CALIFORNIA COGENERATION COUNCIL
A Combined Heat and Power Association

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June 17, 2013

California Public Utilities Commission
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RE: Comments of California Cogeneration Counsel on Alternate Resolutions E-4569 (Southern California Edison Company) and E-4529 (Pacific Gas and Electric Company)

I. Introduction

The California Cogeneration Council ("CCC") provides these comments on Alternate Resolution ("AR") E-4569 (Southern California Edison Company ("SCE")) and E- 4529 (Pacific Gas and Electric Company ("PG&E")) (together "Alternate Resolutions" or "ARs"), both issued by the Office of President Michael Peevey. The ARs would reject in their current form Advice Letters 2771-E (SCE) and 4074-E (PG&E) and provide guidance for potential modifications to the associated Confirmations for Resource Adequacy ("RA")-only agreements (the "RA-only Agreements"), which the California Public Utilities Commission ("Commission" or "CPUC") would approve in subsequent Tier 1 Advice Letter filings. Going forward, the CPUC would reject any solicitation and capacity-only agreements in the context of procurement in the combined heat and power ("CHP") Program.

The CCC appreciates the effort that has gone into finding a compromise from the original Draft Resolutions, which would have granted CPUC approval of the RA-only Agreements. The CCC protests, as well as our protest to SCE's Advice 2771-E, remain a part of the record on these Advice Letters and it will not reiterate here its continuing objections. The CCC particularly appreciates the explicit directive set forth in the ARs that the CPUC will reject any future solicitations and contracts that are brought forward as capacity-only in context of the CPUC's CHP Program.

Unfortunately, the ARs are deficient on other issues and thus also objectionable. Specifically, while an ambiguity has surfaced in the CHP Program Settlement Agreement Term Sheet, the compromise offered by the ARs protects SCE, PG&E and Calpine Energy Services, L.P. ("Calpine"), but not the integrity of the CHP Program. As clearly stated in its previous protests, the CCC does not oppose Commission approval of the RA-only Agreements if RA-only resources are needed by the investor-owned utilities ("IOUs") and the RA-only Agreements provide the requisite system and ratepayer benefits. Applying the same rationale and logic for exclusion of RA-only contracts in subsequent CHP RFOs, the RA-only Agreements from the first CHP RFOs should not be a part of the CHP Program and should not count in meeting the MW goals. Simply put, as discussed in the ARs, the CPUC's RA Program is separate and distinct from its CHP Program, and the MW targets allocated to the CHP Program cannot be compromised if the State is to provide viable contracting opportunities to integrated CHP facilities that provide thermal and electrical energy to hosts as well as electrical products to the IOUs. To the extent any MWs from any RA-only contract are counted, valuable CHP Program MWs needed for legitimate CHP facilities are lost.

II. Discussion

There are a number of problems with the compromise offered in the ARs that make their adoption objectionable.

A. RA-only contracts should not be eligible for any CHP Program RFO or MW Target

As set forth above, the CCC greatly appreciates the efforts reflected in the ARs to correct the ambiguity that has arisen in the implementation of the CPUC- adopted CHP Program. In particular, the

ARs appropriately recognize the critical distinction between the CPUC's RA Program and its CHP Program. As explicitly stated in the ARs:

> Going forward, we clarify that we will reject any solicitations and contracts that are brought forward as capacity-only in the context of the QF/CHP Program. The reasons for this are multi-faceted. The most important reason is that a Resource Adequacy program already exists for capacity-only resources seeking revenues from the utilities . . . . The purpose of the QF/CHP Program is altogether different.[1]

As the CPUC has recognized this critical distinction, the CPUC needs to give it credence in resolving the disposition of the RA-only Agreements. First, the MW targets for the Initial Program Period were very heavily negotiated and must not be compromised if the goals of the CHP Settlement are to be met. Simply put, allowing any portion of the RA-only Agreement MWs to count toward the MW targets will mean less MWs are available for legitimate CHP facilities that are providing electrical and thermal energy to host facilities and the IOUs. At stake are not only the Calpine RA-only Agreements, but also other capacity-only contracts from the first CHP RFOs. Ordering Paragraph 7 of each AR states that the same options will be awarded these capacity-only contracts.[2] If these other agreements are given the same options, the total MW at issue will exceed 340.5 MW and the contractual opportunities for legitimate CHP facilities will be further eviscerated due to a CHP Settlement ambiguity.[3] As the ARs recognize, the CPUC should not allow that result. [4]

Further, while it is clear in the ARs that, going forward, the CPUC could prohibit RA-only solicitations and contracts, it is not clear as to how this would apply to the second PG&E CHP RFO where, in defiance of directives given by all five Commissioners from the dais on April 4, 2013, PG&E has chosen to move forward with a specific solicitation of capacity-only bids. The bids in PG&E's second CHP RFO were submitted on May 2, 2013. While the AR for PG&E clearly states no RA-only bids will be accepted for the second CHP RFO and any subsequent RFOs[5], it is not clear how the current RFO is to be handled. A rebid may be required since PG&E's solicitation of capacity only products undoubtedly influenced bidding behavior.

