

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

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

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**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

QF-related disputes and allows for a smooth transition from the California Public Utilities Commission's ("Commission") existing QF Program to a new QF/CHP Program to preserve resource diversity, fuel efficiency, greenhouse gas ("GHG") emissions reductions and other benefits and contributions of CHP. In addition, the Settlement Agreement facilitates additional CHP benefits and contributions by promoting new, lower GHG emitting CHP facilities and encouraging the repowering, operational changes through utility pre-scheduling, or retirement of existing, higher GHG emitting CHP facilities. Finally, the Settlement Agreement appropriately allocates the costs of the QF/CHP Program to all customers in California who benefit from the CHP portfolio. In short, the Settlement Agreement provides a reasonable, prudent and well-balanced approach to the development of QFs and CHP facilities in California to ensure customer benefits associated with CHP over the near- and long-term.

The parties to the proposed Settlement Agreement represent numerous different groups and interests. These parties include the three investor-owned utilities ("IOUs") -- Pacific Gas and Electric Company ("PG&E"), Southern California Edison Company ("SCE"), and San Diego Gas & Electric Company ("SDG&E"); cogeneration and combined heat and power qualifying facility ("CHP QF") representatives -- the California Cogeneration Council ("CCC"), the Independent Energy Producers Association ("IEP"), the Cogeneration Association of California ("CAC"), and the Energy Producers and Users Coalition ("EPUC"); and statewide consumer and ratepayer groups -- the Division of Ratepayer Advocates ("DRA") and The Utility Reform Network ("TURN") (the parties are referred to hereinafter individually as a "Party" and collectively as the "Joint Parties").

Pursuant to Rule 12.1 (a) of the California Public Utilities Commission's ("Commission") Rules of Practice and Procedure, the Joint Parties respectfully file this *Joint Motion for Approval of Qualifying Facility and Combined Heat and Power Program Settlement*

Agreement (“Joint Motion”) proposing adoption of the attached Settlement Agreement.¹ While each of these groups have separate interests and concerns, the Joint Parties have worked together to develop a comprehensive framework for a QF/CHP Program in California that will encourage the development of efficient CHP, provide environmental benefits through reduced GHG emissions, resolve outstanding QF disputes and provide clear direction going forward on contentious QF issues including costs. During the settlement process, the Joint Parties were required to compromise and develop solutions. None of the Joint Parties received everything it wanted, and each of the Joint Parties was required to compromise in specific areas so that an overall settlement could be reached. The resulting Settlement Agreement represents a balance of the parties’ interests. Consistent with Commission Rule 12.1, the Joint Parties are providing a statement of the factual and legal considerations that are addressed in the Settlement Agreement and demonstrate that the Settlement Agreement is reasonable in light of the whole record, consistent with law, and in the public interest. For these reasons, the Joint Parties respectfully request that the Settlement Agreement be approved by the Commission without modification.²

In addition to this Joint Motion, the Joint Parties are filing a Motion for Expedited Consideration of Joint Motion For Approval of Qualifying Facility and Combined Heat and Power Settlement Agreement (“Motion for Expedited Consideration”). In Section VI, below, the Joint Parties provide a proposed schedule for Commission consideration of the Settlement Agreement. The same schedule is included in the Motion for Expedited Consideration.

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¹ The Settlement Agreement is attached as Attachment A to this motion.

² Each of the Joint Parties expressly reserves its rights to take positions contrary to the positions taken and arguments made in this motion if the Commission does not approve the Settlement Agreement without modification.

I. FACTUAL AND PROCEDURAL BACKGROUND

A. PURPA and The Commission's QF Program

In 1978, Congress enacted the Public Utility Regulatory Policies Act ("PURPA"), which was part of a national effort to promote energy independence and efficiency.³ Under PURPA and the Federal Energy Regulatory Commission's ("FERC") subsequent regulations implementing PURPA, qualifying cogeneration and small power production facilities were provided certain benefits and exemptions. State regulatory agencies were delegated responsibility for developing QF programs and determining avoided-cost pricing. The Commission implemented PURPA in the early 1980s by adopting for the IOUs a number of standard form power purchase agreements ("PPAs") that were available to QFs and established energy and capacity prices to be paid under these PPAs. Many QFs signed these PPAs and built cogeneration and small power production facilities to provide energy and capacity to the IOUs.

Since the Commission implemented the QF program in the 1980s, there have been disputes between the QFs, IOUs and ratepayer advocates including: contract terms, Short-Run Avoided Cost ("SRAC") pricing, capacity payments, contract extensions and terminations, and the availability of new contracts. Many of these disputes are still pending at the Commission. Section 14 of the Settlement identifies disputes pending at the Commission regarding several proceedings, including: retroactive adjustments to SRAC pricing; disputes over pricing and ability to execute PPA extensions; motions for prospective QF PPA options; SRAC disputes dating back to the 2000-2001 energy crisis; disputes concerning administrative heat rates ("AHR") used to calculate SRAC; and applications for rehearing and petitions for modification

³ 16 U.S.C. § 796, *et seq.*; *see also Southern California Edison v. PUC*, 101 Cal.App.4th 982, 986-87 (2002) (describing PURPA).

of numerous QF decisions.⁴ In addition to these disputes pending at the Commission, there are also disputes pending in the California Court of Appeal.⁵

Not only is the Commission faced with disputes regarding existing QF PPAs and the existing QF program, the Commission is also faced with challenges as to how to implement the QF program going forward. For example, in Decision (“D.”) 07-09-040, the Commission recognized that it would need to address the impact of the California Independent System Operator’s (“CAISO”) Market Redesign and Technology Upgrade (“MRTU”) on SRAC and the QF program.⁶ The Commission also has before it disputes over the terms and conditions of the new QF Standard Offer Contract (“SOC”)⁷ and disputes over the amount of QF capacity to include in the Long-Term Procurement Process (“LTPP”).⁸

On the federal level, recently there have been changes to the PURPA purchase obligation. In October 2006, FERC issued Order No. 688:

... revising its regulations governing utilities’ obligations to purchase electric energy produced by QFs. Order No. 688 implements PURPA section 210(m), which provides for termination of the requirement that an electric utility enter into power purchase obligations or contracts to purchase electric energy from QFs, if the Commission finds the QFs have nondiscriminatory access to markets.⁹

⁴ See Term Sheet, §§ 14.1 – 14.2.

⁵ *Id.* at § 14.2.4.

⁶ D.07-09-040 at p. 68.

⁷ See e.g., Draft Resolution E-4242 and comments filed by parties concerning the draft resolution.

⁸ *Joint Petition for Modification of D.07-12-052 by Southern California Edison Company (U 338-E), Pacific Gas & Electric Company (U 39-E), and San Diego Gas & Electric Company (U 902-E)*, filed December 17, 2008 in R.06-02-013.

⁹ *New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation*, 130 FERC ¶ 61,216 (2010) at P. 3 (footnotes omitted).

Although the California IOUs have not yet sought from FERC a termination of their PURPA purchase obligation for QFs larger than 20 MW, the changes in PURPA further support a re-examination of California's existing QF program.

Given the numerous outstanding disputes, changes in PURPA, and challenges in determining a QF and CHP Program ("QF/CHP Program") going forward, the Joint Parties, California customers and the Commission will benefit from a Settlement that: (1) resolves the outstanding disputes; (2) sets out a clear path for the implementation of a cogeneration QF and CHP Program in California; and, (3) makes available additional PPA options for QFs under the QF/CHP Program ("CHP PPAs").

B. State Policy Favoring CHP

Public Utilities Code Section 372(a) and Energy Action Plan II both demonstrate that state policy supports the development of "efficient, environmentally beneficial" CHP. In the 2009 Integrated Energy Policy Report ("IEPR"), the California Energy Commission ("CEC") recommended the continued support and development of CHP as a means to meet state greenhouse gas ("GHG") goals and other policy objectives.¹⁰

C. CARB's Climate Change Scoping Plan

On December 11, 2008, the California Air Resources Board ("CARB") adopted the Climate Change Scoping Plan for California pursuant to Assembly Bill ("AB") 32 (the "CARB Scoping Plan").¹¹ In the CARB Scoping Plan, CARB noted that,

[c]ombined heat and power (CHP), also referred to as cogeneration, produces electricity and useful thermal energy in an integrated system. The widespread development of efficient CHP systems would help displace the need to develop new, or expand existing, power plants. This measure sets a target of an additional 4,000 MW of installed CHP capacity by 2020, enough to displace

¹⁰ See, 2009 IEPR at pp. 8-9.

¹¹ See, http://www.arb.ca.gov/cc/scopingplan/document/adopted_scoping_plan.pdf.

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.

CHP and other facilities. In the Second Program Period, the IOUs procure any portion of the MW Targets that they did not procure during the Initial Program Period and additional CHP capacity to meet GHG Emissions Reduction Targets (“GHG Targets”) or other CHP procurement targets established by the Commission. SDG&E has a target to procure an additional 51 MW during the Second Program Period.

C. Section 3 – Transition PPA

This section describes the eligibility requirements for QF and CHP facilities for a PPA during the Transition Period and the pricing for Transition Period PPAs.¹⁵ The “Transition Standard Contract for Existing Qualifying Cogeneration Facilities” (“Transition PPA”) is included as an exhibit to the Term Sheet and is an attachment to the Settlement Agreement.

D. Section 4 – CHP Procurement Process

This section describes the various aspects of the CHP procurement process under the new QF/CHP Program. First, Section 4.2 describes the new CHP Request for Offers (“CHP RFO”) process under which the IOUs will procure generation from CHP facilities to meet MW Targets and GHG Targets specified in the Settlement Agreement.¹⁶ Section 4.2 includes eligibility requirements for CHP participating in the RFOs (Section 4.2.2), the delivery terms of PPAs resulting from the RFOs (Section 4.2.3), pricing (Section 4.2.4), and RFO evaluation and selection criteria (Section 4.2.5). In addition, the Joint Parties developed a Pro Forma power purchase agreement for CHP RFOs (“CHP RFO PPA”) that will be attached as an exhibit to the Term Sheet.

Section 4 also describes the procurement processes for CHP other than through CHP RFOs that will count towards meeting MW and GHG Targets. Specifically, Sections 4.3 - 4.6

¹⁵ Term Sheet, §§ 3.1 – 3.2.

¹⁶ The MW Targets and GHG Targets are described in Sections 5 and 6 of the Term Sheet, respectively.

describe bilaterally negotiated CHP PPAs, PPAs under the AB 1613 feed-in tariff, PPAs for QFs of 20 MW or less under PURPA, and Optional As-Available PPAs for certain large CHP facilities that have significant on-site load and specific operating characteristics. Section 4.7 addresses utility-owned CHP and limits the contribution of utility-owned facilities to ten percent (10%) of each IOU's GHG Target. IOU-owned facilities will not count toward the MW Targets in the Initial Program Period. Section 4.8 describes "utility prescheduled facilities" which are existing QF facilities that convert to IOU-dispatchable generating facilities.¹⁷ Finally, Section 4.9 addresses new behind-the-meter CHP facilities as one of the procurement options under the QF/CHP Program.

Section 4.10 specifies the Commission approval process required for new PPAs arising from the procurement options in the QF/CHP Program. This includes Tier 2 advice letter filings for existing CHP facilities that execute the CHP RFO PPA without material modification, and a Tier 3 advice letter process for all other CHP PPAs. CHP PPAs that are less than five years in duration do not require Commission pre-approval but will be reported in the IOUs' Quarterly Compliance Reports and CHP Program Semi-Annual Report.

Section 4.11 specifies information that CHP facilities must provide to the IOUs on an annual basis for monitoring purposes and Section 4.12 specifies the timing for commencement of deliveries from a CHP facility that has entered into a new CHP PPA.

E. Section 5 – MW Targets

Section 5 establishes a total MW Target for the IOUs of 2,949 MW during the Initial Program Period and a total MW Target of 3,000 MW for the entire QF/CHP Program. Section 5.1.2 includes a chart allocating this MW Target to three target periods for each of the IOUs. For example, the first MW Target for SCE, PG&E, and SDG&E are 630 MW, 630 MW, and 60

¹⁷ This provision in the Settlement Agreement is described in more detail in Section III.A.9, below.

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.

(“ESPs”) and Community Choice Aggregators (“CCA”).²⁰ These targets are based on the 6.7 MMT GHG reduction attributable to CHP in the CARB Scoping Plan.²¹ Based on the current percentage of retail sales in California, the 6.7 MMT would be allocated as follows: (1) 4.3 MMT to the IOUs; (2) 0.5 MMT to ESPs and CCAs; and (3) 1.9 MMT to publicly-owned utilities (“POUs”).²² The Commission does not have jurisdiction over POUs, but can set GHG Emissions Reduction Targets for the IOUs, ESPs and CCAs.

Section 6.2.2.3.3 provides for the adjustment of the allocation of the GHG Targets based on changes in retail sales during the term of the Settlement Agreement.²³ Thus, for example, if customers depart utility service for ESPs or CCAs, the GHG Targets for the IOUs will decrease and the targets for the ESPs and CCAs will increase. The GHG Targets can also be adjusted among the IOUs.

Section 6.3 identifies the GHG Target allocated to ESPs and CCAs and indicates that it is the preference of the Joint Parties that these non-IOU load-serving entities (“LSEs”) achieve these targets by entering into CHP PPAs. However, if these non-IOU LSEs are not required to enter into CHP PPAs, the IOUs will procure the appropriate amount of CHP for these LSEs to meet their GHG Target and the costs of this procurement by the IOUs will then be allocated to the customers of non-IOU LSEs. The allocation of CHP PPA costs is addressed in Section 13 of the Settlement Agreement. Section 6.4 describes the methodology for establishing the GHG Targets for each of the IOUs. Section 6.5 requires each IOU to report its progress toward meeting its GHG Target in its semi-annual CHP Program Reports that are submitted to the

²⁰ *Id.*, § 6.3.1.

²¹ *Id.*, §6.2.2.1.

²² *Id.*, §6.2.2.3.

²³ *See also id.*, § 6.3.3.

Commission. Section 6.6 states that the GHG Targets for the Second Program Period are subject to review and revision in the LTPP process.

Section 6.7 provides for revisions to the GHG Targets if CARB modifies its CHP reduction goals and provides for GHG Targets to be adjusted in the LTPP if AB 32 compliance is suspended or delayed. In Section 6.8, the Joint Parties agree to advocate at CARB in support of the Settlement Agreement, subject to certain conditions.

Finally, Section 6.9 sets out the justifications for failing to meet the GHG Targets, including the efficiency of CHP facilities participating in the IOUs' procurement programs, excessive offer prices and a lack of need for CHP resources.

G. Section 7 – GHG Emission Accounting Methodology

Section 7 establishes the accounting principles for determining the IOUs' progress toward meeting their GHG Targets. This section adopts a Double Benchmark methodology for determining GHG reductions and provides detailed accounting procedures for new, repowered, and existing CHP facilities to determine the amount of GHG emissions reductions that are attributable to these different types of facilities.

H. Section 8 – Commission Jurisdictional Entities' Reporting Requirements

Section 8 establishes reporting requirements for Commission-jurisdictional LSEs (*i.e.*, the IOUs, ESPs and CCAs). Each LSE must prepare a semi-annual report detailing progress toward meeting its MW Targets and GHG Targets.²⁴ Sections 8.2 – 8.5 describe the contents of the semi-annual reports, and specify report content for different categories of CHP generation (*e.g.*, new, legacy, terminated).

²⁴ *Id.*, § 8.1.1.

I. Section 9 – CHP Auditor

Section 9 provides for a CHP auditor (“CHP Auditor”) who is to act as an advocate for CHP interests regarding the implementation of the QF/CHP Program.²⁵ The CHP Auditor is used in situations where an IOU provides notice that it does not anticipate meeting the MW Targets during a particular RFO or the GHG Targets. The CHP party or parties requesting a CHP Auditor bear the costs²⁶ and the CHP Auditor is provided with an opportunity to receive and review confidential IOU information regarding the relevant QF/CHP RFO. Section 9 includes provisions for execution of a non-disclosure agreement by the CHP Auditor (Section 9.1.4), when an IOU notice triggers an audit (Section 9.2), the time period for an audit review (Section 9.3), receipt and review of confidential information (Section 9.4), and the number of CHP Auditors, as well as rules regarding any potential conflicts of interest (Section 9.5).

J. Section 10 – SRAC Energy Pricing Structure

Section 10 establishes methodologies and formulas for SRAC to be used in Transition PPAs, Legacy PPAs, other existing QF PPAs and Optional As-Available PPAs.²⁷ Section 10.2 includes a methodology for transitioning, by January 1, 2015, SRAC pricing from a formula that is based in part on administratively-determined heat rates to a formula that uses solely market heat rates. Section 10.4 includes a process for addressing market disruptions that may impact the market heat rate to be used in SRAC. Section 10.2 also includes IOU-specific time-of-use (“TOU”) factors to be applied to energy prices to encourage energy deliveries during the times when the energy is most needed by customers. The SRAC formula also includes a locational adjustment based on CAISO nodal prices. Section 10.2 also includes pricing options based on

²⁵ *Id.*, § 9.1.2

²⁶ *Id.*, § 9.1.3.

²⁷ Prices for RFO PPAs are based on competitive bids in the RFO process and bilateral PPA prices are based on negotiated prices between the IOU and the CHP party.

whether a cap-and-trade program or other form of GHG regulation is developed in California or nationally.

When such a cap-and-trade program is initially developed that applies to California, Section 10.2 establishes a floor test which compares an energy price developed with a market-based heat rate to an energy price developed with either a negotiated heat rate, or a heat rate from a period prior to the start of a cap and trade program, plus the market price of GHG allowances. The higher of the two energy prices is the one chosen as SRAC.

Section 10.3 requires the Seller under a CHP PPA to provide certain information to the IOU regarding GHG information that it has reported to CARB or another governmental authority, and information concerning the operation of its facility. Finally, Section 10.5 addresses the responsibility for GHG-related costs.

K. Section 11 – Legacy PPA Matters for Existing QFs

Under Section 11.1, QFs with existing standard offers or other PPAs (“QF PPAs”) at the time of the Settlement Effective Date²⁸ will be paid for energy based on the SRAC formula specified in Section 10 (unless the QF PPA specifies a different price) or may elect to amend their standard offer QF PPA to choose one of the energy price options described in the Legacy QF Amendments, are attached as an exhibit to the Settlement Agreement. Unless otherwise specified in the QF PPA, capacity payments for QF PPAs will be based on the capacity price established by the Commission in D. 07-09-040. Section 11.2 provides for the transition from a QF PPA to a new CHP PPA and ensures that delivery from an existing CHP facility continues uninterrupted during that period. The amendments are not available to QFs participating in the Renewable Portfolio Standard program.

²⁸ The Settlement Effective Date is described in Section 16 of the Term Sheet.

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.

Section 13.1.2.1 provides that if the Commission determines that ESPs and CCAs are responsible for procuring CHP generation for their customers, any above-market costs associated with the QF/CHP Program can be allocated to future departing load customers who depart for DA or CCA service.

In Sections 13.1.3 and 13.1.4, the Joint Parties agree that they will not advocate the imposition of QF/CHP Program costs on CHP customer generation departing load, and in Section 13.1.5 the Joint Parties agree to advocate that CHP PPAs entered into as a result of the QF/CHP Program not be included in the existing Competition Transition Charge.

Finally, Section 13.2 provides that all payments made by the IOUs under the QF/CHP Program can be recovered in the IOUs' respective Energy Resources Recovery Account.

N. Section 14 -- Settlement Of Pending And Anticipated Litigation

Section 14 addresses the settlement of pending, as well as anticipated, claims and litigation. In Section 14.1, the IOUs agree under certain conditions to withdraw with prejudice all SRAC retroactive price adjustment claims. The Joint Parties mutually agree not to raise any new SRAC retroactive adjustment claims as long as the PURPA purchase obligation remains suspended (as described in more detail in Section 15).

In Section 14.2, the Joint Parties agree to release or withdraw a number of pending claims, rehearing applications, or motions including claims and motions at the Commission (Sections 14.2.1 – 14.2.3, 14.2.5 – 14.2.12) and pending appeals at the Court of Appeal (Section 14.2.4). Section 14 does not affect the Joint Parties' rights to advocate their respective position regarding the confidentiality of IOU procurement information.³⁰

³⁰ *Id.*, § 14.3.2.

O. Section 15 – FERC 210(m) Application

Under Section 15, after the Commission approves the Settlement Agreement, the IOUs will submit an application to FERC requesting termination of the IOUs' PURPA purchase requirement from QFs with net capacity in excess of 20 MW, consistent with Section 210(m) of PURPA. Section 15.1 establishes a process for the CHP representatives to review the IOUs' FERC application and provides that these parties can intervene and comment on, but not protest, the IOUs' application. Under Section 15.1.10, the CHP representatives can file at FERC for reinstatement of the PURPA purchase obligation if an IOU "breaches its obligations under the Settlement [Agreement] or the CHP Program adopted in the Settlement [Agreement] is not successfully implemented, based upon the IOU's failure to meet the targets established by the CPUC pursuant to the Settlement [Agreement], without justification as provided for in the Settlement [Agreement]."

Section 15.2 addresses a circumstance where FERC reinstates the PURPA purchase obligation. In this case, SRAC pricing established under the Settlement Agreement stays in place until changed by the Commission (Section 15.2.1.1), although Joint Parties may advocate for a change to SRAC (Section 15.2.1.3). Joint Parties may also advocate for retroactive adjustments to SRAC pricing (Section 15.2.1.4). If the PURPA purchase obligation is reinstated, the IOUs' obligations to conduct CHP RFOs or to engage in alternative procurement processes and the MW Targets and GHG Targets are suspended "provided that the CPUC may on grounds other than the Settlement [Agreement] direct the procurement of CHP resources." (Section 15.2.1.7) Any procurement target to be established by the Commission in the LTPP remains in place unless and until modified by the Commission in a subsequent proceeding. The Joint Parties also agree in Section 15.2.1.8 that for purposes of Section 210(m), designated CHP PPAs constitute "legally enforceable obligations."

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.

consumers.”

“These policies and purposes will be achieved by a State CHP Program that procures CHP as set forth in this Settlement, retains existing efficient CHP, supports the change in operations of inefficient CHP to provide greater benefits to the State, and replaces CHP that will no longer be under contract with the IOUs with new, efficient CHP.”

2. Consistent With State And Commission Policy, The Settlement Agreement Is Intended To Facilitate GHG Emissions Reductions From CHP Facilities.

When it enacted AB 32, the California Legislature declared that global warming caused by GHG emissions posed a serious threat to California.³³ AB 32 was designed to reduce California’s GHG emissions. Since AB 32 was enacted, the Commission has repeatedly indicated that the reduction in GHG emissions is a key policy objective for the utility industry.³⁴ The Commission, CARB and the CEC have all recognized that efficient and clean CHP can reduce GHG emissions.³⁵ Indeed, CARB has made CHP one element in its Scoping Plan to implement AB 32 and reduce GHG emissions in California.

As stated in the Settlement Agreement: “In addition, this State CHP Program will secure additional Greenhouse Gas (GHG) emissions reduction benefits, consistent with the reduction targets of Assembly Bill (AB) 32, by adding new, efficient CHP.” Consistent with state law and these policy objectives, the Settlement is intended to facilitate the reduction in GHG emissions in a number of ways.

First, under the Settlement, GHG Targets are set for all Commission-jurisdictional LSEs, including the IOUs, ESPs and CCAs.³⁶ These targets are intended to facilitate the LSEs meeting

³³ Cal. Health and Safety Code, § 38501, *et seq.*

³⁴ *See e.g.*, D.07-12-052 at pp. 2-5, 243; D.08-10-037 at pp. 2-3 (providing general overview of utility industry role in GHG reduction).

³⁵ D.08-10-037 at pp. 237-238 (Commission discussion of CHP); CARB Scoping Plan at pp. 43-44; 2009 IPER at pp. 97-98.

³⁶ Term Sheet, § 6.

CARB's CHP goals by December 31, 2020.³⁷ To the extent CARB modifies its CHP goals, the Settlement provides flexibility to incorporate any modification in the CARB goals.³⁸

Second, the Settlement creates incentives for upgrading existing, inefficient CHP facilities, or, alternatively, for facilities that cannot participate or are unsuccessful in the CHP Program, the Settlement Agreement provides an orderly exit strategy. All CHP facilities will be able to participate in the CHP RFOs, and some will be able to participate in other procurement processes and obtain contracts that facilitate the financing, construction and operation of upgraded and/or new facilities. The CHP RFO PPA will explicitly include efficiency performance obligations.³⁹ The Settlement Agreement recognizes as one of the QF/CHP Program goals upgrading inefficient existing CHP facilities, or allowing them to retire, and encouraging the development of new, clean and efficient CHP.⁴⁰

Third, the Settlement Agreement includes a requirement for all Commission-jurisdictional LSEs to file semi-annual compliance reports that include GHG emissions information.⁴¹ This will allow the Commission and other interested parties to monitor the GHG emissions resulting from the QF/CHP Program and to determine if LSEs are obtaining the GHG benefits expected, and to address any shortfalls in expected GHG emission reduction benefits in a timely manner.

³⁷ *Id.*, § 6.1.

³⁸ *Id.*, § 6.7

³⁹ *Id.*, § 4.2.9.

⁴⁰ *Id.*, §§ 1.2.2.3 – 1.2.2.5; *see also* § 7.3 (GHG accounting methodology which takes into account GHG benefits from new facilities and retirement of inefficient existing CHP facilities).

⁴¹ *Id.*, § 8.

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).

under 20 MW, utility-ownership, and other procurement options.⁴⁵ The Settlement Agreement also includes a regulatory approval process for CHP PPAs that result from these procurement options.⁴⁶ In short, the Settlement Agreement adopts a procurement process for QF and CHP resources that is competitive, flexible, and allows for sufficient regulatory oversight to ensure that the IOUs are able to minimize costs and select appropriate resources for California customers.

4. The Energy And Capacity Prices Are Reasonable And Consistent With Recent Commission Decisions.

There are several different pricing and contracting options in the Settlement. First, CHP PPA prices will be set on a contract-specific basis through a competitive RFO process subject to Commission approval.⁴⁷ Allowing CHP developers to bid into the RFO will allow them to propose prices that are sufficient to finance and develop their facilities, while at the same time allowing the IOUs to pick the best offers based on a number of criteria, including price. An RFO procurement process, similar to the processes currently used for conventional and Renewable Portfolio Standard (“RPS”) contracts, will result in competitive prices that are ultimately subject to Commission approval. In addition, to the extent that RFO prices are excessive, the Settlement Agreement expressly provides that an IOU may use excessive prices as a justification for failing to meet the MW Targets and GHG Targets.⁴⁸

Second, the Settlement Agreement establishes SRAC prices for the Transition PPAs, Legacy PPAs, QF contracts that are still available under PURPA for facilities less than 20 MW,

⁴⁵ Term Sheet, §§ 4.3 – 4.9.

⁴⁶ *Id.*, § 4.10.

⁴⁷ Bilaterally negotiated PPAs will set contract-specific prices subject to Commission regulatory approval.

