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**Re: Comments of Marin Energy Authority on Draft Resolution E-4529**

Dear Energy Division:

Marin Energy Authority ("MEA") protests Draft Resolution E-4529 ("Draft Resolution") as it relates to the applicability of the Qualifying Facility and Combined Heat and Power Program Settlement Agreement ("Settlement") to the proposed contract between Pacific Gas and Electric Company ("PG&E") Calpine Energy Services, L.P. ("Calpine") for the Los Medanos Energy Center ("LMEC" and "LMEC Contract").

Herein, MEA will discuss two primary concerns with this Draft Resolution and the proposed treatment of the LMEC Contract: (1) whether resource adequacy ("RA") only contracts are eligible under the Settlement, and (2) if so, whether granting cost allocation mechanism ("CAM") treatment of the resource would violate law.

As a market participant, MEA is not privy to pricing of this contract and, as such, takes no position on whether the contract is reasonable, and the pricing of the RA – whether in general, or for a CHP facility – is reasonable. However, MEA and its customers are impacted by this Draft Resolution. MEA would be unilaterally allocated RA, and its customers would pay an unknown cost via the CAM non-bypassable charge. This takes away MEA's ability to procure for its customers and control the costs assigned to its customers.

**1. Are resource adequacy-only contracts eligible under the Settlement?**

The LMEC Contract proposed by PG&E is a resource adequacy ("RA") only contract. As stated in the Draft Resolution, "based on staff's interpretation of the eligibility requirements in the Settlement, LMEC appears to be an eligible facility." (Draft Resolution at 12.) This determination has not been made with stakeholder input.

Pursuant to General Order 96-B states that Advice Letters are specifically for "utility requests that are expected to be neither controversial nor to raise important policy questions." (G.O. 96-B, Section 5.1.) To the extent an issue *would* be controversial or would raise these important policy

questions, such an issue would be more appropriately addressed in a formal proceeding. The determination of whether a RA-only contract would be eligible under the Settlement falls under the latter category. As such, MEA recommends initiating a stakeholder process in a formal proceeding, whether by re-opening the A.08-11-001 *et al.* proceeding or utilizing another proceeding.

To the extent RA-only contracts are eligible under the Settlement, such contracts should count in full towards the targets set forth in the Settlement, subject to compliance with the legal issues set forth below.

**2. If an IOU's target is exceeded, as would be the case if the LMEC Contract were approved, the Commission must address the significant legal issues raised thereby.**

As noted in the Draft Resolution, if the LMEC Contract is determined to be eligible under the Settlement, and counts towards the targets, PG&E will have over-procured in the Target A period by almost 25%. (Draft Resolution at 14-15.) One option available to the Commission would be for the resource to count towards the Target B requirements as proposed by PG&E. Another option available to the Commission is to deny CAM treatment to the excess procurement since it exceeds the Target A authorization. In either case, the instances where the procurement exceeds the targets create legal issues under Senate Bill 790 (2011).

***a. The Commission is required to maximize the ability of CCAs to determine the generation resources used to serve their customers.***

Public Utilities Code Section 380(b) states: "In establishing resource adequacy requirements, the [C]ommission shall achieve all of the following objectives: ... (4) Maximize the ability of community choice aggregators to determine the generation resources used to serve their customers." By allowing an IOU to procure on behalf of CCA and CCA customers in excess of authorized targets, this legal provision is directly impacted, and the Commission's determinations could violate statute.

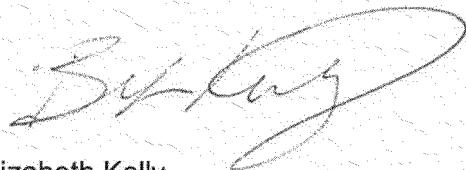
***b. The Commission is required to make a determination that the resource meets a system or local area reliability need if it is granted CAM treatment.***

Furthermore, Public Utilities Code Section 365.1(c)(2), requires that, where CAM treatment is granted, the Commission make a determination that the resource is "needed to meet system or local area reliability needs." The Commission approved the targets set forth in the Settlement, including Target A and the overall target. As a result, the Commission made its "need determinations" only with regards to those targets. As such, the procurement, if approved by the Draft Resolution, could violate statute if CAM since it would be made without the necessary "need determination" being made by the Commission.

**3. Conclusion**

MEA recommends that the Commission begin a stakeholder process related to the implementation of the Settlement to ensure that all parties have the appropriate opportunity to participate in the decision-making process. In particular, the following issues should be included in the scope of that process: (i) whether RA-only contracts are eligible under the Settlement, (ii) whether the investor-owned utilities are authorized to procure in excess of their targets, and if so, whether such excess procurement can receive CAM treatment.

Respectfully Submitted,



Elizabeth Kelly  
Legal Director

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