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September 20, 2012

CPUC Energy Division
Attention: Tariff Unit
505 Van Ness Avenue
San Francisco, CA 94102

Re: Southern California Edison Company Advice No. 2771-E: Protest of the Joint Parties

To the Energy Division:

This letter is written on behalf of Shell Energy North America (US), L.P. ("Shell Energy"), the Marin Energy Authority ("MEA"),[1] and the Alliance for Retail Energy Markets ("AReM")[2] (hereinafter the "Joint Parties"). The Joint Parties submit this protest to the above-referenced advice letter that was filed by Southern California Edison Company ("SCE") on August 31, 2012. This protest raises substantially the same issues that the Joint Parties raised in their July 23, 2012 protest to PG&E Advice No. 4074-E. A copy of that protest is attached hereto and incorporated herein by reference.

A. Background

In its advice letter, SCE requests approval of two contracts with Calpine Energy Services, L.P. ("Calpine") for resource adequacy ("RA") capacity-only products. First, SCE seeks approval of an RA capacity-only contract for 50 percent of the 561 MW nameplate capacity of the Los Medanos

[1] MEA is the not-for-profit public agency that administers the Marin Clean Energy community choice aggregation ("CCA") program. MEA launched electricity service to customers in May 2010. It is the first operating CCA program in the state of California.

[2] AReM is a California mutual benefit corporation whose members are electric service providers that are active in California's direct access market. The positions taken in this filing represent the views of AReM but not necessarily those of any individual member of AReM or the affiliates of its members with respect to the issues addressed herein.

Energy Center ("LMEC"). (PG&E agreed to purchase the other 50 percent of the LMEC capacity in an RA capacity-only contract that is the subject of PG&E Advice No. 4074-E.) Second, SCE seeks approval of the purchase of 100 percent of the 120 MW nameplate capacity of Calpine's Gilroy facility.

SCE states that these are both RA capacity-only contracts. SCE also states that both the LMEC and Gilroy facilities are existing combined heat and power ("CHP") facilities within the meaning of the QF/CHP settlement agreement that was approved by the Commission in D.10-12-035 (December 16, 2010). SCE acknowledges that because these are existing CHP facilities, the RA capacity-only contracts "have no impact, positive or negative, on SCE's progress toward its GHG targets under the [QF/CHP] settlement." Advice Letter at p. 6.

In its advice letter, SCE states that the QF/CHP settlement "authorizes the utilities to enter into contracts for CHP resources and to recover the net costs of the resources from all bundled service customers, direct access ("DA") customers, and community choice aggregation ("CCA") customers, as well as other customers." Advice Letter at p. 9. Although SCE does not expressly say so, SCE's advice letter presumably seeks recovery of the RA capacity costs under these two contracts from all customers on its system, including DA and CCA customers, pursuant to the terms of the settlement.

SCE designates its advice letter a "Tier 3" advice letter "because the subject agreements are not based on CHP RFO Pro Forma PPAs." Advice Letter at p. 11. In this connection, SCE acknowledges that it "revised its CHP RFO Instructions to accept offers for RA-only products." Advice Letter at p. 2. Although these resources were bid into the CHP RFO, the proposed contracts provide RA capacity-only products pursuant to the terms set forth in "confirmation letters" under SCE's EEI Master Agreement with Calpine. The contract terms are treated as confidential by SCE. It appears, however, from SCE's description, that the confirmation letters are not consistent with the pro forma contracts that were approved as a part of the QF/CHP settlement.

The Joint Parties urge the Commission to reject SCE's proposed RA capacity-only contracts, or at a minimum, limit the allocation of RA capacity costs under these contracts to SCE's bundled sales customers. As the Joint Parties asserted with respect to PG&E Advice No. 4074-E, the QF/CHP settlement agreement approved by the Commission in D.10-12-035 does not contemplate "capacity-only" contracts with CHP facilities. As a result, SCE's proposed allocation of a portion of the RA capacity (and associated RA capacity costs) from the LMEC and Gilroy contracts to DA and CCA customers through the Cost Allocation Mechanism ("CAM") was not approved in D.10-12-035.

