ALTERNATE DRAFT

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

I.D. # 11218
PROPOSED ALTERNATE TO AGENDA ITEM 11953
RESOLUTION OF COMMISSION FERRON ON E-4569
July 25, 2013

R E S O L U T I O N

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").

PROPOSED OUTCOME: This Resolution denies, without prejudice, SCE's Confirmation for Resource Adequacy ("RA") Capacity Product, an Agreement for Combined Heat and Power Resource Adequacy Capacity Product for (1) 280.5 Megawatts ("MW") of Combined Heat and Power Resource Adequacy capacity associated with the Los Medanos Energy Center, LLC, (2) 120 MW of Combined Heat and Power Resource Adequacy capacity associated with the Calpine Gilroy Cogen, L.P. SCE may re-submit for Commission consideration these Agreements within the established RA framework. If SCE resubmits these agreements, the associated MWs shall not count towards the Combined Heat and Power program targets. The Resolution provides additional guidance to SCE for Combined Heat and Power solicitations in the future.

SAFETY CONSIDERATIONS: The two agreements are denied and we anticipate no adverse impacts on safety as a result.

ESTIMATED COST: None

By Advice Letter 2771-E filed on August 31, 2012.

SUMMARY

Southern California Edison ("SCE") filed Advice Letter (AL) 2771-E on August 31, 2012 requesting Commission review of a Confirmation for Resource Adequacy ("RA") Capacity Product, which is a capacity-only Power Purchase Agreement ("PPA") with Calpine Energy Services, L.P. ("Calpine" or "Seller"). The contract would convey 280.5 megawatts ("MW") of capacity associated with

the Los Medanos Energy Center ("LMEC Agreement") and 120 MW of capacity associated with the Calpine Gilroy Cogen, L.P. ("Gilroy"). This Confirmation is rejected because it is inconsistent with the requirements of the Combined Heat and Power Request for Offer ("CHP RFO") competitive solicitation under the Qualifying Facility and Combined Heat and Power Program Settlement Agreement ("QF/CHP Settlement"). Only contracts that include energy can be solicited through a CHP RFO.

We recognize that the Commission was silent in approving the QF/CHP Settlement, specifically whether contracts for only resource adequacy are appropriate to be procured and counted in this program. The Commission clarifies in this Resolution for subsequent CHP solicitations that no RA-only bids shall be accepted.

The Confirmation is rejected *without prejudice*, which provides SCE with the option to execute an RA-only contract with the LMEC and Gilroy facilities, and any other bidder who relied on the utility's acceptance of RA-only bids as eligible in the first solicitation, and seek that contract for approval within the existing RA framework.

BACKGROUND

On December 16, 2010, the Commission adopted the Qualifying Facility and Combined Heat and Power Program Settlement Agreement ("QF/CHP Settlement") with the issuance of D.10-12-035. The Settlement resolves a number of longstanding issues regarding the contractual obligations and procurement options for facilities operating under legacy and new qualifying facility ("QF") contracts.

The QF/CHP Settlement establishes megawatt ("MW") procurement targets and greenhouse gas ("GHG") emissions reduction targets that the investor-owned utilities are required to meet by entering into contracts with eligible CHP Facilities, as defined in the Settlement. Pursuant to D.10-12-035, the three large electric investor owned utilities ("IOUs") must procure a minimum of 3,000 MW of CHP to attain GHG emissions limits consistent with the California Air Resources Board ("CARB") Scoping Plan, currently set at 4.8 million metric tonnes ("MMT").

In addition, the Commission defined several procurement processes for the IOUs within the Settlement. Per Section 4.2.1, the Commission directs the three IOUs to conduct Requests For Offers exclusively for CHP resources ("CHP RFOs") as a means of achieving the MW Targets and GHG Emissions Reduction Targets. The Settlement Term Sheet establishes terms and conditions regarding eligibility, contract length, pricing, evaluation and selection and other terms and conditions of the for the RFOs.

Per Section 5.1.4, the IOUs will conduct three CHP RFOs during the Initial Program Period scheduled at regular intervals, with the first initiated no later than 90 days of the Settlement Effective Date (November 23, 2011), or February 21, 2012. The three RFOs shall solicit CHP resources for an amount no less than the Net MW Target (the MW Target A, B, or C not otherwise procured by the Section 4 procurement processes) for each IOU.

