BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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.	FILED PUBLIC UTILITIES COMMISSION XXX XX, 2004 SAN FRANCISCO OFFICE RULEMAKING _____

ORDER INSTITUTING RULEMAKING

1. Introduction and Summary

We open this rulemaking in order to continue our ongoing efforts to develop avoided costs in a consistent and coordinated manner across Commission proceedings. Avoided costs have been part of this Commission's regulatory landscape since the late 1970's. The term refers to the incremental costs avoided by the investor-owned utility (IOU) when it purchases power from qualifying facilities (QFs),[1] implements demand-side management, such as energy efficiency or demand-response programs, or otherwise defers or avoids generation from existing/new IOU supply-side investments or IOU energy purchases in the market.

Avoided costs are applicable to a variety of regulatory issues, including the pricing of QF power and cost-effectiveness evaluations of distributed generation and demand-side energy resource options. Avoided costs have also

[1] Qualifying facilities, or QFs, are qualifying non-utility cogeneration and small power production facilities under the Public Utility Regulatory Policies Act of 1978 that sell electric power to the IOUs.

been used to establish the value of achieved energy savings in performance incentive mechanisms. In addition, the "marginal costs" used for revenue allocation and rate design purposes in Commission proceedings are a close derivative of avoided cost calculations.

As discussed further below, this rulemaking serves as the Commission's forum for developing a common methodology, consistent input assumptions and updating procedures for avoided costs across our various proceedings, and for adopting avoided cost calculations and forecasts that conform to those determinations. It is the forum for considering similarities as well as appropriate differences in methods and inputs for specific applications of avoided costs, including QF avoided cost pricing. Our goal is to establish "apples to apples" comparisons across resource options, to the greatest extent possible. We will strive for consistent methodologies and assumptions across applications of avoided costs, while recognizing that statutory directions for specific programs may require some other considerations.[2]

The four major energy IOUs, Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), San Diego Gas & Electric Company (SDG&E), and Southern California Gas Company (SoCalGas) are respondents to this rulemaking.[3]

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[2] For example, the Renewable Portfolio Standard (RPS) program has specific statutory requirements (e.g., Pub. Util. Code § 399.11 through § 399.16). Parties interested in development of the RPS program should be sure to participate in that proceeding, and should not attempt to use this proceeding as a forum for litigating issues more properly addressed in the RPS proceeding.

[3] PG&E, SDG&E, SCE, and SoCalGas are hereinafter referred to collectively as "IOUs," "utilities," or "respondents."

2. Background on QF Issues

With regard to the determination of avoided cost for purposes of QF pricing, we note here that QFs are subject to a number of federal and state legal requirements. In Decision (D.) 02-08-071, we set forth a brief overview of these requirements germane to QFs, which we find most useful to restate at this juncture:

> **Federal Law**
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> The Public Utility Regulatory Policy Act of 1978 (PURPA), as codified in the United States Codes (USC) at 16 U.S.C. § 824a-3, requires the Federal Energy Regulatory Commission (FERC) to prescribe and periodically revise rules that "require electric utilities to offer to . . . (2) purchase electric energy from [QFs]."[4] Rates paid by utilities for purchases of electric energy may not exceed "the incremental cost to the electric utility of alternative electric energy."[5] PURPA defines incremental cost with respect to electric energy purchased from a QF as "the cost to the electric utility of the electric energy which, but for the purchases from such [QF] such utility would generate or purchase from another source."[6]
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> The FERC has complied with its PURPA obligation to "prescribe rules" by promulgating in the Code of Federal Regulations (CFR) 18 CFR § 292 et seq. The rules set forth therein provide in pertinent part that: "each electric utility shall purchase, in accordance with [18 CFR] § 292.304, any energy and capacity which is made available from a [QF] . . . "[7] §292.304, entitled "rates for purchases,"

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[4] 16 U.S.C. § 824a-3(a).

[5] 16 U.S.C. § 824a-3(b).

[6] 16 U.S.C. § 824a-3(d). PURPA also requires that the cost to the utility be "just and reasonable" to electric consumers while not discriminating against QFs. (*Id.* § 824a-3(b)(1) and (2).)

[7] 18 CFR § 292.303(a).

establishes a pricing regime for purchases by IOUs from QFs. Consistent with 18 U.S.C. § 824a-3, § 292.304(a)(1) requires first that "rates for purchases shall: (i) [b]e just and reasonable to the electric consumer of the electric utility and in the public interest. . . ."[8] While rates may not exceed avoided costs,[9] rates will satisfy the "just and reasonable" and non-discrimination requirements of § 292.304(a) "if the rate equals the avoided costs determined after consideration of the factors set forth in paragraph (e) of this section."[10] Paragraph (e) provides a laundry list of factors to be taken into account in determining avoided costs, "to the extent practicable." These are elaborated upon below.