⁴⁸ Term Sheet, § 5.4 and § 5.4.1 (addressing failure to meet the MW Target); § 6.9 (addressing failure to meet the GHG Targets).

and the Optional As-Available PPAs.⁴⁹ The SRAC included in the Settlement Agreement is based on the current Commission-approved SRAC pricing formula⁵⁰ and achieves the Commission goal of ultimately transitioning to a market heat rate to determine SRAC by January 1, 2015.⁵¹ There is a long history of setting SRAC prices through settlements. The Settlement Agreement resolves this very contentious issue through an arms-length negotiation among adverse parties. As a result, the established SRAC prices are reasonable and in the public interest.

Finally, the Settlement Agreement includes capacity prices that have already been approved by the Commission in D.07-09-040 or are already incorporated in existing contracts.⁵²

5. The QF/CHP Targets Are Appropriate.

The Settlement establishes MW Targets for each IOU.⁵³ These MW Targets are the result of heated and protracted negotiations among parties with divergent interests. The CPUC has recognized that a settlement of contested issues among parties with divergent interests is reasonable and in the public interest. In addition, the Settlement Agreement establishes a GHG Target for all Commission-jurisdictional LSEs. These targets are consistent with the CHP targets included in CARB's Scoping Plan, but can also be adjusted to reflect changes by CARB in CHP targets for GHG emissions reductions and if there is a lack of need is asserted by an IOU and determined by the Commission.⁵⁴

⁴⁹ *Id.*, § 10.1.

⁵⁰ D.07-09-040 at p. 67; Resolution E-4246 (issued July 10, 2009) (adopting Market Index Formula).

⁵¹ D.07-09-040 at p. 68 (indicating intent to transition from administrative heat rates to market heat rates).

⁵² *See e.g.*, Term Sheet, § 3.2.1 (capacity pricing for Transition PPAs); § 4.6.2.2 (capacity pricing for Optional As-Available PPA); and § 11.1 (capacity prices for existing Legacy PPAs).

⁵³ Term Sheet, § 5.

⁵⁴ *Id.*, §§ 6.7 (addressing changes to CARB CHP targets); 6.9.3 (lack of need as a justification for not meeting the GHG Targets).

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.

following four *Pro Forma* PPAs that were developed for specific circumstances and a *Pro Forma* Legacy QF PPA Amendment for each IOU:

- Legacy QF PPA Amendment -- These *Pro Forma* Amendments offer QFs under unexpired Legacy QF PPAs as of the Settlement Effective Date (“Legacy QFs”) the option of amending the energy payment terms of their QF PPAs by selecting one of several payment options and executing the Legacy Amendment within 180 days of the Settlement Effective Date.
- Transition PPA – This *Pro Forma* PPA offers an existing CHP facility whose existing QF PPA or extension thereof is scheduled to expire prior to 2015 the option to continue existing deliveries until July 1, 2015.
- CHP RFO PPA – This *Pro Forma* PPA will be issued in the CHP RFOs to procure deliveries from CHP and other eligible generators larger than five (5) MW.
- Optional As-Available CHP PPA – This *Pro Forma* PPA offers gas-fired CHP facilities with nameplates greater than 20 MW, but annual average deliveries less than 131,400 MWh, the option to make as-available deliveries to meet criteria specified in the Settlement Agreement.
- PPA for QFs of 20 MW or Less – This *Pro Forma* PPA offers QFs of 20 MW or less, including small power producers and renewable energy resources, the option to make firm or as-available sales to the IOUs.

a. **Legacy QF PPA Amendments.**

The Legacy PPA Amendments allow a QF under a currently effective PPA, excluding those executed in the Renewable Portfolio Standard (“RPS”) program, to amend the energy price formula by selecting one of the defined energy pricing options within 180 days of the effective date of the Settlement Agreement. Each of the energy price options is generally based on the SRAC energy pricing structure established by the Settlement (“Settlement SRAC”), as described in Section II.J, above. The energy pricing options differ in terms of the negotiated heat rates and the risk assumed by Seller for the recovery of GHG costs:

- **Option A:** Option A is identical to the Settlement SRAC pricing structure described in Section II.J, above.

- **Option B:** Option B employs the same formula for calculating the energy price as used for Option A. However, the negotiated heat rate is higher than Option A until it becomes market-based in 2015 and GHG compliance costs are the responsibility of the Seller.
- **Option C1:** The Seller's selection of Option C1 triggers a 90-day negotiating period, following the Amendment Effective Date, where parties may agree to a tolling agreement pursuant to which Seller will cause the generating facility to be dispatchable, and Buyer will purchase dispatchable electricity. If Option C1 is selected, the Seller must check a fallback option which shall apply in the absence of a Tolling Agreement.
- **Option C2:** In addition to making energy payments to the Seller based on a negotiated heat rate that is 265 Btu/kWh lower than in Option B, in the event of a cap-and-trade GHG control program is established, the Buyer will make payments of \$20 per metric ton ("MT") to Seller based on a fixed emission rate for GHG compliance costs. In exchange, the Seller is solely responsible for all GHG compliance costs.
- **Option C3:** The energy pricing terms of C3 are identical to those of C2, except that GHG costs are based on facility-specific emissions, capped at Base Year emissions, and an allowance price capped at \$12.50/MT. Annual heat rates are identical to those in Option C2.

The availability of the Legacy QF PPA Amendments is subject to the Commission Approval of the Settlement Agreement and FERC approval of the California IOUs' request to waive the PURPA must-take procurement obligation. This *Pro Forma* amendment incorporates the Joint Parties' settlement of the SRAC pricing issues and offers QFs flexibility to manage the risk of GHG compliance cost.

b. Transition PPA.

The Transition PPA is available to CHP facilities currently selling to an IOU under a Legacy PPA or an extension thereof that is due to expire during the Transition Period. A CHP facility may only enter into a Transition PPA with the same IOU that it currently delivers electricity to under a Legacy PPA or an extension thereof. The term of the Transition PPA begins upon the expiration of the CHP facility's existing PPA and may be terminated upon 180 days' notice when a CHP facility has executed a PPA resulting from either a solicitation or

bilateral negotiation. The Seller may provide firm, as-available, or both forms of capacity. The Transition PPA provides firm capacity payment at the rate of \$91.97/kW-yr and as-available capacity payment at \$41.22/kW-yr escalating annually. Energy is priced at the Settlement SRAC.

The Transition PPA requires a delivery schedule, the installation of a CAISO-approved meter within 180 days of contract execution, and agreements to curtail power production upon notification of CAISO or transmission owner instruction.

Although deliveries are generally limited to historic levels under the Legacy PPA, both capacity and energy levels may be modified, provided that any CHP facility modification does not increase the Buyer's GHG costs. Certain CHP facilities with unique operational constraints may negotiate an amendment to the Transition PPA to deliver a standard additional capacity product that meets Commission and /or CAISO requirements for resource adequacy and CAISO protocols.

c. CHP RFO PPA.

The CHP RFO PPA is used to solicit competitive offers from certain CHP generators. Within 90 days of the Settlement Effective Date, each IOU will initiate a CHP RFO and issue this CHP RFO PPA to establish the terms and conditions by which existing, new or expanded CHP facilities located within California may offer to sell firm or as-available capacity to the IOU.⁵⁸ To be eligible to participate in the CHP RFO, the CHP facility must, among other things, be larger than five (5) MW, must meet the definition of "cogeneration" under Cal. Pub. Util. Code §216.6, must satisfy the Emissions Performance Standard established by Cal. Pub. Util. Code §8341, and must satisfy the definition of "cogeneration facility" under 18 CFR §292.205. Utility Prescheduled Facilities are also eligible to bid into the CHP RFO

⁵⁸ The same CHP RFO PPA will be used in subsequent CHP solicitations as well.

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.

SRAC. Energy scheduled on a day-ahead basis and delivered at a rate in excess of 20 MW per hour will be priced at the MRTU Day-Ahead market PNode energy price. Unscheduled energy incremental to scheduled energy will be purchased by the IOU at the MRTU real time PNode price, while the Seller will bear CAISO charges and receive all CAISO revenues for such deliveries. The Seller may designate a delivery term of up to seven (7) years.

e. PPA for QFs of 20 MW or Less.

The PPA for QFs of 20 MW or Less will be available to QFs with firm or as-available capacity of 20 MW or less under the Commission's continuing PURPA program, regardless of whether the QF has submitted an offer in the CHP RFO or seeks alternative contracting options. The PPA for QFs of 20 MW or Less contains standard terms and conditions and incorporates the capacity prices established in D. 07-09-040, and employs the Settlement SRAC price for energy. There are few terms subject to negotiation. New or repowered facilities must post project development security and performance assurance.

8. The Cost Recovery Proposal Is Reasonable And Consistent With California Law.

The Commission has repeatedly determined that where DA and CCA customers benefit from procurement, these customers should pay their share of the procurement costs. For example, the Commission authorized the allocation of new generation resource costs to DA and CCA customers because these customers benefitted from the system reliability provided by the new generation resources.⁶⁰ The Commission also allocated GHG compliance costs and certain locational costs associated with CHP facilities developed under AB 1613 to DA and CCA customers because these customers benefitted from the AB 1613 program.⁶¹

⁶⁰ D.06-07-029 at p. 7.

⁶¹ D.09-12-042 at pp. 21-25, *aff'd*, D.10-04-055 at pp. 11-18.

Here, one of the purposes of the Settlement Agreement is to develop a QF/CHP Program that can facilitate meeting CARB’s CHP goal as specified in its Scoping Plan. The CARB CHP goal is not limited to the IOUs, but applies to all LSEs in California. Section 365.1(c)(1) of the Public Utilities Code, enacted as part of Senate Bill 695 (2009), requires this Commission to “ensure” that ESPs and CCAs “are subject to the same requirements that are applicable to the state’s three largest electrical corporations under any programs or rules adopted by the commission to implement . . . the requirements for the electricity sector adopted by the State Air Resources Board.” Under the Settlement Agreement, the CARB CHP goal is equitably allocated among Commission-jurisdictional LSEs based on their respective percentage of total retail sales.⁶² This allocation is used to establish GHG Targets for all LSEs, including the IOUs, ESPs and CCA.

As part of its decision on this Settlement Agreement, and based upon input from the parties, including ESPs and CCAs, the Commission will decide whether these entities will be required to meet their portion of the GHG Target by procuring CHP resources, which is the approach the Joint Parties prefer.⁶³ However, if the Commission determines that ESPs or CCAs are unable or unwilling to meet their portion of the GHG Targets by contracting with CHP facilities, the IOUs have agreed under the terms of the Settlement Agreement to procure CHP resources on behalf of these entities. In this case, however, ESP and CCA customers will be responsible for the costs of CHP resources procured on their behalf by the IOUs.⁶⁴ This is consistent with the Commission’s recent decisions on cost allocation when ESP and CCA customers benefit from IOU procurement on their behalf.

⁶² Term Sheet, §§ 6.2 – 6.3.

⁶³ *Id.*, § 6.3.2.

⁶⁴ *Id.*, § 13.1.2.2.

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.

concerning the implementation of the Commission's current QF Program. The Settlement Agreement effectively resolves pending disputes by requiring the Joint Parties to either withdraw pending motions and applications, or release certain claims. In addition, the Settlement Agreement precludes the Joint Parties from raising new retroactive SRAC adjustment claims as long as certain conditions are met.⁷² Thus, the Settlement not only resolves past disputes, but it also limits potential future disputes regarding SRAC energy prices.

The Settlement Agreement also resolves future potential disputes at FERC concerning an application by the IOUs for waiver of the PURPA purchase obligation by clearly defining what type of application the IOUs will file, and the type of disputes or filings that can be made by the CHP Representatives.⁷³ But for the Settlement Agreement, the Joint Parties would likely have expended considerable time and resources litigating at FERC the waiver of the PURPA purchase obligation.

10. The Settlement Agreement Provides For Operationally Flexible Resources.

Recognizing the amount of intermittent, renewable resources that will be added in California as a result of the RPS requirements, the Commission has recently encouraged the development of operationally flexible conventional resources to assist with renewables integration.⁷⁴ One of the challenges for CHP facilities is that these facilities are often operated as baseload facilities and/or need to operate consistent with the needs of a thermal host such that these facilities lack significant operational flexibility. Under the Settlement Agreement, the IOUs can contract with a limited group of existing CHP facilities that convert from a QF facility

⁷² *Id.*, § 14.1.1.

⁷³ *Id.*, § 15.1.

⁷⁴ *See e.g.* D.07-12-052 at pp. 106, 111-112, 115.

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.

process, which is similar to how conventional and RPS resources are now procured. The Settlement Agreement also includes *Pro Forma* PPAs, which will allow CHP developers and the IOUs to reduce transaction costs and resources, which they would otherwise be expended in the time-consuming process of negotiating individual PPAs.

Third, the Settlement Agreement will 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 CHP energy resources available to the State's electricity consumers.

Fourth, the Settlement Agreement creates a framework for achieving CARB's current CHP goals for the reduction of GHG emissions. GHG emissions pose a serious threat to the California economy, environment and the health and welfare of California's citizens. By providing a framework for the implementation of one aspect of the CARB Scoping Plan, the Settlement Agreement will facilitate efforts for California to meet its ambitious AB 32 goals. The Settlement Agreement encourages the retirement of existing, inefficient CHP facilities or repowering existing CHP facilities to make them more clean and efficient, and the development of new, clean and efficient CHP.

Fifth, the Settlement Agreement adopts a methodology for determining SRAC energy prices that is consistent with Commission decisions. The Settlement Agreement also provides for CHP PPA energy prices that are determined as a part of a competitive process, so that the prices accurately reflect a market price. Customers will benefit from clearly established SRAC prices, or prices determined through a competitive process. In addition, the capacity prices adopted in the Settlement Agreement have already been approved by the Commission.

Sixth, the Settlement Agreement creates a transparent procurement process. The Commission, interested parties and the public all benefit from a transparent procurement process with appropriate protections for confidential IOU information.

Seventh, the Settlement Agreement establishes clear rules for pricing and treatment of existing QF PPAs. For example, under the Settlement, QFs with existing PPAs are encouraged to provide forecasting information to the IOUs so that the IOUs can more accurately forecast QF generation. QFs also have greater certainty as the SRAC formula is clearly established rather than being subject to continued and ongoing disputes.

Finally, the Settlement Agreement provides for the equitable allocation of costs associated with the QF/CHP program to all Commission-jurisdictional LSEs.

IV. THE JOINT PARTIES HAVE COMPLIED WITH THE REQUIREMENTS OF RULE 12.1(B)

Commission Rule 12.1(b) requires parties to provide a notice of a settlement conference at least seven (7) days before a settlement is signed. On September 24, 2010, the Joint Parties notified all of the parties on the service list in these proceedings of a settlement conference and subsequently convened the settlement conference on October 7, 2010 to describe and discuss the terms of the proposed Settlement Agreement. Representatives of the Joint Parties participated in the settlement conference. After the settlement conference was concluded, the Settlement Agreement was finalized and executed on October 8, 2010.

V. HEARINGS ARE NOT REQUIRED

The Joint Parties respectfully request that the Commission approve the Settlement Agreement without evidentiary hearings as there are no disputed issues of material fact related to the Settlement Agreement that require hearings. In addition, hearings would prevent the expeditious approval of the Settlement Agreement. Should evidentiary hearings be deemed

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
Comments on Proposed Decision (Rule 14.3(a).)	20 days after Proposed Decision	December 6, 2010
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

VII. CONCLUSION

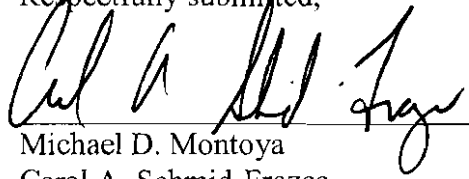
As demonstrated above, the Settlement Agreement is reasonable in light of the whole record, consistent with law, and in the public interest. Thus, the Joint Parties respectfully request that the Commission: (1) approve the Settlement Agreement without modification; (2) approve the *Pro Forma* PPAs attached to the Settlement Agreement without modification; and (3) determine that the decision approving the Settlement Agreement supersedes certain existing Commission decisions identified in Sections 16.2.4, 16.2.5 and 16.2.6 of the Settlement Agreement.

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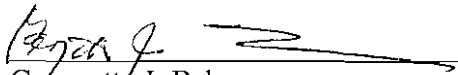
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Respectfully submitted,



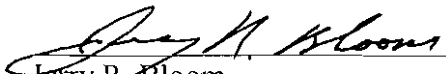
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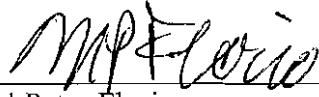
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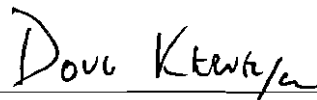
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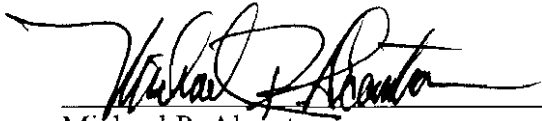
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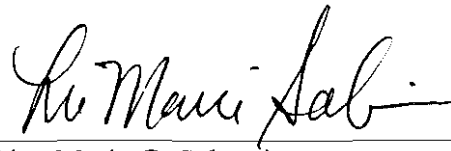
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October 8, 2010

ATTACHMENT A

SETTLEMENT AGREEMENT

**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)
Order Instituting Rulemaking to Integrate Procurement Policies and Consider Long-Term Procurement Plans	Rulemaking 06-02-013 (Filed February 16, 2006)
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)
Order Instituting Rulemaking into Implementation of Public Utilities Code Section 390	Rulemaking 99-11-022 (Filed November 18, 1999)

CHP PROGRAM SETTLEMENT AGREEMENT

The parties to this CHP Program Settlement Agreement¹ are Pacific Gas and Electric Company (“PG&E”), a California corporation, Southern California Edison Company (“SCE”), a California corporation, and San Diego Gas & Electric Company (“SDG&E”), a California corporation (hereinafter collectively referred to as “Investor Owned Utilities” or “IOUs”), The Utility Reform Network (“TURN”) and the Division of Ratepayer Advocates (“DRA”) (hereinafter collectively referred to as “Consumer Interest Groups”), and California Cogeneration Council and all of its members (“CCC”),

¹ The term Settlement Agreement as used herein includes the CHP Program Settlement Term Sheet and Exhibits 1 through 11 listed below.

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

Applications for Rehearing, the Commission issued D.08-07-048, modifying D.07-09-040. In response to D.08-07-048, SCE and TURN filed a Petition for Writ of Review with the California Court of Appeals.

D.08-07-048 allowed the IOUs to seek retroactive application of the energy and as-available capacity pricing for QFs adopted in D.07-09-040. On October 3, 2008, the QF Parties filed a Petition for Modification requesting that the Commission modify D.08-07-048 to eliminate the opportunity for the IOUs to seek retroactive application of the energy and as-available capacity pricing adopted in D.07-09-040 as modified by D.08-07-048. D.08-07-048 established a deadline of November 4, 2008 for the IOUs to file applications for retroactive application of the SRAC energy and as-available capacity pricing.

On November 4, 2008, SCE filed its SRAC Update Application (A.08-11-001) which, pursuant to requests of the QF Parties, was ultimately held in abeyance until after issuance of a decision on the QF Parties' October 3 Petition for Modification of D.08-07-048. On that same date, November 4, 2008, PG&E and SDG&E filed notices of reservations of rights to later file claims to recover amounts exceeding the SRAC energy and as-available capacity pricing adopted on September 20, 2007, but indicating that they would not request recovery of any such amounts paid prior to September 20, 2007.

In December 2008, pursuant to Assembly Bill ("AB") 32, the California Air Resources Board ("CARB") adopted the Climate Change Scoping Plan. In part, that plan embraced a statewide target to reduce 6.7 million metric tons ("MMT") of Greenhouse Gas ("GHG") from the incremental development of Combined Heat and Power ("CHP") facilities.

On January 26, 2009, Administrative Law Judge ("ALJ") DeBerry issued a ruling suggesting proposed principles as a way of resolving the dispute over the reasonableness of PG&E's and SCE's payments to QFs during the period December 2000 through March 2001 ("Proposed Principles"). This dispute was remanded to the Commission by the

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>Mark 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 <u>Matt Burkhardt</u> Title <u>VP-Elect & Fuel Procurement</u> Date <u>10/8/10</u></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>
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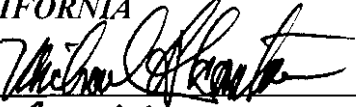
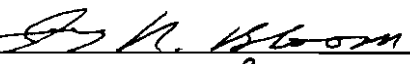

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<p>SOUTHERN CALIFORNIA EDISON COMPANY A California Corporation</p> <p>By _____ Title _____ Date _____</p>	<p>THE UTILITY REFORM NETWORK</p> <p>By <u>MP Florio</u> Title Senior Attorney Date October 8, 2010</p>
<p>INDEPENDENT ENERGY PRODUCERS ASSOCIATION</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>Joseph [Signature]</i></u> Title <u>Acting Director - Division of Ratepayer Advocates</u> Date <u>10/8/10</u>

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<p>COGENERATION ASSOCIATION OF CALIFORNIA</p> <p>By <u></u></p> <p>Title <u>COOUNSEL</u></p> <p>Date <u>October 7, 2010</u></p>	<p>CALIFORNIA COGENERATION COUNCIL</p> <p>By <u></u></p> <p>Title <u>COUNSEL</u></p> <p>Date <u>October 7, 2010</u></p>
	<p>ENERGY PRODUCERS AND USERS COALITION</p> <p>By <u></u></p> <p>Title <u>COOUNSEL</u></p> <p>Date <u>October 7, 2010</u></p>

CHP Program Settlement Agreement Term Sheet

October 8, 2010

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CHP Program Settlement Agreement: Term Sheet

1 Goals and Objectives

1.1 Settlement Goals and Objectives

- 1.1.1 Develop a State combined heat and power (CHP) program (CHP Program).
- 1.1.2 Create a smooth transition from the existing QF CHP PURPA Program to a State-administered CHP Program.
- 1.1.3 Settle all CHP/QF litigation referenced in Section 14.

1.2 State CHP Program

1.2.1 Policy Objectives

- 1.2.1.1 Section 372(a) of the California Public Utilities Code 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.”
- 1.2.1.2 The Energy Action Plan II 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.”
- 1.2.1.3 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 consumers.
- 1.2.1.4 These policies and purposes will be achieved by a State CHP Program that procures CHP as set forth in this Settlement, retains existing efficient CHP, supports the change in operations of inefficient CHP to provide greater benefits to the State, and replaces CHP that will no longer be under contract with the IOUs with new, efficient CHP.
- 1.2.1.5 In addition, this State CHP Program will secure additional Greenhouse Gas (GHG) emissions reduction benefits, consistent with the reduction targets of Assembly Bill (AB) 32, by adding new, efficient CHP.

1.2.2 CHP Program Objectives

- 1.2.2.1 Greater regulatory and market certainty for CHP Facilities;
- 1.2.2.2 Retains existing CHP GHG emissions reduction benefits;
- 1.2.2.3 Encourages the upgrade of the inefficient CHP Facilities in the IOUs' electric portfolios into efficient CHP through repowering or change of operations;
- 1.2.2.4 Provides an orderly exit strategy for CHP Facilities that cannot participate, or are unsuccessful, in the new CHP Program;
- 1.2.2.5 Encourages the development of new, clean and efficient CHP;
- 1.2.2.6 Recognizes the distinct products provided by CHP in order to procure cost-effective and efficient CHP power;
- 1.2.2.7 To the extent available, sustains and enhances reductions in GHG emissions from existing facilities and incrementally adds new CHP with the goal of reducing GHG emissions consistent with AB 32;
- 1.2.2.8 Achieves other benefits for California and electricity consumers in the IOUs' Service Territories;
- 1.2.2.9 Establishes a platform for a State CHP Program with identified features through 2020, and sets a framework for a sustained State CHP Program beyond 2020; and
- 1.2.2.10 Provides Power Purchase Agreement (PPA) options for CHP Facilities.

1.2.3 Facility Owner Goals and Objectives

- 1.2.3.1 On-site reliability;
- 1.2.3.2 Cost control;
- 1.2.3.3 Improvement in business and regulatory certainty;
- 1.2.3.4 Fuel efficiency through the use of a single fuel to produce two energy products, specifically thermal and electrical energy;
- 1.2.3.5 Compliance with GHG regulations; and
- 1.2.3.6 Maintaining CHP Program certainty.

1.2.4 Societal Goals and Objectives

- 1.2.4.1 Fuel efficiency through the use of a single fuel to produce two energy products, specifically thermal and electrical energy;
- 1.2.4.2 Reduction in GHG emissions and criteria pollutant emissions from avoided combustion of fossil fuel;

- 1.2.4.3 Grid reliability and/or local area reliability, including self-service of power supply for facilities' loads in resource-constrained areas;
- 1.2.4.4 Reduction in transmission and distribution energy losses;
- 1.2.4.5 Securing CHP generation resources as part of a diversified portfolio of resources for California generation supply; and
- 1.2.4.6 Support for California's manufacturing, industrial and commercial base without cross subsidization by electric customers.

1.2.5 Bundled IOU Customer Goals and Objectives

- 1.2.5.1 Securing cost-effective GHG reductions;
- 1.2.5.2 Providing system, grid, and local area reliability;
- 1.2.5.3 Reducing transmission and distribution losses and investment;
- 1.2.5.4 Moving to viable, market-based compensation for QFs with Legacy PPAs and CHP resources to sustain California CHP operations at fair prices; and
- 1.2.5.5 Complementing other existing State policy programs that reduce GHG emissions.

1.2.6 GHG Emissions Reduction Goals and Objectives

- 1.2.6.1 Maintain existing GHG benefits in the IOUs' portfolios attributable to CHP; and
- 1.2.6.2 Achieve additional GHG emissions reductions beyond those benefits already provided by the existing CHP fleet towards the California Air Resources Board (CARB) Scoping Plan statewide target goal of 6.7 million metric tons (MMT) from efficient CHP. In the Settlement this is referred to as the CARB Combined Heat and Power Recommended Reduction Measure (CARB CHP RRM).¹

2 Settlement Periods

2.1 Transition Period

- 2.1.1 The Transition Period is a period in which a CHP Facility will either obtain a new PPA as per Section 4, sell into the wholesale market, shut down, or cease to export to the grid.