SCE launched the 2011 CHP RFO for 630 MW on December 15, 2011. SCE decided to use a two track solicitation for the first RFO to manage the risk related to interconnection costs that would be borne by the IOUs and ratepayers. At the 2011 CHP RFO Bidders Conference, SCE outlined "Keys to a Successful Offer" including a preference for competitively-priced offers, optionality by varying the offer's term length and providing curtailment provisions, a preference to execute Pro-Forma CHP or UPF Documents, and signs of project viability for new, expanded or repowered CHPs including progress toward interconnection.

In response, Calpine submitted offers for RA-only capacity from its LMEC and Gilroy facilities. Both Calpine offers were short listed by SCE, which then negotiated offer terms with Calpine. The resultant CHP agreements were immaterially modified from the Pro-Forma RA Confirmation. On July 2, 2012, SCE executed the CHP agreements with Calpine's LMEC and Gilroy facilities and submitted Advice 2771-E for Commission approval.

NOTICE

Notice of AL 2771-E was made by publication in the Commission's Daily Calendar. Southern California Edison states that a copy of the Advice Letter was mailed and distributed in accordance with Section 3.14 of General Order 96-B.

PROTESTS

Advice Letter 2771-E was timely protested by the following parties: (1) Shell Energy North America (US), L.P. ("Shell Energy"), the Marin Energy Authority ("MEA"), and the Alliance for Retail Energy Markets ("AReM") jointly ("Joint Parties"); (2) Energy Producers and Users Coalition ("EPUC") ; the Cogeneration Association of California; and (4) California Cogeneration Council ("CCC"), collectively ("Protesting Parties") on September 20, 2012. SCE filed a response to the protests of the Protesting Parties on September 27, 2012. Similarly, PG&E filed a response to the protests of the Protesting Parties on September 27, 2012. However, on October 12, 2012, PG&E submitted a letter to Energy Division requesting to withdraw its response specifically noting that General Order 96-B only allows the utility that filed an advice letter to respond to protests to that advice letter. We agree with PG&E's interpretation of GO-96B as it pertains to the opportunity to submit a response and therefore will not consider PG&E's response in this resolution. However, PG&E maintains the right to file comments on the draft resolution related to this advice letter.

(1) Shell Energy North America (US), L.P. ("Shell Energy"), the Marin Energy Authority ("MEA"), and the Alliance for Retail Energy Markets ("AReM") collectively ("Joint Parties")

The Joint Parties protested the LMEC and Gilroy Advice Letter for two reasons: (1) the QF/CHP Settlement Agreement does not contemplate or permit "capacity-only" contracts with CHP facilities; (2) SCE's proposed allocation of a portion of the Resource Adequacy ("RA") capacity (and associated RA capacity costs) from the LMEC and Gilroy Agreements to direct access ("DA") and community choice

aggregation ("CCA") customers through the cost allocation mechanism ("CAM") was not approved in D.10-12-035, which adopted the QF/CHP Settlement. [1]

(a) Joint Parties' First Claim: the QF/CHP Settlement Agreement does not contemplate or permit "capacity-only" contracts with CHP facilities.

In their protest, the Joint Parties stated that the QF/CHP Settlement did not contemplate or permit capacity-only contracts. The Joint Parties also stated that LMEC and Gilroy should not have been a part of SCE's CHP RFO and instead should have bid into SCE's all source solicitation, competing with other RA capacity-only products. In addition, the Joint Parties indicated that SCE revised its CHP RFO protocol to accept offers for capacity-only products, and that procurement of capacity-only product provides no CHP energy deliveries or GHG emissions reduction benefits. Due to the various reasons mentioned above, the Joint Parties requested the Commission to reject AL 2771-E.

