**Issue 7 Proposal**

Working Group One

R.17-07-007

*DRAFT*

*Issue 7: Is there inconsistent application of the requirement to pay the Income Tax Component of Contribution (ITCC)**charges across the Utilities? If yes, how should the Commission address this inconsistency?*

1. **Proposal Summary**

The following four proposals were developed by various stakeholders as part of the working group process to address Issue 7. None have consensus support.

* Proposal 1 - Status Quo: remain in the status quo, which is consistent with CPUC Decisions 87-09-026 and 94-06-038, and where each IOU is authorized and retains the discretion pursuant to CPUC rules to collect or not collect ITCC security on safe harbor projects.
	+ All the IOUs support Proposal 1 as the preferred practice on the issue of ITCC security.
* Proposal 2 - All Collect: if consistency is the primary concern of the Commission, then the IOUs propose to all collect ITCC security for safe harbor projects, which provides consistency across the IOUs but the IOUs acknowledge is least desirable for stakeholders.
	+ All the IOUs support Proposal 2, if Proposal 1 is not available.
* Proposal 3 – Modify D94-06-038 to prohibit collection of ITCC security and authorize a recovery mechanism:

This proposal is (a) Modify D94-06-038 to prohibit collection of ITCC security and (b) authorize a recovery mechanism.

* + Non-utility stakeholders propose that all IOUs stop collecting ITCC security and the CPUC authorize a recovery mechanism, which is borne by ratepayers, to make the IOUs whole should projects lose its safe harbor eligibility status and ultimately be subject to a tax liability not covered by the generator (contributor).
	+ The IOUs prefer to have the option to protect against a potential tax liability as the best practice. If the Commission decides to proceed with no security collection, the IOUs would support recovery through customer rates of costs incurred that is not recovered from the contributor for a taxable liability. The IOUs acknowledge that the recovery mechanism needs further vetting as establishing a recovery mechanism will need structure, review, and approval by IOU management and the Commission.
* Proposal 4 – Expand Scope of this issue:
	+ …
1. **Background**

***Income Tax Provisions and the Safe Harbor IRS Notice 2016-36***

Internal Revenue Code Section 118(b) generally treats contributions in aid of construction (CIAC) from customers as a taxable receipt to the utility. CIACs are provided by customers to a utility to construct utility owned assets that will benefit the customer by providing electric, gas or other services and can take the form of money and/or property.

Since IOUs are cost-of-service regulated and the CIAC results in taxable income, the IOUs are allowed to collect an income tax component of contribution (ITCC) from the customer in addition to the CIAC to make both the utility and ratepayers whole. The burden of the tax associated with the CIAC is borne by the contributor or advancer based on the premise that the person who causes the tax pays the tax. D. 87-09-026 provides the IOUs method for collecting ITCC.

ITCC is not applicable when a transaction is considered nontaxable. In the 1980s, after extensive lobbying efforts by the qualified generator (QF) industry, the IRS issued Notice 88-129, which exempted certain generator contributions from being treated as taxable under IRC 118(b) if certain conditions are satisfied (referred to as the Safe Harbor or the Notice). These conditions included satisfying the 5% test and other representations. Thus, these QF projects were no longer taxable upon contribution under IRC 118(a), and although the IOUs did not treat the contributions as taxable, they were authorized pursuant to D.94-06-038 to collect security for the tax exposure risk of the transaction subsequently becoming taxable either because the project triggered a disqualification event, a change in tax law, or early termination of power purchase agreement. Subsequently, the IRS has continued to modify Notice 88-129 to expand the scope of the exception, with each modification removing and superseding prior Notices. The most current iteration of the Safe Harbor is IRS Notice 2016-36. If a project that avails itself of the safe harbor fails any of the required conditions for the third time in a rolling 5-year period, then the transaction becomes taxable in the year of the failure and a tax liability is incurred by the utility triggering the need for ITCC.

