



DRA

*Division of Ratepayer Advocates
California Public Utilities Commission*

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PUBLIC VERSION

CPUC, Energy Division
Attention: Tariff Unit
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Subject: Confidential Protest of the Division of Ratepayer Advocates of Southern California Edison Company's Advice Letter 2825-E (Submission of Transition Agreements Between SCE and Sycamore Cogeneration Company and Kern River Cogeneration Company)

Introduction

The Division of Ratepayer Advocates ("DRA") submits this protest of Southern California Edison Company's ("SCE") Advice Letter 2825-E ("AL 2825-E"), filed on December 14, 2012. In this advice letter, SCE seeks approval of two Transition Agreements under the Combined Heat and Power Settlement ("CHP Settlement"): one between SCE and Sycamore Cogeneration Company ("Sycamore Transition Agreement") and one between SCE and Kern River Cogeneration Company ("KRCC Transition Agreement").

Background¹

In 2008, parties with divergent interests, including the three investor-owned utilities ("IOUs"), representatives of Qualifying Facilities ("QFs"), customer advocacy groups, and California Public Utilities Commission ("CPUC" or "Commission") representatives, engaged in settlement to develop a state combined heat and power ("CHP") program, create a smooth transition from the existing QF CHP program to a state-administered CHP

¹ AL 2825-E, pp.2-3.

program, and settle all CHP/QF litigation issues, such as retroactive payment issues.² After a year and a half-long intensive negotiation process, the participating parties filed a joint motion for CPUC approval of the QF and CHP Settlement Agreement, Term Sheet, and attached Exhibits.

The Settlement is designed to comprehensively resolve disputes arising out of existing QF contracts, especially with regard to energy and capacity pricing, and to transition the existing QF Public Utility Regulatory Policies Act (“PURPA”) program into a new QF/CHP program. The Commission approved the settlement in Decision 10-12-035.

To those ends, Section 2 of the Term Sheet describes the three periods covered by the Agreement: the Transition Period, the Initial Program Period, and the Second Program Period. The Transition Period is designed to facilitate the transition from the existing QF program to the new QF/CHP program.

Section 3 of the Term Sheet describes the eligibility requirements for QF CHP facilities to enter into a Transition Agreement. Specifically, a CHP facility selling power to an IOU under a Legacy power purchase agreement (“PPA”) or an extension thereof is eligible to sign a Transition PPA. Pursuant to the Settlement, capacity prices in Transition PPAs must conform with the pricing established in D.07-09-040, “Future Policy and Pricing for Qualifying Facilities.” Energy pricing will be Short Run Avoided Cost (SRAC) as calculated by the formulas specified in Section 10 of the Term Sheet. The standard form Transition PPA for Existing Qualifying Cogeneration Facilities (“Standard Form”) is included as an exhibit to the Term Sheet.

The QF Settlement also provides an option for the sale of “Additional Dispatchable Capacity beyond the Transition PPA Capacity Product.” This option was viewed as being limited to a small subset of QF CHPs, each with unique operational constraints.³

Section 3.4.1.2 of the Settlement Term Sheet provides:

In addition to these standard products, a Seller may elect to sell to Buyer under a Transition PPA Additional Dispatchable Capacity above the standard contract capacity set forth in the Transition PPA. Buyer must negotiate in good faith for 120 days to amend the Transition PPA to incorporate a competitive

² See Term Sheet at 1.1.; Pursuant to Decision (D.) 08-07-048, SCE filed Application (A.) 08-11-001 to retroactively apply the Qualifying Facility (“QF”) pricing adopted in D.07-09-040 for calculating short-run avoided costs (“SRAC”).

³ See id. at § 3.4.1.2.

market price for Additional Dispatchable Capacity. If negotiations are unsuccessful, Buyer and Seller will mediate the terms of the amendment using the mediation procedures set forth in Section 10.02 of the Transition PPA.

On October 15, 2012, Sycamore and KRCC, both affiliates of SCE, executed respective Transition Agreements, including agreements for the provision of dispatchable capacity with SCE. The instant advice letter was filed December 14, 2012 and included an Independent Evaluator (“IE”) report.