In its response to the Protesting Parties, SCE stated that neither protesting party provided a basis for their claims regarding the reason for which RA contracts were not permitted in the Settlement nor were the reasons stated by the protestors in any way supported by the Settlement. SCE further stated that the Settlement itself did not preclude RA-only contracts and explained that both facilities met the eligibility requirements per the Settlement and therefore, are included within the scope of the settlement. Citing Term Sheet Section 4.2.1 at 12, SCE interprets the Settlement as not limiting of the types of CHP resources it may procure through its CHP RFO, including RA-only agreements. SCE also defended its revision of its CHP RFO and explained that there was nothing improper about SCE revising its CHP RFO protocol to accept offers for RA-only products.

We address the Joint Parties' first claim in the "Discussion" section below.

[1] D.10-12-035, as modified by D. 11-03-051 and D.11-07-010.

(b) Joint Parties' Second Claim: CAM treatment cannot be afforded to a capacity–only contract

The Joint Parties stated that unless a contract includes costs for both energy and capacity-related products, a "net capacity cost" cannot be calculated and cannot be subject to the CAM to which CCAs and ESPs are subject. The Joint Parties claim that SCE may not use the CAM for allocating the cost of the LMEC and Gilroy Agreements because there is no way to determine if the capacity costs to be imposed under these contracts reflect a reasonable netting of energy and ancillary services.

We discuss the Joint Parties' second claim in the "Discussion" section below.

(2) Energy Producers and Users Coalition ("EPUC") and Cogeneration Association of California ("CAC")

In their separate protests, EPUC and CAC state that both Los Medanos and Gilroy RA Confirmations do not comport with the CPUC's QF/CHP Program Settlement standards for MW targets, and the terms of the confirmation letters do not conform to the terms of the Settlement for the following reasons:

(a) RA Confirmation associated with these projects may not be properly accounted for as part of the 3,000 MW First Program Period target under the Settlement;
(b) The Resource Adequacy Confirmations do not provide any obligation to provide energy nor ancillary services from Gilroy or Los Medanos, and do not provide the incentive or encouragement for CHP operation contemplated by the Settlement;
(c) The Settlement contemplates the procurement from CHP generators that produce energy and provide RA capacity only as a collateral benefit, the case for LMEC and Gilroy facilities was not contemplated;
(d) SCE should procure its RA needs through an RA only solicitation;
(e) SCE did not consider the Los Medanos facility as an eligible resource under the Settlement, or potentially capable of providing power products consistent with the Settlement.

(3) California Cogeneration Council, jointly ("CCC")

In its protest CCC did not object to SCE entering into an RA-only contract with Calpine, but argues that this procurement should not count toward the CHP Settlement's MW Targets. CCC requested the Commission to hold that:

(a) The Calpine Agreements do not count toward the CHP Settlement's MW Target

(b) RA-only products will not be eligible for future CHP RFOs and will not count against the MW Target established by the CHP Settlement.

(4) SCE Reply to Protests

SCE interprets the protesting parties' comments as implying that the term "CHP resources" does in fact include RA, but only if bundled with energy. According to SCE, the bundling requirement makes no logical sense, and has no basis in the Settlement language. SCE argues that the definition of the phrase "CHP resources" was broadly defined in the Settlement and was not specifically worded to exclude RA-only contracts. In addition, SCE states that the Net Capacity Costs can be calculated for RA-only contracts, and accordingly should be allocated to non-IOU load serving entities.

Due to the similarity of the protests filed by the CAC/EPUC, SCE referenced the two protests together in its reply comments filing. Since some of the questions and statements issued by the CAC/EPUC were already summarized in the section above, this section will only cover new ideas introduced by the CAC/EPUC.

Recognizing that capacity only products could be procured elsewhere, SCE asserted that the availability of other procurement avenues does not preclude procurement through the CHP RFO. While SCE agrees with the CCC regarding the CHP Programs' intent of creating a venue for viable contracting opportunities for existing and new CHP generating facilities, SCE claims that this intent does not provide a valid reason as to prohibit RA-only projects from

bidding into the SCE CHP RFO. In its application filed at the Federal Energy Regulatory Commission ("FERC") pursuant to Section 210(m) of PURPA ("Section 210(m) application"),[2] SCE listed QFs with which it had a contract. At the time that SCE filed its Section 210(m) application, SCE did not have a contract with LMEC, and thus LMEC would not be included in this list, even though it is a "CHP resource." SCE explained that given that LMEC is not located in SCE's service territory, SCE was not under any obligation to include LMEC in its application. Furthermore, through its competitive solicitation SCE found that the price for both the LMEC and Gilroy facilities were cost-competitive and that both projects provided lower costs to the electric ratepayer in meeting the Settlement MW targets. SCE argues that the MWs associated with the RA only agreements should be counted since both facilities are eligible per the Settlement eligibility requirements, won SCE's competitive CHP solicitation, and provide the most ratepayer benefits at the least cost.