The Commission, recognizing that the IOUs were exposed to tax risk for these projects availing itself of the safe harbor (because the non-taxability treatment hinged upon satisfying certain conditions) permitted the IOUs in D.94-06-038 to collect ITCC security on these projects.[[1]](#footnote-1) The decision to collect ITCC security is subject to IOU discretion and was provided as a means for the IOU to protect IOUs from incurring costs for a future potential tax liability. The IOUs have allowed the risk of a potential tax liability to be satisfied by the collection of ITCC security in the form of cash or a letter of credit from the contributor. Thus, even though a contribution is nontaxable for purposes of IRC 118(b) under the Safe Harbor notice, a project may still be required to post a security instrument to protect the utility and ratepayers from a future tax risk related to safe harbor failures.

It should be noted that the December 2017 tax reform legislation amended by Section 118 to expand transactions that are taxable income under Section 118 to include "any contribution by any governmental entity or civic group (other than a contribution made by a shareholder as such." The 2017 tax legislation has the potential that the underlying court cases, which have been previously relied upon by the IOUs to exempt contributions from taxable income on the basis of the safe harbor, could now be in jeopardy. Therefore, the implications of the recent tax reform legislation could impact the safe harbor and due to its recent passage, there has not been adequate time for the industry to fully analyze or understand potential ramifications.

***Applicability to the OIR***

The IOUs interpret the Safe Harbor provisions as applying to In-Front-of-the-Meter (IFOM) generators that are either Qualifying Facilities (under CPUC jurisdiction) or wholesale generators selling to third parties, including the host utility or the CAISO market (under FERC jurisdiction). Generally, the IOUs perform an assessment of the tax risk related to a project requesting and receiving safe harbor status, and may require a generator or customer (i.e. contributor) to provide ITCC security or an indemnity to guard against a future potential tax liability, should the project lose its safe harbor eligibility status. The ITCC security requirement imposes a financial obligation on the generator, the carrying costs associated with posting a letter of credit for a potential tax liability.

Additionally, based on recent data responses, the IOUs confirmed that the IRS has not identified in a prior audit review, a project receiving safe harbor treatment that should be reclassified as taxable in the last 10 years. However, one should not assume that the IRS couldn’t in the future review a prior safe harbor transaction and determine that it no longer meets the eligibility requirements for safe harbor. Thus, the tax exposure remains related to the safe harbor projects.

***IOU Safe Harbor Provision Applicability Process***

The IOUs rely on the generator’s contractual representation that:

* In light of all the information available at the time the intertie is contributed, it is reasonably projected that, during the ten taxable years beginning when the intertie is placed in service, no more than 5% of the projected total power flows over the intertie will flow to the generator[[2]](#footnote-2)
* Ownership of the electricity wheeled over IOU transmission system remains with the generator prior to its transmission onto the grid[[3]](#footnote-3)
* The intertie will be used for transmitting electricity,[[4]](#footnote-4) and
* The cost of the intertie is capitalized by the generator as an intangible asset and recovered using the straight-line method over a useful life that is treated as 20 years.[[5]](#footnote-5)

SCE’s Application of ITCC to Rule 21 Transactions:

* SCE applies the general concepts and principles of D.94-06-038 in its Rule 21 transactions.
* To the extent the CIAC from an IFOM generator provides written representation that it satisfies the requirement of IRS Notice 2016-36, SCE will not treat the CIAC as taxable and will collect the tax-related security equal to the ITCC amount in the form of a letter of credit, a corporate parent guarantee, or cash.
* To the extent the CIAC from a generator does not satisfy the requirement of IRS Notice 2016-36, SCE will treat the CIAC as taxable and will collect the tax-related the ITCC amount in the form of a cash payment from the project developer (contributor)

PG&E’s Application of ITCC to Rule 21 Transactions:

* PG&E acknowledges the general concepts and principles of D.94-06-038 in its Rule 21 transactions.
* To the extent the CIAC from an IFOM generator satisfies the requirement of IRS Notice 2016-36; PG&E will not treat the CIAC as taxable and will not collect any tax-related ITCC security. PG&E reserves the right to require—on a nondiscriminatory basis—an Interconnection Customer to provide such security.
* PG&E has also modified its practice to not collect ITCC security and require an indemnification for FERC jurisdictional projects[[6]](#footnote-6)
* To the extent the CIAC from a generator does not satisfy the requirement of IRS Notice 2016-36, PG&E will treat the CIAC as taxable and will collect the tax-related the ITCC amount in cash.

