Pacific Gas and Electric Company

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March 25, 2013

ED Tariff Unit
Energy Division
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

Subject: **Comments of Pacific Gas and Electric Company on Draft Resolution E-4529 (PG&E's Advice 4074-E)**

Dear Energy Division Tariff Unit:

Pacific Gas and Electric Company respectfully submits its comments, as attached, on California Public Utilities Commission Draft Resolution E-4529, which unconditionally approves the Agreement with Calpine Energy Services, L.P. for Combined Heat and Power Resource Adequacy Capacity Product from the Los Medanos Energy Center.

Sincerely,

Vice President – Regulatory Relations

cc: Commissioner Michael R. Peevey
Commissioner Mark J. Ferron
Commissioner Michel P. Florio
Commissioner Catherine Sandoval
Commissioner Carla J. Peterman
Edward Randolph – Director, Energy Division
Karen Clopton – Chief Administrative Law Judge
Frank Lindh – General Counsel, CPUC
Damon Franz – Energy Division, CPUC
Cem Turhal – Energy Division, CPUC
Energy Division Tariff Unit – Energy Division
Thomas Jarman - PG&E
Kace Fujiwara – PG&E
Nicholas Castillo - CPUC
John Leslie – McKenna Long & Aldridge LLP
Service List for R.10-05-006

COMMENTS OF PACIFIC GAS AND ELECTRIC COMPANY
ON DRAFT RESOLUTION E-4529

Pacific Gas and Electric Company ("PG&E") strongly supports California Public Utilities Commission ("Commission" or "CPUC") Draft Resolution E-4529 ("DR E-4529"), which unconditionally approves the Confirmation for Resource Adequacy ("RA") Capacity Product between PG&E and Calpine Energy Services, L.P. ("Calpine") for 280.5 megawatts ("MW") of combined heat and power ("CHP") capacity associated with the Los Medanos Energy Center ("LMEC") ("LMEC Agreement"). A similar agreement between Southern California Edison Company ("SCE") and Calpine for LMEC RA CHP capacity and Gilroy RA CHP capacity is also pending in Draft Resolution E-4569 ("DR E-4569"). Due to similarities between these two draft resolutions, PG&E addresses the comments submitted on DR E-4569 that will probably be lodged in this proceeding. PG&E endorses the well-reasoned comments of IEP urging the Commission to expeditiously approve the SCE agreements. On the other hand, PG&E urges the Commission to reject the comments of the Cogenerators and Joint Parties, which oppose both the crediting of CHP MW from RA agreements and, in the case of the Cogenerators, the inclusion of LMEC and Gilroy in meeting SCE's CHP Settlement MW Target.[1] Those comments are meritless attempts by CHP facilities that did not submit winning offers in SCE's Request for Offers ("RFO") to re-write the CHP Settlement Agreement, or equally meritless attempts by Electric Service Providers ("ESPs") and Community Choice Aggregators ("CCA") to avoid cost responsibility. PG&E provides the following comments to support the approval granted in DR E-4529.

A. The DR correctly concluded that RA-Only CHP Transactions may be procured through a CHP RFO and be counted toward PG&E's CHP Settlement MW Target.

DR E-4529 states, "*Pursuant to the QF/CHP Settlement, PG&E is permitted to select and execute the LMEC capacity-only PPA pursuant to § 4.2.2 of the QF/CHP Settlement.*"[2] This statement is accurate. The counting rules to meet MW target are set forth in Settlement Term Sheet §5.[3] The eligibility criteria for participating in a CHP RFO are set forth in Term Sheet § 4.2.2.

The RFO Eligibility criteria require the generating facility to comply with energy utilization and production criteria for *qualifying cogeneration facilities* under state and federal regulation. Eligible facilities may satisfy the MW target through a *variety of products* deliberately provided by the Settlement, including: those which provide energy but not RA, those that provide capacity but not energy, those that provide both, and those that provide neither.[4] The CHP parties themselves sought flexibility for a variety of commercial arrangements. An RA-only procurement will count toward the MW target so long as the generating facility meets the eligibility criteria to participate in the CHP RFO and eligibility pursuant to the counting rules set forth in the Term Sheet.