Second, the CHP Program is not needed for the continued operation of RA-only facilities. As noted in the ARs; "CHP parties agreed to remove the must-take obligation voluntarily in return for certain opportunities to bid in CHP-only RFOs. The CHP–only RFOs were intended to be an opportunity for like CHP resources to compete."[6] The fact that there were no viable contracting options for the electrical products associated with integrated CHP facilities was the primary driver behind CHP-only RFOs.[7] The CHP Settlement was never intended to allow facilities that already had viable contracting opportunities to migrate into the CHP Program and obtain contracts that were superior to those available in other CPUC programs. The RA-only Agreements are for much longer terms (five and seven years) and higher prices than what would be achievable in the RA solicitations. As noted in prior CCC protests, the LMEC facilities had been under contract with PG&E from 2008 to 2011 and the Gilroy facility had continued to operate since ratepayers funded the buyout of its QF contract in 2002. In stark contrast to integrated CHP facilities that could not successfully compete against RA-only facilities, none of the Calpine facilities need or needed the CHP Program to continue operations.

Third, adding insult to injury, as set forth in the ARs, the RA-only Agreements also provide that if LMEC or Gilroy are unable to maintain Qualifying Cogeneration status, because either facility lost its

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[1] AR E-4569 at 13; AR E-4529 at 11.
[2] AR E-4569, Ordering Paragraph 7 at 30; AR E-4529, Ordering Paragraph 7 at 25.
[3] 280.5 MW from LMEC, 60 MW from Gilroy, and additional RA-only MW from Harbor Cogeneration, yet to be determined.
[4] AR E-4569 at 14; AR E-4529 at 12.
[5] AR E-4529 at 2, 13 and Findings and Conclusions # 5 at 22.
[6] AR E-4569 at 14; AR E-4529 at 11.
[7] Although well intentioned, references to majority sales to industrial hosts with some electricity to the grid could be misused by the IOUs in subsequent CHP RFOs and should be eliminated. See, AR E-4569 at 14; AR E-4529 at 11.

steam host, the IOUs will have the *option* to terminate that agreement at that time.[8] The irony here cannot be overlooked. The foundation of the IOUs' argument for inclusion of the RA-only facilities in the CHP Program is that the facilities meet the definition of "CHP Facility" and are certified as Qualifying Facilities with the FERC.[9] If a facility is not a Qualifying Cogeneration Facility, it is not qualified for the CHP Program. If it loses that status during the term of an agreement, the agreement must terminate. The IOUs should not have the discretion to continue an RA-only CHP agreement if a fundamental CHP Program requirement fails to be satisfied. The invitation for abuse by any generation facility producing waste heat is stunning: take the waste heat, engage a steam host and get a long term contract in the CHP Program at premium prices. The thermal application does not even need to be permanent. Unfortunately, that is exactly what is at issue here.

Fourth, there is no evidence to support an argument that without the RA-only Agreements SCE will have problems meeting its MW target.[10] One, as stated in the PG&E AR, PG&E has over-procured beyond its Target A goals and the large LMEC agreement is excessive.[11] CHP facilities can bid into all three IOU CHP RFOs; if PG&E can meet or exceed its MW target, there is no reason that SCE cannot do the same. Two, meeting the Target A goals for the first RFO was not a requirement; if, for any reason, an IOU were not to meet its Target A goal, it has two subsequent RFOs in which to make up the shortfall. Shortfalls from the Initial Program Period are added to the Second Program Period. CCC members submitted bids in the first CHP RFO and those bids were rejected in favor of the RA-only bids. Other CCC members will need to submit bids in subsequent CHP RFOs as their legacy contracts terminate. Three, given the rejection of bids from legitimate CHP, even at one-half of the requested MW, there is no evidence that enough room remains for those CHP facilities that are dependent on the CHP Program to obtain contracts for the energy and capacity that is produced in association with manufacturing, industrial and other applications where thermal energy is inherent or required. If all of the known currently executed PG&E Agreements were to be approved, the CCC members alone would require more MWs than what remain.

Fifth, the results from the first CHP RFOs and the analyses by the IOUs and Independent Evaluators highlight the injustice in allowing RA-only bids into any CHP RFO.[12] Review of the discussions in the ARs regarding bid evaluation, cost reasonableness and selection make it abundantly clear that bids from integrated CHP Facilities producing thermal and electrical energy were unable to compete successfully against bids from RA-only facilities. It is difficult to understand how inclusion of RA-only bids in the CHP Program is fair in light of the fact that the underlying intent of the CHP Program was to create viable contracting options for baseload and other legitimate CHP operations. Prohibiting RA-only contracts from the first, as well as the subsequent, CHP RFOs means that legitimate CHP facilities will be awarded contracts as contemplated when the Commission adopted the CHP Program. As recognized in the ARs, "[t]he CHP-only RFOs were intended to be an opportunity for like CHP resources to complete."[13] The first CHP RFO results show that RA-only resources are not "like CHP resources" and, thus, the template for the CHP RFO bid evaluation and selection process is suspect in light of the CHP Program goals.

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[8] AR E-4569 at 12 and AR E-4529 at 10.
[9] AR E-4569 at 12 and AR E-4529 at 10.
[10] AR E-4569 at 20.
[11] AR E-4529 at 17 -18.
[1212] As noted in the ARs, the one exception is the Utility Prescheduled Facilities ("UPFs"), which were specifically identified and limited to CHP Facilities that were operating and under legacy or extension QF, must take, agreements on September 20, 2007. The set aside for UPFs was specifically created to provide an off ramp for CHP Facilities that were losing steam hosts and going forward could not enter into traditional CHP agreements. There was never an intent to create an on ramp for other capacity-only facilities operating outside of the QF program. See, AR E-4569 at 14 and AR E-4529 at 12. Moreover, UPF contracts are not capacity-only agreements, they are also energy tolling agreements.
[13] AR E-4569 at 14; AR E-4529 at 11.