¹ As referenced on pages 43-44 of the "Approved Scoping Plan" adopted by the CARB at its December 11, 2008 Board meeting. http://www.arb.ca.gov/cc/scopingplan/document/adopted_scoping_plan.pdf

- 2.1.2 The Transition Period will begin on the Settlement Effective Date and shall not extend beyond July 1, 2015.
- 2.2 Initial Program Period and Targets
 - 2.2.1 The Initial Program Period shall commence on the Settlement Effective Date, and shall conclude 48 months thereafter.
 - 2.2.2 Each IOU shall enter into new PPAs with CHP Facilities and Utility Prescheduled Facilities as further described in Section 5 as follows:
 - 2.2.2.1 SCE: 1,402 MW
 - 2.2.2.2 PG&E: 1,387 MW
 - 2.2.2.3 SDG&E: 160 MW.
- 2.3 Second Program Period and Targets
 - 2.3.1 The Second Program Period shall commence at the end of the Initial Program Period and end December 31, 2020.
 - 2.3.2 For CHP procurement in the Second Program Period, the IOUs will procure the following:
 - 2.3.2.1 Any portion of the IOUs' MW Targets that was not attained in the Initial Program Period.
 - 2.3.2.2 SDG&E shall procure an additional 51 MW.
 - 2.3.2.3 Additional CHP capacity to meet the IOUs' GHG Emissions Reduction Targets as established by the CPUC in the Long Term Procurement Planning (LTPP) proceeding, taking into account the progress toward the MW Targets in the Initial Program Period.

3 Transition PPA Matters

- 3.1 Eligibility for a Transition PPA
 - 3.1.1 A CHP Facility currently selling to an IOU under a Legacy PPA or an extension thereof that is expiring during the Transition Period, may sign a Transition PPA with the same IOU-Buyer.
 - 3.1.2 The Transition PPA begins upon the expiration of the Legacy PPA or extensions of a Legacy PPA and ends at the election of the Seller but no later than the last day of the Transition Period.
 - 3.1.3 The capacity and energy that the CHP Facility may sell to the IOU under the Transition PPA are limited to an amount consistent with the QF's historical deliveries under its Legacy PPA, but energy delivery may be lower upon the election of the Seller.

3.1.4 The Transition PPA is unavailable to CHP Facilities whose owners elect under the CHP Program to sell to the IOUs outside of the competitive solicitation process, including CHP Facilities selling under a bilateral PPA, the Optional As-Available PPA, and CHP Facilities eligible to sell to the IOUs pursuant to the AB 1613 Feed-In Tariff. During the Settlement Term, QFs who elect to sign a Transition PPA waive their rights to sign a CHP PPA that is not obtained through competitive procurement, bilateral negotiations or the under 20 MW nameplate PURPA must-take obligation.

3.2 Pricing of Transition PPAs

3.2.1 Capacity prices shall be paid as established in Decision 07-09-040.

3.2.2 Energy pricing will be Short Run Avoided Cost (SRAC) as defined in Section 10 below.

3.3 Form of Transition PPA

3.3.1 The Transition PPA is the QF Standard Offer Contract (SOC) modified for the Transition Period. The Standard Form Transition PPA is attached hereto as Exhibit 4.

3.4 Modifications

3.4.1 Modifications of the SOC for the Transition PPA are described in part as follows: (The terms and conditions of the attached Transition PPA govern)

3.4.1.1 Double penalties under the Transition PPA and CAISO Tariff for failure to deliver capacity for Transition PPA and the CHP RFO Pro Forma PPA.

Under both the applicable CAISO Tariff and the PPAs there are penalties for failure to deliver capacity or scheduled energy. Parties agree that only a single, and not double, penalty shall apply to such deliveries and schedules.

Accordingly, the CAISO Tariff penalties pursuant to the Standard Capacity Product shall be treated as follows:

If Buyer is the Scheduling Coordinator, and if the Generating Facility is subject to the terms of the Availability Standards, Non-Availability Charges, and Availability Incentive Payments as contemplated under Section 40.9 of the CAISO Tariff, then any Availability Incentive Payments will be for the benefit of Buyer and for Buyer's account and any Non-Availability Charges will be the responsibility of Buyer and for Buyer's account.

If Buyer is not the Scheduling Coordinator, and if the Generating Facility is subject to the terms of the Availability Standards, Non-Availability Charges, and Availability Incentive Payments as contemplated under Section 40.9 of the CAISO Tariff, then any Availability Incentive Payments will be for the benefit of Seller and for Seller's account and any Non-Availability Charges will be the responsibility of Seller and for Seller's account.

3.4.1.2 Sale of Additional Dispatchable Capacity beyond the Transition PPA Capacity Product

This option for Additional Dispatchable Capacity is viewed as being limited to a few CHP facilities, each with unique operational constraints. A specific amendment to the Transition PPA is required to accommodate Additional Dispatchable Capacity.

The Transition PPA shall provide that a Seller may elect to deliver a standard capacity product (including associated energy and RA with such capacity) at the Transition PPA firm capacity and energy prices or as-available capacity and energy prices. In addition to these standard products, a Seller may elect to sell to Buyer under a Transition PPA Additional Dispatchable Capacity above the standard contract capacity set forth in the Transition PPA (Additional Dispatchable Capacity). Buyer must negotiate in good faith for 120 days to amend the Transition PPA to incorporate a competitive market price for the Additional Dispatchable Capacity. If negotiations are unsuccessful, Buyer and Seller will mediate the terms of the amendment using the mediation procedures set forth in Section 10.02 of the Transition PPA. Within ninety (90) days after the Transition PPA is executed by Buyer and Seller, Seller shall designate the initial Additional Dispatchable Capacity offered to Buyer for the term of the PPA. In addition, such Additional Dispatchable Capacity will be offered with an associated fixed heat rate, or fixed heat rate curve, established by the Seller. The fixed heat rate or fixed heat rate curve will be used as the applicable heat rate in the energy price formula calculated pursuant to Section 10.2.1.1. Additional Dispatchable Capacity must meet CPUC/CAISO requirements for RA and such capacity must be offered and provided in a manner consistent with CAISO Tariff and Protocols. Parties will work in good faith to get clarification from CAISO to implement this section according to the CAISO Tariff and Protocols on a case-by-case basis in advance of any deliveries of electric power pursuant to this provision.

In order to be eligible to provide Additional Dispatchable Capacity pursuant to this section, the Seller must have twenty-five (25) MWs or more capacity available as Additional Dispatchable Capacity; provided, however, that the Seller must schedule such capacity in quantities of at least 10 MW for scheduled delivery.

After the initial designation of Additional Dispatchable Capacity a Seller providing such capacity to Buyer on a firm basis shall offer such capacity no later than thirty (30) days before the annual Resource Adequacy year-ahead showing each year during the term of the Transition PPA. Such Additional Dispatchable Capacity will include a fixed heat rate, or fixed heat rate curve, established by the Seller.

If the Buyer elects not to accept Seller's offer of Additional Dispatchable Capacity for the term of the Transition PPA, then the Buyer, as the Scheduling Coordinator, will facilitate an alternative sale and delivery of the Dispatchable Capacity to the CAISO market, as long as such capacity meets the CAISO determined requirements for compliance with the CAISO Tariff and Protocols. Such alternative sale and delivery shall be consistent with the applicable CAISO Tariff and Protocols for such sales. The Seller shall have financial responsibility for any applicable CAISO charges or penalties for deviations in the delivery of the Additional Dispatchable Capacity, so long as such charges

or deviations are due to actions of the Seller. Seller shall receive CAISO revenues and charges associated with the delivery of any Additional Dispatchable Capacity into the CAISO markets.

When the IOU is not the Scheduling Coordinator and elects not to accept Seller's offer of Additional Dispatchable Capacity for the term of the Transition PPA, the IOU will facilitate the scheduling and delivery of the Transition PPA Power Product in cooperation with the Seller's Scheduling Coordinator. Seller may undertake any necessary actions with the CAISO or any other jurisdictional entity to facilitate a delivery or sale of Additional Dispatchable Capacity pursuant to this Section 3.4.1.2.

Any resulting amendment to the Transitional PPA must contain terms that allow proper operation consistent with CAISO requirements and appropriate settlement terms consistent with the risk sharing and optional product purchase described above.

- 3.4.2 Section 3.07: The amount of capacity and energy may be modified pursuant to Section 3.07 in the Transition PPA, provided that any CHP Facility modification under Section 3.07 shall not increase the GHG costs of the IOU as a result of a change in the CHP Facility pursuant to Section 3.07. The Seller shall render the Buyer indifferent to GHG cost increases resulting from Section 3.07.
- 3.4.3 CHP Facilities Operating under Transitional SOIs
- 3.4.4 QFs that previously delivered firm capacity under a Legacy PPA or other CHP PPA, and petitioned the CPUC for this firm contract option before January 1, 2010, can elect to sign a firm capacity Transition PPA and shall be paid under such PPA as if deliveries commenced on January 1, 2010. Eligible petitioners under this section are: (1) Mid-Set Cogeneration Company, QF ID # 25C123E02; (2) Coalinga Cogeneration Company, QF ID #25c124E01; (3) Sargent Canyon Cogeneration Company, QF ID #18C052E01; (4) Salinas River Cogeneration Company, QF ID #18C053E01; (5) Berry Petroleum Company Taft/Kern, QF ID #25C151E01; (6) Graphic Packing Int'l (Blue Grass) Santa Clara, QF ID #08C023E01; (7) Berry Petroleum Company Taft/Kern, QF ID# 25C099E01; (8) Berry Petroleum, QF ID #2224 – Newhall II; and, (9) US Borax, QF ID #2019 – U.S. Borax and Chemical Corp.
- 3.4.5 Curtailment
 - 3.4.5.1 Seller shall promptly curtail the production of the Power Product (as defined in the PPAs attached to this Settlement) upon receipt of a notice or instruction from the CAISO, which may be communicated by Buyer if Buyer is the Scheduling Coordinator. Such notice or instruction shall only be provided when the CAISO orders curtailment and the Scheduling Coordinator implements such curtailment in compliance with the CAISO Tariff or applicable orders to avoid or address a declared System Emergency.
 - 3.4.5.2 Seller shall promptly curtail the production of the Power Product upon receipt of a notice or instruction from the Transmission Provider, which may be communicated by Buyer if Buyer is the Scheduling Coordinator. Such notice

or instruction shall only be provided when curtailment of the Power Product is required to comply with:

- 3.4.5.2.1 A CAISO curtailment declared pursuant to Section 3.15 (a) or Transmission Provider declared Emergency Condition, subject to the interconnection agreement between the Seller and the Transmission Provider; or
- 3.4.5.2.2 Transmission Provider's maintenance requirements, subject to the interconnection agreement between the Seller and the Transmission Provider.
- 3.4.5.3 Notwithstanding the above, except as may be required in order to respond to any Emergency Condition or System Emergency, Buyer shall, consistent with FERC Order 888 and the interconnection agreement between the Seller and the Transmission Provider and with the applicable provisions of the CAISO Tariff:
 - 3.4.5.3.1 Use reasonable good faith efforts to coordinate Transmission Provider's curtailment needs with Seller to the extent it can influence such needs; or
 - 3.4.5.3.2 Request the Transmission Provider and CAISO limit the curtailment duration.
- 3.4.5.4 If Seller has entered into a Participating Generator Agreement (PGA) or Qualifying Facility Participating Generator Agreement (QF PGA) with the CAISO, or an interconnection agreement, the terms of the applicable PGA or QF PGA and the applicable interconnection agreement with respect to CAISO or Transmission Provider curtailments, shall govern the rights and obligations of Buyer and Seller to the extent any provision of this Section 3.4.5 is inconsistent with such applicable PGA or QF PGA, and interconnection agreement.
- 3.4.5.5 In the event Seller interconnects with an individual or entity other than the CAISO, the Seller shall adhere to any reliability curtailment order by such individual or entity pursuant to the applicable tariff provisions of such individual or entity.

4 CHP Procurement Processes

4.1 Overview

- 4.1.1 This section outlines various procurement methods encompassed in this CHP Program to meet the MW Targets and GHG Emissions Reduction Targets.

4.2 CHP RFOs

- 4.2.1 Each IOU shall conduct RFOs exclusively for CHP resources (CHP RFOs) as a means of achieving its MW Target and GHG Emissions Reduction Targets, consistent with the terms of this Settlement.

4.2.2 Eligibility

- 4.2.2.1 Any CHP Facility with a nameplate larger than 5 MW may bid into the CHP RFO, including CHP Facilities seeking firm and as-available capacity PPAs, provided that the CHP Facility meets the definition of cogeneration under California Public Utilities Code §216.6 and the Emissions Performance Standard established by Public Utilities Code §8341 (Senate Bill 1368). A CHP Facility must meet the federal definition of a qualifying cogeneration facility under 18 CFR §292.205 implementing PURPA.
- 4.2.2.2 CHP Facilities converting to Utility Prescheduled Facilities. A CHP Facility that met the PURPA efficiency requirements (18 C.F.R. §292.205) as of September 2007 and converts to a Utility Prescheduled Facility is also eligible to participate in the CHP RFOs. After the Existing CHP Facility converts to a Utility Prescheduled Facility, it may be either a Qualifying Facility or an Exempt Wholesale Generator if the facility otherwise meets the criteria in this Section 4.2.2.2.

4.2.3 Term. The maximum term for PPAs resulting from the CHP RFO shall be:

- 4.2.3.1 Up to seven (7) years for Existing CHP Facilities, both firm capacity and as-available capacity or Expanded CHP Facilities, if they do not provide credit and collateral as set forth in Section 4.2.8. An Existing CHP Facility is one that was operational before the Settlement Effective Date.
- 4.2.3.2 Up to twelve (12) years for New CHP Facilities, Repowered CHP Facilities, or Expanded CHP Facilities if they provide credit and collateral as set forth in Section 4.2.8. A New CHP Facility is one that becomes operational after the Settlement Effective Date and a Repowered CHP Facility is one that repowers after the Settlement Effective Date.

4.2.4 Pricing

- 4.2.4.1 Defined according to the executed PPA.
- 4.2.4.2 Buyers and Sellers will not assert that the prices in the PPAs executed as a result of the CHP RFOs or bilateral negotiations are inconsistent with the Buyer's avoided costs as defined by PURPA.

4.2.5 CHP RFO Scope, Evaluation and Selection Criteria

- 4.2.5.1 A CHP Facility may also elect to participate in an all-source RFO or a renewable energy solicitation provided it meets the eligibility requirements for the solicitation.
- 4.2.5.2 The CHP RFO will recognize that CHP has unique attributes.
- 4.2.5.3 CHP offers shall be compared only to other CHP offers within the CHP RFO process.

- 4.2.5.4 The IOU shall conduct an evaluation process, including an analysis of market value, in its CHP RFO process.
- 4.2.5.5 When evaluating an offer from an Existing CHP Facility, the IOU should evaluate the energy that is being delivered to the grid from that CHP Facility.
- 4.2.5.6 CHP offers shall be evaluated on all of the CHP Program goal characteristics, including GHG emissions.
- 4.2.5.7 Each IOU shall use an Independent Evaluator (IE) similar to that used in other IOU RFO processes. It is preferable that the IE have CHP expertise and financial modeling experience.
- 4.2.5.8 The PRG advises and the IE shall review the entire CHP RFO process.
- 4.2.6 The CHP RFO Pro-Forma PPA is attached as Exhibit 5. The CHP Pro-Forma PPA may be modified on a bilateral basis during negotiations for a particular CHP PPA or Utility Prescheduled Facility PPA. As set forth in Section 4.2.12 below, the IOUs may also offer other contract options in the CHP RFO.
- 4.2.7 Modifications of the SOC for the CHP RFO Pro-Forma PPA are described in part as follows: (The terms and conditions of the attached CHP RFO Pro-Forma PPA govern)
 - 4.2.7.1 Remove all standard-offer pricing terms.
 - 4.2.7.2 GHG Compliance Cost: Seller must offer both options below:
 - 4.2.7.2.1 Seller assumes GHG Compliance Cost, and
 - 4.2.7.2.2 Seller elects to pass-through GHG Compliance Costs to Buyer.
 - 4.2.7.3 Seller and Buyer may elect a hybrid approach for GHG cost recovery. For example, Buyer covers GHG costs up to a certain Heat Rate and Seller assumes additional costs above that Heat Rate. This hybrid approach may create an efficiency incentive for the Seller to provide additional reductions of GHG emissions.
- 4.2.8 Credit and Collateral provisions for New, Repowered, or Expanded CHP Facilities
 - 4.2.8.1 Credit and collateral provisions shall apply only to PPAs for New CHP Facilities, Repowered or Expanded Facilities CHP Facilities
 - 4.2.8.1.1 An IOU may request additional offers for different credit and collateral terms from New CHP Facilities, Repowered CHP Facilities or Expanded Facilities in RFO Bid solicitations; and such options will be considered according to the terms and conditions of such options.
 - 4.2.8.2 Credit and collateral provisions for an Existing CHP Facility will not be required in any CHP PPA but may be requested by an IOU in CHP RFOs or bilateral negotiations and will be evaluated by IOUs and Sellers accordingly.

- 4.2.8.3 Performance Assurance for New or Repowered CHP Facilities shall be established equal to the value from one of the following options, and the selection of the option is at the election of the Seller:
- 4.2.8.3.1 Twelve (12) months of capacity payments
 - 4.2.8.3.2 Twelve (12) months of revenues
 - 4.2.8.3.3 Five percent (5%) of anticipated revenues projected over the term of the PPA (*e.g.*, 5% of revenues over the course of a 12 year PPA would be approximately seven (7) months of anticipated revenues);
 - 4.2.8.3.4 Negotiated performance assurance value and conditions for providing security for such Performance Assurance.

4.2.8.4 Cross-default Provision

- 4.2.8.4.1 The Seller may provide a Letter of Credit to the Buyer. In the event of cross default event implicating the Letter of Credit, the Seller must provide a substitute Letter of Credit within five (5) to ten (10) Business Days.
- 4.2.8.4.2 Any cross-default provision in a CHP PPA shall apply specifically to the Seller and the Seller's guarantor under the CHP Pro-Forma PPA (and not a parent of the Seller, a subsidiary of the Seller or an affiliate of the Seller, unless they are the guarantor).
- 4.2.8.4.3 In addition to the default provisions contained in the attached applicable PPAs, the following two scenarios of potential default conditions are acknowledged by the Parties to be addressed by PPA credit and collateral terms and conditions:
 - 4.2.8.4.3.1 Scenario 1: If Seller breaches a CHP PPA with the Buyer, and Buyer has another PPA with Seller, then cross default could be triggered; provided that another PPA means a PPA between the specific Seller, as signatory and as referenced in Section 4.2.8.4.2, and the specific IOU Buyer, as signatory to such PPA. Another PPA is a contract between the Buyer and Seller for electric power, and not a contract for other goods or services.
 - Scenario 2: If the guarantor becomes uncreditworthy for the guarantee, or its credit rating is downgraded to below investment grade by either Moody's or Standard & Poor's or Fitch then default could be triggered; provided that the Seller may prevent such trigger by providing another form of credit within ten (10) Business Days.

4.2.9 Efficiency Performance Obligations and Compliance

The Efficiency Performance Obligation shall apply as incorporated into the final CHP RFO PPA, and the 60% efficiency in the Optional As-Available PPA.

Failure to meet the Efficiency requirement in the CHP PPA throughout the Term shall be, at the Buyer's election, an Event of Default under the PPA. The failure to meet the annual Efficiency requirement may be determined by the Seller's report to CARB (CARB GHG Emissions Reduction Report), the Seller's report to the IOUs pursuant to the CHP QF Compliance Monitoring Program, or other information available to the IOU, such as the loss of a thermal host. If the Seller is out of compliance with the Efficiency Performance Obligation, Buyer shall issue to Seller a written notice of an Efficiency Performance Deficiency. Within three (3) months of its receipt of the notice, Seller will provide Buyer with a plan to cure the Efficiency Performance Deficiency. Buyer shall accept or reject the plan within 30 days of receipt. From the date of written notice from the Buyer of acceptance of the Seller's cure plan, Seller shall have six (6) months to execute the plan and cure the Efficiency Performance Deficiency. If Buyer rejects the cure plan, then Buyer and Seller shall confer to resolve the issues. A Seller meeting these cure provisions shall not incur a default under the PPA.

If a Seller fails to provide an adequate showing that it cured the Efficiency Performance Deficiency within the six (6) month cure period, and does not secure a waiver from the IOU, that Seller is subject to the otherwise applicable default provisions in the PPA.

Seller may have up to two cure periods during the term of the applicable PPA for no more than two Efficiency Performance Deficiencies. A second cure period is available to Seller only if Seller is able to cure the first Efficiency Performance Deficiency. A third Efficiency Performance Deficiency is, at the election of Buyer, an Event of Default pursuant to section 6.2 of the applicable PPA and there is no applicable cure period.

4.2.10 Curtailment: Reliability

4.2.10.1 Seller shall promptly curtail the production of the Power Product (as defined in the PPAs attached to this Settlement) upon receipt of a notice or instruction from the CAISO, which may be communicated by Buyer if Buyer is the Scheduling Coordinator. Such notice or instruction shall only be provided when the CAISO orders curtailment and the Scheduling Coordinator implements such curtailment in compliance with CAISO Tariff or applicable orders to avoid or address a declared System Emergency.

4.2.10.2 Seller shall promptly curtail the production of the Power Product upon receipt of a notice or instruction from the Transmission Provider, which may be communicated by Buyer if Buyer is the Scheduling Coordinator. Such notice or instruction shall only be provided when curtailment of the Power Product is required to comply with:

4.2.10.2.1 A CAISO curtailment declared pursuant to Section 3.15 (a) or Transmission Provider declared Emergency Condition, subject to the interconnection agreement between the Seller and the Transmission Provider; or

- 4.2.10.2.2 Transmission Provider's maintenance requirements, subject to the interconnection agreement between the Seller and the Transmission Provider.
 - 4.2.10.3 Notwithstanding the above, except as may be required in order to respond to any Emergency Condition or System Emergency, Buyer shall, consistent with FERC Order 888 and the interconnection agreement between the Seller and the Transmission Provider and with the applicable provisions of the CAISO Tariff:
 - 4.2.10.3.1 Use reasonable good faith efforts to coordinate Transmission Provider's curtailment needs with Seller to the extent it can influence such needs; or
 - 4.2.10.3.2 Request the Transmission Provider and CAISO limit the curtailment duration.
 - 4.2.10.4 If Seller has entered into a PGA or QF PGA with the CAISO, or an interconnection agreement, the terms of the applicable PGA or QF PGA and the applicable interconnection agreement with respect to CAISO or Transmission Provider curtailments, shall govern the rights and obligations of Buyer and Seller to the extent any provision of this Section 4.2.10 is inconsistent with such applicable PGA or QF PGA, and interconnection agreement.
 - 4.2.10.5 In the event Seller interconnects with an individual or entity other than the CAISO, the Seller shall adhere to any reliability curtailment order by such individual or entity pursuant to the applicable tariff provisions of such individual or entity.
- 4.2.11 Curtailment: Economic
- 4.2.11.1 The CHP Pro-Forma RFO PPA will contain an option, specifically, an Economic Curtailment Option (ECO), that may be selected by the CHP RFO participant and the participant may bid zero under this option.
 - 4.2.11.2 The Buyer can only instruct the Seller to curtail production in those hours when the CAISO published Day-Ahead Integrated Forward Market (IFM) results indicate there is a negative EZ-Gen Hub Locational Marginal Price (LMP)² or negative System Marginal Energy Cost (SMEC) as defined and set forth in the CAISO Tariff.
 - 4.2.11.3 The ECO offered by the CHP RFO participant must contain the fixed MWhs shown in the table entitled Curtailment Period Cap below, for each calendar quarter and on-peak and off-peak time period. The differences between the Seller's Day-Ahead Forecast ("i.e., the schedule Seller provides to Buyer by 5:00 PPT on the day before the Trading Day") and the Economic Curtailment Limit (ECL) schedules submitted over the applicable period must be equal to the Curtailment Period Cap shown in the CHP RFO offer.

² NP15, SP15 or ZP26, based on the location of the CHP Facility.

Curtailment Period Cap

Calendar Quarter	On-Peak (MWhs) ³	Off-Peak (MWhs) ⁴	Total (MWhs)
Jan – Mar	TBD by Seller	TBD by Seller	TBD by Seller
Apr – June	TBD by Seller	TBD by Seller	TBD by Seller
July – Sept	TBD by Seller	TBD by Seller	TBD by Seller
Oct – Dec	TBD by Seller	TBD by Seller	TBD by Seller
Total	TBD by Seller	TBD by Seller	TBD by Seller

Once a Curtailment Period Cap is reached for any quarterly period (either on-peak or off-peak), no additional economic curtailment is available to the Buyer in that quarterly on-peak or off-peak period. Any MWhs not called by the Buyer in any period cannot be rolled over to another period.

- 4.2.11.4 Those Sellers electing the ECO will provide two Day-Ahead power delivery schedules to the Buyer: a Seller’s Day-Ahead Forecast in accordance with the existing terms of the CHP Pro-Forma RFO PPA, and an ECL Schedule indicating the amount of MWhs that Seller offers to be curtailed in each hour for the next day.
- 4.2.11.5 By 2 pm or one hour after receiving published IFM results, whichever is later, Buyer may instruct the Seller to curtail deliveries down to the ECL Schedule, if the IFM indicates a negative EZ-Gen Hub LMP or negative SMEC for such hour. Within one hour of the Buyer’s economic curtailment order, Seller shall provide a binding notice of Seller’s intention to either implement the Buyer’s economic curtailment order (curtailment order) or maintain its Seller’s Day-Ahead Forecast for the negative EZ-Gen Hub LMP or negative SMEC hour(s). If the Seller chooses to maintain its Seller’s Day-Ahead Forecast, it will contemporaneously notify the Buyer of its pricing election pursuant to Section 4.2.11.7.
- 4.2.11.6 If Buyer orders an economic curtailment for a schedule hour and Seller curtails to its ECL Schedule, then the energy payment pursuant to the RFO PPA will be made by Buyer to Seller for Seller’s Day-Ahead Forecast.
- 4.2.11.7 If Buyer orders an economic curtailment for a schedule hour and Seller elects not to curtail to its ECL Schedule, then energy payments for that schedule hour will be made pursuant to the Seller’s election as provided under Section 4.2.11.5 for all deliveries above the ECL Schedule at:
- 4.2.11.7.1 IFM Pricing: Seller will pay the Buyer either the negative SMEC or the negative EZ-Gen Hub LMP, provided if both prices are

³ On-Peak TOU period includes PG&E’s Peak and Partial Peak, SCE’s On-Peak and Mid-Peak, and SDG&E’s On-Peak and Semi-Peak.

⁴ Off Peak TOU period includes Off-Peak and Super Off-Peak for all three IOUs.

negative Seller will pay the average of the two negative prices for that scheduled hour, or

- 4.2.11.7.2 Real Time Collar Pricing: Seller will be paid for energy deliveries above the ECL Schedule at the Real Time (RT) SMEC subject to the designated floor of negative \$50.00 per MWh and ceiling value of the PPA energy price (collar values). The collar values would be, incorporated into the RFO PPA and could not be changed over the term of the PPA. If the hour has a negative RT SMEC, the negative SMEC would be paid by the Seller to the Buyer down to the floor value. If the RT SMEC is positive, the Buyer would pay the Seller the RT SMEC for that hour up to the ceiling value.
- 4.2.11.8 If, at the end of a calendar quarter in the table above, Seller has not offered the Curtailment Period Cap, then Seller will pay Buyer the shortfall at \$50 per MWh for the applicable period.
- 4.2.11.9 For those hours where the Buyer has ordered an economic curtailment, the difference between the Seller's Day-Ahead Forecast and the ECL Schedule will count toward the Curtailment Period Cap irrespective of whether or not the Seller chooses to curtail its operation.
- 4.2.11.10 If Seller curtails, any economic curtailment hour will not be included in the penalty assessment for failure to meet Seller's scheduled amounts and all CAISO charges and penalties, if any, for schedule deviations associated with curtailment will be borne by the Buyer.
- 4.2.11.11 For capacity payment calculation purposes, the Seller's Day-Ahead Forecast will be used for any hour affected by the curtailment so as to not impact the capacity payment. This is necessary due to the physical limitations of the CHP Facilities, such as ramp rates, to respond to the curtailment order.