SEMPRA’s Application of ITCC to Rule 21 Transactions:

* SEMPRA acknowledges the general concepts and principles of D.94-06-038 in its Rule 21 transactions.
* SEMPRA does not treat CIAC from IFOM generators as taxable and currently does not collect any tax-related ITCC security.

***Stakeholder Concerns***

ITCC security, when required, can add roughly 30%[[7]](#footnote-7) to the cost of upgrades associated with an interconnection request if cash is the method selected (Letters of Credit and Corporate Parent Guarantees are also acceptable methods to meet security requirements). As SCE territory’s average total in-front-of-the-meter upgrade costs are approximately $150,000 per MW[[8]](#footnote-8), these charges represent the second largest contributor to interconnection costs, despite the de minimis risk of actual liability being imposed.

Posting ITCC security represents a real cost to developers, depriving them of capital necessary to develop the project. The more general question that needs to be addressed is whether it is good policy to require a developer to set aside substantial sums every year, over the term of an agreement, to protect the utility from a risk that most likely will never arise. Given the limited risk to the utility and real cost to developer, and subsequent advice or rulings from IRS and FERC, the ITCC security requirement warrants reconsideration.

*IOU Response: The IOUs disagree with the use of the term "de minimis" risk without further support. As discussed previously, the IRS on audit can determine that a transaction should be classified as taxable, to which is why ITCC security can be collected to address this risk as consistent with current Commission allowances. In addition, as discussed above, the actual cost impact to the IC’s project is the carrying cost of providing the ITCC security (developers have the choice of cash, letter of credit, or corporate parent guarantee). The cost of capital differs between the three (3) ITCC security options (cash, letter of credit, or corporate parent guarantee). It should be noted that generally IOUs should neither gain nor be harmed in undertaking these IFOM projects for contributors.*

While requiring the interconnection customer to post ITCC security protects the utility from a potential tax liability, this policy may not be cost effective for ratepayers or best advance energy policy, particularly the objective to encourage the development of new renewable generation.

*IOU Response: CPUC Decision (D.) 94-06-038 authorized options for the Utilities to protect itself from a potential tax liability. The IOUs support the advancement of cost-effective renewable generation but cannot ignore the risk of a potential tax liability given the likelihood of changes to IRS requirements and changes to external factors that drive generator economics. See also response above.*

The IRS safe harbor notices provide the generator explicit and easy-to-comply-with rules to avoid a taxable event for transactions under interconnection agreements. We are aware of no contribution under an interconnection agreement that has caused a distribution owner to incur an income tax liability. The risk of any utility or ratepayer ITCC exposure, while admittedly greater than zero, is negligible; the corresponding cost to the developer of maintaining the security for the theoretically maximum amount of tax exposure exacts real costs and necessarily impedes project development.