Summary of Recommendation

DRA recommends that the Commission deny SCE’s request to approve the Sycamore Transition Agreement and the KRCC Transition Agreement. Both agreements include a price for dispatchable capacity that violates the CHP Settlement’s requirement for a “competitive market price.”⁴ The price is not competitive because the negotiated price of \$51.96/kW-yr is much higher than both publicly available data on capacity prices in California and SCE’s own forecasted prices.⁵ For example, the Brattle Group’s October 2012 Report on the price of capacity reflects a range of \$18 to \$38/kW-yr.⁶ The negotiated price of \$51.96/kW-yr is approximately \$14 higher than the Brattle Group’s highest estimate. This is not a competitive market price because if KRCC or Sycamore offered such a price in a market with other generators, the IOUs would reject those offers in favor of the much cheaper capacity that is available. Because the Qualifying Facility settlement described below prohibits such pricing, the Commission must deny SCE’s request.

Analysis and Recommendation

Section 3.4.1.2 of the CHP Settlement requires that the dispatchable capacity price in Transition Agreements be a “competitive market price.” The dispatchable capacity price of \$51.96/kW-yr⁷ negotiated by SCE and its counterparties in the agreements at issue is anything but competitive. Using SCE’s own forward market forecast, a competitive capacity price relevant to the capacity offered by SCE’s counterparties would be in the

⁴ CHP Settlement, Appendix A, CHP Settlement Term Sheet, Section 3.4.1.2.

⁵ AL 2825-E, Appendix C, Independent Evaluator Report, pp. 30-31.

⁶ Id. at 30.

⁷ AL 2825-E, p. 8.

range of \$xx/kW-yr and \$xx/kW-yr,⁸ which is between \$xx/kW-yr and \$xx/kW-yr less than the negotiated price. Another way of comparing these numbers indicates that a competitive market price would be between xxxxx-xxxxxx and xxxxx-xxxxxx of the negotiated price.

SCE argues that the California Independent System Operator's (ISO) Capacity Procurement Mechanism ("CPM") price is relevant to the negotiated price.² The CPM is available to generators that do not have bilateral contracts with an IOU, are needed for reliability, and have submitted a request for CPM designation to the ISO because they are at risk of retirement. Neither Sycamore nor KRCC have submitted a request for CPM designation to the ISO. Sycamore currently has a multi-year contract with SCE through SCE's recent CHP Request for Offer ("RFO"). Sycamore and KRCC provided no evidence to SCE¹⁰, nor did SCE provide any evidence in AL 2825, that Sycamore and KRCC are at risk of retirement. One would assume that if Sycamore and KRCC had such evidence, they would have provided it sometime during the nine months of price negotiations with SCE. Also, the Independent Evaluator's ("IE's") report finds that the CPM is not a market price and therefore, does not qualify as a market price benchmark that meets the requirement of Section 3.4.1.2. Due to the facts that CPM is not a market price, neither KRCC nor Sycamore have requested CPM designation from the ISO, and there is no evidence that the KRCC and Sycamore could qualify for the CPM, the CPM is irrelevant to the determination of a competitive market price for these Transition Agreements.

In AL 2825-E, SCE states that KRCC and Sycamore interpreted Section 3.4.1.2's requirement of "competitive market price" as the price offered by Sycamore in response to SCE's CHP RFOs.¹¹ If the parties to the CHP settlement had agreed to Sycamore and KRCC's interpretation above, the CHP parties would have included that definition in the CHP Settlement Term Sheet. The price that KRCC and Sycamore bid into the RFO is not relevant because the RFO was limited to CHP generators and the term of seven years is much longer than the two-year terms involved in the Transition Agreements at issue.

Like SCE during its negotiations for the Transition Agreements, DRA interprets "competitive market price" to refer to the forecasted price for dispatchable generating

⁸ AL 2825-E, Confidential Appendix to Independent Evaluator Report, p. 2.

² AL 2825-E, pp. 7-8. The current CPM is \$67/kW-yr.

¹⁰ AL 2825-E, IE Report at 30.

¹¹ AL 2825, p. 7.

facilities in the California ISO market.¹² DRA believes that interpretation is the only reasonable interpretation of Section 3.4.1.2's requirement that the dispatchable capacity price be a "competitive market price."

Conclusion

For the reasons given above, DRA recommends that the Commission deny SCE's request to approve the Sycamore and KRCC Transition Agreements.

Please address any questions about this protest to Claire Eustace at 415-703-1889 and Claire.eustace@cpuc.ca.gov.

/s/ Joe Como

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¹² AL 2825-E, Appendix C IE Report at 28.

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A.08-11-001 Service List (Public Version only)