B. <u>There are ambiguities and uncertainties associated with each of the options set forth in the ARs</u>.

While the CCC assumes that the intent of the ARs is that no more than half the MWs associated with the RA-Agreements could count toward meeting the MW goals, the outcomes associated with the three options are not clear. The operational data for LMEC and Gilroy which is public is limited and uncertain. For Option 1, the available data suggests that the contract for LMEC would be no more than 56 MW, based on its stated thermal output of 190 MMBtu/hour (190 MMBtu/hour divided by 3.413 MMBtu/MW-hour equals 55.7 MW). However, LMEC's thermal output may be even lower, based on the values used by Calpine in their initial QF certification (97 MMBtu/hr thermal) and in their latest (2006) recertification (76 MMBtu/hr).[14] These lower thermal outputs would support thermally-balanced CHP capacities of 28.4 MW and 22.3 MW, respectively.

For Option 2, the ARs include no definition of "baseload power output." The baseload capacity of merchant plants such as LMEC or Gilroy is not the average amount of power produced over all hours of the year, because the amount produced can fluctuate greatly from hour to hour. Typically, a baseload generator will produce at an 80% to 95% capacity factor during hours of operation, which include most of the hours of the year. Based on this definition, the baseload capacity of LMEC or Gilroy would be the capacity of the plant that would result in an 80% to 95% capacity factor based on the plant's hours and levels of operation. This value could be very different than the plant's average output over all hours. Examination of hourly operating data for these plants would be necessary to establish their baseload capacity; such an examination would be impractical in a Tier 1 advice letter filing. Further, according to AR E-4569, the Gilroy facility is not baseload generation for purposes of meeting the Emission Performance Standard.[15] Gilroy's recent GHG emissions and operating data suggest that it has operated as a peaker, at very low capacity factors. If that is true, it is not clear as to how Option 2 can be implemented. Further, under both Options 1 and 2, it is not clear as to the allocation between SCE and PG&E and how the CPUC will be able to ensure that double counting does not occur.

Option 3 appears explicitly to limit the MW associated with RA-only capacity to one half or less of the originally-contracted amount. Option 3 is purely arbitrary, and has no link to the actual amount of legitimate, balanced, and efficient CHP capacity that might be required to support LMEC's and Gilroy's thermal output. Considering all of the RA-only CHP contracts that are now public, the key problem with Option 3 is that one-half of the originally-contracted capacity still amounts to a significant and unwarranted amount of capacity, estimated at more than 340.5 MW.[16] The IOUs can procure RA elsewhere and at lower costs without diminishing the availability of contracts to legitimate CHP projects that operate efficiently in support of California businesses. If procuring RA through a CHP RFO results in overpaying for RA, such procurement harms ratepayers.

Further, There is also no way to ascertain whether the requirement under all three options that renegotiated RA-only Agreements be otherwise **identical** to the RA-only Agreements presented in the Advice Letters is (1) possible or practicable or (2) good for the IOUs' ratepayers.[17] The CCC assumes that the contracting parties will make the former determination before filing the renegotiated agreements; however, only the CPUC can make the latter determination. For example, the ARs hold that the pricing per-MW capacity may remain the same.[18] However, the cost analysis ignores a comparison to the price of RA in the RA Programs, which again raises concerns regarding the template for the CHP RFO bid

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[14] See, Notice of Self-Certification of Qualifying Status as a Cogeneration Facility, FERC Docket No. QF01-14 (Oct. 30, 2000); Notice of Self-Recertification as a Qualifying Cogeneration Facility for Medanos Energy Center, LLC, FERC Docket No. QF01-14 (Jan. 31, 2006).

[15] AR E-4569 at 23.

[16] 280.5 MW from LMEC, 60 MW from Gilroy, and additional RA-only MW from Harbor Cogeneration, yet to be determined.

[17] All three options state, "but would otherwise be identical to the instant LMEC and Gilroy Agreements." AR E-4569 at 15 and 29; AR E-4529 at 12-13 and 23..

[18] AR E-4569 at 22; AR E-4529 at 19.

evaluation and selection process. Whatever the outcome of the renegotiation of the RA-only Agreements, at the very least, to ensure full review and input, the subsequent filings should not be made as Tier 1 Advice Letters. Likewise, given the confidentiality of the RA-only Agreements, further review of the renegotiated agreements by the Procurement Review Group and Independent Evaluator should be required, not optional as proposed.

C. The CPUC should not be dissuaded from clarifying ambiguities in its CHP Program

It is proper and necessary for the CPUC to clarify the ambiguity raised through introduction of RA-only Agreements into the CHP Program. As recognized in the ARs, "capacity-only products are not expressly prohibited from competing in CHP-only RFOs; they are not expressly invited either."[19] The ARs also states the CHP Settlement "*is ambiguous* as to whether capacity-only products, other than from Utility Prescheduled Facilities, are invited in the CHP[-] Only RFOs."[20] These Findings and Conclusions are critical given that PG&E and SCE now will not even acknowledge that the CHP Settlement Agreement was ambiguous as to whether RA-only procurement was to be included in the CHP Program. This position is incredible given the fact that the IOUs felt it necessary to seek guidance from the Independent Evaluator and Energy Division on how to handle the eligibility of RA-only bids once the issue arose during the first round of RFO solicitations and that they subsequently revised the CHP RFO protocols.[21] Despite the heroic efforts of all involved in crafting the CHP Program, it is inevitable that unforeseen issues will arise and the Commission will be called on to act in those circumstances. For anyone to argue otherwise, including trying to argue that the CHP Settlement Agreement addressed and expressed the understanding of the parties on *all* outstanding issues, is simply unrealistic and disingenuous. Given that an ambiguity has arisen as to the eligibility of RA-only Agreements for the CHP Program, the Commission has the power and the responsibility to opine on the ambiguity, no matter what any interested party advocates or threatens. There is no doubt that any challenge to the Commission's authority to monitor, direct and implement the CHP Program it adopted would be decided in deference to the expertise of the Commission.