B. RA Capacity-only Contracts are not Permitted under the QF/CHP Settlement Agreement

In D.10-12-035, the Commission approved "IOU procurement of CHP resources on behalf of non-IOU LSEs and allocation of net capacity costs and associated benefits [to the customers of non-IOU LSEs] as described in Section 13.1.2.2 of the Term Sheet." Decision at p. 56. Section 13.1.2.2 of the Term Sheet (as amended by D.11-07-010 (July 14, 2011)) provides as follows:

> If the CPUC determines that the IOUs should purchase CHP generation on behalf of DA and CCA customers, then D.06-07-029 (and D.08-09-012 if necessary) shall be superseded to the extent necessary to authorize the IOUs to recover the net capacity costs associated with the CHP Program from all bundled service, DA and CCA customers and all Departing Load Customers except for CHP Departing Load Customers and from Municipal Departing Load (MDL) Customers only to the extent as described below, on a non-bypassable basis. The net capacity costs of the CHP Program shall be defined as the total costs paid by the IOU under the CHP Program less the value of the energy and any ancillary services supplied to the IOU under the CHP Program. No energy auction shall be required to value such energy and ancillary services. In exchange for paying a share of the net costs of the CHP Program, the LSEs serving DA and CCA customers will receive a pro-rata share of the RA credits procured via the CHP Program.

D.11-07-010 at p. 19 (Ordering Paragraph No. 3).

In order for "net capacity costs" to be allocated to the customers of non-IOU LSEs, the costs must be incurred under a contract that was obtained in accordance with the rules of the CHP program as agreed upon in the QF/CHP settlement, and as approved in D.10-12-035. If the contract is the result of an RFO, the net capacity costs must arise from an agreement that was obtained through an RFO that conforms to the specifications in Section 4.2.1 of the Term Sheet. Section 4.2.1 provides that an IOU "shall conduct RFOs exclusively for CHP resources (CHP RFOs) as a means of achieving its [CHP] MW Target and GHG Emissions Reduction Targets, consistent with the terms of this Settlement."

In its advice letter, SCE acknowledges that it "revised its CHP RFO Instructions to accept offers for RA-only products." Advice Letter at p. 2 (emphasis added). In this connection, the Independent Evaluator's Report acknowledges that the QF/CHP settlement agreement "does not expressly address whether or not RA only offers should be eligible." IE Report at p. 10, n. 14. Under the proposed RA capacity-only contracts, no energy will be delivered to SCE from the CHP facilities. Neither the Commission nor the QF/CHP settlement agreement anticipated that the IOUs would use the resource solicitation protocol established under the settlement agreement to purchase RA capacity-only products from QF/CHP facilities, and then spread the cost of the RA capacity to

all system customers through the CAM. The IE Report's comment that SCE took "an inclusive approach to eligibility . . ." (IE Report at p. 23) is an understatement.

SCE's decision to modify its RFO protocol to allow RA capacity-only bids in the CHP RFO (which is exactly what PG&E did to obtain the RA capacity-only bid for LMEC that is the subject of Advice No. 4074-E) is not consistent with the QF/CHP settlement agreement and has not been approved by the Commission. Accordingly, the solicitation of an RA capacity-only product should not have been a part of SCE's RFO for CHP resources. To the extent SCE has a need for capacity-only resources, it has authorized procurement venues to pursue them, but the QF/CHP settlement is not one of them. A capacity-only product (whether from a CHP resource or from another resource) should be bid into SCE's all-source solicitation and should have to compete with other RA capacity products.

SCE entered into these contracts and presented them for Commission approval without making the necessary showing that this RA capacity will benefit all customers on the SCE system. SCE's proposed treatment of the capacity (and costs) under these contracts is thus contrary to P.U. Code Section 365.1(c)(2), contrary to D.10-12-035, and contrary to the QF/CHP settlement agreement.

Moreover, as SCE acknowledged in its advice letter, the purchase of a capacity-only product from these CHP facilities does not provide any contribution toward SCE's GHG emissions reduction target. See Advice Letter at p. 6. One of the key purposes of the QF/CHP settlement was to enable the IOUs to meet the GHG emissions reduction targets established by the CARB. See D.10-12-035 at p. 38. SCE's proposed purchases of RA capacity-only products from LMEC and Gilroy fail to advance the GHG emissions reduction goal of the settlement.

Finally, the Joint Parties call the Commission's attention to the fact that Calpine's LMEC was not included in the list of "potentially affected QFs" when the IOUs made a filing with FERC in support of the QF/CHP settlement agreement. It appears that LMEC may not have been considered an eligible CHP facility by the IOUs when they entered into the settlement agreement.

C. CAM Treatment Cannot be Afforded to a Capacity-only Contract

Unless a contract includes costs for both capacity and energy-related products, a "net capacity cost" cannot be calculated. Therefore, SCE's proposal to use the CAM for allocating the costs of the LMEC and Gilroy RA capacity-only contracts must be rejected. There is no way to determine if the capacity costs to be imposed under this contract reflect a reasonable netting of energy and ancillary services.