The FERC's rules require that standard rates for purchases be put into effect only "for purchases from qualifying facilities with a design capacity of 100 kilowatts or less."[11] Whether to implement standard rates for qualifying facilities "with a design capacity of more than 100 kilowatts" is discretionary.[12]

Purchases from "as-available" QFs are subject to special pricing rules. QFs may provide energy as it is available, "in which case the rates for such purchases shall be based on the purchasing utility's avoided costs calculated at the time of delivery."[13] QFs providing electric energy or capacity under a contract are to be paid either avoided costs at the time of delivery, or avoided costs calculated at the time the QF entered the contract, whichever the QF chooses at the time it enters the contract.[14]

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[8] 18 CFR § 292.304(a)(1).

[9] 18 CFR § 392.304(a)(2).

[10] 18 CFR § 392.304(b)(2).

[11] 18 CFR § 392.304(c).

[12] 18 CFR § 392.304(c)(2).

[13] 18 CFR § 392.304(d)(1).

[14] 18 CFR § 392.304(d)(2).

State Law

PURPA also imposed an obligation on this Commission. "[E]ach State regulatory authority shall . . . implement [the FERC QF rules] for each electric utility for which it has ratemaking authority."[15] It falls to this Commission to implement the pricing provisions just elaborated. This Commission has a lengthy history of setting QF prices, which we need not elaborate here.

* * *

In D.96-10-036, the Commission undertook to bring its QF implementation practices into the restructured world. Of particular significance to the issues in this docket, the Commission terminated as of January 1, 1998 any requirement that utilities enter SO1 or SO3 contracts with QFs. "QFs with design capacity 100 kW or less may negotiate non-standard agreements based upon the standard rates applicable to grand fathered USO1's and tariff Rule 21."[16]

* * *

For "grandfathered" QFs, i.e., those with contracts entered prior to December 20, 1995, pricing would continue to be based on the contract terms, which almost universally set price at "short run avoided cost." (SRAC.) With respect to SRAC, the Legislature took a hand when it enacted Public Utilities Code Section 390 as part of AB 1890. Generally speaking, Public Utilities Code Section 390 sets out components (most significantly, gas costs) to use in setting SRAC, pending a shift to the use of PX prices to establish SRAC. The Commission implemented R.99-11-022 to work out the particulars of SRAC pricing under Public Utilities Code Section 390. Events overtook this rulemaking, and the demise of the PX in January 2001 ended any chance of a universal migration of QFs to PX-based SRAC pricing. At present, SRAC is set using a formula

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[15] 18 U.S.C. § 824a-3(f)(1).

[16] D.96-10-036, Ordering Paragraph 7.

> based on gas prices.[17] Each utility has detailed QF pricing information (current and historical) on its respective Website.[18]

In both D.03-12-062 and D.04-01-050, we discussed the need to review the pricing methodology applicable to QFs. In D.04-01-050, we noted the definition of avoided costs, applicable to QFs, as set forth by FERC:

> "'Avoided costs' is defined as 'the incremental costs to an electric utility of electric energy or capacity or both which, but for the purchase from the qualifying facility or qualifying facilities, such utility would generate itself or purchase from another source.'" (**18 C.F.R.** § 292.101(b)(6) (2003).)

In regard to these PURPA mandates, we noted in D.04-01-050 that "as FERC itself has recognized, we must balance the PURPA mandate that utilities are to purchase energy and capacity from QFs with the overarching requirement that electric utilities may only charge just and reasonable rates for the power they supply to their customers" (p. 152).

Moreover, in D.03-12-062, we noted that it is important that the current methodologies to establish QF pricing be modified and that the Commission will be moving forward to examine and propose appropriate modifications to the QF pricing methodology in the near future, a point that we reiterated in D.04-01-050. D.04-01-050 also concluded that certain renewed contracts would be subject to subsequent changes in pricing methodologies that may result from this rulemaking.

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[17] See D.01-03-067, as modified by D.02-02-028.

[18] http://www.pge.com/002_biz_svc/002e1_info_center.shtml

http://www.sce.com/sc3/005_regul_info/005i_qualifying_facilities/QFDataDoc.htm

http://www2.sdge.com/srac/

With regard to upcoming workshops on avoided costs and QF pricing described in Section 4 below, parties are encouraged to carefully review existing avoided cost pricing methodologies applicable to QFs which determine (1) short run avoided cost (SRAC) energy payments, and (2) As-Delivered Capacity Prices. Parties should comment on the need for, and difference between, short-run and long-run methodologies or considerations thereof, as well as any appropriate methodological (and thus appropriate pricing) differences between firm and as-available power. Parties should also concisely address any practical constraints that arise from any associated legal requirements and the degree of latitude and discretion available to the Commission under the circumstances.

