ALCANTAR & KAHL, LLP

Michael Alcantar
mpa@a-klaw.com

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CPUC Energy Division, Tariff Unit
505 Van Ness Avenue
San Francisco, CA 94102
EDTariffUnit@cpuc.ca.gov

Re: Opposition of CAC to Draft Resolution E-4569 (Pacific Gas & Electric Company)

I. Introduction

The CPUC QF/CHP Program Settlement[1] Term Sheet §5.1.4.5 provides –

> *Any MW shortfall that occurs in the Initial Program Period shall be rolled over into the Second Program Period to reach the 3,000 MW Target;* ***however, such shortfall may also be addressed by other actions deemed appropriate by the CPUC****."*

Emphasis supplied. The Commission has the authority and obligation to monitor and enforce its policies related to CHP resources, and specifically to address shortfalls in the MW Target by actions it deems appropriate. In light of two draft Resolutions E-4529[2] and E-4569[3] pending before the Commission, a threshold, fundamental issue is presented – Is the Commission's QF/CHP Program intended to secure Resource Adequacy (RA) only resources as a substitute for baseload, legitimate CHP resources?

If so, the Program will fail to secure CHP resources that provide thermal and electric power as an efficient, integrated operation supporting California industrial and manufacturing facilities. The CHP Program will not retain the existing CHP operations seeking contracts to provide their hosts with cogeneration supplied thermal power at high capacity factors contemplated by the

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1 The Qualifying Facility and Combined Heat and Power Program Settlement Agreement, October 8, 2010.

2 Resolution E-4529; Pacific Gas and Electric Company (PG&E) requests the Commission approve the Confirmation for 280.5 MW of Resource Adequacy Capacity Product that PG&E has executed with Calpine Energy Services, L.P.; Los Medanos Energy Center (LMEC); Advice Letter 4074-E filed on July 2, 2012.

3 Resolution E-4569; Southern California Edison Company (SCE) requests the Commission approve two Confirmations for Resource Adequacy Capacity Products that SCE executed with Calpine Energy Services, L.P. (Calpine); LMEC for 280.5 MW and Gilroy Cogen, L.P. (Gilroy) for 130 MWs; Advice Letter 2771-E filed on August 31, 2012.

Pro Forma CHP RFO PPA. The CHP Program CHP RFOs will not compare exclusively CHP to CHP resources; instead it will compare dramatically differing products and distort the CHP-only RFO evaluation.

If not, the draft Resolutions must be rejected.

The issue before the Commission presented by the draft Resolutions is an issue of policy. It is not an issue for the Energy Division who is limited in its assessment of the Settlement to specific implementation actions under the Settlement. The critical and open issue is whether the Commission in its discretion will permit the distortion and evisceration of the goals and objectives of the CHP Program in consideration of the state policies and objectives for CHP resources.

CAC does not oppose the approval of the LMEC RA-only agreement with PG&E, as part of the RA procurement program. CAC opposes the counting of the LMEC capacity as part of the CHP Program, specifically to meet the MW Targets under the Settlement.

II. Discussion

On March 21, 2013 CAC and California Cogeneration Council (CCC) separately filed comments in opposition to SCE's draft Resolution Number E-4569. The March 21, 2013 comments collectively address a series of issues and concerns regarding the SCE LMEC and Gilroy RA-only agreements related to the CHP Settlement that are identical to the objections to the PG&E LMEC agreement. CAC asks that the Commission refer to the March 21, 2013 filings as equally applicable to the PG&E draft Resolution E-4529. The filed comments provide numerous legal and technical arguments based on the language of the CHP Settlement to support rejection of the proposal to credit the RA-only capacity for the MW Targets under the Settlement.

Nonetheless, the Commission's decision on the RA-only contracts must turn on the foundational policy goal underlying the Settlement.

Federal and state policies had their origins in PURPA. PURPA's explicit design and intent is to support the development of Qualifying Facility CHP facilities built to serve an industrial, manufacturing or commercial purpose. Amendments to PURPA adopted in the Energy Policy Act of 2005 (EPAct 2005) and FERC's implementation of those changes reaffirmed the goal of encouraging CHP development when built to serve an industrial, manufacturing or commercial purpose.[4] Over years of CHP regulation and policy development, policymakers have disdained "PURPA machine" projects built primarily to deliver electricity, as opposed to the balanced and integrated use of cogeneration.

[4] For example, the Fundamental Use Test, 18 CFR Part 292.205(d)(3).

The CHP Settlement recognized the same purpose. It incorporated by reference the FERC regulations under EPAct 2005 and stated as an express goal that the targeted CHP resources are to support California's manufacturing, industrial and commercial base.[5] All indications, both by incorporating FERC regulations as eligibility thresholds and by direct expression, are that the Commission intended the CHP Settlement program to continue to support the state's manufacturing, industrial and commercial base, not to encourage RA-only product operations masking as CHP resources.

The CHP Settlement made one express, and highly constrained exception: Utility Prescheduled Facilities (UPF). Under the Settlement, a targeted CHP resource facility either serves an industrial, manufacturing or commercial purpose as a balanced and integrated cogeneration operation or it is a UPF.

The RA-only projects do not fit within this policy framework. By its own public admission, LMEC was built primarily to deliver electric power into the CAISO energy market. The capability for the host operation to sustain operations is not the operation of LMEC, but the facility relies on boilers to supply thermal energy when LMEC is not dispatched for operation. This is not a CHP resource.

If these types of contracts are adopted, it will tilt the scales in favor of facilities without a strong tie to industrial, manufacturing or commercial purposes and eliminate opportunities for legitimate CHP resources.

Disingenuous positions from Calpine, SCE and PG&E should be rejected. Comments from these parties ignore entirely any implication under the Settlement of permitting the accounting for these resources. They conveniently ignore policy and rely exclusively on the narrow assessment made by the Energy Division. They argue that RA of any size qualifies under the Settlement. This position provides a signal to any power plant to simply find any conceivable thermal host demand in an effort to substitute for a legitimate CHP operation. The suggestion that the Settlement failed to restrict eligibility for any similar type of operation is simply wrong. The parties when presented with the potential that UPF or Optional As-Available Capacity product could erode the CHP resources target addressed those issues directly. UPF eligibility is tightly controlled. Optional As-Available Capacity has an Average MW cap to reflect energy deliveries associated with the capacity. Policy interests should not allow the evaporation of the legitimate CHP resources objectives by now adopting an unintended consequence of the Settlement – eligibility and counting of RA-only resources.

III. Conclusion

The promise of the Commission's CHP Program is to provide a viable and real alternative for existing and new baseload CHP that could not provide dispatchable resources sought by the IOU all-source "market" solicitations. Substituting LMEC capacity for the CHP procurement target capacity distorts the CHP Settlement and the Commission's CHP policies. For all the

[5] Term Sheet §1.2.4.6.

reasons presented in these comments, and the March 21, 2013 comments from CAC and CCC, the Commission should decline to adopt the draft Resolution and disallow the counting of LMEC capacity under the CHP Program.

Respectfully submitted,

Michael Alcantar
Executive Director and Counsel
Cogeneration Association of California