We discuss the EPUC/CAC's and CCC's claims in the "Discussion" section below.

DISCUSSION

On August 31, 2012, SCE filed Advice Letter AL 2771-E requesting Commission approval of the Confirmation of Resource Adequacy Capacity Product, which is a capacity-only agreement for 280.5 MWs of capacity associated with the Los Medanos Energy Center and 120 MWs of capacity associated with the Gilroy facility.

Specifically, SCE requests from the Commission:

1. Approval of the Confirmations in their entirety;

[2] SCE, along with Pacific Gas and Electric Company and San Diego Gas & Electric Company, was required by the terms of the QF/CHP Settlement to file at FERC the Section 210(m) application pursuant to Section 292.310 of the FERC's regulations in order to terminate the mandatory purchase obligation under PURPA.

2. A finding that the Confirmations, and SCE's entry into the Confirmations, are reasonable and prudent for all purposes, subject only to further review with respect to the reasonableness of SCE's administration of the Confirmations;

3. A finding that the 280.5 MW associated with the LMEC Confirmation and the 130 MW associated with the Gilroy Confirmation apply toward SCE's procurement target of 1,402 MW of CHP capacity in the Initial Program Period, as established by the QF/CHP Program;

4. A finding that the Confirmations are neutral toward the GHG Target as they are for Existing CHP Facilities without a change in operations; and

5. Any other and further relief as the Commission finds just and reasonable.

Energy Division evaluated the LMEC and Gilroy agreements based on the following criteria:

- Consistency with D.10-12-035 which approved the QF/CHP Settlement including:
  - Consistency with CHP RFOs, eligibility requirements
  - Consistency with MW accounting
  - Consistency with GHG accounting
  - Consistency with cost recovery requirements
- The need for LMEC and Gilroy's procurement

In considering these factors, we also consider the analysis and recommendations of an Independent Evaluator.[3] For the proposed Confirmation, we have reviewed the conclusions from the IE report with respect to eligibility, but not regarding price reasonableness and other factors since they are not necessary in determining the outcome of this resolution.

[3] Per Settlement Term Sheet 4.3.2: "Use of an IE shall be required for any negotiations between an IOU and its affiliate and may be used, at the election of either the buyer or the Seller, in other negotiations."

Consistency with D.10-12-035, which approved the QF/CHP Program Settlement

On December 16, 2010, the Commission adopted the QF/CHP Settlement with the issuance of D.10-12-035. The Settlement resolves a number of longstanding issues regarding the contractual obligations and procurement options for facilities operating under legacy and new QF contracts. Furthermore, the Settlement establishes a MW and GHG target for the IOUs. The IOUs must procure 3,000 MW of CHP and 4.8 MMT of greenhouse gas emission reductions in proportion to the load of the IOU and non-IOU Load Serving Entities. The QF/CHP Settlement became effective on November 23, 2011.

Eligibility of the Facility and Consistency of RA-Only Contracts with CHP Requests for Offers (CHP RFOs)

Per Section 4.2 of the Settlement Term Sheet, the IOUs are directed to conduct Requests for Offers for CHP resources as a means of achieving their respective MW and GHG Emissions Reduction Targets. Per Section 4.2.2, CHP facilities with a nameplate Power Rating of greater than 5 MW may bid into the CHP RFO. In addition, the CHP facility must meet the State and Federal definitions[4] for cogeneration and the Emissions Performance Standard.

Under Section 4.2.2.1 of the QF/CHP Settlement Term Sheet, the LMEC and Gilroy facilities both qualify to participate in the CHP RFO. Specifically: with an operating capacity of 561 MW for LMEC and 120 MW for Gilroy, both facilities exceed the 5 MW threshold; both facilities satisfy the definition of "CHP Facility" in their respective agreements; both facilities are certified as Qualifying Facilities with the FERC.