*IOU Response: ITCC security is meant to protect the IOUs against a potential tax liability obligation, which should be considered akin to insurance. The lack of an accident should not be used as an argument to no longer maintain insurance and support a representation that the tax risk is "negligible". In addition, there are a number of factors that impact a generator’s ability to remain in compliance with the IRS Safe Harbor Provision. The majority of these factors are outside of IOU control. Examples of such factors include:*

* *IRS code changes: The utility industry is still waiting for clarification if and how “The Tax Cuts and Jobs Act” signed on December 22, 2017 will impact the provisions of IRC Section 118(b) and the application of the IRS Safe Harbor Provision.*
* *Economics: The energy market when the IRS Safe Harbor Provision was introduced is a very different energy market than today. IOU procurements are shorter term in nature and contractual terms are less fixed than procurement conducted previously which can contribute to increased risk that a generator may not remain operational.*
* *Generator Size and Interconnection: Generators interconnecting in recent years are smaller in capacity and interconnecting to both transmission and distribution. It may be early to assess how the risks have changed over time, but it is important to note that past performance of existing generators is not a reliable indicator of how we can expect more recently interconnected generators to perform.*

***Current Status***

PG&E, SCE, and SDG&E have different numbers of Rule 21 interconnections claiming Safe Harbor, and different practices regarding ITCC security posting requirements, all of which are compliant with Commission rules and the Internal Revenue Code. PG&E has two (2) eligible applications and SDG&E has zero (0) eligible applications in the past ten years and neither currently require ITCC security, although they retain the authority to do so. SCE does require ITCC security, and has 61 Rule 21 projects interconnected under Safe Harbor, with current total project security postings of approximately $2.4 million . The scope of the data request did not include safe harbor eligible applications under FERC jurisdiction.

1. **Working Group Proposals**

## **Proposal 1: For “Safe Harbor” systems, the Commission should continue to authorize the IOUs to protect against potential tax liability under the options provided in D 94-06-038 (Remain Status Quo)**

Summary: Each Utility evaluates its own risk tolerance level and decides which option under CPUC Decision 94-06-038 works best to protect against potential tax liability and has the discretion to adjust based on updates to risk and risk tolerance levels.

Status: [Non-Consensus] SCE, PG&E and SDG&E support.

Discussion:

IOU Discussion:

* This is the IOU preferred proposal. The IOUs are responsible for its risk and managing its risk. The 1987 and 1994 Decisions authorizes the IOUs to protect itself and ratepayers from potential tax liability and hold the contributor responsible. Absent the contributor, there would be no potential tax liability and therefore the responsibility to cover the costs should be borne by the contributor. This aligns with the cost causation principle and therefore remains as the Utilities’ preferred approach. Furthermore, it should be remembered that IOUs should neither gain nor lose on taking on CIAC projects; therefore the IOU should be permitted discretion to protect itself.

## **Proposal 2: For “Safe Harbor” systems, the Commission should require the IOUs to protect against potential tax liability consistently by collecting security (All Collect)**

Summary: For consistency sake, each IOU under this proposal would collect security to protect against potential tax liability.

Status: [Non-Consensus] SCE, PG&E and SDG&E support this proposal but prefer Proposal 1.

Discussion:

IOU Discussion:

* Currently, the CPUC has provided the IOUs discretion to choose a method to protect against potential tax liability and the IOUs have not selected the same option. To align and provide a consistent approach across California, the IOUs can all support the collection of security. The preference however is Proposal 1 where each IOU has the discretion to select whichever option is acceptable within each IOU’s risk tolerance levels.

## **Proposal 3: For “Safe Harbor” systems, the Commission should modify D.94-06-038 to prohibit the collection of security and authorize a recovery mechanism, whereby each utility recovers from ratepayers any actual costs realized as a result of ITCC charges**

Summary:

*Clean Coalition Version of Summary:*

As an alternative to the current authorized practice of requiring applicants to post ITCC security when seeking interconnection under “Safe Harbor” provisions, in the interest of ratepayers it is proposed that the Commission authorize each Investor Owned Utility (IOU) to recover through customer rates any actual costs realized as a result of ITCC charges incurred by the IOU against interconnections applying under “Safe Harbor” provisions and deemed uncollectable subsequent to “Safe Harbor” eligibility being found inapplicable, and to establish this practice in lieu of requiring the posting of security by the applicant against such liability.