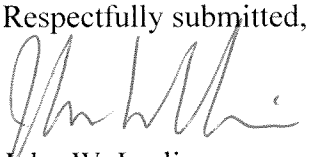
Although the Commission, in D.10-12-035, permitted the IOUs to purchase CHP generation on behalf of DA and CCA customers and to recover the net capacity costs from these customers,

there is no indication that the Commission intended for the IOUs to use the QF/CHP settlement agreement as a basis to purchase RA capacity-only products from entities that just happen to qualify as CHP facilities. If SCE is allowed to spread the cost of this RA capacity to all system customers, the RA procurement options of ESPs and CCAs become increasingly limited.

Moreover, there is simply no way to ascertain that the price being paid for the RA capacity represents a "net capacity cost." It cannot be left to SCE to determine unilaterally that any capacity price it pays for a capacity-only contract is a reasonable net capacity price. That determination can only be made with respect to contracts that are solicited and executed in accordance with the QF/CHP settlement agreement, and that include both energy and capacity products.

For the reasons stated above and in their protest to PG&E Advice No. 4074-E, the Joint Parties respectfully request that the Commission reject SCE's advice letter.

Respectfully submitted,



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And on behalf of the Marin Energy Authority and the Alliance for Retail Energy Markets

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July 23, 2012

CPUC Energy Division
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Re: PG&E Advice No. 4074-E

To the Energy Division:

This letter is written on behalf of Shell Energy North America (US), L.P. ("Shell Energy"), the Marin Energy Authority ("MEA"),[1] and the Alliance for Retail Energy Markets ("AReM")[2] (hereinafter "Joint Parties"). The Joint Parties submit this protest to the above-referenced advice letter that was filed by Pacific Gas & Electric Company ("PG&E") on July 2, 2012.

For two reasons, the Joint Parties urge the Commission to reject PG&E's proposed contract to purchase resource adequacy ("RA") capacity from the Los Medanos Energy Center ("LMEC"). First, the QF/CHP settlement Agreement approved by the Commission in Decision ("D") 10-12-035 (December 16, 2010) does not contemplate or permit "capacity-only" contracts with CHP facilities. Second, PG&E's proposed allocation of a portion of the RA capacity (and associated RA capacity costs) from the LMEC contract to direct access ("DA") and community choice aggregation ("CCA")

[1] MEA is the not-for-profit public agency formed by the County of Marin and eleven other towns and cities that administers the Marin Clean Energy community choice aggregation ("CCA") program. MEA launched electricity service to customers in May 2010. It is the first operating CCA program in the state of California.

[2] AReM is a California mutual benefit corporation whose members are electric service providers that are active in California's direct access market. The positions taken in this filing represent the views of AReM but not necessarily those of any individual member of AReM or the affiliates of its members with respect to the issues addressed herein.

customers through the Cost Allocation Mechanism ("CAM") was not approved in D.10-12-035. Contrary to the allocation mechanism that was approved in D.10-12-035, it is not possible to ascertain the "net capacity costs" of a capacity-only contract.

A. Capacity-only Contracts are not Permitted under the QF/CHP Settlement Agreement

In D.10-12-035, the Commission approved "IOU procurement of CHP resources on behalf of non-IOU LSEs and allocation of net capacity costs and associated benefits [to the customers of non-IOU LSEs] as described in Section 13.1.2.2 of the Term Sheet." Decision at p. 56. Section 13.1.2.2 of the Term Sheet (as amended by D.11-07-010 (July 14, 2011)) provides as follows:

> If the CPUC determines that the IOUs should purchase CHP generation on behalf of DA and CCA customers, then D.06-07-029 (and D.08-09-012 if necessary) shall be superseded to the extent necessary to authorize the IOUs to recover the net capacity costs associated with the CHP Program from all bundled service, DA and CCA customers and all Departing Load Customers except for CHP Departing Load Customers and from Municipal Departing Load (MDL) Customers only to the extent as described below, on a non-bypassable basis. The net capacity costs of the CHP Program shall be defined as the total costs paid by the IOU under the CHP Program less the value of the energy and any ancillary services supplied to the IOU under the CHP Program. No energy auction shall be required to value such energy and ancillary services. In exchange for paying a share of the net costs of the CHP Program, the LSEs serving DA and CCA customers will receive a pro-rata share of the RA credits procured via the CHP Program.

D.11-07-010 at p. 19 (Ordering Paragraph No. 3).

In order for "net capacity costs" to be allocated to the customers of non-IOU LSEs, the costs must be incurred under a contract that was obtained in accordance with the rules of the CHP program as agreed upon in the QF/CHP settlement, and as approved in D.10-12-035. If the contract is the result of an RFO, the net capacity costs must arise from an agreement that was obtained through an RFO that conforms to the specifications in Section 4.2.1 of the Term Sheet. Section 4.2.1 provides that an IOU "shall conduct RFOs exclusively for CHP resources (CHP RFOs) as a means of achieving its [CHP] MW Target and GHG Emissions Reduction Targets, consistent with the terms of this Settlement."

