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October 22, 2012

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

Re: Southern California Edison Company Advice No. 2784-E: Partial Protest of the Joint Parties

To the Energy Division:

This letter is submitted on behalf of Shell Energy North America (US), L.P. (“Shell Energy”), the Marin Energy Authority (“MEA”),<sup>1</sup> and the Alliance for Retail Energy Markets (“AREM”)<sup>2</sup> (hereinafter the “Joint Parties”). The Joint Parties submit this letter as a partial protest to the above-referenced advice letter that was filed by Southern California Edison Company (“SCE”) on October 1, 2012. This partial protest raises substantially the same issues that the Joint Parties raised in their July 23, 2012 protest to PG&E Advice No. 4074-E, and their September 30, 2012 protest to SCE Advice No. 2771-E. The Commission has not yet addressed these advice letter protests. The arguments in the Joint Parties’ previous protests are incorporated herein by reference.

Because the Joint Parties have had to raise these issues repeatedly with respect to resource adequacy (“RA”) capacity-only contracts submitted for approval by SCE and PG&E, the Joint Parties request that the Energy Division convene a workshop to address the parameters for bids and contracts that may be solicited by the IOUs under the terms of the QF/CHP settlement agreement.

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<sup>1</sup> 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.

<sup>2</sup> 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.

The Energy Division workshop should focus on whether RA capacity-only contracts, and contracts for dispatchable capacity (where the primary product is RA capacity), are properly within the scope of the QF/CHP settlement agreement.

### **A. Background**

SCE's October 1 advice letter seeks approval of four agreements and two contract amendments between SCE and Sycamore Cogeneration Company ("Sycamore"). Sycamore is an affiliate of SCE. Sycamore is a cogeneration facility that is comprised of four operationally independent units. Among the contracts for which SCE seeks Commission approval, one of the contracts provides exclusively for the purchase of dispatchable capacity and associated RA capacity from Unit 2 and Unit 4, for a seven-year term (2014-2020). Another contract provides for the purchase of dispatchable capacity and associated RA capacity from Unit 3, from January 1, 2019 to December 31, 2010.

The total amount of RA capacity under the dispatchable capacity contracts for Units 2, 3 and 4 is 222 MW. SCE states that the "main product" purchased from the dispatchable portion of Sycamore is capacity, "with energy if it is economical to do so." Advice Letter at p. 7. SCE states that the "levelized" cost of energy and capacity from the dispatchable portion of Sycamore is anticipated to be \$91.32/kW-year. Id.

SCE states that the Sycamore facility is an existing combined heat and power ("CHP") facility within the meaning of the QF/CHP settlement agreement that was approved by the Commission in D.10-12-035 (December 16, 2010). 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. 16. Although SCE does not expressly say so, SCE's advice letter presumably seeks recovery of the RA capacity costs under all of these contracts, including the contracts for dispatchable capacity and RA capacity, 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 contain material modifications to the PPAs approved in the QF/CHP settlement. See Advice Letter at p. 23; IE Report at p. 18.

The Joint Parties urge the Commission to reject SCE's proposed contracts for the purchase of dispatchable capacity and associated RA capacity from Units 2, 3 and 4. According to the Independent Evaluator's Report, "[c]onverting to dispatchable operations provides SCE with the flexibility not to purchase energy from the dispatchable units when it is more expensive for Sycamore to produce energy than it is for SCE to purchase energy from the market." IE Report at p.

13. Essentially, these contracts are RA capacity-only contracts. Such contracts are not authorized under the QF/CHP settlement agreement that was approved in D.10-12-035.

At a minimum, the Joint Parties request that the Commission limit the allocation of RA capacity costs under these contracts to SCE's bundled sales customers. Because the QF/CHP settlement agreement does not contemplate "capacity-only" contracts with CHP facilities, SCE's proposed allocation of a portion of the RA capacity (and associated RA capacity costs) from the contracts for Units 2, 3 and 4 to DA and CCA customers through the Cost Allocation Mechanism ("CAM") should be rejected.

**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-IOULSEs and allocation of net capacity costs and associated benefits [to the customers of non-IOULSEs] as described in Section 13.1.2.2 of the Term Sheet." Decision at p. 56. In order for "net capacity costs" to be allocated to the customers of non-IOULSEs, 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, then 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."