It is proposed that:

1. The Commission authorize each Investor Owned Utilities (IOUs) to recover through customer rates any actual costs realized as a result of ITCC charges incurred by the IOU against interconnections applying under “Safe Harbor” provisions.
	1. Recovery through customer rates shall only occur when both:
		1. “Safe Harbor” eligibility is ruled inapplicable by the tax authority, and
		2. Such costs are found to be uncollectable by the IOU from the responsible party.
2. The Commission shall establish this practice in lieu of requiring the posting of security by the applicant against such liability.
3. The Energy Division may require posting of security, or limit ratepayer liability and authorize IOUs to require posting of security, for new projects if the Director of the Energy Division determines such actions to be in ratepayer interest.
	1. The Director may take this action upon its own initiative or as an interim response pending a ruling on a Petition for Modification.
	2. Energy Division may establish automatic review of these practices, and/or automatic requirement for new projects to post security in the event that ratepayer backstop results in realized costs greater than $x [$500,000? -- equal to 20% of current security postings]

*IOU Version of Summary:*

Collection of security would be prohibited. Should the Interconnection Customer's project fail the IRS Notice 2016-36 safe harbor requirements thereby triggering a tax liability that is incurred by the IOU and the Interconnection Customer (contributor) is unable to remit payment for the tax liability, the IOU would be exposed to a loss. Therefore, permitting the IOU to establish a security requirement that covers the potential cost consequence of any current tax liability is appropriate.

This proposal is for the Commission to:

1. Modify its prior decision D94-06-038 that authorizes three options for the IOU to select to protect against potential tax liability to not allowing the collection of security
2. Establish a recovery mechanism to recover prudently incurred costs

Under this proposal, IOUs would not collect a security from eligible contributors. If the interconnection fails the IRS Notice 2016-36 safe harbor requirements, a taxable event is triggered whereby the contributor is required to remit payment to the IOU for taxes incurred. In the event the contributor is unable to remit payment, the IOUs would recover its actual costs incurred through customer rates. Utilization of the recovery mechanism and recovery through customer rates shall only occur when both:

1. “Safe Harbor” eligibility is found inapplicable either by the IOU or tax authority, and
2. Such costs are found to be uncollectable by the IOU from the responsible party.
	1. The Energy Division should be given responsibility to monitor the cost recovery mechanism. If an IOU’s cost recovery mechanism exceeds [XX] costs, the prohibition on security collection is automatically ended and the IOU may collect security on a going forward basis.

Status: [Non-Consensus] SCE, PG&E and SDG&E oppose.

Discussion:

Clean Coalition Discussion:

* The non-IOU Working Group expects that there will continue to be projects that request Safe Harbor. Interconnections qualifying under “Safe Harbor” have historically not created an ITCC liability for an IOU; however, there is a degree of uncertainty regarding both whether the tax authority will agree that a project does qualify, and whether a project will maintain its qualification over time.
* The interconnection agreement stipulates that the contributor is liable for any ITCC costs incurred by the IOU; however, the possibility exists that the contributor is unable to remit payment to the IOU for ITCC costs incurred. To insure against non-collection in the event that an IOU is subject to ITCC for a project that was interconnected with a Safe Harbor qualification claim, the IOU is authorized to require a security to be posted by the applicant in a form consistent with D.94-06-038.
* The posting of security creates a cost to the applicant, tying up cash or credit for a period of ten years. These costs increase the producer’s Levelized Cost of Energy (LCOE) from these facilities, and the price these facilities must receive from ratepayers in market mechanisms to remain financially viable.
* It is in ratepayer interest to reduce the cost of energy supplies, as well as the cost of any ratepayer risks associated with energy supplies. If the ratepayer value of cost reduction in energy prices from these facilities is greater than the value of ratepayer assumed risk that is associated with not requiring ITCC security to be posted, then ratepayers will a realize net benefit from backstopping IOU ITCC liability risk of non-collection.
* A review of IOU experience with Safe Harbor interconnections has not identified any instances to date of disqualifications resulting in ITCC costs being incurred as a result of a tax audit; however it is not possible to predict the likelihood of this changing in the future. In addition, IOUs have substantial enforcement options to support collection, including the right to disconnect a generation facility for delinquency under the applicable interconnection agreements.
* *Estimated energy price impact for applicable interconnection is 1%.* Prior data requests have indicated average interconnection upgrade costs of $150,000 per MW, resulting in an ITCC potential of $36,000 per MW (The current ITCC rate is 24%). Assuming that 10% of generator LCOE costs for Safe Harbor projects are related to interconnection upgrades, with an ITCC potential liability of 20% of the value of the upgrades, security posting will equal 2% to the project cost. Cash posting at the developer’s election will be fully refunded after 10 years with interest in accordance with SCE’s tax security practices, but the net present value of the refund over that period will be less than current business value. Alternative use of credit or collateralized security will incur carrying costs over the same period. Thus, the estimated energy price impact for applicable interconnections is around 1%. The net impact will vary depending on the actual time value of money as reflected in interest rates and (foregone) return on investment.