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[1] "IEP" refers to The Independent Energy Producers Association. As used in these comments, "Cogenerators" refers to the California Cogeneration Council ("CCC") and the Cogeneration Alliance of California ("CAC"). "Joint Parties" includes Shell Energy North America (US), L.P., and the Alliance for Retail Energy Markets ("AReM").

[2] DR E-4529, Finding and Conclusion 2.

[3] Settlement Agreement Term Sheet ("Term Sheet") was approved by CPUC Decision ("D.")10-12-035.

[4] Compliance procurement options include those which provide energy but not RA (the "Optional As-Available" and "1613 PPA", which pay sellers for CHP energy regardless of the RA value provided), those that provide capacity but not necessarily energy (Options for "Additional Dispatchable Capacity" and "Utility Prescheduled Facilities,"), those that provide both (the" CHP Pro-Forma PPA"), and those that provide neither (New "behind-the-meter CHP facilities" which provide the IOUs neither capacity nor energy).

The Commission should reject Cogenerators' attempts to convert the CHP Program to a baseload only program. Nuances in Term Sheet drafting do not impose eligibility criteria above and beyond the criteria in § 4.2.2.1. CCC asserts that because § 4.2.3, "Term," does not list "RA" as one of the products eligible for a long-term contract, an RA-only contract is ineligible. This argument is unsupported; the Term Sheet does not specify capacity types for any other type of contract besides a long-term contract. Given this inconsistency, a product type's absence from § 4.2.3 is of no consequence in terms of the CHP Facility's eligibility to participate in the CHP RFO. CCC's attempt to exclude the RA product because it is procured by a "confirm" instead of a "PPA" is also flawed. [5] PG&E incorporated the EEI Confirm into its CHP RFO following the CHP RFO Bidders' Conference, as authorized by § 4.2.6.[6] The RA Confirm was also included in SCE's 2012 All Source Solicitation.

B. The DR Correctly Found the LMEC Facility Eligible to Participate in the CHP RFO.

DR E-4529 properly concluded that: *"PG&E contracted 280.5 MWs of LMEC's available 561 MW's of total capacity. PG&E's LMEC Agreement contributes 280.5 MW towards the MW target assigned to PG&E under the QF/CHP Settlement". (Finding and Conclusion 4.)*

The issue presented by the LMEC Agreement is whether that transaction is eligible to participate in a CHP RFO for procurement to satisfy PG&E's CHP MW targets and thereby count toward the IOU' CHP MW target. LMEC is an existing CHP, serving two thermal hosts with industrial processes, and meets all of the eligibility criteria set forth in § 4.2.2.1 of the Term Sheet for participation in the CHP RFO. LMEC is a competitive, efficient CHP serving real and viable steam needs. Although not a criteria for eligibility, LMEC in fact did replace the steam served by a QF under a legacy Standard Offer 1 QF PPA, Dow Pittsburg. Calpine purchased the Dow Pittsburg facility and the land to build LMEC in 1998 from Dow with the intention of building a large, modern CHP facility. Calpine exercised its right to terminate the Pittsburg QF PPA with PG&E. The Pittsburg facility subsequently was permanently shut down. Arguments that LMEC has "token steam hosts of convenience," is a "PURPA machine," and "is not a CHP facility," are simply unfounded.[7]

C. Cogenerators Refuse to Comply with the Plain Language of the Term Sheet

The Commission should reject attempts to disqualify CHP RA procurement by the unilateral addition of eligibility criteria.

CCC admits that § 4.2.2.1 does not disqualify CHP RA-only products.[8] However, the Cogenerators refuse to live by the Term Sheet and now assert that whether a CHP RA-only contract is eligible is "ambiguous." There is no ambiguity to be resolved by the unilateral imposition of additional eligibility

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5 An "RA Confirm" is used in conjunction with an Edison Electric Institute ("EEI") Master Power Purchase and Sale Agreement between the parties; the Master Agreement primarily establishes the parties' contractual relationship and the Confirm describes the product-specific transaction. The EEI Confirm for RA was added in response to comments received at PG&E's CHP RFO Bidders' Conference. See PG&E's Advice 4074-E, p.2.

