

Staff reports that IPA's Final Draft Sourcing Agreement addresses this requirement in sections 2.6 ("Contract Savings Guaranty"), 2.7 ("Contract Savings Reconciliation"), and 2.8 ("Security for Contract Savings Guaranty Shortfall Amount"). Staff also indicates that it not clear to what extent it is within the Commission's authority to impose changes under Section 9-220(h-4) as amended. Nonetheless, it is of sufficient importance that Staff is compelled to bring it to the Commission's attention, regardless of the Commission's ultimate determination in that regard.

In Staff's view, the provisions in these sections provide very little assurance that consumers will receive the mandated \$100 million in savings, notwithstanding the fact that the guarantee would be backed by (1) a CPRA and, (2) to the extent to which that fund proves insufficient liens on CCE's Plant and other non-cash assets. Staff asserts that the CPRA could easily be dwarfed by the Contract Savings Guaranty Shortfall amount. Staff also claims the utilities' liens on the Plant and other non-cash assets of CCE would be subordinate to the senior lien and mortgage and security agreement executed in favor of the Financing Parties of CCE. According to Staff, even if CCE's indebtedness to the Financing Parties terminates by the end of the 30-year Sourcing Agreement term, since the Plant and other non-cash assets could be approaching the end of their useful lives, their value may be insufficient to cover the Contract Savings Guaranty Shortfall Amount.

Staff believes the sourcing agreement should be modified to increase the likelihood that the Contract Savings Guaranty is honored. In particular, Staff proposed adding to the sourcing agreement a requirement that, during the 30-year period of the agreement, all distributions to equity must be placed into a Guarantee Shortfall Trust Fund, with the accumulated balance at the end of the 30<sup>th</sup> year to be distributed first to the utilities, to the extent that there are insufficient funds in the CPRA to permit seller to rebate to both utilities the full amount of the contract Savings Guaranty Shortfall rebate to both utilities the full amount of the contract Savings Guaranty Shortfall Amount. If and when the full Contract Savings Guaranty Shortfall Amount is distributed to the utilities, Staff suggests that then any and all remaining amounts in the Guarantee Shortfall Trust Fund could be released to CCE's stockholders. Staff also suggests the trustee of the Guarantee Shortfall trust Fund could be the trustee of the CPRA. Staff also proposes that CCE be given an opportunity to find a guarantor who can provide a suitable guarantee to the utilities, which may be able to substitute for a Guarantee Shortfall Trust Fund.

Staff points out that even if distributions are made to the utilities from the proposed Guarantee Shortfall Trust Fund (or from a guarantor), the net present value of the \$100 million in savings actually will be negative for all real (as opposed to nominal) consumer discount rates over a certain percentage. Staff states that since the present value of any series of cash flows weights earlier flows higher than later flows, from this standard economic and business perspective, consumers can be worse off with the CCE commitment than without it, even when the simple sum of real "savings" is positive. Staff says the net present value of consumer savings is not only negative in all the scenarios where the CPRA proves insufficient; the net present value is negative even in Brattle's base case scenario.

Staff states that while the market value could exceed the book value, this would depend on the condition of the aging plant and the feasibility of using it to make and sell SNG and the plant's other outputs at market prices, while still covering on-going costs. Staff has received no evidence of the likelihood of this scenario, and any such evidence would be highly speculative, since it would deal with conditions and events over three decades into the future. Thus, even if CCE, by the end of year 30, has satisfied all its obligations to the Financing Parties, Staff has

very little confidence that CCE will be able to satisfy its outstanding ‘guaranteed’ debt to ratepayers, under the IPA’s Final Draft Sourcing Agreement.

Staff suggests that requiring CCE to deposit all distributions into a Guarantee Shortfall Trust Fund would greatly enhance the commitment to and the likelihood of ratepayers receiving the guaranteed savings level specified in 9-220 (h-1) (4) of the PUA and section 2.6 of the IPA’s Final Draft Sourcing Agreement. However, Staff notes that CCE may object to the proposal on the grounds that its shareholders would prefer to reinvest CCE’s distributions in a manner completely different than that of a trustee of a Guarantee Shortfall Trust Fund. Thus, as an alternative, Staff suggests CCE should be given the option of finding a guarantor, such as its parent (Leucadia National Corporation), to provide each of the utilities with a mutually-agreeable guarantee, negotiated in good faith between the utilities and the guarantor, and subject to approval by the Commission, for the prompt payment of any Contract Savings Guaranty Shortfall Amount still remaining after the utilities have availed themselves of the remedies described in Section 2.7 and 2.8 of the IPA’s Final Draft Sourcing Agreement. Given the state of Leucadia’s balance sheet as of September 30, 2011 (e.g., total assets of \$8.2 billion; total equity of \$6.0 billion), Staff is confident that a suitable guarantee, as a substitute for a Guarantee Shortfall Trust Fund, can be negotiated.