III. Conclusion

For the foregoing reasons, the CCC respectfully requests that the CPUC keep all RA-only contracts separate and apart from the CHP Program for the first as well as the subsequent CHP RFOs. This means that the MWs associated with any approved RA-only contract, including the RA-only Agreements, would not count toward the MW targets set in the CHP Program. The CCC also requests that the CPUC adopt the changes in the ARs set forth in the Indices and Appendices that are attached hereto.

Respectfully submitted,

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[19] AR E-4569, Findings and Conclusions #3, at 26; AR E-4529, Findings and Conclusions #2, at 22
[20] AR E-4569, Findings and Conclusions #5, at 27; AR E-4569, Findings and Conclusions #4, at 22.
[21] See, AR E-4569, at 6; AR E-4529 at 4.

Index of Recommended Changes to Draft Resolution E-4569

Page	Recommended Changes to Draft Resolution
1	In the "Proposed Outcome", change the reference from a Tier 1 Advice Letter Filing to a Tier 2 Advice Letter Filing.
1-2	Revise the first paragraph in the "Summary" to state that SCE's Confirmations for Resource Adequacy Capacity Product with Calpine Energy Services, L.P. for the Los Medanos Energy Center and the Calpine Gilroy Cogen, L.P. ("LMEC and Gilroy Agreements") do not comply with the requirements of the CHP RFO competitive solicitation under the QF/CHP Settlement, are not a part of the CHP Program and do not count toward meeting SCE's MW Target for the Initial Program Period.
2	Remove the word "However" from the first sentence of the second paragraph of the "Summary" and delete the third full paragraph. Revise the first sentence of the fourth full paragraph of the Summary to state: "This Resolution offers SCE several options for renegotiating the instant LMEC and Gilroy Agreements and resubmitting the contracts as Tier 2 Advice Letters for Commission approval; provided that the LMEC and Gilroy Agreements shall not be part of the CHP Program and shall not contribute any MWs towards the MW target assigned to SCE under the QF/CHP Settlement.
12	Revise the second sentence in the second paragraph to state that, although the LMEC and Gilroy facilities are CHP Facilities as defined in the QF/CHP Settlement, RA-only contracts are inconsistent with the QF/CHP Settlement, and therefore, the LMEC and Gilroy Agreements shall not be part of the CHP Program and shall not contribute towards the MW target assigned to SCE under the QF/CHP Settlement. Delete the third and fourth paragraphs on page 12.
14	Revise the last paragraph to add the following sentence to the end of the paragraph: "Therefore, the LMEC and Gilroy Agreements shall not contribute towards the MW target assigned to SCE under the QF/CHP Settlement."
15	Replace the first paragraph as follows: "Notwithstanding that the LMEC and Gilroy Agreements shall not be part of the QF/CHP Program and shall not contribute any MWs towards SCE's MW target under the QF/CHP Settlement, we offer SCE the following options with respect to the LMEC and Gilroy Agreements. Should SCE and Calpine choose one of these options, SCE is required to submit revised Agreements within 30 days of the adoption of this Resolution as a Tier 2 Advice Letter."
15	Replace the last paragraph as follows: "Notwithstanding that in the case of the three options above, various terms of the amended or renegotiated Agreements may not be identical to the instant LMEC and Gilroy Agreements, we make various findings that may be applicable to those Options, should SCE and Calpine choose to exercise one of them, and bring back amended Agreements for our consideration."
16	Revise the first paragraph as follows: "We reject the current form of the LMEC Agreement in this Resolution and conclude that no MWs from the LMEC or Gilroy Agreements, or any RA-only contract, may count towards the MW target assigned to SCE under the QF/CHP Settlement. We also prohibit RA-only solicitations and contracts as part of the QF/CHP RFOs in future solicitations, including SCE's subsequent RFOs."

Page	Recommended Changes to Draft Resolution
17	In the first paragraph, revise the reference from Tier 1 Advice Letters to Tier 2 Advice Letters.
17-18	Revise the analysis of "Consistency with MW accounting" to explain that the MWs associated with the LMEC and Gilroy Agreements are not allowed under the QF/CHP Settlement, and therefore the MWs associated with the LMEC and Gilroy Agreements are not eligible to count towards SCE's MW Target. Therefore, 0 MW from the 561 MW LMEC facility and 0 MW from the 130 MW Gilroy facility shall count toward SCE's MW Target.
18	Delete the following sentence: "If SCE and Calpine negotiate revised Agreements for the purchase of half or less of the MW of the current Agreements and resubmit the contracts as Tier 1 Advice Letters, pursuant to the QF/CHP Settlement Term Sheet Section 5.2.3.2, the contracted MW from the LMEC and Gilroy facilities shall count toward SCE's CHP MW targets."
18	Revise the analysis of "Consistency with Greenhouse Gas accounting – Capacity-Only Agreements" to reflect that the LMEC and Gilroy Agreements are not contracts entered into pursuant to the terms of the QF/CHP Settlement.
18-19	Revise the analysis of "Consistency with cost recovery requirements" to reflect that the LMEC and Gilroy Agreements are not contracts entered into pursuant to the terms of the QF/CHP Settlement.
20	Revise the "Need for Procurement" analysis to reflect that the LMEC and Gilroy Agreements are not contracts entered into pursuant to the terms of the QF/CHP Settlement.
20-22	Revise the "Cost reasonableness" analysis to reflect that the CHP RFO was not the appropriate solicitation to enter into RA-only contracts, and thus bids from CHP facilities that offered energy and capacity provide inappropriate comparisons for determining whether the LMEC and Gilroy Agreements are good values for ratepayers.
24	Revise the last full paragraph as follows: "SCE complied with the Commission's rules for involving the PRG. However, because the CHP RFO was not the appropriate solicitation to enter into RA-only contracts, SCE is required to consult with its PRG again prior to submitting an amended Agreement."
25-26	Revise the paragraph that continues from page 25 to page 26 as follows: "The Independent Evaluator concurs with SCE's decision to execute the LMEC and Gilroy Agreements with Calpine Energy Services, L.P. and finds that the LMEC and Gilroy Agreements merit Commission approval, but the Independent Evaluator erred in presuming that these RA-only contracts could be counted towards SCE's MW Targets under the QF/CHP Settlement. Should SCE choose to renegotiate the Agreements according to the options provided for in this Resolution, SCE is required to consult with the Independent Evaluator again prior to submitting an amended Agreement.