6 Term Sheet § 4.2.6. The IOUs may also offer other contract options in the CHP RFO, including the All-Source Solicitation form. As noted in PG&E's Advice 4074-E, PG&E's CAM Group, which includes the Energy Division, did not object to the inclusion of an RA-only product in the solicitation.

7 CCC at pp. 3 and 4; CAC at pp. 2 and 3.

8 "It is now apparent that § 4.2.2.1 should have explicitly stated that facilities offering RA-only products are ineligible for the CHP Program." CCC, p.2.

criteria. In order to disqualify RA-only procurement from participation in the CHP Program, the Cogenerators attempt to add new eligibility criteria, including: (1) an eligible facility must be baseload; (2) it must pass the fundamental use test; and (3) it must be coming off a Standard Offer ("legacy") QF PPA and belong to a class of CHP facilities that have been unsuccessful in other solicitations. These proposals must be rejected because they are an impermissible attempt to modify the Settlement Agreement for the benefit of a subset of CHP facilities.

CAC and CCC argue that the CHP Settlement is a baseload CHP program and that the inclusion of the "Utility Prescheduled Facility" option was intended to exclude additional non-baseload CHP procurement from CHP MW eligibility.[9] This is untrue. There are no "multiple provisions and decisions implementing the CHP Settlement as a baseload CHP resource program and not an RA-only resource procurement program." The word "baseload" does not appear in the CHP Program Settlement Agreement Term Sheet.[10]

The 95 percent Firm Capacity performance factor, a contract payment term in the CHP RFO pro-forma PPA does not support CAC's claim that an RA-only product may not be offered into the CHP RFO nor that the CHP Program was meant only for baseload CHP resources operating at this capacity factor.[11] This is merely one of the several payment terms in one of the PPAs under the CHP Settlement. The word "baseload" does not even appear in the PPA. Moreover, the CHP Settlement adopted other agreements which do not have such performance criteria.[12]

Second, CAC's suggestion that LMEC is suspect because it does not appear to meet the "fundamental use test" is unfounded. LMEC is not a 'new CHP facility" subject to the fundamental use test promulgated at 18 CFR 292.205(d).[13]

Finally, CAC cannot re-write history by asserting that "[o]ne unequivocal purpose of the CHP program is "to provide viable contracting opportunities to existing and new CHP baseload generating resources that had previously been unsuccessful in securing contracts in the all-source solicitations of IOUs," and citing D.07-09-040 as authority. This discussion in D.07-09-040 is obsolete; it has been replaced by the CHP Program adopted by D.10-12-035. As part of CHP Settlement, CCC agreed to "withdraw its motion for an order implementing the prospective QF program PPA options adopted in D.07-09-040."[14] The Commission should dismiss these attempts to modify the Term Sheet to protect a subset of legacy CHP facilities.

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9 CCC Comments, p.3.

10 CAC comments, p.1. The word "baseload" is used in the Joint Motion for Approval of QF and CHP Settlement Agreement only to describe the opportunity for baseload generators to exercise operational flexibility and remain eligible for procurement as "Utility Prescheduled Facilities." Likewise, the word "baseload" appears in D.10-12-035 only to describe the Settlement's benefit of enabling baseload resources to count toward MW goals after becoming utility dispatchable. *See* Joint Motion, pp. 35 and 36, and in D.10-12-035, § 4.3.2.8.

11 The CHP RFO pro-forma PPA requires any Firm Contract Capacity seller to have a Firm Capacity performance factor of at least 95 percent to be eligible to earn its maximum Firm Capacity payments in any month. (PPA § 1.04.)

12 For example, the Optional As-Available PPA.

13 FERC's PURPA implementation regulations apply minimum operational standards to "a cogeneration facility that was either not a Qualifying Cogeneration facility on or before August 8, 2005, or that had not filed a notice of self-certification or application for FERC certification prior to February 2, 2006." LMEC was a qualifying cogeneration facility before August 8, 2005.