In considering these factors, we direct the parties' attention to the Commission staff's May 1, 2001, Final Report on Workshop to Discuss Alternative Gas Indices.[19] This Report is the outcome of a workshop that staff held on April 19, 2001 regarding the gas index to be used in calculating SRAC payments to QFs. This Report summarizes the written comments that were filed prior to the workshop, as well as the facts and discussion that came out of the workshop.

We also wish to remind the parties of what we noted in D.03-12-062 with regard to the some of the problems with the current SRAC pricing formula:

> In fact, Section 390 is now something of an artifact of the AB 1890 electric restructuring landscape, for the reason that Section 390 can never be fully implemented in accordance with the provisions set forth in Section 390(c) due to the demise of the PX.
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> As the foregoing discussion demonstrates, the SRAC energy pricing formula is now out-of-date. The capacity pricing component of the

[19] http://www.cpuc.ca.gov/word_pdf/REPORT/21996.doc

> SRAC formula is also problematic, because the QFs receive capacity payments in addition to energy payments. With SRAC energy prices that can now be above market prices, the additional capacity payments that QFs receive could compound any inequity to the utilities and their ratepayers of the current SRAC pricing formula.

We intend to carefully examine these points within the context of this proceeding, and we shall carefully consider how to modify the SRAC methodology to assure that it results in just and reasonable rates. If the outcome of this proceeding leads us to conclude that the formula mandated by Section 390 cannot allow us to assure just and reasonable rates for the power provided by QFs, we put the parties on notice that we shall seek appropriate legislative changes to Section 390 that will remedy this anomaly.

3. Background

The need to update avoided cost calculations and to coordinate the development of input assumptions and methodologies across Commission proceedings has been articulated in several Commission decisions over the past year, including D.04-01-050, D.03-12-062 and D.03-04-055. In D.03-04-055, our energy efficiency rulemaking (Rulemaking (R.) 01-08-028), we initiated an avoided cost updating process to "assess externalities to reflect the societal costs of energy."[20] A draft report on this issue, dated January 8, 2004, prepared by Energy and Environmental Economics, Inc. under the direction of our Energy Division staff, is now available on the Commission's Website.[21]

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[20] D.03-04-055 in R.01-08-028. See section VI.D and Conclusion of Law 9.

[21] A copy of the report is posted at http://www.cpuc.ca.gov/static/industry/electric/energy+efficiency/rulemaking/index.htm

This report, entitled "A Forecast of Cost Effectiveness Avoided Costs and Externality Adders," was developed in order to: (1) update the current cost-effectiveness inputs used in evaluating energy efficiency programs to more accurately reflect current conditions, and (2) provide the Commission with a method and model for updating cost-effectiveness inputs on an ongoing basis. Among other things, this report develops a forecast for the years 2004-2023 on avoided costs for use in quantifying the benefits of demand-reduction programs. The report proposes a time dependent valuation method to calculate avoided costs that are location-specific and vary by hour of day, day of week and time of year. The report also establishes a forecast of externality adders for use in quantifying demand side resource program benefits, namely, an environmental externality adder, a transmission and distribution adder, a system reliability adder, and a price elasticity of demand adder.

In D.03-12-062 and D.04-01-050, in our procurement rulemaking (R.01-01-024), we also articulated the need for a complete review of QF pricing policies relating to SRACs:

> " . . . [I]n our view, there is a pressing need to revisit the SRAC pricing system, which will accurately and fairly set utility avoided cost prices both under current and expected future market conditions and with an eye toward diverse utility resource portfolios.
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> "As the foregoing discussion demonstrates, the SRAC energy pricing formula is now out-of-date. The capacity pricing component of the SRAC formula is also problematic, because the QFs receive capacity payments in addition to energy payments. With SRAC energy prices that can now be above market prices, the additional capacity payments that QFs receive could compound any inequity to the utilities and their ratepayers of the current SRAC pricing formula.

> "We have a two-year window until most existing QF contracts begin to expire, and we should craft a remedy in the new OIR that better matches QF contracts with the actual needs and economic alternatives of the IOUs. Because it is so important that the current methodologies to establish SRAC be modified, we are directing the Commission staff to immediately begin work on a draft Order Instituting Rulemaking (OIR) that will examine and propose appropriate modifications to the SRAC methodology."[22]

The need for consistency in assumptions regarding resource benefits was also recognized in D.03-06-071, our most recent decision on RPS implementation. Under the bid review process established for that program, utilities are obligated to assess those bids "on consistent assumptions," and apply "transparent criteria" in evaluating claimed project attributes, including environmental benefits.[23]

More recently, in our new rulemaking proceeding on distributed generation and distributed energy resources, we recognized the need to develop a common methodology for assessing avoided costs in order to evaluate resource options for utility planning and procurement:

> "In future iterations of our proceedings addressing efficiency, demand response, and electrical storage (when and if storage technologies become a cost-effective resource option [footnote omitted]), we will introduce the concept of DER [Distributed Energy Resources] and seek to develop and employ a uniform cost-benefit test in judging the suitability of these options for utility planning and procurement. This standard framework will in turn influence our consideration of incentives for utilities and their customers.

