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December 10, 2012

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

Re: Draft Resolution E-4537: Comments of the Joint Parties

To the Energy Division:

In accordance with Commission Rule 14.5 and the November 19, 2012 Energy Division letter accompanying the above-referenced draft Resolution (“DR”), the following interested and affected parties: 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”) submit these joint comments on the DR.

The Joint Parties do not object to the DR’s recommendation to approve the Transition Power Purchase Agreement (“Transition PPA”) between Southern California Edison Company (“SCE”) and Watson Cogeneration Company (“Watson”). The Joint Parties do object, however, to the DR’s recommendation to allocate the “net capacity costs” of the Transition PPA to direct access (“DA”) customers and community choice aggregation (“CCA”) customers. There is no authority for allocation of the net capacity costs of this Transition PPA to DA and CCA customers under the QF/CHP settlement agreement that was approved by the Commission in D.10-12-035 (December 16,

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.

2010). Because the Transition PPA does not, according to the DR, count toward either the MW procurement target or the GHG emissions reduction target set forth in the QF/CHP settlement agreement, the net capacity costs of the Transition PPA may not be allocated to DA and CCA customers. Otherwise, the DR's recommendation, if approved, would allow SCE to allocate unlimited CHP procurement costs to DA and CCA customers, in direct conflict with the QF/CHP settlement.

I.

INTRODUCTION

The November 19 DR recommends that the Commission approve the Transition PPA between SCE and Watson that was submitted to the Energy Division on August 3, 2012 through SCE Advice No. 2763-E. The Transition PPA provides for an initial level of firm capacity in the amount of 282 MW. DR at p. 9. As described in the DR, the term of the Transition PPA extends from the date of approval by this Commission and FERC, until the Seller elects to terminate the PPA, but no later than the end of the Settlement Transition Period (no later than July 1, 2015). DR at p. 5. The term of the Transition PPA overlaps with the term of the "Initial Program Period" under the QF/CHP settlement agreement. See Term Sheet, Sections 2.1.2 and 2.2.1.

The DR states that the QF/CHP settlement establishes MW procurement targets and GHG emissions reduction targets that the investor-owned utilities ("IOU") are required to meet by entering into contracts with eligible CHP facilities. DR at p. 4. The DR notes that the IOUs must procure "a minimum of 3,000 MW of CHP and reduce 4.8 million metric tons ("MMT") of GHG emissions consistent with the [CARB] Scoping Plan." *Id.* SCE's share of the MW procurement target is 1,402 MW. SCE's share of the GHG emissions reduction target is 45.6 percent of 4.8 MMT. See Term Sheet, Sections 5.1.2 and 6.2.2.3.

The DR states that the Transition PPA between SCE and Watson does not count toward SCE's MW procurement target under the QF/CHP settlement because Transition PPAs are not an "eligible procurement process" under Section 4 of the settlement. See DR at p. 11. Similarly, the DR states that any change in Watson's operation under the Transition PPA does not count toward SCE's GHG emissions reduction target. *Id.* The DR states, in this connection, that "the execution of the Transition PPA with Watson does not affect the need to procure additional CHP resources required to achieve the MW and GHG targets." DR at p. 12 (emphasis added). Nevertheless, the DR recommends that the Commission allow SCE to recover the "net capacity costs" of the Transition PPA on a nonbypassable basis from DA and CCA customers based on the cost recovery mechanism under Section 13.1.2.2 of the settlement. DR at p. 11.

The Joint Parties object to the DR's recommendation to allow SCE to allocate the net capacity costs of this Transition PPA to DA and CCA customers. If the Transition PPA does not

contribute to SCE's MW procurement target or its GHG emissions reduction target, the Commission's December 2010 decision approving the QF/CHP settlement does not authorize SCE to allocate the net capacity costs of the Transition PPA to DA or CCA customers.

The QF/CHP settlement established MW targets in order to impose goals--and limits--on the CHP procurement that is authorized under the settlement. Whether or not the IOUs' MW targets and GHG emission reduction targets establish a "cap" on the amount of CHP procurement by the IOUs, only the net capacity costs from those CHP contracts that contribute to the MW target and the GHG emissions reduction target may be allocated to DA customers and CCA customers under Section 13.1.2.2 of the QF/CHP settlement agreement. Otherwise, SCE and the other IOUs would have unlimited ability to allocate CHP capacity costs to DA and CCA customers. This would allow the IOUs to circumvent the cost allocation mechanism ("CAM") protocol that was adopted in D.11-05-005 (May 5, 2011).

II.

ALLOCATION OF THE NET CAPACITY COSTS OF CHP PROCUREMENT TO DA AND CCA CUSTOMERS IS ONLY AUTHORIZED FOR PROCUREMENT THAT COUNTS TOWARD THE MW PROCUREMENT TARGET AND THE GHG EMISSIONS REDUCTION TARGET

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 Section 4 of the QF/CHP settlement, as approved in D.10-12-035.