14 See CCC's Letter to Paul Clanon dated December 2, 2011 withdrawing its *Motion for an Order Implementing the Prospective Contract Options Adopted in D.07-09-040.*

CHP RA capacity meets the objectives of the CHP Program.

Cogenerators' claim that the RA-only product distorts CHP RFO pricing is self-serving and wrong. PG&E does not favor or have a preference for RA offers. PG&E favors offers that meet the requirements of a CHP Facility and that are the most competitive and offer the best value to our customers. A low priced bundled product, for example, one that offered electricity at index and a low capacity price, could out-compete a high-priced RA only offer just as a low-priced RA-only offer could out-compete a bundled offer at a high heat rate and capacity price. Additionally, any CHP facility could offer an RA-only product into the CHP RFO and schedule its energy into the California Independent System Operator ("CAISO") markets. The facility could operate in the exact same fashion regardless of who schedules the electricity into the CAISO markets. The form of the offer does not change the inherent "CHP-ness" of the underlying facility.

Additionally, the Commission should dismiss arguments that the RA-only contract does not require a steam host.[15] While specific terms are confidential, the terms ensuring that Calpine maintain a steam host and CHP efficiency standards are stronger than concomitant terms in the CHP Pro Forma PPA, which allows years of "Efficiency Deficiencies," and the PURPA PPA, which allows deviations upon a FERC finding. Implications that steam production is incidental to the RA Product are red herrings. LMEC is first and foremost a CHP facility that sequentially produces steam and electricity and has long term commitments to do so. The RA confirm is merely the form of Calpine's winning offer.

FERC's Termination of the mandatory PURPA purchase obligations provides no support for rejecting RA-only contributions toward CHP MW Targets.

The Cogenerators assert that the Federal Energy Regulatory Commission ("FERC") relied on the retention of "real contracting opportunities under the CHP Program" to find that CHP generators in California had non-discriminatory access to wholesale markets, and that allowing RA contracts to satisfy the goals of the CHP Program would constitute a "flaw in the CHP Program" that the Commission should correct before a QF/CHP generator files to reinstate the mandatory purchase obligation. This hypothetical concern is unpersuasive. The counting of RA capacity contracts toward the CHP Program MW requirements is not a reasonable basis for FERC to revisit its termination of the California IOUs' Public Utility Regulatory Policies Act ("PURPA") purchase requirement. FERC's termination was based on its finding that market opportunities for QFs exist, not on any finding that QFs enjoyed rights to execute any particular procurement contract.[16]

In adopting its final Section 210(m) implementation rules, FERC stated: "We disagree with commenters' interpretation of the statutory standard for relief from the requirement that an electric utility enter into a new contract or obligation to purchase electric energy from a QF. There is nothing in Section 210(m) to suggest that Congress intended to ensure a QF's commercial viability." [17]

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[15] CCC at p. 3.

[16] In its rulemaking to implement § 210(m), FERC stated: "We interpret Section 210(m)(1) to require the Commission to eliminate the purchase obligation in markets which meet the criteria of Section 210(m)(1)(A), (B), or (C) if QFs have nondiscriminatory access to such markets. These three wholesale markets are characterized in this rule in short-hand terms as "Day 2" markets (auction based day-ahead and real-time markets), "Day 1" markets (auction-based real-time markets but not auction based day-ahead markets, and comparable markets, respectively." 71 FERC 54342, Docket No. RM06-10-000; Order No. 688, New PURPA § 210(m) Regulations Applicable to Small Power Production and Cogeneration Faculties, Final Rule, par 9.

[17] Id, par.37.

