BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Integrate and Refine Procurement Policies and Consider Long-Term Procurement Plans.	Rulemaking 10-05-006 (Filed May 6, 2010)

COMMENTS OF CALIFORNIA COGENERATION COUNCIL ON PROPOSED DECISION OF ADMINISTRATIVE LAW JUDGE PETER ALLEN

Jerry R. Bloom
Seth F. Richardson
WINSTON & STRAWN LLP
333 South Grand Avenue
Los Angeles, California 90071
Telephone: (213) 615-1756
Facsimile: (213) 615-1750
Email:jbloom@winston.com
sfrichardson@winston.com

Attorneys for California Cogeneration Council

March 12, 2012

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Integrate and Refine Procurement Policies and Consider Long-Term Procurement Plans.	Rulemaking 10-05-006 (Filed May 6, 2010)

COMMENTS OF CALIFORNIA COGENERATION COUNCIL ON PROPOSED DECISION OF ADMINISTRATIVE LAW JUDGE PETER ALLEN

I. INTRODUCTION

Pursuant to Rule 14.3 of the Rules of Practice and Procedure of the California Public Utilities Commission ("Commission"), the California Cogeneration Council ("CCC") respectfully submits these *Comments of California Cogeneration Council on the Proposed Decision of Administrative Law Judge Peter Allen* ("Comments") on the February 21, 2012 Proposed Decision ("PD") of Administrative Law Judge Peter Allen in the above-captioned proceeding. In these Comments, the CCC respectfully requests that Section 3.6 of the PD be modified to recognize that certain existing power purchase agreements ("PPAs") with PURPA qualifying facilities ("QFs") [1] contain atypical pricing provisions, which preclude these QFs from entering into the Legacy QF Amendment[2] contained in the QF/CHP Settlement[3]. For the same reasons that the PD recognizes a need to provide relief to the non-QF independent generators, these atypical QFs also should be afforded an opportunity to negotiate amendments to their PPAs to allow for recovery of greenhouse gas compliance costs imposed by AB 32[4].

[1] As defined in the Public Utility Regulatory Policies Act of 1978, as amended.

[2] As defined in the QF/CHP Settlement.

[3] The CHP Program Settlement Agreement, as approved by the Commission in Decision 10-12-035.

[4] California Assembly Bill No. 32 (2006) - the Global Warming Solutions Act of 2006.

II. DISCUSSION

The CCC represents a number of QF generators that currently have atypical existing or CHP PPAs with the California investor owned utilities ("IOUs"). For example, OLS Energy Chino, LLC ("OLS"), a CCC member, operates an efficient 30 megawatt QF combined-cycle cogeneration power plant located on the grounds of the Chino Institute for Men's correctional and rehabilitation facility ("CIM") in Chino, California ("Chino Facility"). Since 1988, the Chino Facility has provided CIM with steam and power under a 30-year contract, which expires in 2018 ("CIM Contract"). In addition, the Chino Facility supplies Southern California Edison Company ("SCE") with 26 MWs of capacity and energy under a 30-year PPA that also expires in 2018 ("Chino PPA"). SCE and OLS amended the Chino PPA in 1998 to replace the standard pricing provisions contained therein with unique pricing provisions negotiated and agreed-upon by the parties. The pricing amendment was executed to address issues specifically related to the Chino Facility and served as the basis for investment and finance decisions undertaken by OLS. The CIM Contract was entered into nearly two decades before, and the Chino PPA was last amended nearly a decade before, AB 32 was signed into law. As such, neither contract provides for the recovery of greenhouse gas compliance costs attributable to the Chino Facility.

Under the QF/CHP Settlement, the IOUs, including SCE, agreed to allow QFs with existing or CHP PPAs (defined as "Legacy PPAs" under the QF/CHP Settlement) to recover the greenhouse gas compliance costs imposed on their generating facilities by AB 32 through certain mechanisms approved as part of the QF/CHP Settlement. The parties to the QF/CHP Settlement recognized that Legacy PPAs do not account for greenhouse gas compliance costs and that mechanisms providing for recovery of such costs were needed. Thus, the QF/CHP Settlement made available a single, pro forma standard amendment – the Legacy PPA Amendment – which, in part, provides options for such recovery.

One uniform amendment would be acceptable for all QFs with Legacy PPAs if such QFs were equally positioned to execute it. Unfortunately, they are not. Some QFs, like OLS, negotiated certain pricing amendments to their Legacy PPAs prior to the QF/CHP Settlement to address issues specifically related to their generating plants and have made investment and finance decisions based on those agreed-to pricing provisions (each such QF PPA a "Non-Standard QF PPA"). However, along with options for the recovery of greenhouse gas compliance costs, the Legacy PPA Amendment, if executed by a QF, would also impose new short run avoided cost ("SRAC") pricing provisions on those QFs. Simply put, these pricing provisions, which were meant for those with standard SRAC payments as set by the Commission from time to time, do not reflect, and would effectively abrogate, the unique pricing provisions contained in certain Non-Standard QF PPAs. Therefore, certain holders of Non-Standard QF PPAs, who have made investment and finance decisions based on those unique pricing provisions, are not in a position to execute a Legacy PPA Amendment. In the standard Legacy PPA Amendment, there is not an option to retain non-standard pricing under an existing PPA and recover greenhouse gas compliance costs.

To remedy this, the Commission should direct the IOUs to treat holders of Non-Standard QF PPAs and non-QF independent generators similarly. Specifically, the IOUs should be directed to renegotiate the Non-Standard QF PPAs so that they reasonably address the allocation of AB 32 compliance costs. If the Commission does not so direct, the Commission, contrary to intent stated in the PD, would treat "market participants unfairly based on their past investments or decisions made prior to the passage of AB 32." Decision 08-10-037 at 144-45, citing Decision 08-03-018 at 18.

The CCC therefore respectfully requests that Section 3.6 of the PD be amended to direct the IOUs to renegotiate Non-Standard PPAs to allow the QF counterparties to such PPAs to recover their greenhouse gas compliance costs consistent with policies being adopted in the PD. To accomplish this, the CCC recommends changing the last paragraph on page 56 of the PD as follows:

> As a threshold matter, we agree with SCE that we are not modifying the terms of our approval of the QF/CHP Settlement in D.10-12-035. The vast majority of ~~C~~contracts that are subject to that settlement should be addressing greenhouse gas compliance costs consistent with that decision, and need not be addressed again here. There are, however, contracts with non-QF independent generators and contracts with QF generators that contain certain, atypical pricing provisions ~~that are not covered by that settlement,~~ and we do need to address this issue regarding those generators.

III. CONCLUSION

For the reasons set forth above, the Commission should modify the PD as proposed herein.

Respectfully Submitted,

Date: March 12, 2012

Jerry R. Bloom
Seth F. Richardson
WINSTON & STRAWN LLP
333 South Grand Avenue
Los Angeles, California 90071
Telephone: (213) 615-1756
Facsimile: (213) 615-1750
Email: jbloom@winston.com
sfrichardson@winston.com

Attorneys for California Cogeneration Council