Appendix B
Proposed Findings, Conclusions and Ordering Paragraphs

Set forth below are the California Cogeneration Council's proposed changes to the findings, conclusions and ordering paragraphs set forth in Draft Resolution E-4569. Deletions are shown in ~~strikethrough~~ and additions are shown in double underline.

Findings and Conclusions:

1. The LMEC facility is an eligible CHP resource with two steam hosts; is a CHP facility with a nameplate capacity larger than 5 MW; meets the definition of cogeneration facility under California Public Utilities Code §216.6; meets the federal definition of a qualifying cogeneration facility under 18 CFR §292.205 implementing PURPA; and meets the Emissions Performance Standard established by Public Utilities Code §8341 (Senate Bill 1368).

2. The Gilroy facility is an eligible CHP resource with a steam host; is a CHP facility with a nameplate capacity larger than 5 MW; meets the definition of cogeneration facility under California Public Utilities Code §216.6; meets the federal definition of a qualifying cogeneration facility under 18 CFR §292.205 implementing PURPA; and meets the Emissions Performance Standard established by Public Utilities Code §8341 (Senate Bill 1368).

3. Pursuant to the QF/CHP Settlement, Section 4.2.2, capacity-only products are not expressly prohibited from competing in CHP-only RFOs. They are not expressly invited either.

4. A provision for Utility Prescheduled Facilities is expressly provided for in the QF/CHP Settlement and is designed for capacity ~~only~~ and energy-tolling contracts from such facilities.

5. The QF/CHP Settlement is ambiguous as to whether capacity-only products, other than from Utility Prescheduled Facilities, are invited in CHP only RFOs.

6. The current LMEC and Gilroy Agreements in Advice Letter 2771-E should be rejected because ~~it~~ they would occupy ~~too many~~ reserved CHP MWs with ~~a~~ capacity-only contracts, removing opportunities for other CHP facilities to provide benefits to SCE.

7. The Commission should allow renegotiated Agreements, consistent with one of the three options outlined below, to be resubmitted to the Commission and approved via Tier ~~1~~2 Advice Letters, as long as they conform to the terms of this Resolution, provided that no MWs from such renegotiated Agreements shall contribute towards SCE's MW target under the QF/CHP Settlement.

   - QF/CHP Agreements for RA-only capacity that match the level of energy output delivered to the LMEC and Gilroy steam hosts~~, but are otherwise identical to the instant LMEC and Gilroy Agreements~~.

- QF/CHP Agreements for RA-only capacity that match the level of baseload power output from the LMEC and Gilroy facilities~~, but are otherwise identical to the instant LMEC and Gilroy Agreements~~.
- QF/CHP Agreements for RA-only capacity that are for one half or less of the contracted amount in the instant Agreements (up to no more than 140.25 MW associated with LMEC and 60 MW associated with Gilroy)~~, but are otherwise identical to the instant LMEC and Gilroy Agreements Agreement~~.

8. If SCE renegotiates LMEC and Gilroy Agreements consistent with the options outlined in this Resolution, the following findings in this Resolution would apply to such ~~a~~ conforming new Agreements.
    a. As an existing CHP Facility and because the LMEC agreement shall not be part of the QF/CHP Program, ~~per QF/Settlement Term Sheet Section 7.3.3.1,~~ LMEC capacity would not contribute towards SCE's GHG Targets and is neutral for GHG accounting purposes.
    b. The LMEC and Gilroy facilities are existing CHP facilities and therefore would be a viable project.
    c. The terms of the LMEC and Gilroy agreements for a capacity-only PPA would provide the CHP Attributes, the RA Attributes, the Local RA Attributes, and the Capacity Attributes equivalent to the capacity associated with the LMEC and Gilroy ~~A~~agreements to the ratepayers.
    d. Capacity-only LMEC and Gilroy PPAs are not subject to the EPS under D.07-01-039 as it was deemed to be compliant with the EPS, as each facility ~~it~~ is a combined-cycle natural gas facility that was in operation prior to June 30, 2007.
    e. SCE would not be allowed to allocate the net capacity costs and associated RA benefits to bundled, DA, CCA, and departing load (to the extent not exempted) customers consistent with D.10-12-035, as modified by D.11-07-010.
    f. ~~Actual LMEC and Gilroy Agreement costs will be recovered through ERRA, less net capacity costs recovered in the NSGBA.~~
    g. SCE has complied with the Commission's rules for involving the PRG. Should SCE renegotiate the LMEC and Gilroy Agreements, they shall be ~~should be encouraged but not~~ required to consult again with their PRG.
    h. The Independent Evaluator concurred with SCE's decision to execute the LMEC and Gilroy Agreements with Calpine Energy Services, L.P. and found that the LMEC and Gilroy PPAs merit~~s~~ Commission approval, but the Commission finds that the Independent Evaluator erred in presuming that these RA-only contracts could be counted towards SCE's MW Targets under the QF/CHP Settlement. Should SCE renegotiate the LMEC and Gilroy Agreements, ~~as long as the per-MW costs do not increase,~~ they should ~~not~~ be required to subject the amended Agreement to additional IE analysis prior to resubmitting to the Commission.

