



September 20, 2012

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Re: SCE Advice Letter 2771-E: *Agreements Between Southern California Edison Company and Calpine Energy Services, L.P. for Resource Adequacy Capacity*

The Cogeneration Association of California (CAC) protests SCE's request in the above-referenced advice letter for approval of two confirmation letters with Calpine Energy Services. SCE seeks approval of procurement agreements from the Los Medanos and Gilroy generating facilities. The Commission should deny the approvals requested by SCE. Neither Los Medanos nor Gilroy comports with the CPUC's QF/CHP Program Settlement (Settlement) standards for MW targets, and the terms of the confirmation letters do not conform to the terms of the Settlement.

The Resource Adequacy (RA) Confirmation associated with these projects may not be properly accounted for as part of the 3,000 MW First Program Period target under the Settlement. Resource Adequacy is simply capacity that may be available for dispatch under certain conditions. A load-serving entity meets its RA obligation by procuring only capacity regardless of whether the generator produces even one MWh of energy. In a sale of RA capacity, the generator may remain off-line entirely. Resource Adequacy is not base load operations reflecting high load factors sustaining a thermal host's industrial operations, *i.e.*, the facilities contemplated by the Settlement as reflected by the CHP *pro forma* power purchase agreement.

One of the stated purposes of the Settlement is to:

... encourage the continued operation of the State's Existing CHP Facilities, and the development, installation, and interconnection of



new, clean and efficient CHP Facilities, in order to increase the diversity, reliability, and environmental benefits of the energy resources available to the State's electricity consumers.¹

That purpose is not achieved by a contract that procures only RA without the concomitant energy. The Resource Adequacy Confirmation does not provide any obligation for Gilroy or Los Medanos, and does not provide the incentive or encouragement for CHP operation contemplated by the Settlement.

There is a fundamental difference between a standard RA contract and the RA capacity provided as a benefit under the QF/CHP Settlement *pro forma* contracts. The standard RA contract provides only for a form of capacity and, if the energy associated with that capacity is actually needed to meet load, the CAISO determines the generator is either already operating, or can dispatch it. Such a contract for only RA capacity is a decoupling of capacity and energy that is not consistent with the Settlement. In contrast, all products contemplated by the Settlement called for the IOU to purchase both capacity and energy whether dispatchable or not. These *pro forma* contracts differ in that there is no ability of the CAISO or the contracting load-serving entity to dispatch the facility if it is not already operating. See §6.01(c)(3) [all references to the *pro forma* Transition PPA]. The RA capacity provided is whatever is available as a collateral benefit from the energy delivered by the CHP facility. Additionally, to reinforce this point, the *pro forma* contracts provide full compensation to the generator only if it maintains a 95% capacity factor. This reveals that the Settlement established a standard for base load operation associated with CHP facilities.

The Settlement contemplates the procurement from CHP generators that produce energy and provide RA capacity only as a collateral benefit. Only in the limited case of specifically eligible UPF facilities is there any divergence from this Settlement objective.² Gilroy and Los Medanos do not meet these standards.

The Resource Adequacy Confirmation for Gilroy or Los Medanos does not assure procurement of any energy produced by a CHP operation, does not provide any obligation for these facilities to operate, and does not provide the incentive or encouragement for CHP operation contemplated by the Settlement.

If SCE wishes to procure these operations for RA, there is a rather obvious avenue. SCE issued an all-source RFO for 2012 RA capacity³, but later withdrew it, presumably because SCE had sufficient RA already committed. In any event, if SCE needs RA capacity, such an all-source RFO targeted at the specific product is the vehicle by which to procure it, rather than substituting this for capacity that would legitimately qualify as CHP. For all of these reasons, the Commission should reject the requested RA Confirmation

¹ QF/CHP Program Settlement Agreement Term Sheet, §1.2.1.3.

² There is at least one other feature of the Settlement, §3.4.1.2, that provides for an additional option under limited conditions to provide Additional Dispatchable Capacity that are not related to the issues addressed in this protest.

³ <http://www.sce.com/EnergyProcurement/ESM/AllSourceRFO/all-source-rfo.htm>.



Significantly, there is rather compelling evidence that SCE did not consider Los Medanos an eligible resource under the Settlement, or potentially capable of providing power products consistent with the Settlement. SCE did not include Los Medanos in its service list of potentially affected QFs when the IOUs filed their petition at FERC to terminate the mandatory purchase obligation under the Federal Power Act §210(m). This omission is revealing since the list reflected all potentially affected generators, principally QF/CHP resources.

Finally, there are options for SCE to procure from Los Medanos or Gilroy outside of the CPUC's QF/CHP program, either through an RA solicitation or as counting against the Second Program Period obligations established by the CPUC. SCE could also seek to increase the First Program Target to account for Harbor or other similarly situated operations that it now wants to procure. But permitting SCE to procure RA from these facilities as a part of the CHP/UPF RFO process undermines the carefully balanced 3000 MW target and the eligibility of CHP and select UPF resources to meet that target. The Commission should preclude this option and preserve the public policy and specific provisions of the Settlement.

Respectfully submitted,

ALCANTAR & KAHL LLP

A handwritten signature in cursive script that reads "Donald Brookhyser".

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