As a condition of both the facility's agreements, Calpine states that LMEC and Gilroy are CHP Facilities, as defined in the QF/CHP Settlement, as of the

[4] State definition of cogeneration per Public Utilities Code Section 216.6. Federal definition of qualifying cogeneration per 18 C.F.R. §292.205 implementing PURPA.

agreement's Effective Date; both agreements also provide that if LMEC or Gilroy are unable to maintain Qualifying Cogeneration Facility status, because either facility lost its steam host, SCE will have the option to terminate that agreement at that time.

As eligible QF CHP resources per Section 4.2.2 of the Term Sheet, LMEC and Gilroy bid into SCE's CHP RFO as qualifying CHP facilities, and were shortlisted and selected in SCE's competitive CHP solicitation. For these reasons, we find both the LMEC and the Gilroy facilities are consistent with the Settlement's eligibility requirements, allowing LMEC and Gilroy to participate in the utility's CHP requests for offers.

We now turn our attention to the eligibility of SCE to procure an RA-only contract with LMEC and Gilroy.

Protesting Parties' *Protests*

Among other things, in their protest, the Protesting Parties raise a number of arguments for why RA-only contracts are ineligible under the QF/CHP Settlement and why the MWs associate with either project should not be counted towards SCE's Settlement MW Targets. While we discuss in greater detail below, we agree with protesting parties that RA-only contracts are ineligible. Here we address the three protests as they relate to this issue jointly. Each of the arguments identified by the Protesting Parties has been identified below along with a response.

Protest Issue #1: The Settlement does not expressly indicate that capacity-only contracts are allowed. Capacity only contracts should not be considered under the Settlement because this type of contract was never anticipated.

The Joint Parties are correct that capacity-only contracts were not expressly called for under the terms of the Settlement Agreement. They also were not expressly prohibited. Therefore, parties assert there is an ambiguity in the Settlement Agreement that is open to interpretation by the Commission.

In adopting D.10-12-035, we agree that the Commission was silent on if capacity-only contracts are eligible for the QF/CHP program. We take this opportunity to speak to this point as it pertains to future RFOs conducted for CHP.

Going forward, IOUs should not solicit RA-only contracts as part of their CHP solicitations. We will reject any 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 utilities. The purpose of the RA program is to provide available capacity to utilities for reliability purposes. The RA program is robust and routinely yields successful procurement of capacity. Soliciting an RA-only product in the CHP program could lead to 'forum shopping' in the RA market. There could also be increased difficulty in assessing just and reasonable rates in approving RA contracts by having a multiple different concurrent solicitations with different contracts, program goals and evaluation requirements.

The purpose of the QF/CHP program is different than the RA program. The QF/CHP settlement was designed to provide opportunities to CHP facilities whose primary, if not exclusive, purpose is to provide energy and heat to a host industrial facility, while also remaining interconnected to the grid and available to provide some benefits to the utilities.

Previous to the QF/CHP Settlement Agreement, CHP facilities in California relied on a must-take obligation on the part of the utilities under the terms of federal law Public Utilities Regulatory and Policy Act, (PURPA). In the context of the Settlement Agreement, those CHP parties agreed to remove the must-take obligation in return for opportunities to bid in CHP-only RFOs. In fact, in suspending the must-take obligation, the Commission recognized in its comments to the Federal Energy Regulatory Commission (FERC) that the RA only market is separate and distinct from the QF/CHP market. The majority of CHP facilities may have some flexibility to offer RA-only, additional dispatchable capacity or ancillary services products to the grid, but the majority of their capacity and energy is devoted to their industrial host. Clearly, there are some exceptions to this, such as the Calpine facility at issue in this resolution, but it is not the majority of CHP facilities that have the ability to provide the majority of their capacity as RA-only. Thus, the CHP RFOs are designed to work for the majority of CHP facilities for which the Settlement Agreement was intended to meet their needs to cover their steam hosts while also providing some electricity

to the grid. An RA-only product does not further these objectives. Section 1 of the QF/CHP settlement enumerates multiple other objectives of the new QF/CHP program, and we observe that a capacity only product does not directly enhance any of those objectives.