EXAMPLES

For a given hour, assume
Contract energy Price = \$30/MWh
DA EZ-Gen Hub LMP = -\$9
DA SMEC = -\$11
Seller's Day-Ahead Forecast Energy = 100 MWs
Curtailment Period Cap = 1,000 MWs
RT SMEC Collar = + \$30/MWh/- \$50/MWh

Case 1 (4.2.11.6). Assume Seller's ECL Schedule is 90 MWs and Seller agrees to curtail deliveries in response to the order. Seller delivers 90 MWs but is paid for all 100 MWs of the Seller's Day-Ahead Forecast at \$30/MWh. Seller gets credit for 10 MWs toward fulfilling the Curtailment Period Cap.

Case 2 (4.2.11.6). Assume Seller's ECL Schedule is 80 MWs and Seller agrees to curtail deliveries in response to the order. Seller delivers 80 MWs but is paid for all 100 MWs of the Seller's Day-Ahead Forecast at \$30/MWh. Seller gets credit for 20 MWs toward fulfilling the Curtailment Period Cap.

Case 3 (4.2.11.7.1). Seller notifies Buyer that it will deliver the Seller's Day-Ahead Forecast quantity (100 MWs) and accept IFM pricing (Average = - \$10/MWh) for deliveries in excess of the ECL Schedule (90 MWs). Seller is paid the contract price of \$30/MWh for 90 MWs and owes Buyer \$10 per MWh for the 10 MWs of energy that was not curtailed. Seller receives credit for 10 MWs toward fulfilling the Curtailment Period Cap.

Case 4 (4.2.11.7.2). Seller notifies Buyer that it will deliver the Seller's Day-Ahead Forecast quantity (100 MWs) and accept the RT collar pricing for deliveries in excess of the ECL Schedule (90 MWs). Seller will be paid for 90 MWs at the contract price of \$30/MWh.

- a. If the RT SMEC for that hour is \$-20/MWh, Seller will pay Buyer for the 10 MWs at a price of \$20/MWh.
- b. If the RT SMEC for that hour is -\$75/MWh, Seller will pay Buyer for the 10 MWs at a price of \$50/MWh as limited by the price exposure collar.
- c. If the RT SMEC for that hour is \$250/MWh, Seller will be paid for the 10 MWs at a price of \$30/MWh as limited by the price exposure collar.

In each case (4a, 4b and 4c) Seller receives credit for 10 MWs toward fulfilling the Curtailment Period Cap.

4.2.12 PPA Options in CHP RFOs

As part of the bid package for each CHP-Only RFO, each IOU may request offers with specific (1) credit and collateral, (2) voluntary curtailment, and (3) dispatchability terms that differ from the CHP RFO Pro Forma PPA. As part of the bid package, IOUs may also offer the all source RFO in addition to the CHP-Only RFO and may also sign a hybrid contract of the two.

In IOU evaluations of final offers from CHP bidders, the IOUs will give preference to Pro Forma offers with no options, relative to non-Pro Forma offers, to the extent that such Pro Forma offers are competitive with the non-Pro Forma offers.

For example, assume there are 10 RFO bids, 6 Pro Forma bidders and 4 non-Pro Forma bidders. If the 5 of the 6 Pro Forma bidders (those offering the product contemplated by the program) are competitive (based upon the standards in the Settlement and are otherwise commensurate with the product solicited) the IOU would choose those 5 bids and cannot choose the 4 non-Pro Forma bidders in lieu of Pro-Forma bidders; this does not preclude the IOU from selecting the 4 non-Pro Forma bidders. Non-Pro Forma bids cannot replace or substitute for the selection of Pro Forma bids.

4.3 Bilaterally Negotiated PPAs

- 4.3.1 Bilaterally negotiated and executed CHP PPAs or Utility Prescheduled Facilities PPAs are part of the procurement options in this CHP Program.

- 4.3.2 Use of an IE shall be required for any negotiations between an IOU and its affiliate and may be used, at the election of either the Buyer or the Seller, in other negotiations.
- 4.3.3 Pricing, terms, and conditions will be according to the executed and approved PPA.
- 4.4 AB 1613 Feed-In Tariff
 - 4.4.1 Feed-In Tariff for equal to or less than 20 MW (nameplate) CHP Facilities that are New CHP Facilities/Repowered CHP Facilities (Assembly Bill 1613 (codified in California Public Utilities Code §2840 *et seq.*, which establishes the Waste Heat and Carbon Emissions Reductions Act)(R.08-06-024)) are part of the procurement options in this CHP Program.
- 4.5 PURPA Program for QFs 20 MW or Less (QF PPAs)
 - 4.5.1 The CPUC will continue to administer a QF Program under PURPA for QFs 20 MW or less. QFs must continue to meet the QF requirements established by PURPA and any FERC rules as amended from time to time (18C.F.R. Part 292, §292.203 *et seq.*) implementing PURPA.
 - 4.5.2 QFs that are equal to or less than 20 MW nameplate will be provided a QF PPA containing standard terms and conditions for eligible Qualifying Facilities.
 - 4.5.3 Eligible QFs may continue to operate under the PURPA must-take obligation program. Any CHP Facility meeting the CHP RFO eligibility requirements may also submit an offer in the CHP RFO or seek alternative contracting options; however, the IOUs must continue to offer QF PPAs to these QF CHP Facilities.
 - 4.5.4 Pricing
 - 4.5.4.1 Energy prices will be SRAC as set forth in Section 10.
 - 4.5.4.2 Capacity prices will be as specified in D.07-09-040.
 - 4.5.5 The QF PPA for QFs equal to or less than 20 MW is based on the SOC and is attached as Exhibit 6.
- 4.6 As-Available Procurement Alternatives and Optional As-Available PPA
 - 4.6.1 As-Available CHP Facilities are eligible for several procurement alternatives under the CHP Program, including the CHP RFOs, bilaterally negotiated PPAs, the AB 1613 Feed-In Tariff and the PURPA Program for QFs 20 MWs or under. In addition to these alternatives for the procurement from as-available CHP Facilities, there is also an Optional As-Available PPA.
 - 4.6.2 Optional As-Available PPA is subject to the following terms and conditions:
 - 4.6.2.1 Eligibility
 - 4.6.2.1.1 Gas-fired CHP Facilities with nameplates greater than 20 MW, but average annual deliveries less than 131,400 MWh (as specified in D.07-09-040 and D.08-09-024).

- 4.6.2.1.2 The as-available project host(s) must consume, consistent with Public Utilities Code §218(b), 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. For purposes of this section, "CHP Facility" includes all CHP units serving the host's thermal or electric loads consistent with Public Utilities Code §218(b).
- 4.6.2.1.3 For Topping Cycle or Bottoming Cycle with supplemental firing, the as-available CHP Facility must meet sixty percent (60%) efficiency calculated by dividing the total annual useful thermal and electrical output by the total annual fuel use, based on Higher Heating Value. There will be no efficiency requirement for a Bottoming Cycle CHP Facility with no supplemental firing.
- 4.6.2.2 Capacity Pricing: The capacity price shall be set consistent with the as-available capacity price in D.07-09-040, subject to escalation as provided in that decision, and shall be applied up to a maximum of 20 MW of deliveries measured on an Integrated Hour. For purposes of this section, an Integrated Hour is the sum of all measured meter intervals for the applicable hour.
- 4.6.2.3 Energy Pricing: Energy scheduled on a day-ahead basis and delivered up to 20 MW per hour in a given hour based on the lesser of Day-Ahead scheduled energy or metered deliveries will be priced at SRAC.
 - 4.6.2.3.1 Energy scheduled on a Day-Ahead basis and delivered above 20 MW per hour in a given hour will be priced at the MRTU Day-Ahead Market PNode energy price.
 - 4.6.2.3.2 Seller shall schedule all deliveries with the IOU on a Day-Ahead basis in advance of timing required for Buyer to schedule energy into the CAISO Day-Ahead market (8 hours in the CAISO day-ahead market).
 - 4.6.2.3.3 Unscheduled energy incremental to scheduled energy in a given hour shall be priced at the MRTU real time PNode price for such energy, thus Seller shall pay any applicable CAISO Charges and receive all CAISO Revenues attributable to unscheduled deviations between Seller's scheduled and metered deliveries for such incremental energy. Applicable CAISO Charges for deviations shall be the responsibility of the Seller.
 - 4.6.2.3.4 The Performance Tolerance Band under Scheduling and Delivery Deviation (SDD) Energy Adjustment and the SC Trade Tolerance Band shall be set at the greater of (a) three (3) percent of the Seller's Final Energy Forecast divided by the number of Settlement Intervals in such hour or (b) three (3) MWh divided by the number of Settlement Intervals in such hour.
- 4.6.2.4 The term of an Optional As-Available PPA shall be up to seven (7) years at the discretion of the Seller. If the Seller chooses a PPA term of five (5) years or

greater, the Seller will provide on a confidential basis to the IOU sufficient information for the IOU to confirm that the CHP Facilities comply with the Emissions Performance Standard, if such standard is applicable to the CHP as an as-available facility.

- 4.6.2.5 The SOC is the basis for the development of the Optional As-Available PPA, and is attached here as Exhibit 7.
- 4.6.2.6 (Intentionally omitted)
- 4.6.2.7 Seller shall comply with the applicable provisions of the CAISO Tariff as determined by the CAISO.
- 4.6.2.8 Buyer, at Seller's election, shall be Seller's Scheduling Coordinator. At Seller's option, Seller may establish and pay for a Scheduling Coordinator (SC) ID for the CHP Facility.
- 4.6.2.9 GHG emissions reductions associated with New, Repowered, or Expanded CHP under an Optional As-Available PPA shall be the amount of GHG emissions reductions from the entire CHP Facility as, as set forth in Section 7.
- 4.6.2.10 Average MW (AMW) Energy Delivery Cap for the Optional As-Available PPAs
 - 4.6.2.10.1 There is no specific MW capacity target for the Optional As-Available Program.
 - 4.6.2.10.2 There is a cap on energy deliveries from all of the Optional As-Available PPAs measured each year in AMW for each IOU (AMW Cap) until the AMW Cap is reached. The AMW Cap shall be: PG&E: 75 AMW, SCE: 75 AMW, SDG&E: 10 AMW. An Optional As-Available PPA will remain available to eligible CHP Facilities in an IOU Service Territory until the IOU's AMW Cap has been reached. The IOU shall report annually on the determination of reaching the AMW Cap until the cap is reached. The IOU may choose to offer a PPA to a CHP Facility although the IOU has exceeded its AMW Cap, in its sole discretion.
 - 4.6.2.10.3 To determine progress toward an IOU's AMW Cap, AMW will be calculated by dividing MWh of deliveries under an Optional As-Available PPA by the total hours in the year.
- 4.6.2.11 Counting Rules for Optional As-Available PPA Enrollment and MW Targets
 - 4.6.2.11.1 Each gas-fired CHP Facility eligible pursuant to Section 4.6.2.1 (including bottoming-cycle CHP Facilities) with an existing CHP PPA or which had a CHP PPA within twenty-four (24) months before the CHP Facility provides notice of its intention to execute an Optional As Available PPA may upon expiration or termination of its CHP PPA execute an Optional As-Available PPA provided the IOU for the Service Territory where the CHP Facility is located

has not reached its AMW Cap. AMW deliveries from these CHP Facilities may be counted toward the AMW Cap using deliveries as reported in the IOU's most recent public information such as FERC Form 1 or CEC Annual Power Disclosure Report and towards the IOU MW Target. If the CHP Facility re-contracts with an IOU upon expiration or termination of its PPA, the procuring IOU may count the full project capacity toward its CHP MW Target. If there are multiple IOUs procuring power from the same CHP Facility, then the procured contract capacity for each IOU shall be counted respectively;

4.6.2.11.2 An as-available Seller eligible pursuant to Section 4.6.2.1 (including Bottoming Cycle CHP Facilities) that has not had a PPA with an IOU at any time, or whose CHP PPA terminated more than twenty-four (24) months before the CHP Facility provides notice to secure an Optional As-Available PPA, may execute an Optional As-Available PPA provided the IOU in the Service Territory where the CHP Facility is located has not reached its AMW Cap. AMW of deliveries from these CHP Facilities may be counted toward the AMW Cap using, if available, deliveries as reported in publicly available reports such as FERC Electric Quarterly Reports or the most recent FERC Form 1. If such reports are not available, the counting for the AMW Cap for such CHP Facilities shall rely upon either the Seller's forecast of AMW delivery from the CHP Facility, or actual deliveries to the IOU, if available; and thereafter from available public information to establish AMW deliveries, *e.g.*, FERC Form 1 data. AMW deliveries from these CHP Facilities may be counted toward the MW Targets. If there are multiple IOUs procuring power from the same CHP Facility then the AMW deliveries for each IOU shall be counted respectively;

4.6.2.11.2.1 AMW of deliveries from a New CHP Facility or Repowered CHP Facility eligible for an Optional As-Available PPA will count toward an IOU's AMW Cap. The capacity of such a CHP Facility may be counted toward the MW Targets. Capacity for a New CHP Facility or Repowered CHP Facility shall be established using a one-time Capacity Demonstration Test, net of auxiliary or station power.

4.6.2.11.2.2 A CHP Facility currently operating under an evergreen Legacy PPA may not terminate its evergreen Legacy PPA to obtain a new Optional As-Available PPA. Neither the MW nor the AMW of deliveries under these CHP PPAs may be counted toward the MW Targets or the AMW Cap. If, however, the CHP Facility adds new capacity, it may receive an Optional As-Available PPA for any deliveries that are determined to be associated with the new capacity, and the MW of new capacity shall be counted toward the MW Targets.

4.7 IOU-Owned CHP

- 4.7.1 IOU-owned CHP counts towards the IOUs' GHG Emissions Reduction Targets for the Second Program Period, but not for the 3,000 MW Target. The counting from these resources is capped at 10% of the IOUs' GHG Emissions Reduction Target.

4.8 Utility Prescheduled Facilities

4.8.1 Eligibility

- 4.8.1.1 A CHP Facility that met the PURPA efficiency requirements as of September 20, 2007 and converts to a Utility Prescheduled Facility is eligible to participate in a CHP RFO or to obtain a PPA through bilateral negotiations or amend an existing Legacy PPA through bilateral negotiations.
- 4.8.1.2 New PPAs with Utility Prescheduled Facilities (not Legacy PPA Amendments) count towards the MW Targets if the existing QF PPA expires before the end of the Transition Period. For SDG&E, any procurement of a Utility Prescheduled Facility (regardless of the date of expiration of the CHP PPA) counts toward SDG&E's MW Target.
- 4.8.1.3 Amendments to Legacy PPAs to convert to a Utility Prescheduled Facility count towards each IOU's GHG Emissions Reduction Targets.

4.9 New Behind the Meter CHP Facilities

- 4.9.1 New CHP Facilities that are behind the meter including the Self-Generation Incentive Program (SGIP) and New CHP Facilities that do not export to the grid are part of the procurement options in this CHP Program.

4.10 Approval of PPAs

- 4.10.1 IOUs will utilize a Tier 2 Advice Letter for Existing CHP Facilities that execute the CHP RFO Pro Forma PPA without material modification.
- 4.10.2 IOUs will utilize a Tier 3 Advice Letter for all other PPAs (new, repowering or existing PPAs that contain any material modification of the PPAs approved in this Settlement).
- 4.10.3 PPAs of less than five (5) years do not require advance CPUC approval according to existing CPUC policy. Such CHP PPAs should be included in the IOU Quarterly Compliance Reports (QCRs) and CHP Program Semi-Annual Report specified in Section 8.1.1, below.
- 4.10.4 Emissions Performance Standard (EPS) Approval for PPAs
 - 4.10.4.1 For those PPAs equal to or greater than five (5) years in length that are submitted to the CPUC in a Tier 2 or Tier 3 Advice Letter, the CPUC must make a specific finding that the PPA with the Generating Facility is in compliance with the Emissions Performance Standard.

- 4.10.4.2 The Sellers must provide sufficient information, on a confidential basis as necessary, to the IOUs to allow the IOUs to make a sufficient showing of compliance with the EPS for all PPAs with terms five (5) years or greater.
- 4.10.4.3 For those PPAs equal to or greater than five (5) years in length that are not submitted to the CPUC in a Tier 2 or Tier 3 Advice Letter, the Buyer shall use reasonable efforts to obtain a letter from the CPUC Energy Division acknowledging that the Generating Facility is in compliance with the EPS (EPS Compliance Letter). The Buyer will not execute the applicable PPA until the CPUC Energy Division provides the EPS Compliance Letter.

4.11 Seller Reporting Requirements for PPAs

Subject to CPUC confidentiality rules applicable to the information being reported, on an annual basis, Seller will provide a report to the IOU showing the annual used thermal output, total electricity generation, and fuel consumed. Such report shall be provided within five (5) Business Days after the CARB Mandatory GHG Emissions Annual Reports are due to CARB or a successor regulatory agency.

CHP QFs will continue annual reporting to the IOUs pursuant to the CPUC-approved CHP QF Monitoring Program for CHP QFs. If the CHP Facility is not a QF, it will provide the same data to the IOUs and CPUC as is contained in the CHP QF Compliance Monitoring Program report, and on the same schedule.

4.12 Timing of Commencement of Delivery

An IOU may record in the CHP Program Reports as progress towards obtaining its MW Targets and GHG Emissions Reduction Targets the MWs, GHG Credits or GHG Debits associated with the PPA at the time of execution. If the CPUC subsequently disapproves such PPA, or if an executed PPA terminates before beginning deliveries, the IOU shall remove any MW, GHG Credits or GHG Debits from such disapproved or terminated PPA from its CHP Program Reports.

Subject to force majeure conditions, Sellers under PPAs for Existing CHP Facilities will be required to commence deliveries on the earlier of the following two dates: (a) two (2) years after PPA execution; or (b) the Term Start Date specified in the PPA. Subject to force majeure conditions, Sellers under PPAs for New CHP Facilities or Repowered CHP Facilities will be required to commence deliveries on the earlier of the following two events: (a) five (5) years after CPUC approval of the PPA, or (b) the Term Start Date in the PPA. Subject to force majeure conditions, Sellers under PPAs for Expanded CHP Facilities will be required to commence deliveries on the earlier of the following two events: (a) three (3) years after CPUC approval of the PPA, or (b) the Term State Date in the PPA. The IOU's procedures and administration of the PPAs, including milestone provisions should target these timeframes for the start of the term. For good cause the Buyer and Seller may agree to delay the commencement of the term.

5 MW Targets

5.1 IOUs' MW Targets

- 5.1.1 The IOUs' combined CHP MW Targets will be 3,000 MW of capacity. The MW Targets may be met through any of the CHP Procurement Processes described in Section 4.

5.1.2 The allocation of the 3,000 MW for the Initial Program Period shall be as follows:

Utility	MW Target A	MW Target B	MW Target C	IOU Total MW Target
SCE	630 MW	378 MW	394 MW	1,402 MW
PG&E	630 MW	376 MW	381 MW	1,387 MW
SDG&E	60 MW	50 MW	50 MW	160 MW
Total Targets	1320 MW	804 MW	825 MW	2,949 MW*

*To meet the total of 3,000 MW, SDG&E will have an additional 51 MW Target by 2018 in the Second Program Period.

5.1.3 Each IOU shall enter into PPAs to meet the MW Targets and GHG Emissions Reduction Targets consistent with the CHP Procurement Processes listed in Section 4.

5.1.4 CHP RFOs

5.1.4.1 Each IOU shall conduct three RFOs during the Initial Program Period to seek PPAs for the portion of the MW Targets set forth in Section 5.1.2., not otherwise procured by other procurement processes described in Section 4 (Net MW Target(s)).

5.1.4.2 The CHP RFOs during the Initial Program Period shall be scheduled at regular intervals, provided the first CHP RFO is initiated within ninety (90) days of the Settlement Effective Date.

5.1.4.3 The amount of CHP sought in each CHP RFO during the Initial Program Period shall not be less than the Net MW Target for each IOU. An IOU may procure MWs in excess of the MW Targets in Section 5.1.2 above relying upon an RFO or any other CHP Procurement Processes listed in Section 4.

5.1.4.4 If an IOU does not meet its MW Targets identified in Section 5.1.2 at the end of any particular RFO, the portion of the unmet MW Target shall be rolled over into the subsequent MW Target for procurement.

5.1.4.5 Any MW shortfall that occurs in the Initial Program Period shall be rolled over into the Second Program Period to reach the 3,000 MW Target; however, such shortfall may also be addressed by other actions deemed appropriate by the CPUC.

- 5.1.4.6 The number of CHP RFOs in the Second Program Period to meet MW Targets, if any, shall be established in the LTPP proceedings. Except for SDG&E there are no established MW Targets in the Second Program Period. There are GHG Emissions Reduction Targets in the Second Program Period as defined in Section 6.
- 5.1.4.7 The number of CHP RFOs in the Second Program Period shall be established in the LTPP proceedings.
- 5.1.4.8 The MWs required in the Second Program Period may be limited or expanded, as determined by the CPUC in the LTPP process, but shall be no less than the MW Targets for the Second Program Period specified in Section 5.1.2 above.

5.2 MW Counting Rules

- 5.2.1 The timing for procuring the MW Targets shall be as provided in Section 5.1.2.
- 5.2.2 PPAs executed during the period between September 1, 2009 and the Settlement Effective Date count towards the IOUs' MW Targets and GHG Emissions Reduction Targets.
- 5.2.3 Progress towards the MW Targets for Existing CHP Facilities shall be determined as follows:
 - 5.2.3.1 For the purposes of Section 5.2 regarding MW counting, Existing CHP Facilities are gas-fired Topping Cycle CHP Facilities that exported and delivered electric power to an IOU listed by QF ID number in each IOU's July 2010 Cogeneration and Small Power Production Report (July 2010 Semi-Annual Report) – "Contract Nameplate," as amended, if necessary. The MWs counted for New PPAs executed with Existing CHP Facilities will be the published Contract Nameplate value, unless otherwise noted in this Settlement.
 - 5.2.3.2 CHP PPAs executed with QFs who formerly sold to the IOUs and are not listed in the July 2010 Semi-Annual Reports will count towards the MW Targets based on the Contract Nameplate (or for PG&E the "operating size") in the most recent Cogeneration and Small Power Production Semi-Annual Report, if any, in which the CHP was listed. If not listed as contract nameplate, the contract nameplate in the most recent QF or CHP PPA will be counted.
- 5.2.4 Exceptions Related to Counting for Existing CHP Facilities
 - 5.2.4.1 To the extent the full net output is offered by an Existing CHP Facility but is not procured by the IOU, only the capacity procured by an IOU shall count towards any IOU's MW Target.
 - 5.2.4.1.1 For example – if a 50 MW capacity CHP Facility from the July 2010 Semi-Annual Report offers 40 MW for procurement, and the IOU procures less than 40 MW, only the capacity procured will count towards the IOU's MW Target. If the CHP Facility sells the full 40 MW offered, then the IOU may count the full 50 MW of capacity reported in the July 2010 Semi-Annual Report.

- 5.2.4.2 Coal-fired, wood waste, and renewable QFs in an IOU's portfolio as of July 2010 will not count towards the IOU's MW Targets.
 - 5.2.4.3 Any Existing CHP Facility that does not export power to the grid will not count toward the IOU's MW Target, including existing SGIP facilities.
 - 5.2.4.4 If an IOU contracts with an Existing CHP Facility that is currently operating in the State but has never sold to an IOU, the capacity from such CHP Facility will be determined by a Capacity Demonstration Test. This test will determine the CHP Facility's capability to serve on site and PUC §218(b) loads and provide net exports to the grid, excluding auxiliary/station power load.
 - 5.2.4.4.1 If a CHP Facility elects and is eligible under the Optional As-Available Program, the specific counting rules of that program shall apply for the purpose of calculating the subscription cap in the Optional As Available Program.
 - 5.2.5 A New CHP Facility for the purpose of Section 5.2 means gas-fired Topping Cycle CHP Facilities and Bottoming Cycle CHP Facilities using waste heat. The capacity of a New CHP Facility to be used to count progress towards the MW Targets shall be established by a Capacity Demonstration Test. The CHP Facility's capacity, as demonstrated by this test, shall exclude auxiliary/station power load.
 - 5.2.5.1 The MWs of capacity for PPAs executed pursuant to the AB 1613 Feed-In Tariff and SGIP shall be the CHP Facility nameplate reported to the IOUs by the Seller, applicant or system owner applicable to such facility.
 - 5.2.5.2 The MWs of capacity for behind the meter CHP Facilities other than SGIP will be the capacity reported to the CEC by the Generating Facility owner and other power plant owners.
 - 5.2.6 A Repowered CHP Facility for the purpose of Section 5.2 means gas-fired Topping Cycle CHP Facilities and Bottoming Cycle CHP Facilities using waste heat. The MW to be used to count progress towards the MW Targets shall be determined by a Capacity Demonstration Test after the CHP Facility re-power is completed. The Capacity Demonstration Test will determine the increment of additional project capacity, which will count towards the procuring IOU's MW Target. The total MWs to count progress will be the additional project capacity combined with the Contract Nameplate in each IOU's July 2010 Semi-Annual Report. In the event the Capacity Demonstration Test results in a value lower than the value determined as set forth in the July 2010 Semi-Annual Report, the July 2010 Semi-Annual Report value will count toward the IOU's MW Target.
- 5.3 CHP Program MW Counting Precedent or Use
- 5.3.1 The Parties acknowledge that the MW counting pursuant to this Section 5, or the specific, individual project capacity counting levels for the CHP Program shall not establish a precedent or be used for any other purpose, or with any other agency for establishing available capacity from any individual CHP Facility.
- 5.4 Justification for Failure to Meet MW Targets

Any IOU that is unable to meet its MW Target must make a showing to justify its inability to meet the MW Target. Lack of sufficient offers can be used as a reason to justify failure to procure the MW Targets and GHG Emissions Reduction Targets. The efficiency of the CHP Facility participating in the IOUs' procurement programs as compared to the Double Benchmark, offer prices in excess of levels as provided herein, and the amount of GHG emissions reductions may be valid justifications for missing the IOU MW Targets and GHG Emissions Reduction Targets. Lack of need or portfolio fit arguments shall not be used as reasons to justify failure to procure the MW Targets, but are reasons to justify an inability to meet the GHG Emissions Reduction Targets.

