Southern California Edison*, Southern California Edison Company, Pacific Gas and Electric Company, and San Diego Gas & Electric Company (“Joint IOUs”) filed a petition for modification of D.09-12-014 in order to clarify issues related to the state action immunity doctrine under the anti-trust laws.⁴ The Joint IOUs explained that they could not pursue meaningful commercial negotiations concerning the development of a potential carbon capture facility and generator until the Commission acted on the petition for modification. Citing Rule 14.6(c)(9), the Commission shortened the comment period on the proposed decision concerning the petition for modification, finding that the public interest in pursuing “meaningful joint discussions” outweighed the public interest in a full 30-day period for review and comment.⁵ The Commission has also shortened comment periods on proposed decisions in cases involving rate changes intended to resolve existing rate disparities.⁶

Here, the requirements of Rule 14.6(c)(9) are readily satisfied. First, there were no hearings involved in the Commission’s review of the QF/CHP Settlement.

³ Rule 14.6(c)(9).

⁴ D.10-06-009 at p. 4.

⁵ *Id.* at p. 12.

⁶ *See e.g.*, D.09-12-048 at p. 22.

Second, there is a strong public interest in having the Commission act on the PFM as soon as possible. Similar to the situation in *Southern California Edison*, numerous QF and CHP generators and the IOUs are ready to begin to implement the commercial provisions and program measures of the QF/CHP Settlement, including entering into new contracts, amending existing contracts, and conducting Requests for Offers. The generators and the IOUs need to make and implement commercial and procurement decisions based on the QF/CHP Settlement. The sooner the QF/CHP Settlement becomes effective, the sooner these parties will be able to move ahead with acting on and implementing the QF/CHP Settlement program. The Commission has already concluded that the QF/CHP Settlement is consistent with state policy and in the public interest.⁷ The public will clearly benefit the sooner the QF/CHP Settlement can become effective. Moreover, implementing the QF/CHP Settlement will facilitate the implementation of a new Short-Run Avoided Cost (“SRAC”) formula. Similar to the Commission’s decision in D.09-12-048, a shortened comment period on the PD is in the public interest to allow for the expeditious implementation of the new SRAC prices.

Third, the public will not be harmed by a shortened review and comment period. No party opposed the Motion for Expedited Consideration of the PFM, and only one group of parties ultimately filed comments on the PFM. Even if the comment period on the PD is reduced, these parties will have more than sufficient time to review the PD and file opening and reply comments on the PD. Given the narrow and limited issues addressed by the PFM, parties should be more than able to file comments within a shortened comment period.

Assuming the ALJ issues the PD by September 9, 2011, the Joint Parties are hopeful that the Commission will be able to act on the PD at its October 6, 2011 business meeting. Thus, the Joint Parties are requesting that comments on the PD be due September 23, 2011 and reply

⁷ D.10-12-035, Conclusions of Law 19, 21.

comments due September 28, 2011. This timing allows parties fourteen (14) days to file initial comments and five (5) days to file reply comments, and would give the Commission sufficient opportunity to review those comments and make any necessary changes to the PD before acting on it at the October 6th meeting.⁸

III. CONCLUSION

The Joint Parties respectfully request that the comment period on the PD be shortened under Rule 14.6(c)(9) so that initial comments on the PD are due no later than September 23, 2011 and reply comments are due no later than September 28, 2011, so that the PD can be acted on at the Commission's October 6, 2011 meeting.

PG&E is authorized to sign on behalf of the Joint Parties.

Respectfully submitted on behalf of the Joint Parties,

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August 26, 2011

⁸ The dates proposed by the Joint Parties are not contingent upon the date the PD is issued. Thus, if the PD is issued September 12, 2011, instead of September 9, initial comments would still be due September 23 and reply comments September 28.