In addition to this basic policy reasoning, the Commission also finds that the Settlement Agreement explicitly contemplates some type of option for RA-only contracts that might result from the CHP solicitations by defining Utility Pre-Scheduled Facilities (UPFs). However, neither of these Calpine facilities are eligible UPFs. Accordingly, the fact that there is a contracting pathway for capacity-only contracts that is not utilized for the proposed agreements, and in light of the overall purpose of the Settlement Agreement, we are compelled to deny the opportunity for capacity-only contracts that are not UPFs.

It would have been preferable for the Commission to have identified and ruled explicitly on eligibility of capacity-only contracts prior to the completion of the first RFO. In general, we are reluctant to modify terms of competitive solicitations after they have been completed. We value certainty in commercial transactions and it is unfortunate to reject these contracts, without prejudice, after time and money has been devoted to this process.

However, given the size of this contract (and several others currently before us) relative to the 3,000 MW capacity target that the utilities are required to procure during the first three RFOs, we cannot allow this Commission's goals for the QF/CHP program be eviscerated by approving such a large contract here in this Resolution.

To mitigate this situation, we deny these contracts without prejudice. However, SCE and Calpine may pursue an RA contract to satisfy SCE's RA program requirements; as a result, we deny these contracts without prejudice for re-submission for future consideration, as long as SCE does not proposed to count the MWs as part of the QF/CHP Program.

We reject, without prejudice, the current form of the LMEC and Gilroy Agreements in this Resolution. We also prohibit RA-only solicitations and contracts as part of the QF/CHP RFOs in future solicitations, including SCE's subsequent RFOs.

Protest Issue #2: As a capacity-only contract, the projects do not provide any GHG benefits and so are inconsistent with the Settlement given the GHG reduction targets the IOUs are required to meet.

Joint Parties are correct that the Settlement includes both MW and GHG targets, however the fact that a given contract does not contribute toward the GHG goals does not render a project ineligible to participate in, or inconsistent with the Settlement. In calculating the embedded GHG benefit in D.10-12-035, the Commission used existing QF contracts to form the baseline and the double benchmark to establish the embedded GHG reductions from the existing QF contract fleet. Both of these Calpine facilities existed but were not under a QF contract at the time. Therefore, the Commission did not calculate the embedded GHG emissions (or potential GHG emissions reductions) against the double benchmark using the methodology in Section 7.3. Since we reject these capacity-only contracts, we do not calculate the GHG emissions reductions for the purposes of fulfilling the GHG targets set forth in D.10-12-035. However, if SCE were to execute a different eligible contract from these facilities, we recognize that we will need to re-visit how to count the potential GHG emissions reductions at that time. We also note that D.10-12-035 contemplates projects that do not contribute toward the GHG targets, because one of the goals is to ensure the continued operation of existing CHP facilities. Section 7.3.3 of the QF/CHP Settlement Term Sheet enumerates the project types/circumstances whereby a given project is treated as neutral for GHG accounting purposes under the Settlement.

<u>While IOUs are required to procure GHG reductions as part of the QF/CHP Settlement Agreement, not all contracts must deliver GHG benefits to be eligible for approval.</u>

Issue #3: SCE should procure its RA needs through an RA only solicitation.

We agree with the Joint Parties on this point.

SCE has several existing methods to procure RA in order to meet its annual RA needs. We need not re-list them here. We do clarify, however, that it is not appropriate to use the QF/CHP Program to execute RA-only contracts.

We deny without prejudice these capacity-only contracts in this forum; if SCE were to bring these contracts back to the Commission for consideration using the existing RA framework, we shall evaluate them accordingly.

Consistency with MW accounting - Capacity-Only Agreements

Issue #4: RA Confirmation associated with these projects may not be properly accounted for as part of the 3,000 MW First Program Period target under the Settlement.

Because we deny these contracts and because of our clarification that no RA-only contracts shall be eligible for the QF/CHP program, this point is moot.

Consistency with cost recovery requirements

Issue #5: CAM treatment, involving the allocation of Net Capacity Costs, cannot be applied to an RA only contract because these contracts offer no energy or ancillary service value.

