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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Instituting Rulemaking on the
Commission's Own Motion into combined heat
and power Pursuant to Assembly Bill 1613.

Rulemaking 08-06-024
(Filed June 26, 2008)

COMMENTS OF THE ENERGY PRODUCERS AND USERS COALITION ON WORKING GROUP REPORT

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June 1, 2009

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Pursuant to the April 1, 2009, Amended Scoping Memo and Ruling of Assigned Commissioner and Administrative Law Judge (Amended Scoping Memo), the Energy Producers and Users Coalition¹ (EPUC) submits the following comments on the Working Group Report filed by Pacific Gas and Electric Company on May 15, 2009 (Report).

EPUC opted out of the process set for developing a power purchase agreement and pricing structure for sales by combined heat and power (CHP) to the utilities under AB 1613. The coalition's membership includes existing CHP facilities over 20 MW that would fall outside the scope of AB 1613, and any new projects under consideration today would exceed 20 MW. Moreover, as the Amended Scoping Memo made clear, there will be no relationship between the contract established in this proceeding and the Qualifying Facility (QF) contract under development in R.04-04-003/R.04-04-025. Finally, this Commission has

¹ EPUC is an ad hoc group representing the electric end use and customer generation interests of the following companies: Aera Energy LLC, BP West Coast Products LLC, Chevron U.S.A. Inc., ConocoPhillips Company, ExxonMobil Power and Gas Services Inc., Shell Oil Products US, THUMS Long Beach Company, and Occidental Elk Hills, Inc.

committed publicly to a rulemaking to explore large CHP policy. For these reasons, EPUC offers only very limited comments on the Report.

I. A STANDARD OFFER CONTRACT (SOC) SUITED FOR CHP FACILITIES 20 MW AND UNDER WILL NOT BE WELL-SUITED FOR LARGER FACILITIES.

The Amended Scoping Memo made clear that this proceeding is limited in scope to small CHP. This direction is appropriate in light of many potential differences between the small units at issue and larger CHP facilities. For example:

- ✓ The SOC presented in the Workshop Report contemplates as-available deliveries; a larger facility may be positioned to offer firm power products;
- ✓ The requisite terms for an SOC may differ between large and small projects, depending on project payback and thermal host requirements;
- ✓ The risk of curtailment to a smaller CHP host may present less concern than for a large, integrated industrial host such as a refinery; and
- ✓ The extent of the capital risk presented by a larger CHP facility may require greater certainty regarding price terms, including greenhouse gas cost recovery.

Due to these and potentially other different conditions faced by large and small CHP facilities, the Assigned Commissioner and Administrative Law Judge have appropriately limited the scope of this proceeding to small CHP consistent with AB 1613.

II. DESPITE DIFFERENCES BETWEEN LARGE AND SMALL CHP, EPUC SHARES CERTAIN CONCERNS RAISED BY SMALL CHP DEVELOPERS.

The California Clean DG Coalition, Fuel Cell Energy and California On-Site Generation (Small CHP Parties) did not reach agreement with the utilities on several key points, including SOC form, price, collateral and termination rights. EPUC shares the concerns raised by the Small CHP Parties in these areas.

Standard Offer Contract. The Matrix of Issues and Positions submitted with the Workshop Report (Matrix) reflects Small CHP Parties' concerns that the SOC "*is prohibitively lengthy and complex*" for small CHP facilities. EPUC agrees. The SOC has two full pages of insurance requirements (§9.10), and the utilities propose a full page designating NERC compliance obligations (§3.21). The SOC is nearly four times longer than the power purchase agreement used in the existing utility renewable CREST program, which is now being proposed for an expanded Feed-in-Tariff (FiT) program in R.08-08-009. The Commission should give deference to the Small CHP Parties in trimming the contract to a workable length, possibly with an eye toward the CREST/FiT PPA.

Price. The utilities continue to maintain that pricing should be set either at the short-run avoided cost determined in the QF proceeding or at the CAISO day-ahead price. The Small CHP Parties have not agreed, and for good reason. Both of the proposed prices leave a good measure of price risk on the CHP facilities. These facilities will face the risk of market price fluctuations, whether directly through a CAISO price or through the QF Market Index Formula. They will also face the risk of greenhouse gas cost recovery without a direct pass through of those costs in a manner similar to the pass-through provided to the

utilities' own facilities and recent merchant PPAs. CHP developers typically have less appetite for power sales price risk than a merchant, since their primary business driver is providing heat to an industrial or commercial host.

Consequently, minimizing the risk to the CHP facility will maximize the success of the AB 1613 program. A price based on the Market Price Referent -- with a capacity price, and fixed-heat rate energy price formula and a GHG pass-through -- is the right approach. To the extent this type of pricing formula requires Federal Energy Regulatory Commission (FERC) approval, the Commission should seek such approval.

Collateral. The utilities have proposed seven pages of significant credit and collateral requirements under the SOC in §1.06 and Exhibit D. Central to these provisions are a performance assurance, equal to 12 months of expected SOC revenue, and development security that totals \$60/kW. For a facility delivering approximately 10 MW to the grid at an 80% capacity factor and a \$60/MWh price, these requirements would total nearly \$5 million. The Small CHP Parties, not surprisingly, have objected to these provisions. EPUC agrees that the proposed provisions are onerous, even for large CHP facilities.

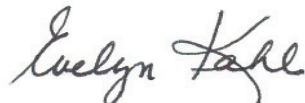
Termination. The utilities propose in the SOC two contract termination provisions (§§ 2.02(a)(i) & (ii)), which the Small CHP Parties have reasonably opposed. Section (a)(i) allows for termination if the Commission "*in any way diminishes Buyer's rights*" to collect above-market costs associated with the agreement from departing load customers. Section (a)(ii) terminates the agreement if the mandatory purchase agreement under AB 1613 is eliminated.

While the conditions described in these provisions, should they arise, may be a basis to review the program on a prospective basis, using the conditions as termination provisions increases developer risk. A developer needs to have certainty in its contract term and pricing at the outset of the arrangement. These provisions must be rejected.

III. CONCLUSION

The Working Group Report leaves critical issues unresolved between the utilities and CHP developers. If the Commission seeks to implement a robust, workable program, these critical issues should be resolved to address the Small CHP Parties' interests.

Respectfully submitted,

A handwritten signature in black ink, reading "Evelyn Kahl". The signature is fluid and cursive, with the first name "Evelyn" and the last name "Kahl" clearly distinguishable.

Evelyn Kahl

Counsel to the Energy Producers and
Users Coalition

June 1, 2009

CERTIFICATE OF SERVICE

I, Amie Burkholder, hereby certify that I have on this date caused the foregoing document, **Comments of the Energy Producers and Users Coalition on Working Group Report** to be served on all known parties by electronic mail, to each party named in the official service list obtained from the Commission's website, attached hereto, and pursuant to the Commission's Rules of Practice and Procedure.

Dated June 1, 2009, at San Francisco, California.

A handwritten signature in black ink that reads "Amie Burkholder". The signature is written in a cursive style with a large, stylized "B".

Amie Burkholder

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