Ordering Paragraphs:

1. The request of Southern California Edison (SCE) in Advice Letter 2771-E for Commission approval of the Los Medanos Energy Center and Gilroy Agreements with Calpine in its entirety is denied.

2. SCE is authorized to renegotiate amended Agreements with Calpine if they are consistent with one of the following three Options, with Option 3 indicating the maximum procurement amount SCE~~PG& E~~ is authorized regardless of which Option is executed; provided that such amended agreement shall not count towards SCE's MW target under the QF/CHP Settlement:
   - Option 1: QF/CHP Agreements for RA-only capacity that match the level of energy output delivered to the LMEC and Gilroy steam hosts~~, but are otherwise identical to the instant LMEC and Gilroy Agreements~~.
   - Option 2: QF/CHP Agreements for RA-only capacity that match the level of baseload power output from the LMEC and Gilroy facilities~~, but are otherwise identical to the instant LMEC and Gilroy Agreements~~.
   - Option 3: QF/CHP Agreements for RA-only capacity that are for one half or less of the contracted amount in the instant Agreements (up to no more than 140.25 MW associated with LMEC and 60 MW associated with Gilroy)~~, but are otherwise identical to the instant LMEC and Gilroy Agreements~~.

3. If SCE renegotiates amended Agreements with Calpine consistent with one of the three options outlined in Ordering Paragraph 2, SCE shall resubmit the amended Agreements via a Tier ~~1~~ 2 Advice Letter within 30 days after the approval of this Resolution.

4. SCE is ~~encouraged, but not~~ required~~,~~ to consult with its Procurement Review Group about any amended Agreements consistent with Order Paragraph 2 prior to submitting amended Agreements to the Commission via a Tier ~~1~~ 2 Advice Letter.

5. If SCE negotiates amended Agreements consistent with Ordering Paragraph 2, ~~as long as the per-megawatt cost of the contract is not increased from Advice Letter 2771-E,~~ additional review by an Independent Evaluator is ~~not~~ required.

6. SCE shall not invite or accept any capacity-only contracts in their existing or future Combined Heat and Power solicitations, except as Utility Prescheduled Facilities as defined in the Qualifying Facility/Combined Heat and Power Settlement Agreement adopted in Decision 10-12-035.

7. For any other capacity-only contracts signed by SCE as a result of their first Combined Heat and Power Requests for Offers required under the Qualifying Facility/Combined Heat and Power Settlement Agreement adopted in Decision 10-12-035, the same options outlined in Ordering Paragraph 2 of this Resolution will be available, if contracts are renegotiated and resubmitted for Commission approval, as applicable; provided that such amended agreements shall not contribute towards SCE's MW target under the QF/CHP Settlement.

Index of Recommended Changes to Draft Resolution E-4529

Page	Recommended Changes to Draft Resolution
1	In the "Proposed Outcome", change the reference from a Tier 1 Advice Letter Filing to a Tier 2 Advice Letter Filing.
1-2	Revise the first paragraph in the "Summary" to state that PG&E's Confirmation for Resource Adequacy Capacity Product with Calpine Energy Services, L.P. ("LMEC Agreement") does not comply with the requirements of the CHP RFO competitive solicitation under the QF/CHP Settlement, is not a part of the CHP Program and does not count toward meeting PG&E's MW Target for the Initial Program Period.
2	Remove the word "However" from the first sentence of the second paragraph of the "Summary" and delete the third full paragraph. Revise the first sentence of the fourth full paragraph of the Summary to state: "This Resolution offers PG&E several options for renegotiating the instant LMEC Agreement and resubmitting the contract as Tier 2 Advice Letter for Commission approval; provided that the LMEC Agreement shall not be part of the CHP Program and shall not contribute any MWs towards the MW target assigned to PG&E under the QF/CHP Settlement.
4	Revise the second sentence of the third full paragraph to replace the word "will" with the word "would" as follows: "The PPA between PG&E and the Seller would become effective upon the approval of this resolution."
10	Revise the second sentence in the second paragraph to state that, although the LMEC facility is a CHP Facility as defined in the QF/CHP Settlement, RA-only contracts are inconsistent with the QF/CHP Settlement, and therefore, the LMEC Agreement shall not be part of the CHP Program and shall not contribute towards the MW target assigned to PG&E under the QF/CHP Settlement. Delete the third and fourth paragraphs on page 10.
12	Revise the third paragraph to add the following sentence to the end of the paragraph: "Therefore, the LMEC Agreement shall not contribute towards the MW target assigned to PG&E under the QF/CHP Settlement."
12	Revise the fourth paragraph as follows: "Notwithstanding that the LMEC Agreement shall not be part of the QF/CHP Program and shall not contribute any MWs towards PG&E's MW target under the QF/CHP Settlement, we offer PG&E the following options with respect to the LMEC Agreement. Should PG&E and Calpine choose one of these options, PG&E is required to submit a revised Agreement within 30 days of the adoption of this Resolution as a Tier 2 Advice Letter."
13	Replace the third paragraph as follows: "Notwithstanding that in the case of the three options above, various terms of the amended or renegotiated Agreement may not be identical to the instant LMEC Agreement, we make various findings that may be applicable to those Options, should PG&E and Calpine choose to exercise one of them, and bring back an amended Agreement for our consideration."
13	Replace the fourth paragraph as follows: "We reject the current form of the LMEC Agreement in this Resolution and conclude that no MWs from the LMEC Agreement, or any RA-only contract, may count towards the MW target assigned to PG&E under the QF/CHP Settlement. We also prohibit RA-only solicitations and contracts as part