- 5.4.1 Offer prices: If the IOU claims that CHP RFO offer prices are excessive, the IOU must refer to independent or publicly-available sources. For example, when making a justification on the basis of price of new or repowered fossil fuel-fired generation, the IOU may compare offer prices to prices reflected in sources such as Cambridge Energy Research Associates' capital cost index, CPUC estimates of new fossil fuel-fired generation, CEC estimates of new fossil fuel-fired generation, forward market prices, or other similar third-party information regarding the cost of new generation CHP Facilities in California.

6 GHG Emissions Reduction Targets

6.1 Strategy

- 6.1.1 By approving this Settlement, the CPUC will adopt a strategy to reduce statewide GHG emissions by the following means:
 - 6.1.1.1 Maintaining the existing GHG emissions reduction attributable to the efficient Existing CHP Facilities and reducing GHG emissions from the inefficient Existing CHP Facilities, as defined in 7.1.3, by encouraging the repower, conversion to Utility Prescheduled Facilities or retirement of such CHP Facilities; and,
 - 6.1.1.2 Increasing the efficiency of the CHP fleet by adding efficient CHP resources to the IOUs' electric portfolios to make progress towards the CARB CHP RRM;
 - 6.1.1.3 Allocating a portion of the CARB CHP RRM to other non-IOU load serving entities to increase the amount of efficient CHP in the State; and,
 - 6.1.1.4 Achieving the GHG Emissions Reduction Targets by December 31, 2020.

6.2 IOUs' GHG Emissions Reduction Targets

- 6.2.1 Existing: Maintaining GHG Emission Reductions from Existing CHP
 - 6.2.1.1 The IOUs shall maintain an equivalent amount of GHG emissions reductions attributable to the gas-fired Topping Cycle CHP Facilities included in each IOU's July 2010 Semi-Annual Reports for PPAs that expire in the Initial Program Period.
- 6.2.2 New GHG Reductions: IOU GHG Emissions Reduction Targets

- 6.2.2.1 In addition to 6.2.1.1., this Settlement establishes a GHG target of 4.3 MMT based on the CARB Scoping Plan estimates that, by 2020, the State can add 4,000 MW of additional efficient CHP. These 4,000 MW are estimated to reduce GHG emissions by 6.7 MMT. The CARB CHP RRM does not have specific allocations to the IOUs.
- 6.2.2.2 The Parties agree that the portion of the CARB CHP RRM allocated to the IOUs as part of this CHP Program can be derived by multiplying the current, or any revised statewide CARB CHP RRM, by the IOUs' percentage shares of statewide retail electric sales, as determined by the most current CEC data.
- 6.2.2.3 The CARB CHP RRM resulting in emissions reductions of 6.7 MMT and IOU and ESP/CCA retail sales of 72% presently yields a total allocation of 4.8 MMT to the IOUs and ESPs/CCAs. The amount of retail sales attributable to ESPs is currently estimated as 10% of total electricity sales in the IOU Service Territories. Reducing the 4.8 MMT by the amount of ESP/CCA retail electric sales yields a target of 4.3 MMT for the IOUs' bundled service customers.
 - 6.2.2.3.1 IOU and ESP/CCA retail sales within IOU service territories currently represent 72% of total electricity sales in the State (this calculation does not consider customer generation). The percentage of IOU Service Territory retail sales based on CEC data from 2007 is as follows: SCE (45.6 %); PG&E (43.9 %); and SDG&E (10.5 %). It is expected that, as the electric market continues to evolve, the portion of electric sales attributable to each IOU will change. Thus, the proportion of the CARB CHP RRM attributable to each IOU will change.
 - 6.2.2.3.2 As CEC data regarding percentage of retail sales is updated and published, the CPUC staff will calculate and post on the CPUC website an update to the portion of each IOU's GHG Emissions Reduction Target that is based on the CARB CHP RRM.
 - 6.2.2.3.3 During the Initial Program Period, the GHG Emissions Reduction Target is set for the IOUs, but may be adjusted among the IOUs, as a group, and the ESPs and CCAs on an individual basis if each ESP/CCA has responsibility for procuring CHP, or as a group if the CPUC requires the IOUs to purchase CHP power on behalf of the ESP/CCA, based on changes in retail electric sales. This adjustment will be based upon the updated and published CEC data.

6.3 ESP and Community Choice Aggregator (CCA) Portion of the CARB CHP RRM

- 6.3.1 This Settlement adopts an initial allocation of the CARB CHP RRM of 4.3 MMT for the IOUs' bundled service customers and 0.5 MMT (4.8 MMT-4.3 MMT = 0.5 MMT) for the non-IOU load serving entities serving Direct Access (DA) customers and CCA customers in the IOUs' Service Territories (non-IOU LSEs).
- 6.3.2 The Parties prefer that the non-IOU LSEs procure their respective shares of the CARB CHP RRM by entering into their own PPAs with CHP Facilities. If the non-IOU LSEs

are not required to procure their respective shares of the CARB CHP RRM then, as set forth further in Section 13.1.2, the IOUs will obtain CHP and each non-IOU LSE will be allocated cost responsibility for GHG reductions attributable to CHP based on its proportion of statewide retail sales.

- 6.3.3 To the extent the amount of electric sales attributable to non-IOU LSEs increases or decreases during the term of the Settlement, the IOU and non-IOU LSE allocations of the CARB CHP RRM shall be adjusted annually by the CPUC Energy Division based on updated and published CEC retail sales data.
 - 6.3.4 To the extent a CCA provides service or commences service in an IOU's Service Territory; the IOU's portion of the CARB CHP RRM and corresponding GHG Emissions Reduction Targets shall be adjusted to account for the CCA's service in that Service Territory consistent with the methodology set forth in Section 6.2.2.3.1, above. The remainder of the CARB CHP RRM, currently estimated as 1.9 MMT, should be the responsibility of POUs or entities not regulated by the CPUC.
 - 6.3.5 The Parties support proportional MW Targets and GHG Emissions Reduction Targets for all POUs in California at CARB and/or in other statewide or national venues.
- 6.4 Method to Determine Each IOU's GHG Emissions Reduction Target
- 6.4.1 For the purposes of this section regarding GHG Emissions Reduction Target counting, Existing CHP Facilities are gas-fired Topping Cycle CHP Facilities that exported and delivered electric power to an IOU as listed by QF ID number in each IOU's July 2010 Semi-Annual Report – as “Contract Nameplate.” The IOUs proportional share of the CARB CHP RRM in effect during the Second Program Period is established in this Settlement as 4.3 MMT, but may be superseded by a modification of the CARB CHP RRM regarding the goal of securing 6.7 MMT of incremental GHG reductions from incremental CHP resources or changes in CEC published retail electric sales.
 - 6.4.2 Add any GHG Emissions Reduction Target shortfall or subtract any surplus from Existing CHP Facilities, as determined at the end of the Initial Program Period.
 - 6.4.2.1 In 2015, after the Initial Program Period, all Parties, in conjunction with CPUC Energy Division staff, will meet and confer to determine the status of the Existing CHP Facilities from each IOU's July 2010 Semi-Annual Reports for purposes of determining any GHG Emissions Reduction Target shortfall or surplus.
 - 6.4.2.2 For Existing CHP Facilities that shut down during the Initial Program Period, the GHG reductions will be calculated against the previous two calendar years of data compared to the Double Benchmark.
 - 6.4.2.3 The net of the GHG Debit or GHG Credit calculated from the CHP Facilities that are no longer operational will be added/subtracted to the share of the CARB CHP RRM allocated to the IOUs as a group.
 - 6.4.3 Coal-fired, wood waste, and renewable CHP will count towards the GHG Emissions Reduction Targets.

- 6.4.4 Calculate each IOU's allocated portion of the CARB CHP RRM based on its percentage of retail electric sales at that time, as determined by updated and published CEC data; and,
- 6.4.5 Add or subtract net changes from each IOU's GHG Credits and GHG Debits from all sources not included in Section 6.4.2 above during the Initial Program Period.
- 6.5 Each IOU's GHG Emissions Reduction Target for the Second Program Period will be calculated and submitted to the CPUC by the IOUs in their Semi-Annual CHP Program Reports.
- 6.6 The IOUs' GHG Emissions Reduction Target for the Second Program Period is subject to review and revision in the LTPP process.
- 6.7 Changes to the CARB CHP RRM
 - 6.7.1 If CARB, pursuant to an official CARB document modifies the CARB CHP RRM to revise the goal of securing 6.7 MMT of incremental GHG reductions from incremental CHP resources, the GHG Emissions Reduction Targets adopted by this Settlement will be adjusted accordingly, so long as the CPUC adopts such modification in the LTPP process. The GHG Emissions Reduction Targets may also be adjusted by the CPUC in the LTPP process, provided that changes in the GHG Emissions Reduction Targets do not affect the MW Targets specified in this Settlement.
 - 6.7.2 Changes to the GHG Emissions Reduction Targets resulting from a change to the CARB CHP RRM adopted between LTPP decisions may be implemented by the CPUC via a Tier III advice letter process.
 - 6.7.3 If the CARB CHP RRM is modified without a specific allocation by CARB to the IOUs, the methodology set forth in Section 6.2.2.3 for determining the IOU allocation of the CARB CHP RRM will remain the same, and the corresponding GHG Emissions Reduction Targets will be updated consistent with that methodology. During the Second Program Period, the CARB CHP RRM allocations will be adjusted annually by the CPUC Energy Division based upon updated and published CEC retail sales data.
 - 6.7.4 It is expected that new CHP Facilities, including Repowered CHP Facilities, may provide IOUs with meaningful GHG emission reductions to meet the CARB CHP RRM. Such expectations will be incorporated in the evaluation criteria and may change to reflect revisions to CARB's Scoping Plan or related regulations.
 - 6.7.5 AB32 or Federal Delay or Elimination

If AB 32 CARB GHG compliance is delayed or suspended or superseded by a federal program for all or any portion of the Second Program Period, the IOUs shall sustain the GHG reduction benefit derived from applying a fixed double benchmark equaling 8,300 Btu/kWh and an 80% boiler to gas-fired CHP Facilities in the Existing CHP Facilities resources fleet. In addition to sustaining the GHG reduction benefit pursuant to this subsection, the IOUs shall procure any other MW Targets or GHG Emissions Reduction Targets established in the LTPP process for the Second Program Period.
- 6.8 Advocating at CARB and in other Forums

- 6.8.1 The Parties agree to support and advocate for the terms of this Settlement before CARB and in all other forums.
- 6.8.2 Notwithstanding the above section, the Parties reserve the right to advocate before CARB, the CPUC or any successor agency for modification of: (a) the CARB CHP RRM; (b) the Double Benchmark used to measure GHG emission reductions from CHP; (c) the IOU obligations to procure CHP capacity in the Second Program Period, or GHG Emissions Reduction Targets from CHP Facilities.
- 6.8.3 Parties are free to advocate at CARB or the CPUC in favor of maintaining or modifying the current definition of the Double Benchmark for a CHP Facility for a period longer than the term of the PPA. For example, Parties may advocate for the application of the Double Benchmark for the operating life of the CHP Facility.

6.9 Justification for Failure to Meet GHG Emissions Reduction Targets

Any IOU that is unable to meet its GHG Emissions Reduction Target must make a showing to justify its inability to meet the GHG Emissions Reduction Target. Asserted justifications for missing the GHG Emissions Reduction Targets may include that:

- 6.9.1 The efficiency of the CHP Facility participating in the IOU's procurement programs is inefficient compared to the Double Benchmark, except as otherwise measured pursuant to Section 7.3;
- 6.9.2 The offer prices are in excess of levels as provided herein; and
 - 6.9.2.1 Offer prices: If the IOU claims that CHP RFO offer prices are excessive, the IOU must refer to independent or publicly-available sources. For example, when making a justification on the basis of price of new or repowered fossil fuel-fired generation, the IOU may compare offer prices to prices reflected in sources such as Cambridge Energy Research Associates' capital cost index, CPUC estimates of new fossil fuel-fired generation, CEC estimates of new fossil fuel-fired generation, forward market prices, or other similar third-party information regarding the cost of new generation CHP Facilities in California.
- 6.9.3 A lack of need exists.

7 GHG Emission Accounting Methodology
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7.1 GHG Accounting Principles

- 7.1.1 Progress toward the IOUs' GHG Emissions Reduction Targets will be determined by a GHG Credit or GHG Debit. A "+" counts as a GHG Credit which will count toward the IOU's then-current GHG Emissions Reduction Target from CHP resources. A "-" counts as a GHG Debit, which will count against the IOU's then-current GHG Emissions Reduction Target. This same methodology applies if the CPUC requires CCAs/ESPs to procure on their own behalf.
- 7.1.2 Except otherwise noted in Section 7.3, the Parties agree to measure the amount of GHG emissions from CHP Facilities as compared to the current Double Benchmark in place at the time of PPA execution or, for a Utility Prescheduled Facility, execution of a new

PPA or a Legacy PPA Amendment. The Double Benchmark is intended to reflect the GHG emissions that would have occurred if the same amount of electricity and thermal output were obtained from conventional generation resources and a stand-alone boiler. The Double Benchmark measures the additional amount of GHG emissions that otherwise would exist if the CHP Facility did not exist.

- 7.1.3 For the purposes of GHG accounting, an “efficient” CHP refers to one that reduces emissions as compared to the Double Benchmark. An “inefficient” CHP refers to one that increases GHG emissions as compared to the Double Benchmark.
 - 7.1.4 CHP PPAs that are required by law to be executed by the IOU outside of the RFO or bilateral procurement processes, meaning PURPA contracts, feed-in tariffs (*e.g.*, AB 1613 Feed-In Tariff) or other mandated programs or PPAs will not count as a GHG Debit to the IOU. Efficient CHP Facilities as compared to the Double Benchmark will be counted as a GHG Credit.
- 7.2 The Double Benchmark, which may be later modified pursuant to this Settlement, is as follows:
- 7.2.1 The Heat Rate for the electricity generated is 8,300 BTU/kWh HHV at the busbar and excluding line losses.
 - 7.2.2 The thermal efficiency of a standard boiler is 80%.
 - 7.2.3 If the Double Benchmark is modified by CARB in a superseding Scoping Plan, regulation, or by the CPUC in a subsequent CPUC decision, the modified Double Benchmark shall be applied only on a prospective basis. The revised Double Benchmark shall apply to a CHP Facility that executes a PPA on or after the adoption date of the modified Double Benchmark. Changes to the Double Benchmark will not modify the MW Targets in this Settlement.
- 7.3 Detailed GHG Accounting Methodology to Measure Progress Toward the IOUs’ GHG Emissions Reduction Targets
- 7.3.1 Projects counted as a GHG Credit (+)
 - 7.3.1.1 New CHP Facilities: Efficient New CHP Facilities as compared to the Double Benchmark will count as a GHG Credit toward the contracting IOU's GHG Emissions Reduction Target regardless of where the CHP Facility is located. Measurement is based on the Double Benchmark in place at the time of PPA execution compared to the anticipated operations reflected in the PPA.
 - 7.3.1.2 Physical Change From a Repowered CHP Facility, MW Expansion, or Fuel Change (*e.g.*, an existing coal plant converts to a less GHG intensive fuel): Counts as a GHG Credit for the IOU. The measurement is the difference between i) the previous two (2) calendar years of operational data compared to the Double Benchmark in place at the time of PPA execution and ii) the anticipated change in operations as identified in the PPA compared to the Double Benchmark.
 - 7.3.1.3 CHP Facility Change In Operations or Conversion to a Utility Prescheduled Facility: Counts as a GHG Credit. Measurement is based on the Baseline year

emissions minus the projected PPA emissions and emissions associated with replacing one hundred percent (100%) of the decreased electric generation at a time differentiated Heat Rate. The Baseline year emissions are the average of the previous two (2) calendar years of operational data.

7.3.1.4 Existing inefficient CHP Facility shuts down: Counts as a GHG Credit toward the CARB CHP RRM of the IOU that previously contracted with the CHP.

7.3.1.4.1 If the thermal need continues, the measurement is the Double Benchmark in place at the time of the shut-down compared to the previous two (2) calendar years of operational data.

7.3.1.4.2 If the thermal need no longer exists, measurement is based on the Baseline year emissions minus the projected PPA emissions and emissions associated with replacing one hundred percent (100%) of the decreased electric generation at a time differentiated Heat Rate. The baseline year emissions are the average of the previous two (2) calendar years of operational data. The IOU shall demonstrate the thermal need no longer exists.

7.3.2 Projects counted as a GHG Debit (-)

7.3.2.1 Inefficient New CHP Facilities: Inefficient New CHP Facilities will count as a GHG Debit toward the contracting IOU's GHG Emissions Reduction Target. Measurement is based on the Double Benchmark in place at the time of PPA execution compared to anticipated operations reflected in the PPA.

7.3.2.2 Shut-down or Retirement of an existing, efficient CHP Facility and the thermal need continues: There is a GHG Debit for the IOU who previously contracted with the CHP equal to the amount of the GHG emissions reduction of the CHP Facility as compared to the Double Benchmark against the previous two calendar years of operational data.

7.3.2.3 Physical Change, a Repowered CHP Facility, MW Expansion or Fuel Change (e.g., an existing coal plant converts to a less GHG intensive fuel): A less efficient facility counts as a GHG Debit toward the IOU target. The measurement before the change is the previous two (2) calendar years of operational data compared to the Double Benchmark in place at the time of PPA execution; the measurement after the change is the anticipated operations reflected in the PPA compared to the Double Benchmark.

7.3.3 Projects counted as Neutral

7.3.3.1 Existing CHP Facility with no change in operations: Regardless of contract status (*i.e.*, a new PPA with an Existing CHP Facility or one that sells to the market) the CHP Facility is considered neutral for GHG accounting purposes.

7.3.3.2 Efficient Existing CHP Facility shuts-down and the thermal need is discontinued: If the host facility does not put in boilers, then there is no change to the IOU GHG Emissions Reduction Target.

- 7.3.3.3 Inefficient projects required by law to execute (including PURPA <20 MW, as-available, and feed-in tariffs): Count as neutral toward the GHG Emissions Reduction Target.

7.4 Effective Date for Accounting of Changes in GHG Credits and GHG Debits

- 7.4.1 The GHG benefit shall be calculated at the time of execution of the CHP PPA (includes RFO, bilateral agreement, Feed-In Tariff, as-available, PURPA <20 MWs). The calculation of the GHG Credit or GHG Debit attributable to the CHP Facility shall not be altered for the term of the PPA for the purposes of counting progress towards the IOUs' GHG Emissions Reduction Targets, regardless of a change to the Double Benchmark or modifications to the CARB Scoping Plan regarding the goal of securing 6.7 MMT of incremental GHG reductions from incremental CHP resources. If revised by a CARB determination and adopted by the CPUC in the LTPP proceeding, the modified Double Benchmark shall only apply to a CHP Facility that executes a PPA on or after the adoption of the modified Double Benchmark.
- 7.4.2 For an efficient CHP Facility that terminates its operations, the effective date shall be the date operations terminate.
- 7.4.3 For an existing CHP Facility with a change in operations, the effective date will be the date a new CHP PPA is executed by both Parties or, if there is no new PPA, the date on which the CHP Facility commences its change in operations.
- 7.4.4 PPAs executed during the period between September 1, 2009 and the Settlement Effective Date count towards the IOUs' MW Targets and GHG Emissions Reduction Targets.
- 7.4.5 SGIP or behind-the-meter CHP Facilities are counted at the time operations commence.

8 CPUC Jurisdictional Entities' Semi-Annual CHP Program Reports

8.1 General Description

- 8.1.1 Each CPUC Jurisdictional Entity shall prepare a semi-annual report (CHP Program Semi-Annual Report) detailing progress towards both MW Targets and GHG Emissions Reduction Targets.
- 8.1.2 Purpose: To track and report progress towards the CPUC Jurisdictional Entities' GHG Emissions Reduction Targets and MW Targets.
- 8.1.3 Responsible Parties: The CPUC Jurisdictional Entities will each prepare and update a CHP Program Report that they will submit to the CPUC Energy Division. The CPUC Energy Division will be responsible for verifying the accuracy of the data and collating the data to develop publicly-available reports as provided herein.
- 8.1.4 Availability: The CPUC Energy Division will post on the CPUC website public versions of the detailed updates for each CPUC Jurisdictional Entity, and maintain and publish a summary tracking progress toward both MW Targets and GHG Emissions Reduction Targets. This report shall be in addition to the IOUs' semi-annual reports on QF status.

8.1.5 Format: The CPUC Energy Division will determine the format of the CHP Program Reports. The Parties recommend Microsoft excel worksheet, with tabs for summary, including but not limited to PPAs with All Existing CHP Facilities, PPAs with New CHP Facilities or Repowered CHP Facilities, terminated PPAs, and with retired or shut down CHP Facilities.

8.1.6 Frequency: Semi-annual.

8.2 Overview of CHP Program Report Content

8.2.1 Summary to include: CHP Facility PPAs or other procurement and termination of CHP Facility PPAs by all CPUC Jurisdictional Entities by year, number of PPAs, capacity, GHG accounting (GHG Credits and GHG Debits).

8.2.2 Tracking in the report will begin upon execution of a new PPA by the Buyer and Seller for all CHP Facilities including existing, repowered or new, and excluding Transition PPAs, and Legacy PPAs (except where an amendment to a Legacy PPA results in an incremental change to GHG Emissions Reductions, in which case the tracking shall begin on the date of the execution of a Legacy PPA Amendment).

8.2.3 CHP Program Reports will include:

8.2.3.1 A tally of all CHP MWs deemed, pursuant to the Settlement, to count towards progress in meeting the IOUs' MW Targets, including a breakdown by IOU Service Territory.

8.2.3.2 A tally toward overall GHG Emissions Reduction Targets, including the GHG emissions reductions attributable to CHP Facilities that currently have PPAs with the IOUs, including breakdown by IOU Service Territory.

8.2.3.3 Each tally shall include MWs, GHG Credits and GHG Debits and shall be broken down by the following mutually exclusive categories:

8.2.3.3.1 Executed CHP Facility PPAs (but not yet delivering),

8.2.3.3.2 Operational CHP Facility PPAs,

8.2.3.3.3 Amended PPAs, and

8.2.3.3.4 Terminated CHP Facility PPAs including facility shut downs.

8.3 Report Content for New PPAs

8.3.1 The following table shows the public report content for:

8.3.1.1 Existing CHP Facilities entering into new PPAs (excluding Transition PPAs or Legacy PPA C1 Amendments)

8.3.1.2 New CHP Facilities, Repowered CHP Facilities and Expanded Facilities

Item	Description
All Identification Numbers	Facility ID number and name, as per the PPA/CHP PPA CAISO ID number, CEC ID number, Energy Information Administration (EIA) ID number, CARB ID number
Location	IOU Service Territory/ESP/CCA etc.
Type of Program under which CHP Facility has been procured	Bilateral, CHP-only RFO, All Source RFO, AB 1613 Feed-In Tariff, As-Available, PURPA \leq 20 MW, SGIP, Utility Prescheduled Facility PPA, Section 3.07 modified CHP Facilities
Power Product	CHP Facility Contract Nameplate (MW) (define in report) Contract Capacity (MW) Energy deliveries under the Optional As-Available Program measured in AMW
Fuel Type	For example: natural gas, biomass, pet-coke, etc.
Contract Execution Date	Mm/dd/yyyy
Online Date	Mm/dd/yyyy
GHG Credits/ GHG Debits	Reflect figures pursuant to GHG accounting rules in Section 7 of the Settlement to determine GHG Credits/GHG Debits, and effective dates of change to GHG accounting. This value remains static for counting purposes for the life of the PPA.
Double Benchmark	The Double Benchmark reference point, <i>e.g.</i> , 8,300 Btu/kWh and 80% boiler efficiency.
Technology Type	Microturbine, etc.
Topping Cycle or Bottoming	Topping Cycle or Bottoming Cycle Classification

Item	Description
Cycle	

8.4 Report Content for Legacy PPA C1 Amendments, Utility Prescheduled Facilities or Other Changes in Operations

8.4.1 The following table shows the public report content for Legacy PPA C1 Amendments, Utility Prescheduled Facilities or other changes in operations.

8.4.2 Amendments to Legacy PPAs for CHP Facilities that convert to Utility Prescheduled Facilities will record the same information as in the table in Section 8.3 plus:

Item	Description
All Identification Numbers	Facility ID number and name, as per the PPA/CHP PPA CAISO ID number, CEC ID number, EIA ID number, CARB ID number
Location	IOU Service Territory/ESP/CCA etc.
Amendment Date	Mm/dd/yyyy
GHG Credits /GHG Debits	Reflect figures pursuant to GHG accounting rules in Section 7 of the Settlement to determine GHG Credits/GHG Debits, and effective dates of change to GHG accounting.
GHG Credit /GHG Debit Measurement	As per the GHG accounting rules in Section 7.
Effective Date of Change in Operations	Mm/dd/yyyy

8.5 Report Content for Terminated PPAs and Facilities that Cease Operations

8.5.1 The following table shows the public report content for Terminated PPAs and facilities that cease operations.

8.5.2 Terminated PPAs with CHP Facilities – (includes CHP Facilities with PPAs that are terminated for any reason during the Settlement Term (*i.e.*, expired, retired, or facilities that cease operations).

8.5.2.1 Facilities that cease operations shall indicate whether the thermal need remains or is discontinued.

Item	Description
Facility Name	Name as it appears in the PPA
All Facility ID Numbers	Facility ID number and name, as per the PPA, CAISO ID number, CEC ID number, EIA ID number, CARB ID number
Location	IOU Service Territory/ESP/CCA, etc.
Type of Program under which CHP had been procured	Bilateral, CHP-only RFO, All Source RFO, AB 1613 Feed-In Tariff, As-Available, PURPA ≤ 20 MW, SGIP, Utility Prescheduled Facility PPA, Legacy PPA, Section 3.07 modified facilities
Power Product	Facility Contract Nameplate (MW) Energy deliveries under the Optional As-Available PPA measured in AMW
Fuel Type	For example: natural gas, biomass, pet-coke, etc.
PPA Termination or Ceases Operating	Mm/dd/yyyy
Thermal Load Status	Discontinued/Ongoing
GHG Credits /GHG Debits Measurement	As per the GHG accounting rules in Section 7.

9 CHP Auditor

9.1 Description of CHP Auditor

9.1.1 This section addresses the role of the CHP Auditor(s) for the CHP RFOs in the Settlement. This section also sets forth non-disclosure obligations for Confidential Information, the right to seek and secure information, designation criteria, and other matters.

9.1.2 Purpose and Role of the CHP Auditor(s). The purpose and role of a CHP Auditor is to be an informed advocate for CHP interests regarding the implementation of the CHP

Program. CHP Auditor(s) will only be designated under this section if, upon written notice, an IOU does not, or anticipates it will not, meet any of the following: a MW Target established by this Settlement; a GHG Emissions Reduction Target established by this Settlement; or any MW Target or GHG Emissions Reduction Target established by the CPUC in the LTPP after the Settlement Effective Date.