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[22] D.03-12-062, pp. 58-59. See also D.04-01-050, pp. 155-156.

[23] D.03-06-071, p. 37, Finding of Fact 24.

> "This standardized cost-benefit test ultimately involves the calculation of avoided costs over some time frame, typically the short run (SRAC) or the long run (LRAC). This exercise is currently underway in a number of forums before the Commission: in the energy efficiency proceeding, in the implementation of the Renewable Portfolio Standard, in the treatment of QF resources . . . , in our previous distributed generation proceeding, and now here.
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> "These efforts are essentially technology-specific attempts to answer a common question: what is the value of deferring an IOU investment in traditional generation resources? The answer to this question is the foundation of the benefits side of the cost-benefit analysis, to which consideration of externality avoidance and other technology-specific attributes should be added.
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> "The Commission intends to develop a common methodology for assessing avoided costs across the full range of supply- and demand-side technologies, to be employed as a fundamental component of integrated IOU planning for the short and long term."[24]

Finally, in our rulemaking to promote coordination and integration in electric utility resource planning, R.04-04-003, we adopted a case management approach to the development of avoided costs, as a vehicle for coordinating the ongoing record- building on this issue in our resource-related proceedings.[25]

4. Purpose of Proceeding

The development of avoided costs in our various resource-related proceedings in recent months has been coordinated through the efforts of the assigned Administrative Law Judges (ALJs) and Commissioners to broadly notice prehearing conferences (PHC) and workshops whenever avoided cost

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[24] R.04-03-017, pp. 4-5.

[25] R.04-04-003, *mimeo.*, pp. 8-10.

issues arise in specific proceedings, and to direct interested parties to file avoided cost related pleadings to a consolidated service list across various resource-related proceedings. As stated above, we recognized the need to coordinate the data inputs and methodologies used in calculating avoided costs across the various resource applications in R.04-04-003.[26] In that decision, we noted that until we issue a separate rulemaking on avoided cost issues, the procurement rulemaking proceeding would serve as the forum for coordinating the Commission's development of avoided costs across the various resource-related proceedings.

We believe that it is now time to consolidate the development of avoided cost input assumptions, avoided cost methodologies and updating procedures into a single procedural forum. We see two clear advantages to this approach.

First, it will be less confusing for all interested parties to follow and participate in avoided cost issues if they are addressed in a single rulemaking proceeding. As it now stands, avoided cost-related issues are being addressed (or scheduled to be addressed) in several existing dockets, including R.99-11-022, R.01-08-028, and R.04-03-017. Even with careful notice procedures and coordination among the assigned ALJs and Commissioners, it will be difficult to ensure that the public knows clearly where and when avoided costing methods, assumptions, forecasts, and updating procedures will be considered by the Commission.

Second, consolidating these issues into a single rulemaking will ensure a consistent record as the Commission considers how best to calculate and update avoided costs for the various resource-related applications. As we recognized in

[26] R.04-04-003, p. 4.

R.04-03-017, cohesive and rational policy making for resource procurement requires that we develop a common methodology for assessing avoided costs across the full range of supply- and demand-side technologies. QF pricing is part of this mix, and should not be addressed in isolation. Although there may be legitimate reasons for differences in avoided cost calculations, depending upon the application, we believe that addressing methodological issues, input assumptions, and updating procedures in a single forum is the best way to consider those differences as we develop avoided costs for use in our proceedings.

Therefore, we see great advantage to consolidating avoided cost issues into a single rulemaking. Moreover, the timing is ripe: We are in the very early stages of updating avoided costs in the various resource-related proceedings, which means that physical consolidation of the record and schedules can be easily accomplished.

In sum, the purpose of this rulemaking is to serve as the forum for developing the common methods, input assumptions, and updating procedures for avoided cost calculations used in Commission proceedings, including but not limited to R.02-06-001 (Demand Response), R.04-03-017 (Distributed Generation), R.01-08-028 (Energy Efficiency), ongoing Annual Earnings Assessment Proceedings, and all other proceedings where avoided cost calculations or forecasts are to be applied. This rulemaking also serves as the forum for updating QF avoided cost pricing, per the Commission's direction in D.03-12-062.