SCE acknowledges, in the advice letter, that the "main product" to be purchased from the dispatchable portion of Sycamore is "capacity." SCE states that the "expected energy generation will vary based on changes in market gas and power prices, among other factors." Advice Letter at p. 7. SCE states that pursuant to the terms of the Confirmation Letters ("Confirms"), Unit 2 and Unit 4 "are expected to run under limited market conditions and for limited periods of time." Advice Letter at p. 15. On this basis, SCE projects that the annualized capacity factor for Units 2 and 4 will be 33 percent, and zero percent for Unit 3. *Id.* at p. 16. Among the contracts for which SCE seeks Commission approval, the contracts for dispatchable capacity for Units 2 and 4 (and Unit 3 for a two-year period) are essentially RA capacity-only contracts.

The Independent Evaluator's Report states 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. 15. The Independent Evaluator's Report states that SCE decided to include RA-only offers in its CHP resource solicitation, however, after SCE consulted with the Energy Division and CHP representatives. *Id.* Neither the QF/CHP settlement agreement nor the Commission's decision approving it anticipated that the IOUs would use the RFO protocols 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 Independent Evaluator notes that SCE's acceptance of RA capacity-only bids was "an effort to be more inclusive . . . ." Id.

SCE's decision to allow RA capacity-only bids in the CHP RFO is not consistent with the QF/CHP settlement agreement and has not been approved by the Commission. To the extent SCE has a need for capacity-only resources, it has authorized procurement venues (including its all-source solicitation) to pursue them. The CHP RFO protocol that was enabled through the QF/CHP settlement is not the vehicle through which to pursue RA capacity-only contracts. 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.

Because these capacity-only contracts are not within the scope of the QF/CHP settlement, they are not eligible for CAM treatment under D.10-12-035. Moreover, SCE has not shown that the contracts are otherwise eligible for CAM treatment. SCE entered into these dispatchable capacity contracts and presented them for Commission approval without demonstrating that this RA capacity will benefit all customers on the SCE system. In this connection, SCE has not shown that the projected levelized cost of the dispatchable capacity (\$91.32/kW-year) is competitive or reasonable. As a result, SCE has not made the showing required to approve CAM treatment for these contracts under the standards established in D.06-07-029 (July 20, 2006).

Furthermore, there is 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. 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.

### **C. CAM Treatment for RA Capacity-only Contracts Could Extend CAM Treatment Beyond an IOU's MW Target**

In D.10-12-035, the Commission established MW "targets" for the IOUs' CHP procurement efforts. The Commission also authorized the IOUs to purchase CHP generation on behalf of DA and CCA customers and to recover the net capacity costs from these customers. Expanding the CHP solicitation to include RA capacity-only products could increase the quantity of CHP procurement that is subject to CAM treatment beyond the level of the MW targets. If SCE were to be allowed to spread the cost of this RA capacity to all system customers, the RA procurement options of ESPs and CCAs would become increasingly limited.

Although the Commission established "targets" for CHP procurement under the QF/CHP settlement, it does not appear that the Commission set a "cap" on the amount of CHP procurement

by the IOUs under the settlement. See Term Sheet Sections 5.1.4.3 and 5.1.4.8. If the Commission allows RA capacity-only contracts with CHP facilities to be eligible for CAM treatment, purchases of RA capacity-only products under the QF/CHP settlement agreement could exceed the MW targets and thus completely prevent ESPs and CCAs from purchasing RA capacity on their own, under more competitive terms and conditions.

For the reasons stated above, the Joint Parties respectfully request that the Commission reject that portion of SCE's advice letter that seeks approval of the contracts for dispatchable capacity from Units 2, 3 and 4.

Finally, the Joint Parties request that the Energy Division convene a workshop to discuss whether the QF/CHP settlement agreement authorizes the IOUs to solicit and contract for RA capacity-only products. The Commission must clarify the scope of products that may be bid in the CHP RFO in order to ensure that the costs of non-qualifying products from CHP resources are not allocated to DA and CCA customers through the CAM.

Respectfully submitted,



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And on behalf of the Marin Energy Authority and the  
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All parties on service list in R.12-03-014