- 9.1.3 Payment of CHP Auditor(s). The CHP Parties may retain the CHP Auditor(s) subject to the conditions and approval processes set forth herein. The CHP Parties will bear the costs of the CHP Auditor. The sponsoring CHP Party (or Parties) for any individual CHP Auditor will bear the costs of such CHP Auditor.
- 9.1.4 Permitted Reporting by the CHP Auditor and the Applicable Non-Disclosure Agreement. The CHP Auditor(s) shall execute and is subject to non-disclosure restrictions set forth in the CHP Auditor Non-Disclosure Agreement (NDA), which is attached as Exhibit 8. With the exception of the twenty-four (24) month restriction in Section 9.5.3, if the CPUC, the courts or another legal authority modifies the requirements applicable to a reviewing representative of IOU Confidential Information, the NDA shall be updated to reflect such modifications (Applicable NDA). The CHP Auditor shall be bound by the terms and conditions of the Applicable NDA executed for a particular RFO on the conditions in the Applicable NDA at the time of execution. Updates to Applicable NDAs, if any, as provided under this section, shall apply only prospectively for NDAs executed after such updates. Subject to the terms and conditions of the Applicable NDA, the CHP Auditor may:
 - 9.1.4.1 Before the CPUC, and all divisions thereof, and the IOU's Procurement Review Group (CPUC forum) report on the IOU's conduct of and procurement decisions arising from a particular CHP RFO, using any information, including the Confidential Information obtained by the CHP Auditor from the IOU.
 - 9.1.4.2 Before any other forum, report, assess, recommend or advocate CHP procurement policies, targets or actions based upon the CHP Auditor's experience auditing a CHP RFO or other RFOs, including the procurement of additional CHP capacity to meet CHP procurement targets established by the CPUC, additional actions to promote the success of the CHP Program, or advocate any other action related to CHP policy or procurement that the Auditor deems appropriate. Actions by the Auditor under this section shall be consistent with the goals and objectives of the Settlement, and the Auditor(s) may not reveal Confidential Information pursuant to the Applicable NDA. For actions under this section the Auditor(s) may express qualitative opinions regarding the CHP Program and related matters based upon the Auditor's experience, provided that the CHP Auditor does not reveal Confidential Information.
 - 9.1.4.3 Before any other forum, the CHP Auditor(s) shall secure the advance approval of any affected IOU of the disclosure of any aggregated data derived from the IOU's Confidential Information that the CHP Auditor proposes to disclose. The affected IOU's advance approval shall be timely in contemplation of the circumstances of the disclosure and the IOU's consent shall not be unreasonably withheld. The IOU's decision on whether to allow use of data must be based on CPUC confidentiality rules in place at that time and on the terms of the Applicable NDA.

- 9.1.4.4 The Auditor(s) may also reference any public information, including any information publicly disclosed by any IOU Independent Evaluator.
- 9.1.4.5 The NDA, among other things, shall provide procedures for the Auditor to comply with lawful orders from a commission, court or other lawful authority compelling disclosure of Confidential Information.

9.2 IOU Notice Triggering Audit

- 9.2.1 An IOU will provide written notice to those CHP Parties on the new service list for this Settlement that the CPUC will create for the CPUC review of this Settlement, that it will not meet, or anticipates that it will not meet any of the following: a MW Target established by this Settlement; a GHG Emissions Reduction Target established by this Settlement; or any MW Target or GHG Emissions Reduction Target established by the CPUC in the LTPP after the Settlement Effective Date.
- 9.2.2 An IOU shall provide notice at the earliest practicable time based upon an IOU's expectation that it will not achieve any one of the following in a particular CHP RFO: a MW Target established by this Settlement; a GHG Emissions Reduction Target established by this Settlement; or any MW Target or GHG Emissions Reduction Target established by the CPUC in the LTPP after the Settlement Effective Date; provided that such notice shall be no later than the earlier of (1) Buyer's Advice Letter requesting approval of results from any CHP RFO solicitation, or (2) within five (5) Business Days of any presentation by the Buyer to the Buyer's PRG indicating that the Buyer will not achieve one of the above targets.

9.3 Time Period for Audit Review

- 9.3.1 The CHP Auditor(s) shall have up to ninety (90) calendar days (Audit Period) from the date of the receipt of the Confidential Information that was previously provided to the Independent Evaluator for a particular CHP RFO to present findings to the CPUC. If the CHP Auditor(s) require(s) additional time to present such findings, the Director of the CPUC Energy Division may, upon good cause shown, extend the Audit Period up to one hundred and eighty (180) calendar days. The CHP Auditor shall provide a written request to the Director of the CPUC Energy Division for such extension with a copy of the request simultaneously provided to the affected IOU.
- 9.3.2 Any pending CHP audit will not provide good cause for a delay in the IOU's completion of the procurement process for any CHP RFO.
- 9.3.3 A CHP Audit that exceeds ninety (90) calendar days will not provide good cause for delay of an IOU in commencing the next CHP RFO; provided that the IOU may condition procurement in subsequent RFOs upon final resolution of pending RFO audits in order to avoid procurement in excess of established MW Targets or GHG Emissions Reduction Targets.

9.4 Receipt and Review of Confidential Information and Other Relevant Data

- 9.4.1 The CHP Parties shall provide the IOU with notice of the identity of the designated CHP Auditor(s) for the CHP RFO. Within ten (10) Business Days of the receipt of such notice, the IOU will provide the Confidential Information to the CHP Auditor(s)

that was provided to the Independent Evaluator, if the CHP Auditor has executed and submitted an Applicable NDA as provided by this Section 9 with the particular IOU whose RFO is audited. The CHP Auditor(s) shall not be entitled to receive Confidential Information prior to the time the IOU receives the CHP Auditor's executed NDA.

- 9.4.2 At a minimum the Confidential Information shall include all information provided to the subject CHP 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.
- 9.4.3 In addition to the right to secure access to all information provided by the IOU to the Independent Evaluator working on the particular CHP RFO, the CHP Auditor(s) shall also have the right to secure additional information that is reasonably required to evaluate the IOU procurement decisions in connection with a CHP RFO. The IOUs shall respond in full to all data requests from CHP Auditor(s) within ten (10) Business Days. The Parties agree that the Director of the CPUC Energy Division shall promptly address and resolve any disputes over the relevance of or access to data sought by the CHP Auditor(s).
- 9.4.4 The Parties agree that there is no waiver of rights or positions regarding access to confidential data resulting from future changes by the CPUC, court or other lawful authority on the issue of confidentiality. The obligations and responsibilities of the CHP Auditor(s) with regard to maintaining confidentiality of the Confidential Information shall be specified in the Applicable NDA.

9.5 Designation, Notice, Conflict of Interest Review and Number of CHP Auditors

- 9.5.1 The CHP Parties shall endeavor to agree upon a single CHP Auditor, but may designate no more than two CHP Auditors for each CHP RFO under this section; provided that IEP shall have the right to designate one Auditor, and collectively CCC-CAC-EPUC shall have the right to designate one Auditor.
- 9.5.2 The CHP Parties shall provide notice to the CPUC Energy Division director (Director) of the name of any designated CHP Auditor(s) for a specific conflict of interest review. The Director shall evaluate the curriculum vitae for any designated auditor, determine if any applicable conflict of interest restrictions exist for the designee(s) within five (5) Business Days and notify the IOU that the Director has determined that the designated CHP Auditor(s) is/are acceptable. The Director will certify the designated CHP Auditor(s) within five (5) Business Days, during which the Director shall review conflict(s) of interest for the CHP Auditor(s) under the following conditions: (1) the direct ownership interest in any bidder in the particular RFO subject to the CHP audit, or (2) a breach of a non-disclosure agreement in an CHP RFO audit review or any other NDA. If the Director identifies any other conflict of interest standard that the Director reasonably believes needs to be applied to the CHP Auditor, the Director shall meet and confer with all affected Parties to discuss the need for such other standard(s).
- 9.5.3 Each CHP Auditor must certify in writing, prior to the receipt of Confidential Information, that he or she will not engage, beginning on the date of the delivery of Confidential Information, and thereafter for a period of twenty four (24) months in: (a)

a transaction for the generation, purchase, sale or marketing of electrical energy, and/or capacity, and/or related products, including specifically 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 specifically natural gas related financial products (meaning derivatives, swaps or options), for electric generation, purchase or sale purposes in the State of California, (c) preparing offers and/or bidding strategies, bidding on, or purchasing of electric power plants in the State of California or the substantive supervision of any employees whose duties include such responsibilities with regard to those activities, subject to the following Section 9.5.4, 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) of this Section 9.5.3.

- 9.5.4 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 the NDA for the affected IOU and each provision of Section 9. 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 9.5.3, above. For example, any third party, including 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.

10 SRAC Energy Pricing Structure

10.1 Applicability

- 10.1.1 The SRAC energy price applies to the following:

- 10.1.1.1 Transition PPAs;
- 10.1.1.2 Legacy PPAs, if another option in Section 11 is not selected;
- 10.1.1.3 QF PPAs; and
- 10.1.1.4 Optional As-Available PPAs.

10.2 Methodologies and Formulae

- 10.2.1 The following formulas and methodologies for determining the SRAC energy price shall replace the CPUC-adopted SRAC formula as of the first day of the second calendar month beginning after the Settlement Effective Date (SRAC Commencement Date) and are set forth below:

- 10.2.1.1 Method for Determining the SRAC Energy Price. Subject to Sections 10.2.2 through 10.2.7, as of the SRAC Commencement Date, the SRAC energy price must be calculated using the following formula:

$$\text{Energy Price } \$/\text{kWh} = ((\text{Applicable HR} * \text{BTGP}/1,000,000) + \text{VOM}) * \text{TOU} + \text{LA} + \text{GHG Charges}$$

Where:

Applicable HR = The Heat Rate for the specified time-period, per the following table:

Calendar Year(s)	Heat Rate (Btu/kWh)
2011	8,700
2012	8,225
January 1, 2013 through December 31, 2014	8,125
January 1, 2015 and beyond	Market Heat Rate

BTGP = Calendar month Burner Tip Gas Price (\$/MMBtu), per D.07-09-040 and CPUC Resolution E-4246 (as such Resolution may be modified from time to time by the CPUC);

VOM = Calendar month avoided variable O&M (\$/kWh), per D.07-09-040 and CPUC Resolution E-4246 (as such Resolution may be modified from time to time by the CPUC);

GHG Charges = means all taxes, charges or fees, assessed with the implementation and regulation of Greenhouse Gas emissions with respect to the Generating Facility imposed by any Governmental Authority, such as the CARB's AB 32 Cost of Implementation Fee (as defined in Title 17 C.C.R. §95200). For example, if the charges are assessed on but not included in fuel consumption or gas costs, the Applicable Heat Rate or Burner Tip Gas Price will be used to derive the dollars per kilowatt-hour charge. On January 1, 2015 or the commencement of the First Compliance Period, the GHG Charges will equal zero in the above formula.

TOU (i.e., time-of-use) = The TOU factors are, as of the SRAC Commencement Date, as follows for each IOU:

TOU Factors if Buyer is PG&E		
	Summer	Winter
Peak	1.2564	N/A
Partial-Peak	1.1535	1.1395
Off-Peak	0.9155	0.9628
Super Off-Peak	0.7439	0.8216
Off-Peak TOU factors will be calculated as a residual – similar to the current method – to preserve the correctness of the monthly hourly weighting. An example for Period A – Summer is: [Number of hours in month – (1.2564 * Number of Summer Peak hours in month) – (1.1535 * Number of Summer Partial-Peak hours in month) – (0.7439 * Number of Summer Super Off-Peak hours in month)] / Number of Summer Off-Peak hours in month		

TOU Factors if Buyer is SCE		
	Summer	Winter
On-Peak	1.4251	N/A
Mid-Peak	see below	1.2185
Off-Peak	0.8526	see below
Super Off-Peak	N/A	0.7760
Summer Mid-Peak = (Total # hours in month - (1.4251 * # of Summer On-Peak hours in month) - (0.8526 * # of Summer Off-Peak hours in month)) / # of Summer Mid-Peak hours in month Winter Off-Peak = (Total # hours in month - (1.2185 * # of Winter Mid-Peak hours in month) - (0.7760 * # of Winter Super Off Peak hours in month)) / # of Winter Off-Peak hours in month		

TOU Factors if Buyer is SDG&E		
	Summer	Winter
On-Peak	1.411	1.224
Semi-Peak	1.106	1.106
Off-Peak	0.986	0.933
Super Off-Peak	0.645	0.711

PG&E and SDG&E may update the TOU factors in their respective SRAC postings at the beginning of each calendar year using the energy-only portion of the time-of-use factors (as adjusted by PG&E and SDG&E, as applicable and if necessary, to reflect their respective CPUC-approved time-of-use periods) set forth in their most recent RPS Program solicitation (e.g., 2012 time-of-use factors are those used in Buyer's 2011 RPS Program solicitation). SCE may update its TOU factors annually through an appropriate filing with the CPUC.

$$LA \text{ (i.e., hourly location adjustment, in \$/kWh)} = LMP_{QF} - LMP_{Trading\ Hub}$$

Where the hourly location adjustment will be based on the hourly Day-Ahead prices and actual hourly generation by the Generating Facility for delivery to Buyer as follows:

LMP_{QF} (in \$/kWh) = The hourly Day-Ahead Locational Marginal Price at the point of interconnection with the CAISO-controlled electric system associated with the Generating Facility; and

$LMP_{Trading\ Hub}$ (in \$/kWh) = The hourly Day-Ahead Locational Marginal Price of the trading hub where the Generating Facility is located (i.e., SP15 Existing Zone Generation Trading Hub (formerly SP15), NP15 Existing Zone Generation Trading Hub (formerly NP15), or ZP26 Existing Zone Generation Trading Hub (formerly ZP26), as applicable, or any successor thereto).

- 10.2.2 Energy Price During the Floor Test. If there is a cap-and-trade program in California for the regulation of GHG, as established by CARB (and/or by a different Governmental Authority pursuant to federal or state legislation), then, during the Floor

Test Term, the SRAC energy price will be the higher of the two formulas provided in Sections 10.2.2.1 and 10.2.2.2 (the GHG Floor Test):

$$10.2.2.1 \text{ Energy Price } \$/\text{kWh} = ((\text{Market Heat Rate} * \text{BTGP}/1,000,000) + \text{VOM}) * \text{TOU} + \text{LA}$$

Where:

Market Heat Rate (Btu/kWh) = As defined in Section 17;

BTGP (\$/MMBtu) = As set forth above;

VOM (\$/kWh) = As set forth above;

TOU = As set forth above; and

LA (\$/kWh) = As set forth above.

OR

$$10.2.2.2 \text{ Energy Price } \$/\text{kWh} = ((\text{Applicable HR} * (\text{BTGP} + \text{GHG Allowance Price}) / 1,000,000) + \text{VOM}) * \text{TOU} + \text{LA} + \text{GHG Charges}$$

Where:

Applicable HR = (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 (as defined in Section 17) from January 1, 2015 until the end of the Floor Test Term;

BTGP (\$/MMBtu) = As set forth above;

GHG Allowance Price (\$/MMBtu) = Allowance Cost (\$/MT) * 117lbs of GHG per MMBtu / 2,204.6 lbs per MT

Where:

Allowance Cost (\$/MT) = The cost of one Allowance, determined using the GHG Auction clearing price from the latest GHG Auction that has taken place during the calendar quarter immediately preceding the date that Buyer's payment is due to Seller; *provided, however*, that if there is no GHG Auction held during the applicable time-period, then the Allowance Cost is determined in accordance with Section 10.2.6.

VOM (\$/kWh) = As set forth above;

GHG Charges (\$/kWh) = As set forth above;

TOU = As set forth above; and

LA (\$/kWh) = As set forth above.

- 10.2.3 Free Allowance Reporting and Allocation. If, at any time, Buyer makes a monthly payment to Seller utilizing the GHG Floor Test formula set forth in Section 10.2.2.2, then Buyer shall deduct from the monthly payment to Seller for the applicable month the value of the Free Allowances disclosed in and based on all Free Allowance Notices that have not already been applied to a prior payment to Seller; provided, however, that if Buyer, using reasonable efforts, is unable to process such payment adjustment for the applicable month, then Buyer shall make such payment adjustment to the next monthly payment due to Seller. For any month that Buyer utilizes the formula set forth in Section 10.2.2.1 to make a monthly payment to Seller, Buyer shall maintain a record of the value and quantity of all Free Allowances disclosed in the Free Allowance Notices, if any, and shall deduct the value of such Free Allowances to any subsequent monthly payment due to Seller where Buyer calculates such monthly payment utilizing the formula set forth in Section 10.2.2.2 until such time that the value of all such Free Allowances are expended.
- 10.2.4 In order for Buyer to make the payment adjustment set forth in the immediately preceding paragraph, Seller agrees to deliver to Buyer, within twenty (20) calendar days of receiving any Free Allowances, a Free Allowance Notice for the applicable month, which Free Allowance Notice must include all Additional GHG Documentation. Buyer shall value any such Free Allowances using the same methodology Buyer uses in valuing the Allowance Cost, as set forth above.
- 10.2.5 Buyer will review the Annual GHG Reports described in Section 10.3 to determine if there is any discrepancy in the payments made by Buyer to Seller for GHG Compliance Costs during the course of the applicable calendar year. To the extent Buyer determines that there is any such discrepancy, (i) if Buyer owes Seller an additional payment for GHG Compliance Costs, then Buyer shall make such additional payment in a subsequent monthly payment to Seller under the Applicable PPA, or (ii) if Seller owes Buyer a payment refund for GHG Compliance Costs, then Buyer shall offset such payment refund amount in a subsequent monthly payment to Seller under the Applicable PPA. If the Applicable PPA terminates before Buyer is able to make such additional payment for GHG Compliance Costs or offset such GHG Compliance Costs payment refund from Seller's monthly payments, as applicable, then Buyer or Seller, as applicable, shall pay all remaining payment amounts due within the thirty- (30) day period before the termination of the Applicable PPA.
- 10.2.6 Determining Allowance Costs under the GHG Floor Test if there is No GHG Auction. This Section 10.2.6 is applicable if no GHG Auction has been held during the time-period for which the Allowance Cost variable set forth in Section 10.2.2.2 is to be determined. In such an instance, publicly available indices will be used to determine the price for the applicable period. If no such indices exist, SCE, SDG&E and PG&E, on the one hand, and CAC, EPUC, CCC and IEP, on the other hand, shall negotiate in good faith to reach an agreement on setting the Allowance Cost variable. If, after negotiating for fifteen (15) Business Days, the Parties are not able to reach agreement on setting the Allowance Cost variable, then SCE, SDG&E and PG&E, on the one hand, and CAC, EPUC, CCC and IEP, on the other hand, shall each select, within fifteen (15) calendar days after such failed negotiations, price quotations from two (2) different Reference Market-Makers, for a total of four (4) price quotations. The Allowance Cost variable for the applicable time-period will be determined by taking the average of the four (4) price quotations so selected by the Parties.

10.2.7 Energy Price from the end of the Floor Test Term. As of the end of Floor Test Term, the SRAC energy price must be calculated in accordance with the following formula:

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

Where:

Market Heat Rate (Btu/kWh) = as defined in Section 17;

BTGP (\$/MMBtu) = As set forth above;

VOM (\$/kWh) = As set forth above;

TOU = As set forth above; and

LA (\$/kWh) = As set forth above.

10.3 Reporting Requirements

10.3.1 From the SRAC Commencement Date through the end of the term of the Applicable PPA (and for any period following the termination of the Applicable PPA to the extent relating back to the term of the Applicable PPA), Seller shall provide to Buyer the following information (together, the Annual GHG Reports):

10.3.1.1 On or before the fifth (5th) Business Day following Seller's timely submission to CARB (or any other authorized Governmental Authority having jurisdiction in California) of the CARB Mandatory GHG Emissions Annual Report, or such other annual report submitted to CARB, detailing the GHG emissions of the Generating Facility for the applicable calendar year (as verified by an independent third party, if applicable) (the CARB Annual Report), Seller shall deliver such CARB Annual Report to Buyer; and

10.3.1.2 To the extent not set forth in the CARB Annual Report (or if Seller is no longer required to submit the CARB Annual Report for any reason), then Seller shall submit to Buyer, along with the CARB Annual Report (or, if Seller is no longer required to submit the CARB Annual Report for any reason, then on the sixtieth (60th) Business Day following the end of the applicable calendar year), the following information for the applicable calendar year, which, in each case, must be verifiable and of settlement quality: (1) the Useful Thermal Energy Output of the Generating Facility; (2) total fuel usage of the Generating Facility; (3) the total amount of GHG emissions attributable to the Generating Facility, the electrical energy used to serve the Site Host Load, the Useful Thermal Energy Output of the Generating Facility; (4) the total electrical energy produced by the Generating Facility, the electrical energy used to serve the Site Host Load, and the energy delivered to Buyer; and (5) the number of Allowances (including Free Allowances) held and/or surrendered by Seller for such calendar year (during any period where the SRAC energy price is calculated in accordance with Section 10.2.2).

10.3.2 If Buyer requires any other information not delineated in Section 10.3.1 in order to comply with any GHG emissions reporting requirements adopted by CARB and/or by

any other Governmental Authority and imposed on Buyer (other than the information that Seller must provide in accordance with Section 10.3.3), then SCE, SDG&E and PG&E, on the one hand, and CAC, EPUC, CCC and IEP, on the other hand, shall promptly meet and confer regarding such other information that Buyer requires and negotiate in good faith to reach a mutually acceptable agreement. Buyer and Seller shall be bound by any agreement as to any information required by Buyer, as described in the foregoing, between PG&E, SCE and SDG&E, on the one hand, and CAC, EPUC, CCC and IEP, on the other hand, in accordance with the foregoing.

10.3.3 Each Party shall deliver to the other Party, or before the tenth (10th) Business Day following receipt of a notice from the other Party, such information as such other Party is required to report to any authorized Governmental Authority pursuant to the Settlement.

10.3.4 To the extent that the information provided by the disclosing Party in accordance with this Section 10.3 is Confidential Information, the receiving Party shall treat such Confidential Information with the same degree of care that it currently treats the data and information provided by QFs under the existing CHP QF Compliance Monitoring Program.

10.4 Market Disruption Event

10.4.1 If, on or after the date that the Market Heat Rate applies to and is used in the calculation of the energy price and until the end of the term of the Applicable PPA, there occurs a Market Disruption Event, then the Market Heat Rate for the affected Trading Day(s) must be determined by reference to the Market Heat Rate for the first Trading Day thereafter on which no Market Disruption Event exists; provided, however, that if the Market Heat Rate is not so determined within five (5) Trading Days after the Market Disruption Event, then PG&E, SCE and SDG&E, on the one hand, and CAC, EPUC, CCC and IEP, on the other hand, will negotiate in good faith to reach an agreement on a Market Heat Rate (or a method for determining a Market Heat Rate), and if such negotiating parties have not so agreed on or before the twelfth (12th) Trading Day following the first Trading Day on which the Market Disruption Event occurred or existed, then the Market Heat Rate will be determined in good faith by taking the average of the price quotations for energy and relevant Trading Days that are obtained from no more than two (2) Reference Market-Makers selected by PG&E, SCE and SDG&E, on the one hand, and CAC, EPUC, CCC and IEP on the other hand (for a total of four (4) price quotations). Buyer and Seller shall be bound by any agreement as to a Market Heat Rate (or a method for determining a Market Heat Rate) between PG&E, SCE and SDG&E, on the one hand, and CAC, EPUC, CCC and IEP, on the other hand, in accordance with the foregoing.

10.5 Seller's Responsibility

10.5.1 Other than Buyer's payment to Seller for GHG Compliance Costs and GHG Charges as set forth in payment formulae in Section 10.2 above, Seller is solely responsible for all GHG Compliance Costs and all other costs associated with implementation and regulation of GHG emissions with respect to Seller or the Generating Facility.

11 Legacy PPA Matters for All Existing QFs

11.1 Energy and Capacity Pricing

- 11.1.1 Unless a Legacy PPA is otherwise amended to specify an alternate energy price or pricing methodology, SRAC shall be as set forth in Section 10.
- 11.1.2 QFs with Legacy PPAs may execute the Amendment to Legacy PPAs, which shall include energy pricing options identified as Options A, B, C1, C2, and C3, and other terms, as attached hereto as Exhibits 1, 2, and 3.
- 11.1.3 If no capacity price is set in the Legacy PPAs, other than the administratively determined price, the capacity price shall be as set in D.07-09-040.

11.2 Other Matters

- 11.2.1 The Parties' objective is to assure that a CHP or Utility Prescheduled Facility operating under an extension ordered by the Commission in D.07-09-040 will be able to deliver power without interruption pursuant to the extension of the Legacy CHP PPA until the first day of the term, meaning the initial date of the delivery of power, of a new or amended PPA (Subsequent PPA). Extensions of Legacy CHP PPAs ordered by the Commission pursuant to D.07-09-040 shall remain in effect until the date the Seller commences power deliveries under a Subsequent PPA pursuant to this Settlement. For example, the end delivery date of the extension of the Legacy CHP PPA would be Monday and the first day of the term of the Subsequent PPA would be Tuesday. This would allow continued delivery of power without interruption under an approved and effective Subsequent PPA. The Parties shall use all reasonable efforts to meet conditions that would permit transition from the extensions to an approved and effective Subsequent PPA within one hundred and twenty (120) days after the Settlement Effective Date. Absent good cause shown, the extension of the Legacy CHP PPA shall terminate and the term of the Subsequent PPA commence no later than one hundred and twenty (120) days after the Settlement Effective Date. Good cause shall include pending regulatory approvals from the CPUC, CAISO or other Governmental Authority that prevents the delivery of power under a Subsequent PPA. In the event of a dispute, the QF may submit a letter to the Director of the CPUC Energy Division (with a copy to the IOU with a right to respond) setting forth the particular facts that explain why the CHP Facility cannot move to the Subsequent PPA and asking for a further extension. The Director of Energy Division will act on this letter within thirty (30) days and the extension of the Legacy CHP PPA shall remain in effect during the period of review. Such requests shall not be unreasonably repetitive or designed primarily to delay termination of the extension of the Legacy CHP PPA. The Parties will comply with Commission orders or actions of the Director of CPUC Energy Division related to the termination of the extension of the Legacy CHP PPA.
- 11.2.2 Legacy PPAs, and extensions of PPAs ordered by the CPUC, shall remain in effect under the terms and conditions specified in such PPAs and extensions of such PPAs, subject to the following section.
- 11.2.3 A QF with a Legacy PPA can bid into a CHP RFO or otherwise make use of any applicable CHP Procurement Process.

11.3 Non-Binding Forecasting Requirements for Legacy PPAs

11.3.1 General Requirements. The Buyer and Seller shall make good faith efforts to abide by the forecast requirements and procedure described below and shall agree upon reasonable changes to these requirements and procedures from time to time as necessary to:

11.3.1.1 Support Buyer's compliance with the CAISO's scheduling requirements related to the PPA;

11.3.1.2 Accommodate changes to the Buyer's and/or Seller's respective generation technology and organizational structure; and

11.3.1.3 Address changes in the operating and Scheduling procedures of Seller, Buyer and the CAISO, including automated Forecast and outage submissions.