5. Preliminary Scoping Memo and Schedule

In this preliminary Scoping Memo, we describe the issues to be considered in this proceeding and the timetable for resolving this proceeding. As discussed above, in this rulemaking we will develop a common methodology, consistent

input assumptions, and updating procedures for avoided costs across our various Commission proceedings, and adopt avoided costs calculations and forecasts that conform to those determinations. This rulemaking is the forum for considering similarities as well as appropriate differences in methods and inputs for specific applications of avoided costs, including QF avoided cost pricing.

We will build on the avoided cost issues and workshop process discussed in the Assigned Commissioner Ruling dated February 6, 2004 in our energy efficiency rulemaking, R.01-08-028. As discussed in that ruling (and in Section 2 above), a report on avoided cost updating, entitled "A Forecast of Cost Effectiveness Avoided Costs and Externality Adders," has been prepared by Energy and Environmental Economics, Inc. We note that Energy Division has been directed to schedule a workshop on the report and serve a notice of the workshop on the same parties receiving notice of this rulemaking.[27]

We incorporate into this docket the schedule established by the February 6, 2004 ruling in R.01-08-028:

Energy Division Workshop Notice	by May 21, 2004
Pre-Workshop Opening Comments on Avoided Costs Report	June 4, 2004
Pre-Workshop Reply Comments	June 18, 2004
Energy Division Workshop	June 23, 24, and 25, 2004
Post-Workshop Comments	July 16, 2004
Post-Workshop Reply Comments	July 30, 2004

At the workshop, Energy and Environmental Economics, Inc. will present an overview of its proposed approach to forecasting avoided costs and

[27] See February 6, 2004 ruling in R.01-08-028, footnote 8.

externality adders, and will be available to answer questions concerning its approach and respond to concerns raised in pre-workshop comments. The workshop will serve as a forum for parties to discuss their views on the proposed methodology and resulting forecasts with respect to energy efficiency, as well as other applications of avoided costs. Specifically, the workshop discussion and subsequent post-workshop comments will address the following issues:

1. Should the Commission adopt the methodology for updating avoided costs presented in the consultant's report for the purposes of evaluating the resource value of energy efficiency programs? If not, what aspects of that methodology should be refined or modified?

2. Which components of the proposed methodology could be applicable to other avoided cost applications, such as SRACs for QF pricing, evaluation of RPS bid proposals,[28] cost-effectiveness evaluation of demand-response programs, distributed generation, renewables, and other supply-side resources? Which components do not appear to be applicable, and why not?

3. With regard to QF pricing, parties are encouraged to carefully review existing avoided cost pricing methodologies applicable to QFs which determine (1) SRAC energy payments, and (2) As-Delivered Capacity Prices. Parties should comment on the need for, and difference between, short-run and long-run methodologies or considerations thereof, as well as any appropriate methodological (and thus appropriate pricing) differences between firm and as-available power. Parties should also concisely address any practical constraints that arise from any associated legal requirements and the degree of latitude and discretion available to the Commission under the circumstances, as well as prior Commission direction provided in D.03-12-062

[28] The results of this proceeding would be most likely to be used in the RPS bid evaluation process in what is known as the "second ranking" of bids. (See, D.03-06-071, pp. 30-38.)

and D.04-01-050. Parties should also be prepared to address whether the formula mandated by Section 390 either inhibits or prevents us from assuring just and reasonable rates for the power provided by QFs, such that Section 390 should be modified or rescinded.

4. What should be the next procedural steps in this proceeding (including a proposed schedule) for:

   a) Developing consistent methods, inputs, and updating procedures for avoided costs across the various avoided cost applications at the Commission?

   b) Adopting specific calculations and forecasts of avoided costs, based on the determinations made in a) above, for avoided cost applications at the Commission, including QF pricing?

As soon as practicable after the workshop, the assigned ALJ will schedule a PHC in this rulemaking to finalize the scoping memo, prioritize the scheduling of avoided-cost issues across the various avoided cost applications, including QF pricing and RPS bid evaluation, and address other procedural issues. We anticipate that evidentiary hearings may be needed in those instances where factual disputes cannot be resolved outside of the hearing room. However, we intend to fully utilize the workshop/comment process to address as many issues in this proceeding as possible.

In R.04-03-017, we stated that our effort to develop a common methodology for avoided costs would primarily be conducted during 2005, which is an "off year" in the two-year procurement planning cycle we have implemented for the IOUs.[29] That still being our intent, we anticipate that this proceeding will extend beyond 18 months. However in all respects, this

[29] R.04-03-017, pp. 4-5.

proceeding will conform to statutory case management deadlines set forth in Pub. Util. Code § 1701.5, and the Assigned Commissioner will provide more guidance on this point in the Scoping Memo to be issued following the PHC.