In its advice letter, PG&E acknowledged that it "revised its CHP RFO Protocol to accept offers for capacity-only products ...." Advice Letter at p. 2 (emphasis added). PG&E stated further that in its RFO, PG&E accepted offers for "capacity-only products, provided such capacity comes from an eligible CHP facility, or from a portion of an eligible CHP facility." Id. PG&E also stated,

in its advice letter, that Calpine submitted an offer to provide a capacity-only product from LMEC. Id. The capacity-only product provides no CHP energy deliveries and provides no GHG emission reduction benefits.

The unredacted portion of the Independent Evaluator's Report acknowledges that a CHP capacity only product "was not explicitly identified in the QF/CHP Settlement Agreement . . . ." IE Report at p. 3. Under the proposed capacity-only contract, no energy will be delivered to PG&E from the CHP facility. In fact, PG&E's advice letter states that the electricity sales by LMEC to POSCO Industries and Dow Chemical "are unrelated to the sale of the RA product to PG&E under the LMEC Agreement." Advice Letter at p. 4. Neither the Commission nor the QF/CHP settlement agreement anticipated that the IOUs would use the settlement agreement to purchase RA capacity-only products from QF/CHP facilities, and then spread the cost of the RA capacity to all system customers through the CAM.

PG&E's unilateral decision to modify its RFO protocol to allow capacity-only bids in the CHP RFO is not a decision that PG&E is allowed to make under the QF/CHP settlement agreement. Accordingly, the solicitation of a capacity-only product should not have been a part of PG&E's RFO for CHP resources. In its report, the Independent Evaluator referenced the "unique nature" of CHP resources. IE Report at p. 25. There is nothing "unique" about a capacity-only product. To the extent PG&E has a need for capacity-only resources, it has authorized procurement venues to pursue them, but the QF/CHP settlement is not one of them. A capacity-only product (whether from a CHP resource or from another resource) should be bid into an IOU's all-source solicitation and should have to compete with other RA capacity products.

It appears, from PG&E's advice letter, that PG&E entered into the contract with LMEC for the sole purpose of purchasing RA capacity and allocating the costs to all system customers, rather than under the cost recovery mechanism that would otherwise be applicable to its RA capacity-only purchases for its bundled sales customers. PG&E entered into this contract, and presented it for Commission approval, without making a showing that this RA capacity will benefit all customers on the PG&E system. PG&E's proposed treatment of the capacity (and costs) under this contract is thus contrary to P.U. Code Section 365.1(c)(2), contrary to D.10-12-035, and contrary to the QF/CHP settlement agreement.

Moreover, as PG&E acknowledged in its advice letter, the purchase of a capacity-only product from this CHP facility does not provide any contribution toward PG&E's GHG emissions reduction target. One of the key purposes of the QF/CHP settlement was to enable the IOUs to meet the GHG emissions reduction targets established by the CARB. See D.10-12-035 at p. 38. PG&E's proposed purchase of a capacity-only product from LMEC fails to advance the GHG emissions reduction goal of the settlement.

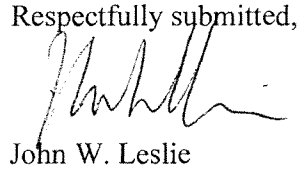
B. CAM Treatment Cannot be Afforded to a Capacity-only Contract

Unless a contract includes costs for both capacity and energy-related products, a "net capacity cost" cannot be calculated. Therefore, PG&E's proposal to use the CAM for the LMEC contract must be rejected because there is no way to determine if the capacity costs to be imposed under this contract reflect a reasonable netting of energy and ancillary services.

Although the Commission, in D.10-12-035, permitted the IOUs to purchase CHP generation on behalf of DA and CCA customers and to recover the net capacity costs from these customers, the Commission did not intend that IOUs could use the QF/CHP settlement agreement as a basis to purchase RA capacity-only products from entities that just happen to qualify as CHP facilities. If PG&E is allowed to spread the cost of this RA capacity to all system customers, not only do the RA procurement options of ESPs and CCAs become increasingly limited, there is simply no way to ascertain that the price being paid for the capacity represents a net capacity cost. It cannot be left to PG&E to determine unilaterally that any capacity price it pays for a capacity-only contract is a reasonable net capacity price. That determination can only be made with respect to contracts that are solicited and executed in accordance with the QF/CHP settlement agreement, and that include both energy and capacity products.

For the reasons outlined herein, the Joint Parties respectfully request that the Commission reject PG&E's advice letter.

Respectfully submitted,



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