IOU Discussion:

* The IOUs object to modification of D94-06-038. The IOUs consider it best practice for each IOU to assess its own risk tolerance levels and choose a method that best protects against potential tax liabilities. The IOUs object to not having the ability to collect security.
* The IOUs must be permitted to recovery reasonably incurred interconnection costs. Should the Commission decide to prohibits the collection of security for costs an Interconnection Customer may cause a utility to incur, the recovery of costs through customer rates is one option for cost recovery if a utility cannot recover costs incurred from contributors.
* However, as noted above, the IOUs see many complications with this Proposal, such as how the recovery mechanism will be structured, tracked, reviewed, and/or approved. More consideration about how this recovery mechanism should be structured will be required. The IOUs strongly support the status quo proposal of Proposal 1.
* The IOUs believe the energy price analysis offered by Clean Coalition fails to offer sufficient evidence to support its broad conclusions.

## **Proposal 4: Recommendation for R.17-07-007 Scope to Consider Utility ITCC Practices That Are Consistent Between Utilities**

Summary: Each Utility evaluates its own risk tolerance level and decides which option under CPUC Decision 94-06-038 works best to protect against a potential tax liability and has the discretion to adjust based on updates to risk and risk tolerance levels. However, the scope of Issue 7 should be expanded to address the following:

* Applicability of the Safe Harbor Option for behind the meter interconnections
* Alternatives to practices that trigger ITCC

Status: [Non-Consensus] CalSEIA, ORA, GPI, Foundation Wind Power, Tesla, Borego Solar, Chico Electric, CalCom Solar, and Sunworks have indicated by email support in concept. SCE, PG&E and SDG&E oppose.

Discussion:

Non-IOU stakeholder discussion:

1. Applicability of the Safe Harbor option for behind the meter (BTM) interconnections
	* Non-utility stakeholders have asserted that BTM projects may be equally eligible for Safe Harbor and should receive this option. Utilities do not agree with this interpretation of the Notice.
	* The WG has identified a need for Commission clarification regarding Safe Harbor applicability to aggregated net energy metering (NEMA) projects, which often have a no-load POI that is a new service, and similar facilities not selling energy to the host utility.
	* The WG has identified a need for IRS clarification regarding:
		+ The eligibility of BTM generation for Safe Harbor
		+ Application of the 5% rule when the upgrade is:
			- Not required by generation export but triggered by increased load in conjunction with a generation interconnection request;
			- Future load increases unrelated to the generation application.
	* Utilities have indicated that they feel it is most appropriate for industry representatives to make a request to the IRS, so the WG may recommend this action in our report, but the request itself may occur outside of this proceeding.
2. Alternatives to the current practice of title transfer that triggers ITCC, for both wholesale and BTM interconnections (see scoping recommendation text below)