6. Interagency Considerations

In the past two years in selected proceedings, this Commission has encouraged the active and collaborative participation of the California Energy Commission and the California Power Authority in its ratemaking endeavors, rather than as party litigants. Such efforts have included holding joint PHCs and working group meetings presided over by Commissioners from these agencies, with support of interagency advisory staff teams.[30] Our interagency efforts in recent rulemakings have also used working groups or technical workshops facilitated by interagency staff designed to develop program and technical details.[31] This has been an effective tool to ensure that involved state agencies are able to share their technical capabilities and communicate their joint policy goals to the parties at regular intervals during the course of the proceeding.

In developing common methods, consistent input assumptions, updating procedures, and forecasts of avoided costs, we will use interagency working groups in support of our decisionmaking endeavors. At this point, it is too early to specify the details of the precise interagency working models that will prove to be most effective in this proceeding. However, the Assigned Commissioner and assigned ALJ will work together to develop the necessary interagency working models that will support successful decisionmaking here.

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[30] For example, R.02-06-001, our demand response rulemaking and R.01-08-028, our energy efficiency proceeding.

[31] *Id.*

7. Category of Proceeding

The Commission's Rules of Practice and Procedure (Rules) require that an order instituting rulemaking preliminarily determine the category of the proceeding and the need for hearing.[32] As a preliminary matter, we determine that this proceeding is ratesetting because our consideration and adoption of avoided costs methods and forecasts will establish mechanisms that in turn impact respondents' rates, particularly with respect to QF pricing.[33] As stated previously, we may need to hold evidentiary hearings as part of our development of avoided costs in this proceeding.

As provided in Rule 6(c)(2), any person who objects to the preliminary categorization of this rulemaking as "ratesetting" or to the preliminary hearing determination, shall state his/her objections in his/her PHC Statement. After the PHC in this matter, the Assigned Commissioner will issue a scoping ruling making a final category determination; this final determination is subject to appeal as specified in Rule 6.4.

8. Parties and Service List

Interested persons will have 20 days from the date of mailing to submit a request to be added to the service list for this proceeding. Since our order names PG&E, SDG&E, SCE and SoCalGas respondents to this rulemaking, by virtue of that fact, they will appear on the official service list.

We will also serve this order on those who are on the service lists for the following related proceedings:

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[32] Rule 6(c)(2).

[33] Rule 5(c).

- R.01-10-024, the procurement rulemaking and R.04-04-003, its successor rulemaking;
- R.02-06-001, the demand response rulemaking;
- Investigation 00-11-001, the transmission planning investigation;
- R.04-01-026, the transmission assessment rulemaking;
- R.99-10-025 and R.04-03-017, existing distributed generation dockets;
- R.01-08-028, the energy efficiency rulemaking;
- R.99-11-022, addressing certain QF pricing issues;
- R.04-01-025, the natural gas supply rulemaking; and
- R.04-04-**XXX**, the new RPS rulemaking.

Within 20 days of the date of mailing of this order, any person or representative of an entity interested in monitoring or participating in this rulemaking should send a request to the Commission's Process Office, 505 Van Ness Avenue, San Francisco, California 94102 (or ALJ_Process@cpuc.ca.gov) asking that his or her name be placed on the official service list for this proceeding, as directed below. The service list will be posted on the Commission's Website, www.cpuc.ca.gov, as soon as possible. We will be using the electronic service protocols listed in Attachment A to this order.

Any party interested in participating in this rulemaking who is unfamiliar with the Commission's procedures should contact the Commission's Public Advisor in Los Angeles at (213) 649-4782 or in San Francisco at (415) 703-7074, (866) 836-7875 (TTY—toll free) or (415) 703-5282 (TTY), or send an e-mail to public.advisor@cpuc.ca.gov.

9. Ex Parte Communications

This ratesetting proceeding is subject to Pub. Util. Code § 1701.3(c), which prohibits ex parte communications unless certain requirements are met (see also,

Rule 7(c)). An ex parte communication is defined as "any oral or written communication between a decisionmaker and a person with an interest in a matter before the commission concerning substantive, but not procedural issues, that does not occur in a public hearing, workshop, or other public proceeding, or on the official record of the proceeding on the matter." (Pub. Util. Code § 1701.1(c)(4).) Commission rules further define the terms "decisionmaker" and "interested person" and only off-the-record communications between these two entities are "ex parte communications."[34]

By law, oral ex parte communications may be permitted by any Commissioner if all interested parties are invited and given not less than three business days' notice. If a meeting is granted to any individual party, all other parties must be granted individual ex parte meetings of a substantially equal period of time and shall be sent a notice at the time the individual request is granted. Written ex parte communications may be permitted provided that copies of the communication are transmitted to all parties on the same day. (Pub. Util. Code § 1701.3(c); Rule 7(c).) In addition to complying with all of the above requirements, parties must report ex parte communications as specified in Rule 7.1.