Page	Recommended Changes to Draft Resolution
	of the QF/CHP RFOs in future solicitations, including PG&E's current second CHP RFO."
14-15	Revise the analysis of Joint Parties' Claim #3 to reflect that the LMEC Agreement is not a contract entered into pursuant to the terms of the QF/CHP Settlement, and thus the cost allocation rules defined in Section 13.1.1 of the QF/CHP Settlement Term Sheet are not relevant to allocation of the net capacity costs of the contract.
15	Revise the analysis of "Consistency with MW accounting" to explain that the MWs associated with the LMEC Agreement are not allowed under the QF/CHP Settlement, and therefore the MWs associated with the LMEC Agreement are not eligible to contribute towards PG&E's MW Target. Therefore, no MWs from the 561 MW facility shall count toward PG&E's MW Target.
15-16	Delete the following sentence: "If PG&E and Calpine negotiate a revised Agreement for the purchase of half or less of the MW of the current Agreement and resubmit the contract as a Tier 1 Advice Letter, pursuant to the QF/CHP Settlement Term Sheet Section 5.2.3.2, the contracted MW from the LMEC facility shall count toward PG&E's CHP MW targets."
16	Revise the analysis of "Consistency with Greenhouse Gas accounting – Capacity Only PPA" to reflect that the LMEC Agreement is not a contract entered into pursuant to the terms of the QF/CHP Settlement.
16-17	Revise the analysis of "Consistency with cost recovery requirements" to reflect that the LMEC Agreement is not a contract entered into pursuant to the terms of the QF/CHP Settlement.
17-18	Revise the "Need for Procurement" analysis to reflect that the LMEC Agreement is not a contract entered into pursuant to the terms of the QF/CHP Settlement.
18-19	Revise the "Cost reasonableness" analysis to reflect that the CHP RFO was not the appropriate solicitation to enter into RA-only contracts, and thus bids from CHP facilities that offered energy and capacity provide inappropriate comparisons for determining whether the LMEC Agreement is a good value for ratepayers.
21	Revise the first full paragraph as follows: "PG&E complied with the Commission's rules for involving the PRG. However, because the CHP RFO was not the appropriate solicitation to enter into RA-only contracts, PG&E is required to consult with its PRG again prior to submitting an amended Agreement."
21	Revise the last paragraph as follows: "The Independent Evaluator concurs with PG&E's decision to execute the LMEC Agreement with Calpine Energy Services, L.P. and finds that the LMEC Agreement merits Commission approval, but the Independent Evaluator erred in presuming that this RA-only contract could be counted towards PG&E's MW Targets under the QF/CHP Settlement. Should PG&E choose to renegotiate the Agreement according to the options provided for in this Resolution, PG&E is required to consult with the Independent Evaluator again prior to submitting an amended Agreement.

Appendix A
Proposed Findings, Conclusions and Ordering Paragraphs

Set forth below are the California Cogeneration Council's proposed changes to the findings, conclusions and ordering paragraphs set forth in Draft Resolution E-4529. Deletions are shown in ~~strikethrough~~ and additions are shown in double underline.

Findings and Conclusions:

1. The LMEC facility is an eligible CHP resource with two steam hosts; is a CHP facility with a nameplate capacity larger than 5 MW; meets the definition of cogeneration facility under California Public Utilities Code §216.6; meets the federal definition of a qualifying cogeneration facility under 18 CFR §292.205 implementing PURPA; and meets the Emissions Performance Standard established by Public Utilities Code §8341 (Senate Bill 1368).

2. Pursuant to the QF/CHP Settlement, Section 4.2.2, capacity-only products are not expressly prohibited from competing in CHP-only RFOs. They are not expressly invited either.

3. A provision for Utility Prescheduled Facilities is expressly provided for in the QF/CHP Settlement and is designed for capacity ~~only~~ and energy-tolling contracts from such facilities.

4. The QF/CHP Settlement is ambiguous as to whether capacity-only products, other than from Utility Prescheduled Facilities, are invited in CHP only RFOs.

5. Capacity-only contracts should not have been selected during the first CHP RFO and for ~~For~~ CHP RFOs after the first RFO, the Commission should prohibit capacity-only contracts from bidding, other than as Utility Prescheduled Facilities, because other revenue opportunities exist besides the CHP program for RA-only contracts.

6. The current LMEC Agreement in Advice Letter 4074-E should be rejected because it represents capacity not needed by PG&E in the first RFO period and would occupy ~~too many~~ reserved CHP MWs with a capacity-only contract, removing opportunities for other CHP facilities to provide benefits to PG&E.

7. The Commission should allow a renegotiated Agreement, consistent with one of the three options below, to be resubmitted to the Commission and approved via a Tier ~~1~~ 2 Advice Letter, as long as it conforms to the terms of this Resolution, provided that no MWs from such renegotiated Agreement shall contribute towards PG&E's MW target under the QF/CHP Settlement.

