



September 20, 2012

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Re: SCE Advice Letter 2772-E Agreements Between Southern California Edison Company and Harbor Cogeneration Company, LLC for CHP Products

The Cogeneration Association of California (CAC) hereby protests SCE's request in the above-referenced advice letter for approval of two confirmation letters with Harbor Cogeneration Company. The CPUC should reject the approval requested by SCE. Harbor does not comport 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.

First, the UC Toll Confirmation should not be approved, as it is contrary to the terms of the Settlement. The Harbor facility is neither a Utility Prescheduled Facility (UPF) nor a CHP facility as defined by the QF Settlement. The Settlement provides an opportunity for a very specific and limited set of carefully defined and prescribed units to be eligible for procurement under the CHP/UPF only RFO process. The criteria for facilities eligible for this process are clearly stated in the Settlement and must be rigorously enforced, so that ineligible facilities do not supplant the eligible facilities contemplated for the MW Target of each IOU.

CHP facilities under the Settlement, and the *pro forma* power purchase agreements negotiated as part of the Settlement, specifically targeted resources operating at high, baseload capacity factors in cogeneration mode. SCE's proposed Harbor facility meets neither of these standards.

To be eligible as a UPF for purposes of the Settlement, a facility must have been operating as a QF and "changed operations" due to the reduction in thermal demand by the host operation. Specifically, a facility must have "*met the PURPA efficiency requirements as of September 20, 2007....*" (QF/CHP Term Sheet, §4.8.1.1.) The Harbor facility does not qualify because it had



ceased its cogeneration activities by the early 2000s. The advice letter had to resort to a SCE January 1999 Semi-Annual Report to obtain a yardstick of Harbor's prior QF capacity. The Independent Evaluator confirms this in its report:

The Harbor offer was different from most other offers in that Harbor does not currently qualify as a CHP Facility and did not qualify as one in September 2007. If it had so qualified, it could have provided a qualifying offer as a UPF pursuant to the Settlement Agreement.¹

The Settlement provides for a market for defined UPF facilities to transition from a QF/CHP (and the must-take provisions of a PURPA contract) to a utility dispatchable operation. The Settlement must not be interpreted to include facilities that are "similar to" UPFs but do not meet the strict standards of the definition. The Harbor facility is not an existing QF and does not qualify for consideration under the QF/CHP Settlement as a facility eligible for utility dispatch. The Commission should not approve the UC Tolling Agreement because it does not meet the prerequisites established by the Settlement.

Second, the Commission should not approve the Resource Adequacy Confirmation as counting toward SCE's MW target. 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 purposes of the QF 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.²

That purpose is not achieved by a contract that procures only capacity without the concomitant energy. There is a fundamental difference between a standard RA contract (as proposed by SCE for the Harbor facility) 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

¹ Appendix B-1 to SEC Advice Letter 2772, *Report of Independent Evaluator*, p. 33.

² QF/CHP Program Settlement Agreement Term Sheet, §1.2.1.3.



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.³ Harbor does not meet these standards. The Resource Adequacy Confirmation does not procure any energy produced by a CHP operation, does not provide any obligation for Harbor to operate, and does not provide the incentive or encouragement for CHP operation contemplated by the Settlement.

We note that SCE issued an all-source RFO for RA capacity⁴, but later withdrew it, presumably because SCE had sufficient RA capacity already committed. In any event, if SCE needs RA capacity, it should procure that capacity through an all-source RFO targeted at the specific product, 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.

For the reasons outlined above, the Harbor facility is not eligible for the CHP/UPF RFO process. Indeed, the project should not have been allowed to submit a bid under the established RFO protocols.⁵ As to Harbor's possible compliance with the qualifying standards in the future, the advice letter speaks only of SCE's "understanding" of Harbor's intent to physically modify its facilities and obtain a contract to sell thermal energy. Since the agreement has been redacted, it is unknown whether the confirmations impose a precondition on Harbor to satisfy the various QF requirements and to complete the conversion of its facilities to deliver thermal energy to an industrial host or whether the reconfigured Harbor facility will be able to meet FERC's efficiency and operating standards for qualification as a QF. It is also impossible to verify the GHG credit projected by SCE. Given that a contract with a thermal host has not been negotiated, SCE's projections of a GHG credit are without reasonable foundation. Assuming all of the other defects identified above are cured, satisfaction of those prerequisites for certification as an operating, qualified cogeneration facility must be confirmed by the Energy Division before these contracts are approved.

³ 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.

⁴ <http://www.sce.com/EnergyProcurement/ESM/AllSourceRFO/all-source-rfo.htm>.

⁵ *Id.*, p. 3; SCE's Participant Instructions for its 2011 CHP RFO stated that it would accept "*all timely Offers from any New CHP Facility, Existing CHP Facility, Expanded CHP Facility, Repowered CHP Facility, or Utility Prescheduled Facility (as defined in the Settlement Agreement).*..." Harbor is neither a New nor an Existing CHP unit.



Finally, there are options for SCE to procure from Harbor 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 Harbor 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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