Therefore, **IT IS ORDERED** that:

1. The Commission hereby institutes this rulemaking on its own motion to continue ongoing efforts to develop avoided costs in a consistent and coordinated manner across Commission proceedings.

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[34] See Rules 5(e), 5(f), and 5(h).

2. Pacific Gas and Electric Company, Southern California Edison Company, San Diego Gas & Electric Company, and Southern California Gas Company are Respondents to this proceeding.

3. This rulemaking serves as the consolidated forum for developing the methods, input assumptions, and updating procedures for avoided cost calculations and for adopting calculations and forecasts of avoided costs used in Commission proceedings, including but not limited to Rulemaking (R.) 02-06-001 (Demand Response), R.04-03-017 (Distributed Generation), R.01-08-028 (Energy Efficiency), ongoing Annual Earnings Assessment Proceedings, and all other proceedings where avoided cost calculations or forecasts are applied. This rulemaking also serves as the forum for updating qualifying facility (QF) avoided cost pricing, per the Commission's direction in Decision 03-12-062. The record developed to date on updating avoided-costs in the aforementioned proceedings shall be incorporated into the record in this rulemaking. All further development of a record on the methods, specific input assumptions to be used in applications of avoided costs, updating procedures for avoided cost calculations and for adopting calculations and forecasts of avoided costs used in Commission proceedings shall occur in this rulemaking, unless directed otherwise by the Commission. Consideration of other factors in pricing and valuing resource options (e.g., statutory requirements) that are specific to particular resource types may need to be addressed in resource-specific proceedings.

4. The Executive Director shall cause this Order Instituting Rulemaking to be served on Respondents, the California Energy Commission, the California Consumer Power and Conservation Financing Authority, the California Independent System Operator, and parties to the following existing Commission proceedings: R.01-10-024 and R.04-04-003, its successor; R.02-06-001; R.99-10-025

and R.04-03-017; R.01-08-028; Investigation 00-11-001; R.04-01-026; R.99-11-022; and R.04-01-025 **and R.04-04-XXX**.

5. Within 20 days from the date of mailing of this order, any person or representative of an entity interested in monitoring or participating in this rulemaking shall send a request to the Commission's Process Office, 505 Van Ness Avenue, San Francisco, California 94102 (or ALJ_Process@cpuc.ca.gov) asking that his or her name be placed on the official service list for this proceeding. The request should include the rulemaking proceeding number, your name, U.S. postal address, phone number, *and* an electronic mail address. The request should indicate whether you want to be placed on the service list as an "appearance" (party status), "state service," or "information only." (See Attachment A.) If you do not have access to electronic mail, please indicate this in your request. Parties may also appear at the first prehearing conference (PHC) in order to enter an appearance in the proceeding.

6. All parties shall abide by the Electronic Service Protocols attached as Attachment A to this order.

7. As discussed in this rulemaking, the report entitled "A Forecast of Cost Effectiveness Avoided Costs and Externality Adders" prepared by Energy and Environmental Economics, Inc. under Energy Division's direction has been posted to the Commission's Website. The schedule established by the February 6, 2004 ruling in R.01-08-028 for Energy Division's workshop and pre- and post-workshop comments is incorporated into this docket, as follows:

Energy Division Workshop Notice	by May 21, 2004
Pre-Workshop Opening Comments	June 4, 2004
Pre-Workshop Reply Comments	June 18, 2004
Energy Division Workshop	June 23, 24, and 25, 2004
Post-Workshop Comments	July 16, 2004

8. As soon as practicable after the workshop, the Administrative Law Judge (ALJ) shall schedule a PHC in this proceeding to finalize the scoping memo, prioritize the scheduling of avoided cost issues across the various avoided cost applications, including QF pricing and RPS bid evaluation, and address other procedural issues. The ALJ's notice of PHC shall solicit PHC statements, whereby interested parties may respond pursuant to Rule 6(c)(2) to our preliminary determinations regarding the need for hearings, category of proceeding and scoping memo.

9. The category of this rulemaking is preliminarily determined to be "ratesetting." Any person who objects to the preliminary categorization of this rulemaking as "ratesetting" shall state his/her objections in his/her PHC Statement.

10. The ALJ may make any revisions to this schedule, as necessary to facilitate the efficient management of the proceeding.

This order is effective today.

Dated _____, at San Francisco, California.