*Review of Transfer of Ownership of Interconnection Facilities and Distribution Upgrades to Avoid Unnecessarily Triggering ITCC*

* Under current practice, the customer is required to contract for and pay the utility for procurement and installation of Interconnection Facilities, Distribution and Network Upgrade equipment from the host utility, and subsequently transfer ownership of this equipment back to the same utility. This creates potentially unnecessary costs and the practice should be reviewed in this proceeding. At least two alternatives warrant consideration.
* The first option is to allow the applicant a method to retain ownership, while still granting the utility necessary rights and control. This would avoid the issues with the ITCC identified above while more significantly allowing the applicant to apply the 30% Federal Income Tax Credit and depreciation value on these costs, significantly reducing the cost of DER development and the services it provides.
* Alternatively, converting to an interconnection fee to cover utility costs may allow the utility to hold original and continuing ownership of the facilities, while avoiding the classification of the fee as a contribution in aide of construction (CIAC) that would trigger the ITCC as well as the not insignificant administrative costs and delays associated with transfer of ownership.

IOU Discussion:

* The [IOUs collectively are indifferent] towards the expansion of Issue 7 in this OIR to include approaching the IRS to gain clarification on whether behind-the-meter (BTM) projects are eligible for safe harbor. The IOUs believe that non-utility stakeholders are the appropriate party to undertake this effort, which is consistent with the establishment of prior safe harbor guidelines and as they develop the underlying project that would be reviewed by the IRS The IOUs believe that IRS guidance is clear that the Safe Harbor Notice as issued by the IRS does not apply to the BTM projects and therefore the burden is on non-utility stakeholders to present the IOUs with tax authority that support their position.
* [Additional discussion to be added]
1. CPUC Decision (D.) 94-06-038 established three options to assure payment to the purchasing utility for any future taxes: (1) pay the full ITCC; (2) provide the utility a letter of credit for the value of the full ITCC; or (3) execute an indemnity agreement and provide a guarantee for the value of the ITCC. [↑](#footnote-ref-1)
2. Section III.C.1.a. of IRS Notice 2016-36 [↑](#footnote-ref-2)
3. Section III.C.2. of IRS Notice 2016-36 [↑](#footnote-ref-3)
4. Section III.C.4. of IRS Notice 2016-36 [↑](#footnote-ref-4)
5. Section III.C.5. of IRS Notice 2016-36 [↑](#footnote-ref-5)
6. Docket No. ER11-3944-000. On June 29, 2011, Pacific Gas and Electric Company (PG&E) submitted a request for waiver of the provision in the appendices or attachments of certain generator interconnection agreements that requires interconnection customers to provide security for the estimated amount of the potential income tax liability on generator interconnection facilities. The income tax at issue is commonly referred to as the income tax component of contribution (ITCC). PG&E’s requested waiver would, on a prospective basis waive the provisions requiring customers to post ITCC under each generator interconnection agreement and authorize PG&E to refund all ITCC security amounts (with interest) to certain customers. In this order, we grant PG&E’s waiver request. CAISO supported PG&E’s request for waiver. PG&E currently does not require the Interconnection Customer to provide Income Tax Component of Contribution (“ITCC”) security to cover the potential tax liability on the Interconnection Facilities; however, PG&E reserves the right to require, on a non-discriminatory basis, the Interconnection Customer to provide such security, in a form reasonably acceptable to PG&E as indicated in Section 5.17 of the LGIA (or Section 11 of the SGIA), in an amount up to the cost consequences of any current tax liability. Upon request, and within sixty (60) Calendar Days’ notice, the Interconnection Customer shall provide PG&E such ITCC security in the form requested by PG&E.  [↑](#footnote-ref-6)
7. cite [↑](#footnote-ref-7)
8. This figure is from the Clean Coalition data request and reflects interconnections prior to 2013. Confidential quarterly interconnection cost reports from the IOUs were subsequently initiated and available to Commission staff. [↑](#footnote-ref-8)