11.3.2 The Buyer and Seller agree that the Forecasts generated by, or otherwise resulting from, the forecasting requirements and procedures in this Section 11.3 are non-binding on Seller, the Generating Facility or the Site Host.

11.3.3 Seller's Forecasting Submittal Procedures

11.3.3.1 30-Day Forecast.

11.3.3.1.1 No later than 30 days before the first day of the following Initial Forecast Month, Seller shall provide Buyer with a Forecast for the 30-day period commencing on the first day of the Initial Forecast Month using the Web Client.

11.3.3.1.2 If the Web Client becomes unavailable, Seller shall provide Buyer with the Forecast by e-mail at [Buyer to provide contact information] or by telephoning Buyer's generation operations center at [Buyer to provide contact information].

11.3.3.1.3 The Forecast, and any updated Forecasts provided pursuant to Section 11.3.3 shall (i) not include any anticipated or expected electric energy losses between the meter(s) used for measuring the energy sold to Buyer by Seller and the point of delivery of the energy delivered to Buyer by Seller, and (ii) limit hour-to-hour Forecast changes to no less than 250 kWh during any period when the Web Client is unavailable. Seller shall have no restriction on hour-to-hour Forecast changes when the Web Client is available.

11.3.3.2 Weekly Update to 30-Day Forecast.

11.3.3.2.1 Commencing on or before 5:00 p.m. California time of the Wednesday before the first week covered by the Forecast provided pursuant to Section 11.3.3.1, and on or before 5:00 p.m. California time every Wednesday thereafter for the remainder of the term of the PPA, Seller shall update the Forecast for the 30-day period

commencing on the Sunday following the weekly Wednesday Forecast update submission.

11.3.3.2.2 Seller shall use the Web Client, if available, to supply this weekly update or, if the Web Client is not available, Seller shall provide Buyer with the weekly Forecast update by e-mailing or telephoning Buyer at the e-mail address or telephone number listed in Section 11.3.3.1.

11.3.3.3 Further Update to 30-Day Forecast.

11.3.3.3.1 As soon as reasonably practicable and commensurate with Seller's knowledge, Seller shall provide Forecast updates to take into account expected changes in daily, hourly and real-time deliveries from the Generating Facility for any cause, including changes in the Generating Facility ambient conditions, a Forced Outage or a Real-Time Forced Outage, any of which results or is expected to result in a material change to the Generating Facility's deliveries (whether in part or in whole).

11.3.3.3.2 This updated Forecast pursuant to this Section 11.3 must be submitted to Buyer via the Web Client by no later than:

11.3.3.3.2.1 5:00 p.m. California time on the day before the day in which Day -Ahead trading occurs in accordance with the Western Electricity Coordinating Council Preschedule Calendar (as found on the Western Electricity Coordinating Council's website) is impacted by the change, if the change is known to Seller at that time,

11.3.3.3.2.2 The Hour-Ahead Scheduling Deadline, if the change is known to Seller at that time,

11.3.3.3.2.3 If the change is not known to Seller by the timeframes indicated in Sections 11.3.3.2.1 and 11.3.3.3.2.2 immediately above, no later than 20 minutes after Seller becomes aware of the event which caused the expected energy production change.

11.3.3.3.3 Seller's updated Forecast must contain the following information:

11.3.3.3.3.1 The beginning date and time of the event resulting in a change in the availability of the Generating Facility and expected hourly energy production in MWh/h;

11.3.3.3.3.2 The expected ending date and time of the event;

11.3.3.3.3.3 The expected energy production or available generation capacity, as applicable, in MWh; and

11.3.3.3.3.4 Any other information required by the CAISO as communicated to Seller by Buyer.

- 11.3.4 Buyer is responsible for all CAISO charges and is entitled to receive all CAISO revenues.
- 11.3.5 Except as set forth in this Section 11.3, there shall be no modification of Seller's existing communication protocols and designated contacts with Buyer, if any, including any requirement to notify Buyer of Generating Facility parallel operation or separation from the electrical system.

12 CAISO Tariff Compliance

12.1 CAISO Tariff Compliance for New PPAs

- 12.1.1 As reflected in the applicable PPAs, all CHP Facilities subject to the CAISO Tariff shall comply with applicable CAISO Tariff provisions as determined by the CAISO no later than the time when the CHP Facility begins deliveries under any PPA entered into pursuant to this Settlement. CAISO approved revenue quality metering and telemetry shall be installed in compliance with CAISO requirements within six (6) months following execution of such contract, subject to any extension granted by the CAISO.
- 12.1.2 The Parties acknowledge that the CAISO may condition, waive, extend or modify applicable conditions for interconnection, metering or other CAISO jurisdictional matters to the extent permitted by the CAISO Tariff provisions applicable to CHP Facilities. Pending installation of CAISO approved revenue quality metering and telemetry for a CHP Facility, the IOU shall provide the CAISO with any necessary revenue meter and telemetry data as requested by the CAISO.

13 IOU Cost Recovery for CHP Program PPAs

13.1 Cost Allocation and Departing Load Charges

- 13.1.1 The IOUs will enter into CHP PPAs for up to twelve (12) years. CPUC D.04-12-048, D.06-07-029 and D.08-09-012 limit the recovery of power procurement PPA costs to ten (10) years. This Settlement is conditioned on a CPUC Decision approving this Settlement which supersedes the provisions of D.06-07-029 and D.08-09-012 as follows: (1) the relevant costs (either "above market costs" or "net capacity costs," as appropriate) of this CHP Program can be recovered through Non-Bypassable Charges and (2) the same relevant costs of new PPAs entered into pursuant to the CHP Program can be recovered through Non-Bypassable Charges for the term of the CHP PPA, subject to the restrictions herein.
- 13.1.2 One of the two following methods for allocation of CHP procurement costs shall uniformly apply to all ESPs and CCAs. The choice of the two methods referenced in this section shall be determined by the CPUC on review of this Settlement. The same method shall be used for all three IOUs.
 - 13.1.2.1 If the CPUC determines that all ESPs and CCAs should procure CHP generation for their customers, then the relevant CPUC decisions (potentially including D.04-12-048, D.06-07-030 and/or D.08-09-012) shall be superseded to the extent necessary to authorize the allocation of all above-market costs associated with the IOU portion of the CHP Program on a vintaged basis to

future Direct Access (DA) and CCA customers and all future Departing Load Customers, except for Departing Load Customers served by CHP Facilities as provided in Public Utilities Code §218(b) (CHP Departing Load Customers), through the Cost Responsibility Surcharge (CRS). The calculation of the above-market costs of the CHP Program to be added to the CRS would follow the same methodology adopted in D.06-07-030.

13.1.2.2 If the CPUC determines that the IOUs should purchase CHP generation on behalf of DA and CCA customers, then the D.06-07-029 (and D.08-09-012 if necessary) shall be superseded to the extent necessary to authorize the IOUs to recover the net capacity costs associated with the CHP Program from all bundled service, DA and CCA customers and all Departing Load Customers except for CHP Departing Load Customers, on a non-bypassable 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 CHP Program, the LSEs serving DA and CCA customers will receive a pro-rata share of the RA credits procured via the CHP Program.

13.1.3 The Parties agree that they will not advocate charging load served by CHP that meets the criteria of Public Utilities Code §218(b) and §216.6 for the costs of the CHP Program through any cost allocation mechanism.

13.1.4 The current Non-Bypassable Charges applicable to Customer Generation Departing Load (CGDL) as of December 31, 2009 include only the DWR Bond Charge, Nuclear Decommissioning and the Public Purpose Program charge. The Parties agree to oppose (or not support) any proposal before the CPUC not otherwise required by statute that would result in the application of “new generation” costs as defined in D.04-12-048 and D.08-09-012 or cost allocation mechanism (CAM) charges to CHP CGDL, or that would re-characterize the costs currently recovered through those mechanisms such that they would apply to CHP CGDL in the future. However, Parties reserve the right to argue that future programs not currently within the scope of “new generation” as defined in D.08-09-012⁵ should be treated as Public Purpose Programs.

13.1.5 In recognition of the new cost recovery mechanisms contemplated by this Settlement, the Parties agree to advocate exclusion from the Competition Transition Charge (CTC) of any above-market costs associated with purchases of power from a CHP Facility via a PPA entered into pursuant to this Settlement. However, the above-market costs of QF procurement via Legacy PPAs may continue to be recovered through CTC for the life of those contracts.

13.2 IOUs' Energy Resources Recovery Accounts

⁵ “New Generation” as defined in D.08-09-012 includes “generation from both fossil fueled and renewable resources contracted for or constructed by the investor-owned utilities subsequent to January 1, 2003.” D.08-09-012, note 1.

- 13.2.1 The IOUs shall recover the cost of all payments made pursuant to PPAs and PPA Amendments executed under this CHP Program in their respective Energy Resources Recovery Accounts, subject only to the reasonable administration of these PPAs and PPA Amendments.

14 Settlement of Pending and Anticipated Litigation

14.1 Retroactive Adjustment of SRAC Prices

- 14.1.1 If the CPUC adopts the Settlement and FERC terminates, subject to reinstatement, the PURPA must take obligation for QFs over 20 MW, the IOUs will withdraw with prejudice all SRAC retroactive price adjustment claims and challenges and such claims and challenges cannot be revived. As long as the FERC 210(m) suspension stays in place, the Parties may neither raise new claims nor seek retroactive adjustments of SRAC prices paid to QFs during the Settlement Term based on the grounds that SRAC prices violate PURPA avoided cost requirements or based on an argument that alternative pricing theories or methodologies would be preferable to the SRAC methodologies set forth in the Settlement. However, the IOUs may adjust payments to QFs based on other issues that arise in the administration of the PPAs, *e.g.*, billing errors, metering errors, fraud.

14.2 Released Claims

- 14.2.1 QFs over 20 MW will not have the right to new five (5)-year and ten (10)-year PPAs ordered in D. 07-09-040 during the Settlement Term.
- 14.2.2 CCC will withdraw its motion for an order implementing the prospective QF program PPA options adopted in D.07-09-040.
- 14.2.3 All Parties will waive all retroactive claims for energy and capacity adjustment for periods including, but not limited to:
- 14.2.3.1 SRAC Remand Dispute (R.99-11-021) (December 2000 – March, 31 2001),
 - 14.2.3.2 SCE's SRAC Update application (A. 08-11-001) (April 2004 – July 31, 2009), and
 - 14.2.3.3 PG&E's and SDG&E's pending refund application (September 2007 – July 31, 2009).
- 14.2.4 SCE/TURN will withdraw its Petition for Writ of Review of D.07-09-040 and D.08-07-048 at California Court of Appeal (Case B210398). Parties will withdraw cross claims in that case.
- 14.2.5 SCE, PG&E, and SDG&E will withdraw their application for rehearing of D.09-04-032.
- 14.2.6 SCE, PG&E, SDG&E, and TURN will withdraw their application for rehearing of D.09-04-034.
- 14.2.7 CAC, EPUC, and IEP will withdraw their applications for rehearing of D.09-04-032.

- 14.2.8 CAC and EPUC will withdraw their application for rehearing of D.09-04-034.
 - 14.2.9 The CPUC shall close with prejudice its reconsideration of the Administrative Heat Rates as ordered in D.08-11-062.
 - 14.2.10 Application or petitions regarding CHP Facilities on Transitional SO1 agreements or extensions will be withdrawn.
 - 14.2.11 The IOUs will withdraw Advice Letters PG&E AL 3197-E, SDG&E AL 1958-E, and SCE AL 2200-E to implement new Standard Offer Contracts pursuant to D.07-09-040.
 - 14.2.12 The IOUs shall withdraw the Petition for Modification of D.07-12-052 (LTPP Decision) regarding QF capacity.
- 14.3 Confidentiality
- 14.3.1 The Parties agree that they shall abide by the CPUC rules regarding Confidential Information as set forth in CPUC decisions and as modified by the CPUC, the courts or the legislature.
 - 14.3.2 Parties reserve all rights to advocate for their respective positions before the CPUC, the courts or the legislature regarding the confidentiality of IOU procurement information.

15 Federal Energy Regulatory Commission 210(m) Application

- 15.1 PURPA §210(m) Application at the FERC⁶
- 15.1.1 The IOUs will submit a joint application under Section 210(m) of PURPA and 18 C.F.R. §§ 292.309 – 292.310 to FERC (“Joint Application”) requesting a termination of the PURPA purchase requirement.
 - 15.1.2 The IOUs will provide the other parties to the Settlement including QFs who are members of the CHP Parties’ organizations (“Other Parties to the Settlement”) an opportunity to review and provide comment to the IOUs on the Joint Application prior to it being filed and the IOUs will use good faith in considering and incorporating comments consistent with the Settlement.
 - 15.1.3 The Joint Application shall be filed under 210(m)(1)(C). The Joint Application will reference the following four components to demonstrate that the application meets the statutory requirements of Section 210(m)(1)(C): MRTU, RA Capacity, RPS Program, and CHP Program Settlement.
 - 15.1.4 The Other Parties to the Settlement will have the right to intervene and file comments on the Joint Application, but will not protest nor otherwise oppose the termination of the PURPA purchase obligation, consistent with Section 15.1.3 above. Nothing herein prohibits the IOUs from filing a reply to comments consistent with Section 15.1.3.

⁶ Order 688, *New PURPA Section 210(m) Regulations Applicable to Small Power Production and Cogeneration Facilities*, 117 FERC ¶ 61,078 (2006).

- 15.1.5 The Other Parties to the Settlement will provide the IOUs an opportunity to review and provide comment to the Other Parties to the Settlement on their respective comment on the Joint Application prior to the comment being filed and the Other Parties will use good faith in considering and incorporating comments consistent with the Settlement.
- 15.1.6 The Joint Application will not be filed until after the CPUC issues a decision approving or disapproving the Settlement.
- 15.1.7 Subject to the situations described in Sections 15.1.9, 15.1.10, and 15.1.12 below, the IOUs and the Other Parties to the Settlement (collectively, the IOUs and the Other Parties to the Settlement, “the Parties”) agree that all advocacy in all forums will be consistent with the Settlement, the Joint Application, and Section 15.1.3.
- 15.1.8 The Parties reserve their rights to seek rehearing and appeal a FERC decision granting or denying the Joint Application.
- 15.1.9 If a non-settling party protests or otherwise opposes the Joint Application, nothing herein prohibits the Parties from replying. In addition, the Parties shall: (1) meet and confer within three (3) days to determine if they can reach agreement on advocacy positions consistent with the Settlement, the Joint Application and Section 15.1.3; and (2) make a good faith effort to agree on bases for advocacy within seven (7) days consistent with the Settlement, the Joint Application, and Section 15.1.3; thereafter, including requesting that FERC convene a Settlement Conference under Rule 601. If the Parties are unsuccessful in reaching resolution of advocacy positions as contemplated by this section, each Party shall have the right to file in support or opposition to the protest consistent with the Settlement, the Joint Application and Section 15.1.3.
- 15.1.10 The Other Parties to the Settlement do not waive the right to file at FERC for a reinstatement of a particular IOU’s PURPA purchase obligation if the IOU breaches its obligations under the Settlement or the CHP Program adopted in the Settlement is not successfully implemented, based upon the IOU’s failure to meet the targets established by the CPUC pursuant to the Settlement, without justification as provided for in the Settlement. The Other Parties to the Settlement cannot file for a reinstatement until the CPUC or the Energy Division Director makes a determination in writing that the IOU’s failure to meet the targets was not justified. The Other Parties to the Settlement shall not file for a reinstatement of a particular IOU’s PURPA purchase obligation earlier than the announcement of the results of the second RFO for that IOU. The IOUs retain the right to argue that termination of the PURPA purchase requirement should be sustained and/or that relief should be solely on the basis of Section 210(m)(1)(A) in response to a reinstatement filing.
- 15.1.11 If at any time , after the Section 201(m)(1) termination has been granted by FERC, a filing is made at FERC, or any other applicable authority, by a third party seeking relief from the Section 210(m)(1) termination or reinstatement of the IOU PURPA purchase obligation, or any successor provision, the Parties shall: (1) meet and confer within five (5) days to determine if they can reach agreement on advocacy positions; and (2) make a good faith effort to agree on bases for advocacy within five (5) days thereafter that will preserve the grounds for termination set forth in Section 15.1.3, above. If the Parties are unsuccessful in reaching resolution of advocacy positions as contemplated

by this section, each party shall have the right to file in support or opposition to the filing seeking relief from the termination.

15.1.12 .If the Joint Application is denied, the IOUs reserve the right to file a new application that does not comply with the procedures set forth above.

15.2 FERC Reinstatement of PURPA Obligation

15.2.1 If FERC reinstates the IOUs' obligation to purchase pursuant to Section 210(m) then the following applies:

15.2.1.1 SRAC pricing stays in place until changed by the CPUC.

15.2.1.2 The amendments signed by Legacy QFs stay in place for the term of the amendments without change, including SRAC contained in such amendments.

15.2.1.3 Parties may advocate for changes to SRAC pricing.

15.2.1.4 Prior claims for and challenges to retroactive price adjustments cannot be revived, but Parties may advocate for retroactive adjustments to SRAC pricing in accordance with existing Court and CPUC decisions unless and until modified by the Courts or CPUC and may petition or otherwise advocate for changes in rules and decisions on retroactive adjustments.

15.2.1.5 If the CPUC sets SRAC at a market-based price, excluding certain administrative adjustments such as O&M adders, there will be no retroactive pricing for the period such market-based SRAC formula is in effect. However, the IOUs may adjust payments to QFs based on other issues that arise in the administration of the PPAs, *e.g.*, billing errors, metering errors, fraud.

15.2.1.6 If the CPUC sets SRAC at a price based in whole or in part on administrative or non-market based components, excluding certain administrative adjustments such as O&M adders, rather than a market-based price SRAC, Parties may advocate for a return to a market-based SRAC price and may advocate for the retroactive application of an adopted market-based SRAC pricing change in accordance with existing Court and CPUC decisions unless and until modified by the Courts or CPUC.

15.2.1.7 Obligations to conduct additional CHP RFOs or conduct alternative CHP Procurement Processes under the Settlement shall be suspended, including the MW Targets and GHG Emissions Reduction Targets; provided the CPUC may on grounds other than the Settlement direct the procurement of CHP resources. CHP PPAs executed prior to the suspension remain in full force and effect. Any procurement targets to be established by the CPUC in the LTPP remain in place unless and until modified by the CPUC in a subsequent proceeding.

15.2.1.8 Designation of Legally Enforceable Obligation under Section 210(m). The Parties agree that any existing CHP PPA, any existing extension agreements, and any Standard Offer PPA or Pro-Forma PPA executed pursuant to this Settlement will constitute a legally-enforceable obligation as provided in Section 210(m).

16 Conditions Precedent and Subsequent to Settlement Effective Date

16.1 Approval of Settlement by CPUC

- 16.1.1 This Settlement shall be submitted and approved in all open QF dockets. This Settlement resolves all open and pending issues in all the following open dockets: R.04-04-003, R.04-04-025, A.08-11-001, R.99-11-022, R.06-02-013.

16.2 Conditions Precedent to Effectiveness of the Settlement

- 16.2.1 Final and non-appealable FERC approval of the IOUs' application to terminate their PURPA purchase obligation, subject to reinstatement in accordance with Section 210(m);
- 16.2.2 Final and non-appealable approval of the Settlement by the CPUC as submitted for approval without revisions unacceptable to any Party or in an alternative form that is acceptable to all Parties;
- 16.2.3 As part of the Settlement approval process, CARB support, in written form, for the Settlement. Examples of such support can be, but are not limited to, pleadings, comments to the CPUC or a letter of support. CARB support must be provided to the CPUC no later than CPUC approval of this Settlement;
- 16.2.4 The CPUC Decision adopting the Settlement will supersede certain portions of existing CPUC decisions as occurs with any subsequent CPUC decision or order;
- 16.2.5 D.06-07-029 and D.08-09-012 are superseded as follows: (1) the relevant costs (either "above market costs" or "net capacity costs" as appropriate) of this CHP Program can be recovered through Non-Bypassable Charges consistent with Section 13 herein; and (2) the same relevant costs of new PPAs entered into pursuant to the CHP Program can be recovered through Non-Bypassable Charges for up to twelve (12) years consistent with Section 13 herein.
- 16.2.6 The Procurement obligations in this Settlement and under the RPS Program supersede and replace the QF MWs in D.07-12-052.
- 16.2.7 All Parties will execute and be bound by the Settlement on the Settlement Effective Date and shall support and defend this Settlement in all forums, including but not limited to the CPUC, FERC, CEC, CARB and the federal and state Legislature. CCC, CAC and EPUC will sign on behalf of their members and an appendix to the Settlement will contain the names of all of the current members of each of the organizations and each such member will be bound by the Settlement. IEP members and other QFs will have the option to sign a QF PPA amendment, which will include agreement to be bound by the Settlement. An amendment or execution of the Settlement will not be required to bind the members of CCC, CAC and EPUC. CCC, CAC and EPUC will represent that it is authorized to represent each listed member and that it has provided a copy of the Settlement to each of its members.
- 16.2.8 To the extent the Generating Facility has Green Attributes associated with the Related Product (as Green Attributes and Related Product are defined in each of the form PPAs

attached to this Settlement), such Green Attributes shall be counted or credited toward the purchasing IOU's RPS Program or any successor program.

16.3 Conditions Subsequent to Effectiveness of Settlement

- 16.3.1 If CARB subsequently adopts regulations directly imposing a MW Target or GHG Emissions Reduction Target that differs from the Settlement for the Second Program Period, the IOUs' obligations to purchase from CHP to meet the MW Target or GHG Emissions Reduction Target will remain in place until such time as the CPUC is able to consider such change in an LTPP or other pertinent proceeding.

17 Glossary of Defined Terms

AB 1613 Feed-In Tariff: As defined in Section 4.4.1.

Actual HR: The Heat Rate that must be used in accordance with and subject to the terms set forth in Section 10.2.2.2, which Heat Rate Buyer shall calculate, on the date of the commencement of the First Compliance Period, using the following formula:

Actual HR = The average of the Daily HR_n for each delivery or flow date in the two (2) year period immediately preceding the commencement of the First Compliance Period

Where:

$$\text{Daily } HR_n = [EP_n - VOM_n] / [GP_n + GT_n]$$

Where:

EP_n = The average of the Day Ahead hourly electric energy prices, as determined by the Integrated Forward Market (as defined in the CAISO Tariff) for (i) SP15 Existing Zone Generation Trading Hub (formerly known as SP15), or its successor, if Buyer is SCE or SDG&E, and (ii) NP15 Existing Zone Generation Trading Hub (formerly known as NP15), or its successor, if Buyer is PG&E;

VOM_n = Calendar month avoided variable O&M for the applicable month (\$/kWh), per D.07-09-040 and CPUC Resolution E-4246 (as such Resolution may be modified from time to time by the CPUC);

GP_n = The applicable daily gas price index, which is (i) Platt's Gas Daily (currently SoCalGas gas indices) if Buyer is SCE or SDG&E, or (ii) Platt's Gas Daily (currently SoCalGas and PG&E Malin gas indices), if Buyer is PG&E; and

GT_n = The gas transportation rate for the applicable month, per CPUC Resolution E-4246 (as such Resolution may be modified from time to time).

Additional GHG Documentation: Documentation necessary to allocate Free Allowances to energy delivered by Seller to Buyer, which documentation consists of the following, in each case for the time-period to which the Free Allowances are to apply: (a) the total amount of GHG emissions attributable to the Generating Facility, the electrical energy used to serve the Site Host Load, the Useful Thermal Energy Output of the Generating Facility; and the energy delivered to Buyer; (b) the Useful Thermal Energy Output of the Generating Facility; (c) the total electrical energy produced by the Generating Facility, the electrical energy used to serve the Site Host Load, and the energy delivered to Buyer; and (d) total fuel usage of the Generating Facility.

Allowance: A limited tradable authorization (whether in the form of a credit, allowance or other similar right), allocated to, issued to or purchased by, Seller, the Site Host or a Related Entity of Seller, with respect to the Generating Facility, to emit one MT of GHG, in accordance with a cap-and-trade program in California for the regulation of GHG, as

established by CARB (and/or by a different Governmental Authority pursuant to federal or state legislation), and as applied to the GHG emitted by the Generating Facility.

AMW: For purposes of this Settlement, the average MW deliveries from the Optional As-Available PPAs as determined in accordance with Section 4.6.2.10.3.

AMW CAP: There is a cap on energy deliveries from all of the Optional As-Available PPAs measured in AMW. The AMW Cap shall be: PG&E: 75 AMW, SCE: 75 AMW, SDG&E: 10, as defined in Section 4.6.2.10.2.

Annual GHG Reports: As defined in Section 10.3.1.

Applicable NDA: As defined in Section 9.1.4.

Applicable PPA: Any power purchase agreement between Buyer and Seller that requires Buyer to calculate the energy payment due to Seller under such agreement in whole or in part based on SRAC.

Availability Incentive Payments: As defined in the CAISO Tariff.

Availability Standards: As defined in the CAISO Tariff.

Baseline: Specific to GHG Accounting, as defined in Section 7.3.1.3.

Bottoming Cycle CHP: A cogeneration facility in which the energy input to the system is first applied to a useful thermal energy application or process, and at least some of the reject heat emerging from the application or process is then used for power production, and as otherwise provided in 18 CFR Section 292, *et seq.*

Burner Tip Gas Price: As determined in CPUC Decision 07-09-040 and CPUC Resolution E-4246 (as such Resolution may be modified from time to time by the CPUC).

Business Day: Any day except a Saturday, Sunday, the Friday after the United States Thanksgiving holiday, or a Federal Reserve Bank holiday that begins at 8:00 a.m. and ends at 5:00 p.m. local time for the Party sending a notice or payment or performing a specified action.

Buyer: The party responsible for purchasing electric energy, capacity or other power products delivered by Seller in a PPA.

CAISO: The California Independent System Operator Corporation or successor entity.

CARB: The California Air Resources Board, or any successor entity.

CARB Mandatory GHG Emissions Annual Report: Reporting of greenhouse gases by major sources is required by the California Global Warming Solutions Act. The Air Resources Board approved a mandatory reporting regulation in December 2007, which became effective January 2009. See Section 10.3.1.1.

CARB CHP Recommended Reduction Measure or RRM: As referenced on pages 43-44 of the "Approved Scoping Plan" adopted by the CARB at its December 11, 2008 Board meeting. http://www.arb.ca.gov/cc/scopingplan/document/adopted_scoping_plan.pdf

CARB Scoping Plan: the “Approved Scoping Plan” adopted by the CARB at its December 11, 2008 Board meeting.
http://www.arb.ca.gov/cc/scopingplan/document/adopted_scoping_plan.pdf

CAISO Tariff: The CAISO Operating Agreement and Tariff, including the rules, protocols, procedures and standards attached thereto, as the same may be amended or modified from time to time and approved by the FERC, or any successor entity.

CAISO-Approved Quantity: The total quantity of electric energy that Buyer Schedules with the CAISO and the CAISO approves in its final schedule which is published in accordance with the CAISO Tariff.