In D.10-12-035, the Commission rationalized allocation of the "net capacity costs" of the IOUs' CHP procurement to DA and CCA customers based on implementation of CARB's CHP goals for the electrical sector. The Commission stated that under P.U. Code Section 365.1(c)(1)(SB 695), "ESPss should be subject to the same GHG emissions net reduction requirements as the IOUs." Decision at p. 47. The Commission further stated that by directing the IOUs to meet the CHP procurement targets "on behalf of all retail customers in their service territories," the Commission would trigger the requirement of P.U. Code Section 365.1(c)(2) that requires the Commission to allocate the net capacity costs and resource adequacy benefits to all customers" *Id.* at p. 48.

The DR acknowledges, however, that the Transition PPA between SCE and Watson contributes to neither SCE's MW procurement target nor SCE's GHG emissions reduction target. DR at p. 11. In this connection, the DR acknowledges that the Transition PPA is not an "eligible

procurement process” within the meaning of Section 4 of the settlement agreement. Id. On this basis, there is no justification under the settlement agreement (or under D. 10-12-035) for allocation of the net capacity costs of the Transition PPA to DA and CCA customers. If SCE seeks to allocate the net capacity cost of this PPA to all customers through a nonbypassable charge, SCE must comply with the requirements for CAM treatment under D. 11-05-005.

III.

NEITHER THE QF/CHP SETTLEMENT NOR THE COMMISSION’S DECISION APPROVING THE SETTLEMENT AUTHORIZE UNLIMITED ALLOCATION OF NET CAPACITY COSTS FROM THE IOUs’ CHP PROCUREMENT CONTRACTS

Section 5 of the QF/CHP settlement terms sheet establishes the CHP MW procurement target for each IOU. SCE’s total MW target is 1,402 MW. Section 5.1.1 of the term sheet provides that the MW targets may be met “through any of the CHP Procurement Processes described in Section 4.” As acknowledged in the DR, the Transition PPA between SCE and Watson is not within the CHP procurement processes authorized in Section 4. DR at p. 11.

The Commission has not determined whether the MW targets set forth in Section 5 of the settlement establish “caps” on the level of CHP procurement by the IOUs.³ Nevertheless, if the Commission allows the net capacity costs under Transition PPAs (executed outside the process approved in Section 4 of the settlement) to be eligible for nonbypassable charge treatment under the settlement, the RA capacity and related capacity costs shifted to DA and CCA customers could substantially exceed the MW targets. This, in turn, could completely prevent ESPs and CCAs from purchasing RA capacity on their own, under more competitive terms and conditions.

Section 5 of the term sheet also establishes MW targets for each “program period.” The Transition Period, which extends from the settlement effective date (November 23, 2011) to a date not to extend beyond July 1, 2015, overlaps substantially with the Initial Program Period, which extends from the settlement effective date to November 23, 2015. SCE’s MW target in the Initial Program Period is 1,402 MW. If SCE meets its MW target in the Initial Program Period, the net capacity costs from all of the 1,402 MW obtained in the Initial Program Period will be allocated to DA and CCA customers. If SCE also is allowed to allocate, as a nonbypassable charge, the net capacity cost of Transition PPA that do not count toward the MW targets, SCE could have virtually unlimited authority to allocate CHP net capacity costs to DA and CCA customers.

³ The Joint Parties raised the issue of a “cap” in their October 22, 2012 partial protest to SCE Advice No. 2784-E.

The Transition PPA with Watson is for 282 MW of firm capacity. DR at p. 9. This Transition PPA alone would increase the net capacity costs allocated to DA customers and CCA customers by 20 percent above SCE's MW target. There is no authority in the settlement agreement, or in the Commission's decision approving the settlement agreement, for unlimited shifting of the IOUs' CHP procurement costs to DA and CCA customers.

The Commission must establish a "cap" on the magnitude of IOU CHP net capacity costs that may be allocated to DA and CCA customers. The cap must be equal to the MW targets approved in the settlement. Moreover, the Commission must clarify that if a CHP procurement contract is not eligible to be counted toward an IOU's MW target (for any reason), the net capacity costs from that contract may not be allocated to DA and CCA customers under the authority of the settlement.


IV.

CONCLUSION

The DR's recommendation to allocate the net capacity costs of the Transition PPA to DA and CCA customers should be rejected. The Commission should clarify that net capacity costs of CHP procurement contracts may be allocated to DA and CCA customers only if the contract counts toward the IOU's MW target under Section 5 of the settlement. Finally, the MW targets established under the settlement should be fixed as the "cap" on allocation of net capacity costs to DA and CCA customers pursuant to the settlement.

Proposed revised findings and conclusions are attached as an Appendix.

Respectfully submitted,



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

CPUC Energy Division

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All Commissioners
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APPENDIX

REVISED FINDINGS AND CONCLUSIONS

12. Replace with the following: Resource adequacy benefits, and associated net capacity costs, are not to be allocated to DA customers or CCA customers because the Transition PPA does not count toward SCE's CHP MW procurement target or its GHG emissions reduction target.

REVISED ORDERING PARAGRAPH

2. Replace with the following: SCE is authorized to recover the costs associated with the Transition PPC exclusively from its bundled sales customers, consistent with the QF/CHP settlement.

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