   □ Option 1: A QF/CHP Agreement for RA-only capacity that matches the level of energy output delivered to the LMEC steam hosts~~, but is otherwise identical to the instant LMEC Agreement~~.

□ Option 2: A QF/CHP Agreement for RA-only capacity that matches the level of baseload power output from the LMEC facility~~, but is otherwise identical to the instant LMEC Agreement~~.

□ Option 3: A QF/CHP Agreement for RA-only capacity that is for one half or less of the contracted amount in the instant Agreement (up to no more than 140.25 MW)~~, but is otherwise identical to the instant LMEC Agreement~~.

8. If PG&E renegotiates an LMEC Agreement consistent with the options outlined in this Resolution, the following findings in this Resolution would apply to such a conforming new Agreement.

   a. As an existing CHP Facility and because the LMEC Agreement shall not be part of the QF/CHP Program, ~~per QF/Settlement Term Sheet Section 7.3.3.1,~~ LMEC capacity would not contribute towards PG&E's GHG Targets and is neutral for GHG accounting purposes.

   b. The LMEC facility is an existing CHP facility and therefore would be a viable project.

   c. The terms of the LMEC agreement for a capacity-only PPA would provide the CHP Attributes, the RA Attributes, the Local RA Attributes, and the Capacity Attributes equivalent to the capacity associated with the LMEC Agreement to the ratepayers.

   d. A capacity-only LMEC PPA is not subject to the EPS under D.07-01-039 as it was deemed to be compliant with the EPS, as it is a combined-cycle natural gas facility that was in operation prior to June 30, 2007.

   e. PG&E would not be allowed to allocate the net capacity costs and associated RA benefits to bundled, DA, CCA, and departing load (to the extent not exempted) customers consistent with D.10-12-035, as modified by D.11-07-010, and PG&E's Advice 3922-E, approved December 19, 2011.

   f. ~~Actual LMEC Agreement costs will be recovered through ERRA, less net capacity costs recovered in the NSGBA.~~

   g. PG&E has complied with the Commission's rules for involving the PRG. Should PG&E renegotiate the LMEC Agreement, they shall be ~~should be encouraged but not~~ required to consult again with their PRG.

   h. The Independent Evaluator concurred with PG&E's decision to execute the LMEC Agreement with Calpine Energy Services, L.P. and found that the LMEC PPA merits Commission approval, but the Commission finds that the Independent Evaluator erred in presuming that this RA-only contract could be counted towards PG&E's MW Targets under the QF/CHP Settlement. Should PG&E renegotiate the LMEC Agreement, ~~as long as the per-MW costs do not increase,~~ they should ~~not~~ be required to subject the amended Agreement to additional IE analysis prior to resubmitting to the Commission.

Ordering Paragraphs:

1. The request of Pacific Gas and Electric Company in Advice Letter 4074-E for Commission approval of the Los Medanos Energy Center Agreement with Calpine in its entirety is denied.

2. Pacific Gas and Electric Company is authorized to renegotiate an amended Agreement for ~~with~~ the Los Medanos Energy Center with Calpine if it is consistent with one of the following three Options; provided that such amended agreement shall not count towards Pacific Gas and Electric Company's MW target under the QF/CHP Settlement:
   - Option 1: A QF/CHP Agreement for RA-only capacity that matches the level of energy output delivered to the LMEC steam hosts~~, but is otherwise identical to the instant LMEC Agreement~~.
   - Option 2: A QF/CHP Agreement for RA-only capacity that matches the level of baseload power output from the LMEC facility~~, but is otherwise identical to the instant LMEC Agreement~~.
   - Option 3: A QF/CHP Agreement for RA-only capacity that is for one half or less of the contracted amount in the instant Agreement (up to no more than 140.25 MW)~~, but is otherwise identical to the instant LMEC Agreement~~.

3. If Pacific Gas and Electric (PG&E) Company renegotiates an amended Agreement with Calpine for the Los Medanos Energy Center consistent with one of the three options outlined in Ordering Paragraph 2, PG&E shall resubmit the amended Agreement via a Tier ~~1~~ 2 Advice Letter within 30 days after the approval of this Resolution.

4. Pacific Gas and Electric Company is ~~encouraged, but not~~ required~~,~~ to consult with its Procurement Review Group about any amended Agreement consistent with Order Paragraph 2 prior to submitting an amended Agreement to the Commission via a Tier ~~1~~ 2 Advice Letter.

5. If Pacific Gas and Electric Company negotiates an amended Agreement consistent with Ordering Paragraph 2, ~~as long as the per-megawatt cost of the contract is not increased from Advice Letter 4074-E,~~ additional review by an Independent Evaluator is ~~not~~ required.

6. Pacific Gas and Electric Company shall not invite or accept any capacity-only contracts in their existing or future Combined Heat and Power solicitations, except as Utility Prescheduled Facilities as defined in the Qualifying Facility/Combined Heat and Power Settlement Agreement adopted in Decision 10-12-035.

7. For any other capacity-only contracts signed by Pacific Gas and Electric Company as a result of their first Combined Heat and Power Requests for Offers required under the Qualifying Facility/Combined Heat and Power Settlement Agreement adopted in Decision 10-12-035, the same options outlined in Ordering Paragraph 2 of this Resolution will be available, if contracts are renegotiated and resubmitted for Commission approval, as applicable; provided that such amended agreements shall not contribute towards Pacific Gas and Electric Company's MW target under the QF/CHP Settlement.