CCA or Community Choice Aggregator: Any city, county, or city and county, or group of cities, counties, or cities and counties, whose governing board or boards elect to combine the loads of their residents, businesses, and municipal facilities in a community wide electricity buyers’ program, as specified in Public Utilities Code §331.5.

CEC: California Energy Commission.

CHP: Combined Heat and Power system or cogeneration means the sequential use of energy for the production of electrical and useful thermal energy (Public Utilities Code §216.6). As defined in Section 1.1.1.

CHP Auditor: As provided in Section 9.

CHP Facility or CHP Facilities: A facility that meets the federal definition of a qualifying cogeneration facility under 18 C.F.R. §292.205.

CHP Party or CHP Parties: Any of the following associations, or an individual member of or group of individual members of such associations – California Cogeneration Council (CCC), Cogeneration Association of California (CAC), Energy Producers and Users Coalition (EPUC); the Independent Energy Producers Association (IEP); and Sellers that execute the Legacy PPA Amendment.

CHP Program Semi-Annual Report: As defined in Section 8.1.1.

CHP Procurement Processes: Procurement processes for CHP resources by the IOUs that count toward the MW and/or GHG Emissions Reduction Targets as specified in the Settlement. These include the CHP RFO PPAs, bilaterally negotiated and executed CHP PPAs, the AB 1613 Feed-In Tariff, QF Standard Offer CHP PPAs for eligible CHP Facilities pursuant to PURPA, Optional As Available PPAs for eligible CHP Facilities, certain IOU-owned CHP, existing CHP that converts to a Utility Prescheduled Facility, and new behind the meter CHP.

CHP QF Compliance Monitoring Program: The existing CPUC QF Compliance Monitoring Program, established by Decision 91-05-007.

CHP RFOs: As defined in Section 4.2.1.

CHP RFO Pro-Forma PPA: As defined in Section 4.2.6.

Capacity Demonstration Test: Buyer shall conduct a Capacity Demonstration Test of the Generating Facility under the CHP PPA to determine the MW to count towards the MW Targets. The Capacity Demonstration Test shall be conducted as defined in the attached PPAs.

Confidential Information: All oral or written communications exchanged between the Parties on or after the Settlement Effective Date relating to the implementation of the CHP PPA, including information related to Seller's compliance with operating and efficiency standards applicable to a qualifying cogeneration facility or fuel use standards applicable to a qualifying small power production facility. Confidential Information does not include (i) information which is in the public domain as of the Settlement Effective Date or which comes into the public domain after the Settlement Effective Date from a source other than from the other Party, (ii) information which either Party can demonstrate in writing was already known to such Party on a non-confidential basis before the Settlement Effective Date, (iii) information which comes to a Party from a bona fide third-party source not under an obligation of confidentiality, or (iv) information which is independently developed by a Party without use of or reference to Confidential Information or information containing Confidential Information.

CPUC: the California Public Utilities Commission.

CPUC Jurisdictional Entities: the IOUs, ESPs and CCAs.

D.: A CPUC Decision.

DA: Direct Access. As defined in Section 6.3.1.

Day-Ahead: As defined and may be modified in the CAISO Tariff.

Day-Ahead Market: The forward market for energy and ancillary services to be supplied during the settlement period of a particular Trading Day that is conducted by the CAISO, and other Scheduling Coordinators. This market closes with the CAISO's acceptance of the final Day-Ahead Schedule.

Day-Ahead Schedule: A schedule prepared by a Scheduling Coordinator or the CAISO before the beginning of a Trading Day. This schedule indicates the levels of generation and demand scheduled for each settlement period of that Trading Day.

Departing Load Customers: Includes CGDL, TMDL and NMDL customers as defined in SCE's existing DL-NBC, CGDL-CRS, TMDL and NMDL tariff schedules; as CGDL, TMDL, and NMDL in PG&E's existing E-DCG, E-NMDL and E-TMDL tariff schedules; and in SDG&E's existing E-DEPART tariff schedules.

Designated Capacity Product: As defined in Section 3.4.1.2.

Direct Access Customers: Customers located within the IOU Service Territory of an IOU who purchase electricity from an ESP.

Double Benchmark: The Double Benchmark measures the amount of GHG emissions that otherwise would exist if the CHP Facility did not exist. The Double Benchmark, which may be later modified pursuant to this Settlement, contains the following assumptions:

(a) the heat rate for the electricity generated is 8,300 BTU/kWh at the busbar and excluding line losses; and (2) the thermal efficiency of a standard boiler is 80%.

Efficiency Performance Deficiency: Failure to meet annual efficiency requirements under the terms of the PPA, as defined in Section 4.2.9.

Efficiency Performance Requirement: A contractual requirement to meet certain levels of efficiency as defined in the PPA or AB 1613 Feed-In Tariff.

Emergency Condition: As set forth in the Transmission Provider's LGIA, SGIA or other distribution-level FERC-jurisdictional interconnection agreement with Seller, as applicable; *provided, however*, that if Seller interconnects pursuant to Tariff Rule 21, "Emergency Condition" means "Emergency", as defined in such Tariff Rule 21.

Emissions Performance Standard or EPS: The Emissions Performance Standard adopted by the CPUC in D.07-01-039 and as it may be revised in subsequent decisions.

ESP or Electric Service Provider: An entity that is licensed by the CPUC to provide electric power service to Direct Access Customers under Public Utilities Code §§218.3 and 394, or subsequent statutes.

Existing CHP Facility(ies): An Existing CHP Facility is one that was operational before the Settlement Effective Date.

Expanded CHP Facilities: Means (i) an existing topping-cycle CHP Facility that, on or after the Settlement Effective Date, has added at least one new combustion turbine and increased the Power Rating of the Generating Facility by not less than 90% of the Power Rating of the largest existing combustion turbine at the Generating Facility, or (ii) an existing bottoming-cycle CHP Facility that has increased its total Power Rating by at least 30% as compared to the Power Rating before such expansion.

EWG or Exempt Wholesale Generator: An unregulated power generator that is allowed to sell wholesale power as an independent energy producer, and is exempt from the Public Utility Holding Company Act of 1935.

FERC: The Federal Energy Regulatory Commission, or successor agency.

First Compliance Period: The first period of time for compliance with a cap-and-trade program in California for the regulation of GHG, as established by CARB (and/or by a different Governmental Authority pursuant to federal or state legislation). There will be no more than a single First Compliance Period.

Floor Test Term: From the date the First Compliance Period commences for a period of three (3) years.

Free Allowance: Any Allowance freely allocated to Seller or the Generating Facility by CARB or an authorized Governmental Authority (or any entity authorized by such Governmental Authority).

Free Allowance Notice: The notice, delivered by Seller to Buyer in accordance with the Applicable PPA, that sets forth the aggregate quantity of Free Allowances received by

Seller during the applicable time-period and sets forth the allocation of such Free Allowances in accordance with the following:

- (i) The allocation of Free Allowances by CARB (or any other Governmental Authority) to the energy generated by the Generating Facility and delivered to Buyer during the applicable time-period; or
- (ii) If CARB (or any other Governmental Authority) does not allocate Free Allowances received by Seller as described in subsection (i) above, then Seller shall set forth in the Free Allowance Notice the quantity of Free Allowances allocated to the energy generated by the Generating Facility and delivered to Buyer during the applicable time-period (FA_d) utilizing the following formula:

$$FA_d = FA_t * [G_e / (G_e + G_t)] * [E_d / (E_{sh} + E_d)]$$

Where:

FA_t = Total number of Free Allowances received by Seller with respect to the Generating Facility for the applicable time-period;

G_e (in MTs) = Emissions of GHG attributed to the total amount of electric energy produced by the Generating Facility for the applicable time-period (calculated in accordance with the formula set forth in Section 95112 of the California Code of Regulations, or any successor thereto, which calculation must be set forth in the Free Allowance Notice);

G_t (in MTs) = Emissions of GHG attributed to the Useful Thermal Energy Output produced by the Generating Facility for the applicable time-period (calculated in accordance with the formula set forth in Section 95112 of the California Code of Regulations, or any successor thereto, which calculation must be set forth in the Free Allowance Notice);

E_d (in kWh) = Energy generated by the Generating Facility and delivered to Buyer for the applicable time-period; and

E_{sh} (in kWh) = Electric energy generated by the Generating Facility and used to serve the Site Host Load for the applicable time-period; or

- (iii) If the CARB (or any other Governmental Authority) does not allocate the Free Allowances received by Seller, as described in (i) above, and there is no available formula in any applicable rule or regulation for the calculation of G_e and G_t , as described in (ii) above, then Seller shall include in the Free Allowance Notice the total amount of emissions of GHG attributed to the electric energy period (G_e , in MTs) and the Useful Thermal Energy Output (G_t , in MTs) produced by the Generating Facility for the applicable time-period based on the two following formulas:

$$G_e = G * (\text{Useful Power Output} / (\text{Useful Power Output} + \text{Useful Thermal Energy Output}))$$

$$G_t = G * (\text{Useful Thermal Energy Output} / (\text{Useful Power Output} + \text{Useful Thermal Energy Output}))$$

Where:

G (in MTs) = Total emissions of GHG produced by the Generating Facility for the applicable time-period;

Useful Power Output (in MMBtu) = As defined in 18 CFR §292.202(g), or any successor thereto;

Useful Thermal Energy Output (in MMBtu) = As defined in 18 CFR §292.202(h), or any successor thereto;

Upon determining G_e and G_t in subsection (iii) above, Seller shall then calculate for and provide the quantity of Free Allowances attributed to energy generated by the Generating Facility and delivered to Buyer for the applicable time-period (FA_d) using the formula set forth in subsection (ii) of this definition.

Forced Outage: As set forth in the CAISO Tariff.

Forecast: The hourly forecast of (i) the total electric energy production of the Generating Facility (in MWh) when the Generating Facility is not PIRP-eligible, or (ii) the available total generation capacity of the Generating Facility (in MW) when the Generating Facility is PIRP-eligible, in each case net of the Site Host Load and Station Use.

Generating Facility: Seller's electric energy production facility set forth in the PPA.

GHG Auction: Any auction or other sale-by-bid event applicable to California and by an authorized Governmental Authority (or any entity authorized by such Governmental Authority) for the sale of Allowances.

GHG Charges: Means all taxes, charges or fees, assessed with the implementation and regulation of Greenhouse Gas emissions with respect to the Generating Facility imposed by any Governmental Authority, such as the CARB's AB 32 Cost of Implementation Fee (as defined in Title 17 C.C.R. §95200). For example, if the charges are assessed on but not included in fuel consumption or gas costs, the Applicable Heat Rate or Burner Tip Gas Price will be used to derive the dollars per kilowatt-hour charge. On January 1, 2015 or the commencement of the First Compliance Period, the GHG Charges will equal zero in the above formula.

GHG Compliance Costs: The cost of Allowances, as determined in accordance with Section 10.2.

GHG Credit: A positive GHG Emissions Reduction from a Generating Facility as defined in Section 7 of the Settlement.

GHG Debit: An increase in GHG emissions from a Generating Facility as defined in Section 7 of the Settlement.

GHG Emissions Reduction Target: The procurement targets defined in Section 6.

GHG Floor Test: As defined in Section 10.2.2.

Governmental Authority: Any governmental authority responsible for the regulation of GHG in California, including (i) any federal, state, local, municipal or other governmental authority, (ii) any governmental, regulatory or administrative agency, commission, lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power, or (iii) any court or governmental tribunal.

Greenhouse Gas or GHG: Emissions released into the atmosphere of carbon dioxide (CO₂), nitrous oxide (N₂O) and methane (CH₄), which are produced as the result of combustion or transport of fossil fuels. Other greenhouse gases may include hydrofluorocarbons (HFCs), perfluorocarbons (PFCs) and sulfur hexafluoride (SF₆), which are generated in a variety of industrial processes. Greenhouse gases may be defined or expressed in terms of a MT of CO₂-equivalent, in order to allow comparison between the different effects of gases on the environment; *provided, however*, that the definition of the term 'Greenhouse Gas', as set forth in the immediately preceding sentence, shall be deemed revised to include any update or other change to such term by CARB and/or any other Governmental Authority.

Heat Rate: For purposes of this Settlement, the value obtained, in BTU per kWh, when the fuel input, on a Higher Heating Value basis, in BTU is divided by generation, net of Station Use, in kWh.

Higher Heating Value or HHV: The high or gross heat content of the fuel with the heat of vaporization included; the water vapor is assumed to be in a liquid state.

Hour-Ahead Scheduling Deadline: Thirty (30) minutes before the deadline established by the CAISO for the submission of schedules for the applicable hour.

IE or Independent Evaluator: The duties of an IE are generally described in CPUC D.07-12-052 at pp. 136-142.

Initial Program Period: The period commencing on the Settlement Effective Date and concluding forty-eight (48) months thereafter.

Initial Forecast Month: The first calendar month for which Seller provides to Buyer a 30-day Forecast pursuant to Section 11.3, which must be the first calendar month commencing no earlier than 30 days after Settlement Effective Date and no later than 60 days after such date.

IOU: An investor owned-utility, including PG&E, SCE and SDG&E.

IOUs: PG&E, SCE and SDG&E collectively.

Joint Application: As defined in Section 15.1.1.

July 2010 Semi-Annual Report: Each IOU's July 2010 Cogeneration and Small Power Production Semi-Annual Reports, as defined in Section 6.2.1.1.

Legacy PPA(s): All Existing QF or CHP PPAs, including extensions of such PPAs, in force and effect on the Settlement Effective Date with any IOU that has not expired by its terms and conditions, excluding PPAs entered into pursuant to the RPS Program.

Legacy PPA Amendment: An amendment to a Legacy PPA which is attached to this Term Sheet as Exhibits 1, 2, and 3.

LGIA (Large Generator Interconnection Agreement or Standard Large Generator Interconnection Agreement): As set forth in the CAISO Tariff.

Legacy PPA C1 Amendment: An amendment to a Legacy PPA which allows the IOU to schedule operations of the CHP Facility or Utility Prescheduled Facility.

Locational Marginal Price: As defined and may be modified in the CAISO Tariff.

LTPP: The CPUC's Long-Term Procurement Plan proceeding for the IOUs, or its successor proceeding.

Market: The MIF calculation adopted in D.07-09-040 and Resolution E-4246 with 100% Market Heat Rate and 0% Administrative Heat Rate. Market Heat Rates shall be defined as provided in Resolution E-4246. The Parties agree to rely on the 12-month forward indices adopted by the CPUC in Resolution E-4246, unless the direction to use such indices is modified by the CPUC.

Market Disruption Event: With respect to any MHR Source, any of the following events: (i) the permanent discontinuation or material suspension of trading in the exchange or in the market specified for determining a Market Heat Rate; (ii) the temporary or permanent discontinuance or unavailability of the MHR Source; or (iii) the temporary or permanent closing of any exchange specified for determining a Market Heat Rate. For purposes of this definition, "temporary" means five (5) or more continuous Trading Days.

Market Heat Rate: The 12-month forward market heat rate, calculated for each calendar pricing month utilizing the methodology set forth in CPUC D.07-09-040 and CPUC Resolution E-4246 (as such Resolution may be modified from time to time by the CPUC) for (i) SP15 Existing Zone Generation Trading Hub (formerly known as SP15), or its successor, if Buyer is SCE or SDG&E, and (ii) NP15 Existing Zone Generation Trading Hub (formerly known as NP15), or its successor, if Buyer is PG&E.

Megawatt (MW): One thousand kilowatts (1,000 kW) or one million (1,000,000) watts.

Megawatt Hour (MWh): One thousand kilowatt-hours.

MRTU: The Market Redesign and Technology Upgrade implemented by CAISO on April 1, 2009.

MHR Source: The relevant publications used to determine the Market Heat Rate.

MMT: Million Metric Tons.

MT(s): Metric Ton(s)

MW Target(s): As provided in Section 5.

NDA: Non Disclosure Agreement as defined in Section 9.1.4 and attached as Exhibit 8.

Net MW Targets: MW Targets in each RFO in the Initial Program Period.

New MW Target(s): As defined in Section 5.1.4.1.

New CHP Facility: A CHP Facility that became operational after the Settlement Effective Date.

Non-Availability Charges: As defined in the CAISO Tariff.

Non-Bypassable Charge: A charge to Departing Load Customers to recover the costs of PPAs entered into by an IOU for their benefit while they were IOU bundled customers.

Non-IOU LSE: A load serving entity other than PG&E, SCE, and SDG&E. See Section 6.3.1.

Optional As-Available Program: Available for generators that deliver less than 20 MW, on average to the Buyer, as provided in Section 4.6.

Optional As-Available PPA: A PPA option for CHP generators that deliver less than 20 MW, on average, to the Buyer, as provided in Section 4.6, and the form of which is attached to this Settlement as Exhibit 7.

Other Parties to the Settlement: As defined in Section 15.1.2.

PIRP (Participating Intermittent Resource Program): The CAISO's intermittent resource program initially established pursuant to Amendment 42 of the CAISO Tariff in FERC Docket ER02-922-000, or any successor program that Buyer determines accomplishes a similar purpose.

PG&E: Pacific Gas and Electric Company.

Party: A single party to the Settlement from among CCC, CAC, EPUC, IEP, PG&E, SCE, SDG&E, TURN, and DRA.

Parties: CCC, CAC, EPUC, IEP, PG&E, SCE, SDG&E, TURN, DRA.

PNode: As defined in the CAISO Tariff.

POUs: Publicly-owned utilities including municipal utilities (utilities owned by branches of local government) and/or co-ops (utilities owned cooperatively by customers).

Power Rating: The electrical power output value indicated on the generating equipment nameplate.

PPA: A power purchase agreement between a Seller and Buyer.

PRG: The group of non-market participants established in D.02-08-071 as an advisory group to review and assess the details of the IOUs' overall procurement strategy, RFOs, specific proposed procurement contracts and other procurement processes.

PURPA: The Public Utility Regulatory Policies Act of 1978, as amended, 16 U.S.C. §§823a, 2601, *et seq.*

QCRs: IOU Quarterly Compliance Reports submitted to the CPUC.

Qualifying Facility or QF: An electric energy generating facility that complies with the qualifying facility definition established by PURPA and any FERC rules as amended from time to time (18 Code of Federal Regulations Part 292, Section 292.203 *et seq.*) implementing PURPA and has filed with FERC (i) an application for FERC certification, pursuant to 18 Code of Federal Regulations Part 292, Section 292.207(b)(1), which FERC has granted, or (ii) a notice of self-certification pursuant to 18 Code of Federal Regulations Part 292, Section 292.207(a).

QF PPA: A PPA with standard terms and conditions for a QF with a nameplate capacity of 20 MWs or less.

Real-Time Forced Outage: A Forced Outage which occurs only after 5:00 p.m. California time on the day before a Trading Day impacted by such Forced Outage.

Reference Market-Maker: A leading dealer in the energy market that is not a Related Entity of either Party and that is selected by a Party in good faith among dealers of the highest credit standing which satisfy all the criteria that such Party applies generally at the time in deciding whether to offer or to make an extension of credit. Such dealer may be represented by a broker.

Related Entity: With respect to either Party, any individual or entity that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with such Party. For purposes of the Applicable PPA, "control" means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.

Repowered CHP Facilities: A CHP Facility that, on or after the Settlement Effective Date, has had its prime mover(s) replaced or refurbished, as follows:

- If the CHP Facility contains combustion turbines, then each combustion turbine must be replaced with:
 - A new combustion turbine that has been certified as new by the original manufacturer of the equipment *provided, however*, that the CHP Facility that has replaced its combustion turbines with a substantially identical engine (e.g., as is common during major overhauls of aeroderivative combustion turbines or as part of a spare engine program), does not qualify as a Repowered CHP Facility; or
 - A refurbished combustion turbine, so long as such refurbished combustion turbine has been certified by the entity that refurbished such combustion turbine (which may be the manufacturer) to achieve Heat Rate and total power output performance guarantees comparable to a new combustion turbine, prior to operational degradation; or
- If the CHP Facility contains only steam turbines, then each steam turbine must be replaced with a refurbished steam turbine, which refurbishment must have been accomplished with new or near-new condition parts, and which include (i) a

replacement of all stop and throttle control valves, seals, bearing, rotors, and turbine blades of each steam turbine, and (ii) a replacement or rebuilding of the stationary part of each steam turbine back to new condition, including seal system, lube oil system and all associated piping and auxiliary equipment.

In addition to the above requirement, (1) the repowering of the Generating Facility as described in this definition must be completed before the Term State Date, (2) Section 1.02(a) of the CHP PPAs must provide that the Generating Facility will be a Repowered CHP Facility on the Term Start Date, and (3) Seller must provide to Buyer a written certification, including all supporting data, from a qualified independent engineer, which certification must provide that the total useful life of the CHP Facility (including, as applicable, the combustion turbine(s), the steam turbine(s), the electrical generator(s) and the heat recovery steam generator) will operate for at least the Term of this Agreement, subject to industry standard maintenance practices.

Resource Adequacy Benefit or RA Benefit: The resource adequacy benefits associated with the generating capability of the CHP Facility or Utility Prescheduled Facilities that can be used to meet the IOU's obligations under any CPUC resource adequacy Rulings. Resource Adequacy Benefits shall include any local, zonal or otherwise locational attributes associated with the CHP or Utility Prescheduled Facilities.

RPS Program: The State of California Renewable Portfolio Standard Program, as codified at California Public Utilities Code §399.11, *et seq.*

SCE: Southern California Edison Company.

Schedule: The action of Scheduling Coordinator, or its designated representatives, of notifying, requesting, and confirming to the CAISO, the CAISO-Approved Quantity of electric energy.

Scheduling Coordinator: Scheduling coordinators (SCs) submit schedules and bids and provide settlement-ready meter data to the CAISO.

SDD: Scheduling and Delivery Deviation as set forth in Exhibit K of each of the QF PPA, Transition PPA, Optional As-Available PPA, and CHP RFO PPA.

SDG&E: San Diego Gas & Electric Company.

Second Program Period: The period of time commencing from the end of the Initial Program Period and concluding on December 31, 2020.

Self-Generation: A generation facility dedicated to serving on site load or a particular retail customer, often located on the customer's premises. The facility may either be owned directly by the generator or owned by a third party with a contractual arrangement to provide electricity to meet some or all of the customer's load.

Self Generation Incentive Program (SGIP): SGIP provides rebates for qualifying distributed energy systems installed on the customer's side of the utility meter.

Seller: The Party responsible for generating and delivering electric energy to Buyer in accordance with a PPA.

Service Territory: The state, area or region served principally by a single IOU, subject to service provided by ESPs and CCAs to customers in such state, area or region.

Settlement: That certain Settlement Agreement, dated October 8, 2010, filed by the Settling Parties in CPUC R.04-04-025, R.04-04-003, A.08-11-001, R.99-11-022, and R.06-02-013.

Settlement Effective Date: The date that is the later of the two following events: (1) final and non-appealable CPUC approval of the Settlement in its entirety in a form that is agreeable to each Party; and (2) a final and non-appealable order from FERC approving the IOUs' Joint Application to terminate their PURPA purchase requirement under Section 210(m) of the Energy Policy Act of 2005, 117 FERC ¶61,078 (2006).

Settlement Term: The period beginning on the Settlement Effective Date and ending December 31, 2020.

SGIA (Small Generator Interconnection Agreement): The form of Interconnection Request (as defined in the CAISO Tariff) pertaining to a Small Generating Facility (as defined in the CAISO Tariff), which is attached to the CAISO Tariff as Appendix T.

Site Host: The entity or entities purchasing or otherwise using the Site Host Load or Useful Thermal Energy Output from the Generating Facility.

Site Host Load: The electric energy and capacity produced by or associated with the Generating Facility that serves electrical loads (other than Station Use) of Seller or one or more third parties conducted pursuant to California Public Utilities Code §218(b).

SRAC or Short Run Avoided Cost: Short Run Avoided Cost, as set forth in Section 10.

SRAC Commencement Date: As defined in Section 10.2.

Standard Offer Contract or SOC: The QF PPA that was developed by the Parties in order to comply with D.07-09-040 and submitted for approval by the IOUs through Advice Letters PG&E AL 3197-E, SDG&E AL 1958-E, and SCE AL 2200-E, each as proposed to be modified by the CPUC in proposed final Resolution E-4242 dated September 10, 2009 and revised on October 20, 2009.

State CHP Program or CHP Program: The program established in this Settlement for CPUC-jurisdiction entities to procure from CHP Facilities and Utility Prescheduled Facilities.

Station Use: The electric energy produced by the Generating Facility that is (i) used within the Generating Facility to power the lights, motors, control system and other electrical loads that are necessary for Operation, (ii) consumed within the Generating Facility's electricity energy distribution system as losses needed to deliver electricity to the Site Host Load, and (iii) consumed within the generator collection system as losses between the generator(s) and the high voltage side of the Generating Facility output transformer(s)."

System Emergency: As set forth in the CAISO Tariff.

Tariff Rule 21: The interconnection standards of the Transmission Provider for distributed generation adopted by the CPUC in D.00-11-001 and D.00-12-037, as modified by the CPUC.

Tier 2 Advice Letter: As defined in the CPUC's General Order 96-B or its successor.

Tier 3 Advice Letter: As defined in the CPUC's General Order 96-B or its successor.

Topping Cycle CHP Facility: A cogeneration facility in which the energy input to the facility is first used to produce useful power output, and at least some of the reject heat from the power production process is then used to provide useful thermal energy, and as otherwise provided in 18 CFR §292.205, *et seq.*

Trading Day: The day in which Day-Ahead trading occurs in accordance with the Western Electricity Coordinating Council's Preschedule Calendar (as found on the WECC's website).

Transition PPA: A short-term PPA between a CHP currently selling to an IOU under a Legacy PPA or extension thereof that begins on the expiration of the Legacy PPA and ends at the conclusion of the Transition Period, the form of which is attached to this Settlement as Exhibit 4.

Transition Period: The period beginning on the Settlement Effective Date and ending on July 1, 2015.

Transmission Provider: Any individual or entity responsible for the interconnection of the Generating Facility with the interconnecting utility's electrical system or the CAISO Controlled Grid or transmitting the Metered Energy (as defined in the PPAs attached to this Settlement) on behalf of the Seller from the Generating Facility to the Delivery Point (as defined in the PPAs attached to this Settlement).

Useful Thermal Energy Output: As defined in 18 CFR §292.202(h) and modified by the Energy Policy Act of 2005, or any successor thereto.

Utility Prescheduled Facility: An Existing CHP Facility that has changed operations to convert to a utility controlled scheduled dispatchable generation facility, including but not limited to an EWG.

Web Client: A Buyer provided Web based system or an email address designated by Buyer.

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:

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

[XX] By Electronic Mail – serving the enclosed 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 with an e-mail address.

[XX] By U.S. Mail – by placing the enclosed for collection and mailing, in the course of ordinary business practice, with other correspondence of Pacific Gas and Electric Company, enclosed in a sealed envelope, with postage fully prepaid, addressed to those 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 without an e-mail address.

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

**THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA
EMAIL SERVICE LIST
CPUC DOCKET NO. R0404003-R0404025-A0811001-R9911022-R0602013**

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