ATTACHMENT A
ELECTRONIC SERVICE PROTOCOLS

These electronic service protocols are applicable to all "appearances" and individuals/organizations on the "state service" list that serve comments or other documents in this proceeding.

I. Party Status in Commission Proceedings

In accordance with Commission practice, by entering an appearance at a hearing or by other appropriate means, an interested party or protestant gains "party" status. A party to a Commission proceeding has certain rights that non-parties do not have. For example, a party has the right to participate in evidentiary hearings, file comments on a proposed decision, and appeal a final decision. A party also has the ability to consent to waive or reduce a comment period, and to challenge the assignment of an Administrative Law Judge (ALJ). Non-parties do not have these rights, even though they are included on the service list for the proceeding and receive copies of some or all documents.

Non-parties may participate in this proceeding under either the "state service" or "information only" categories. Commission staff members, divisions or branches, Legislators or their staff members, and state agencies or their staff members may participate as under the state service category. They will be allowed to file comments or other documents on issues in this rulemaking, at the direction of the assigned ALJ(s) or Assigned Commissioner.

Those who request to be categorized as "information only" will receive all Commission-generated notices of hearings, rulings proposed decisions and Commission decisions at no charge. However, individuals on the "information only" list will not receive copies of pleadings or other filings in this proceeding,

and may not comment on the issues in this proceeding, unless they later apply for party status.

II. Service of Documents by Electronic Mail

For the purposes of this proceeding, all individuals in appearance and state service categories shall serve documents by electronic mail, and in turn, shall accept service by electronic mail. In some circumstances, however, electronic mail addresses may not be available. In those circumstances, paper copies shall be served by U.S. mail. In addition, paper copies shall be served on the assigned ALJ(s) and Assigned Commissioner.

III. Notice of Availability

If a document, including attachments, exceeds 75 pages, parties may serve a Notice of Availability in lieu of all or part of the document, in accordance with Rule 2.3(c) of the Commission's Rules of Practice and Procedure. However, paper copies of that document shall be served on the assigned ALJ(s) and Assigned Commissioner.

IV. Filing of Documents

These electronic service protocols govern service of documents only, and do not change the rules regarding the tendering of documents for filing. Documents for filing must be tendered in paper form, as described in Rule 2, et seq., of the Commission's Rules of Practice and Procedure.

V. Electronic Service Standards

As an aid to review of documents served electronically, appearances should follow these procedures:

- Merge into a single electronic file the entire document to be served (e.g., title page, table of contents, text, attachments, service list).

- Attach the document file to an electronic note.
- In the subject line of the note, identify the proceeding number; the party sending the document; and the abbreviated title of the document.
- Within the body of the note, identify the word processing program used to create the document if anything other than Microsoft Word. (Commission experience is that most recipients can readily open documents sent in Microsoft Word 6.0/95.)

If the electronic mail is returned to the sender, or the recipient informs the sender of an inability to open the document, the sender shall immediately arrange for alternative service (regular U.S. mail shall be the default, unless another means—such as overnight delivery—is mutually agreed upon).[35]

Parties should exercise good judgment regarding electronic mail service, and moderate the burden of paper management for recipients. For example, if a particularly complex matrix or cost-effectiveness study with complex tables is an attachment within a document mailed electronically, and it can be reasonably foreseen that most parties will have difficulty printing the matrix or tables, the sender should also serve paper copies by U.S. mail, and indicate that in the electronic note.

VI. Obtaining Up-to-Date Electronic Mail Addresses

The current service lists for active proceedings are available on the Commission's web page, www.cpuc.ca.gov. To obtain an up-to-date service list

[35] Due to the vast volumes of electronic service sent from our Process Office, this requirement does not extend to the Commission's service of rulings, decisions, etc. It is the responsibility of each person or organization on the service list to promptly inform the Process Office of any changes to your email address. All interested parties should also check the Commission's website periodically, where rulings and decisions in this proceeding will be posted as close to the time of service as possible.

of electronic mail addresses click on the "Service Lists" bar on the web page, scroll to find the proceeding number, and click on "List." To view and copy the electronic addresses for a service list, download the comma-delimited file, and copy the column containing the electronic addresses.

The Commission's Process Office periodically updates service lists to correct errors or to make changes at the request of parties and non-parties on the list. Parties should copy the current service list from the web page (or obtain paper copy from the Process Office) before serving a document.

VII. Pagination Discrepancies in Documents Served Electronically

Differences among word-processing software can cause pagination differences between documents served electronically and print outs of the original. (If documents are served electronically in PDF format, these differences do not occur, although PDF files can be especially difficult to print out.) For the purposes of reference and/or citation (e.g., at the Final Oral Argument, if held), parties should use the pagination found in the original document.

(END OF ATTACHMENT A)