CCC claims that FERC granted the IOUs' application for termination of the mandatory purchase obligation under PURPA Section 210(m)(1) based on a finding that QFs believed they would have viable contracting opportunities to sell "capacity and electric energy." That is not so. FERC stated, "The lack of opposition from QFs following notice… indicates that QFs in California agree that the four components (California's CHP Program, California's RPS Program, California's RA requirements, and CAISO's implementation of the MRTU day-ahead market), considered together, provide competitive quality wholesale markets comparable to markets described in Sections 210(m)(1)(A) and 210(m)(1)(B)." [18]

FERC's rejection of QF attempts to require contractual safety nets to ensure the commercial viability of individual QFs as a condition of Section 210(m) approval, coupled with FERC's focus on the existence of competitive markets as the primary basis for terminating the IOUs' "must take" obligation, reveals that the CPUC would not jeopardize the Section 210(m) waiver for California's IOUs by authorizing the use of an RA-only contract for CHP Program compliance.

D. The DR Correctly Finds that the LMEC Agreement is Eligible for Cost Recovery and that Net Capacity Costs of the LMEC Agreement Should be Allocated Pursuant to the Ratemaking Mechanisms Defined in Section 13.1.2.2 of the Term Sheet.

Joint Parties seek to escape their responsibility for their allocated portion of the cost of RA-only contracts by arguing that RA-only contracts were not contemplated by the CHP Settlement. Joint Parties' position should be rejected because the adopted cost allocation methodology is not contingent on the type of capacity or GHG reduction procured, so long as it is procurement in compliance with the CHP Program.[19]

Conclusion

Draft Resolution E-4529 clearly recognizes the merits of the LMEC Agreement and provides convincing reasons for CPUC approval of this transaction. To provide further clarification, PG&E requests the Commission to make these four corrections in the final version of Resolution E-4529: (1) Delete the discussion of the eligibility claim under the heading "Joint Parties ' Claim #4"; (2) Definitively state that capacity-only CHP transactions may be procured through a CHP RFO and be used to satisfy CHP MW procurement goals; (3) Correct the impression that with the LMEC Agreement, PG&E has over-procured its CHP goal; and (4) Clarify that the LMEC offer is being evaluated against the bids that participate in PG&E's CHP RFO. These changes are shown in the attached Appendix. The Commission should make these changes, as detailed below, in the final version of Resolution E-4529.

To enable the LMEC Agreement to count toward PG&E's June 2013 RA filing, the Commission should approve the LMEC Agreement at its April 4 meeting, so that final and non-appealable CPUC approval occurs no later than May 15, 2013, as requested in Advice Letter 4074-E.

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[18] 135 FERC P. 61,234, Docket No. QM11-2-000, Order Granting Application to Terminate Purchase Obligation, par. 25.

[19] The Joint Parties request for ESP and CCA authorization to opt-out of CHP procurement should be rejected because such requests are to be made in a future proceeding, not in an implementation advice letter. See D.10-12-035.

APPENDIX TO
PG&E'S COMMENTS ON DRAFT RESOLUTION E-4529

Recommendation #1: Delete the discussion of an inapplicable eligibility claim from the final resolution.	
Explanation:	**Modification:**
The only protest to Advice 4074-E was submitted by the "Joint Parties"[1], who objected to the RA Capacity-only form of the LMEC Agreement. No party has claimed that LMEC is not an eligible CHP facility in response to PG&E's LMEC advice letter. However, the Draft Resolution includes an analysis of "Joint Parties' Claim #4," regarding LMEC's eligibility to participate in the CHP RFO.[2] This analysis does not belong in DR E-4529.[3]	The discussion of "Joint Parties' Claim #4" should be stricken from final Resolution E-4529.
Recommendation #2: Provide notice of the Commission's determination that Capacity-only CHP Transactions May Be Procured Through a CHP RFO and May Satisfy CHP MW Procurement Goals.	
Explanation:	**Modification:**
The Draft Resolution correctly concludes that the Settlement does not prohibit capacity-only transactions with eligible CHP facilities from participating in PG&E's CHP RFO.[4] To demonstrate that the Commission has fully resolved the issue, the Commission should adopt the highlighted text in its discussion of ***Joint Parties' Claim #1*** and as a Findings and Conclusion.	*An RA capacity-only product is one of several contract options that the IOUs may offer in the CHP RFO, in accordance with Settlement Term Sheet § 4.2.6, Capacity-only procurement is consistent with the goals and objectives of the QF/CHP Settlement.*

[1] The "Joint Parties" consist of Shell Energy North America, the Marin Energy Authority, and the Alliance for Retail energy Markets.