The Commission rejects these contracts; therefore, we need not discuss any issues regarding allocation of costs of these contracts. We also need not evaluate the costs of the contracts since we find them to be ineligible.

However, if SCE and Calpine renegotiate the Agreements and resubmit them using the existing RA framework, we will evaluate the costs at that time. Our rejection of these contracts should offer no commentary on the price of the contracts or on their reasonableness.

Public Safety

California Public Utilities Code Section 451 requires that every public utility maintain adequate, efficient, just, and reasonable service, instrumentalities, equipment and facilities to ensure the safety, health, and comfort of the public.

Rejecting these two contracts should not adversely impact SCE's operations of its system.

Project Viability

Since we reject the two contracts, we need not speak to the project's viability at this time. However, we note that Los Medanos Energy Center is an existing

Qualifying Facility and has operated since 2001 and is interconnected to the CAISO-controlled grid at the transmission level. As an existing QF, the project faces minimal to no project development risk.

Similarly, Calpine's Gilroy facility is an existing Qualifying Facility and has operated since 1988 and is interconnected to the CAISO-controlled grid at the transmission level. As an existing QF, the project faces minimal to no project development risk.

Consistency with the Emissions Performance Standard

Since we reject these contracts as ineligible for participation in the QF/CHP program, we need not consider consistency with the Emissions Performance Standard.

Independent Evaluator Review

SCE retained Independent Evaluator (IE) Merrimack Energy Group, Inc ("Merrimack Energy") to oversee the filing of AL 2771-E and to evaluate the overall merits for Commission approval of the LMEC and Gilroy Agreements. AL 2771-E included a public and confidential Independent Evaluator's report. In its report, the IE determined that the Calpine Agreements, in the IE's opinion, merit Commission approval. AL 2771-E included a public and confidential Independent Evaluator's report. In its report, the IE determined that:

i) SCE's 2011 CHP RFO was conducted consistent with the requirements set forth in the CHP Settlement Agreement.
ii) While there were certainly issues of interpretation regarding the meaning of the Settlement in various contexts SCE's interpretations and application of those interpretations in its administration of the RFO were reasonable.
iii) Evaluation framework and implementation of the RFO was fair and provided for fair and consistent comparisons between different types of projects and different types of counterparties. IE also stated that SCE did not provide preferential treatment to any affiliate that participated in the RFO.

iv) SCE acted reasonably in selecting the five offers for contract award and execution totaling over 800 MW, and the resulting contracts, including the Calpine Agreements, merit approval by the Commission.[5]

IE concludes that SCE selected the appropriate bids from the CHP RFO and acted without prejudice and therefore, recommends Commission approval of the two Calpine Agreements. While we appreciate the Independent Evaluator's views, ultimately it is up to the Commission to provide clarification about the reasonableness of the eligibility of these contracts. As stated above, we find these contracts to be ineligible with the requirements set forth in D.10-12-035.

COMMENTS

Public Utilities Code section 311(g)(1) provides that this resolution must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. Section 311(g)(2) provides that this 30-day period may be reduced or waived upon the stipulation of all parties in the proceeding.

The 30-day comment period for the draft of this alternate resolution was neither waived nor reduced. Accordingly, this draft resolution was mailed to parties for comments on June 25, 2013. Comments are due on July 15, 2013.

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).

[5] Public IE Report p.38

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 is exempt from 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 authorized to compete in CHP-only RFOs. They are not expressly prohibited either.

4. A provision for Utility Prescheduled Facilities is expressly provided for in the QF/CHP Settlement Agreement.

5. The QF/CHP Settlement Agreement is silent 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 capacity-only contracts are ineligible to participate and because approval of the contracts would occupy too many reserved CHP MW with a capacity-only contract, removing opportunities for other CHP facilities to provide benefits to SCE.

7. The Commission should deny these contracts without prejudice. If SCE were to execute modified Agreements, consistent with the existing RA-only framework, the Commission shall consider them in due course.

THEREFORE IT IS ORDERED THAT:

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 are denied without prejudice.

2. Southern California Edison 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.

This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on July 25, 2013; the following Commissioners voting favorably thereon:

_____
PAUL CLANON
Executive Director