[2] Draft Resolution, p. 12

[3] Cogeneration Association of California and the Energy Producer and User Coalition ("CAC/EPUC") challenged LMEC's eligibility based on the fact the IOUs did not notify LMEC of their pending § 201(m) application in their protest of SCE's Advice 2771-E of SCE.

[4] Draft Resolution, p. 9.

Recommendation #3: Avoid any suggestion that the LMEC agreement has caused PG&E to over-procure.	
Explanation:	**Modification:**
The Draft Resolution states on page 14, "As of PG&E's October, 2012 CHP Semi-Annual Report filing, PG&E has procured 783 MW and 814,817 MT of GHG Reductions towards its targets. While PG&E will be over-procured by 153 MW beyond its Target A goal of 630 MW, after reviewing the bids in PG&E's CHP RFO, staff recognizes that…" PG&E has not over-procured CHP generation. The 783 MW listed in the October 2012 CHP Semi-Annual Report filing includes the LMEC Agreement. Term Sheet § 5.1.4.3 provides that individual targets for each RFO are a floor, not a ceiling and an IOU may procure MWs in excess of the targets specified in § 5.1.2; as such, procurement above the interim target for RFO 1 is not over-procurement.	The discussion of the 783 MW value beginning on page 14 of the Draft Resolution should be modified as follows: As of PG&E's October, 2012 CHP Semi-Annual Report filing, PG&E has procured 783 MW and 814,817 MT of GHG Reductions towards its targets. *The 280.5 MW represented by LMEC is included within the 783 MW figure and allows PG&E to surpass its intermediate Target A CHP MW procurement goal. (G)*iven the overarching 1,387 MW target for PG&E, the procurement of LMEC …
Recommendation #4: Describe the correct comparator group for evaluating an offer received in an IOU's CHP RFO	
Explanation:	**Modification:**
Under the "Cost reasonableness" heading on p. 15, the Draft Resolution states that comparison between the LMEC Agreement and a previous PPA might have been applicable to determine the cost reasonableness of the LMEC Agreement. However, Settlement § 4.2.5.3 states, "CHP offers shall be compared only to other CHP offers within the CHP RFO process." A comparison to a previous PPA price is inconsistent with the Settlement's evaluation criteria, regardless of whether the facility was listed in a Cogeneration and Small Power Producer Report.	PG&E suggests a deletion and addition to the discussion of "Cost Reasonableness" to avoid a potential misinterpretation of the Settlement: ~~"Although LMEC has sold to IOUs previously, it was not listed in any of the Cogeneration and Small Power Production Semi-Annual Reports of the three IOUs. Therefore, comparison to a pervious PPA is not applicable in ascertaining the cost reasonableness of the LMEC agreement".~~ *The LMEC offer was one of the most competitive bids received in PG&E's CHP RFO in terms of ratepayer benefit . Based on this comparison, the LMEC Agreement costs are determined to be reasonable.*

CERTIFICATE OF SERVICE

I certify that I have by mail, e-mail, or hand delivery this day served a true copy of Pacific Gas and Electric Company's comments on Draft Resolution E-4529, regarding PG&E's Advice Letter 4074-E on:

1) Commissioner Michael Peevey
2) Commissioner Mark Ferron
3) Commissioner Mike Florio
4) Commissioner Catherine Sandoval
5) Commissioner Carla Peterman
6) Edward Randolph – Director, Energy Division
7) Karen Clopton – Chief Administrative Law Judge
8) Frank Lindh – General Counsel
9) Cem Turhal – Energy Division
10) Damon Franz – Energy Division
11) Energy Division Tariff Unit – Energy Division
12) John Leslie - McKenna Long & Aldridge LLP
13) Thomas Jarman – PG&E
14) Kace Fujiwara – PG&E
15) Nicholas Castillo - CPUC
16) Service List for Draft Resolution E-4529

/S/ KIMBERLY CHANG
Kimberly Chang
PACIFIC GAS AND ELECTRIC COMPANY

Date: March 25, 2013