ALTERNATE DRAFT

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

AGENDA I.D. # 12217
PROPOSED ALTERNATE TO AGENDA ITEM 11951
RESOLUTION OF COMMISSIONER FERRON ON E-4529
July 25, 2013

R E S O L U T I O N

Resolution E-4529. Pacific Gas and Electric Company ("PG&E") requests the Commission approve the Confirmation for Resource Adequacy Capacity Product that PG&E has executed with Calpine Energy Services, L.P.

PROPOSED OUTCOME: This Resolution denies, without prejudice, PG&E's Confirmation for Resource Adequacy ("RA") Capacity Product, an Agreement for Combined Heat and Power Resource Adequacy Capacity Product for 280.5 MW of Combined Heat and Power Resource Adequacy capacity associated with the Los Medanos Energy Center, LLC. PG&E may re-submit for Commission consideration this Agreement within the established RA framework. If PG&E resubmits this Agreement, the associated MWs shall not count towards the Combined Heat and Power program targets. The Resolution provides additional guidance to PG&E for Combined Heat and Power solicitations in the future.

SAFETY CONSIDERATIONS: The agreement is denied and we anticipate no adverse impacts on safety as a result.

ESTIMATED COST: None.

By Advice Letter 4074-E filed on July 2, 2012.

SUMMARY

Pacific Gas and Electric Company's ("PG&E's") filed Advice Letter (AL) on July 2, 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")

for 280.5 megawatts ("MWs") of capacity associated with the Los Medanos Energy Center ("LMEC Agreement"). 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 PG&E with the option to execute an RA-only contract with the LMEC facility, 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.

In its first CHP RFO solicitation, PG&E requested offers for existing, new, repowered and expanded CHP facilities, Utility Prescheduled Facilities and CHP capacity-only products. Based on comments received following its CHP RFO Bidders' Conference, PG&E revised its CHP RFO Protocol to accept offers for capacity-only products, provided such capacity comes from an eligible CHP Facility, or from a portion of an eligible CHP Facility.

In its RFO, PG&E stated a strong preference for offers that are low cost and that are from facilities with efficient operations and either have low associated GHG emissions or provide GHG emissions reductions through changes in operations or technology. In response to PG&E's CHP RFO, Calpine submitted an offer to provide a capacity-only product from LMEC. PG&E reviewed the merits of each offer received in the CHP RFO and compiled a shortlist. On April 30, 2012, PG&E informed Calpine that the LMEC offer was on the shortlist and the parties engaged in negotiations over the terms of the offer. On May 30, 2012, PG&E and Calpine executed the LMEC Agreement for CHP capacity from LMEC.

On July 2, 2012, PG&E filed Advice Letter ("AL") 4074-E requesting Commission approval of a new capacity-only PPA with the Los Medanos Energy Center for sixty months, or five years. The PPA between PG&E and the Seller will become effective upon the approval of this resolution. LMEC is a 561 MW nameplate capacity natural gas topping-cycle combined heat and power facility located in

Pittsburg, California. LMEC was self-certified as a Qualifying Facility ("QF") in Federal Energy Regulatory Commission Docket No. QF01-14-000 on October 31, 2000 and is an existing CHP QF. In total, LMEC provides its two thermal hosts an average of approximately 190 MMBtu/hour of steam without seasonal variation. The two thermal hosts, USS-POSCO Industries and Dow Chemical Company, use the steam for process heating at their respective steel mill and chemical processing facilities.

Under the LMEC Agreement, PG&E contracted for 280.5 MWs of LMEC's available 561 MW of total capacity. PG&E thus argues that the LMEC Agreement contributes 280.5 MW towards the MW target assigned to PG&E under the QF/CHP Settlement. The MW accounting rules that apply to LMEC can be found in Section 5.2.3.2 of the QF/CHP Settlement Term Sheet ("Term Sheet").

LMEC has been operating since July 2001 and thus has over ten years of experience operating as a CHP facility. Although it has sold to Investor Owned Utilities ("IOUs") previously, it was not listed in any of the Cogeneration and Small Power Production Semi-Annual Reports of the three IOUs. This is the first capacity-only CHP contract Calpine has signed with PG&E.

In filing Advice 4074-E, PG&E provided multiple confidential appendices detailing the pricing terms and conditions for the LMEC facility's capacity-only power purchase agreement. A summary of the capacity-only PPA, pricing details, and an analysis of the benefits can be found in the Confidential Appendix A of this Resolution.

NOTICE

PG&E declared that a copy of the Advice Letter 4074-E was mailed and distributed in accordance with Section IV of General Order 96-B. PG&E sent the Advice Letter electronically and via U.S. mail to the parties on the service list for R.10-05-006, which was the Commission's Rulemaking to Integrate and Refine Procurement Policies and Consider Long-Term Procurement Plans.

PROTESTS

Advice Letter 4074-E was timely protested by 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") on July 23, 2012. PG&E filed a response to the protest of the Joint Parties on July, 30, 2012.

The Joint Parties protested the LMEC Advice Letter for two reasons: (1) the QF/CHP Settlement Agreement does not contemplate or permit "capacity-only" contracts with CHP facilities; (2) PG&E's proposed allocation of a portion of the Resource Adequacy ("RA") capacity (and associated RA capacity costs) from the LMEC Agreement to direct access ("DA") and community choice aggregation ("CCA") customers through the cost allocation mechanism ("CAM") was not approved in D.10-12-035,[1] which adopted the QF/CHP Settlement.

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 should not have been a part of PG&E's CHP RFO and instead should have bid into PG&E's all source solicitation, competing with other RA capacity-only products. In addition, the Joint Parties indicated that PG&E 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 respectfully requested the Commission to reject AL 4074-E.

In its response to the Joint Parties, PG&E stated that because the QF/CHP Settlement provided each IOU with multiple procurement pathway options to meet their respective MW and GHG targets, PG&E included a capacity-only product in the scope of its CHP RFO. PG&E also stated that the LMEC Agreement for RA capacity is a resource that can be procured through PG&E's CHP RFO to meet its CHP MW target; accordingly, the QF/CHP Settlement requires PG&E to allocate its RA benefits and costs to DA and CCA customers through a CAM-like ratemaking mechanism. PG&E added that the fact that the net capacity cost of a capacity-only contract is equal to the contract price does not obviate the need or undermine the ability to allocate the contract costs to DA and CCA customers. For all the reasons mentioned above, PG&E asked that the Joint Parties protest be rejected.

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.

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 PG&E may not use the CAM for allocating the cost of the LMEC Agreement because there is no way to determine if the capacity costs to be imposed under this contract reflect a reasonable netting of energy and ancillary services.

In its response PG&E defined the net capacity costs of the CHP Program as "the total costs paid by the IOU under a contract less the value of energy and ancillary services supplied to the IOU under the contract". PG&E further explained that under the LMEC Agreement, it receives no energy or ancillary services; therefore, the value of energy and ancillary services supplied is zero. As a result, the net capacity costs of the LMEC agreement are equal to the total costs of the contract.

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

DISCUSSION

On July 2, 2012, PG&E filed Advice Letter AL 4074-E requesting Commission approval of the Confirmation for Resource Adequacy Capacity Product, which is a capacity-only PPA for 280.5 MWs of capacity associated with the Los Medanos Energy Center ("LMEC Agreement").

Specifically, PG&E requests that the Commission:

1. Approval of the Confirmation in their entirety;
2. A finding that the Confirmation, and PG&E's entry into the Confirmation, is reasonable and prudent for all purposes, subject only to further review with respect to the reasonableness of PG&E's administration of the Confirmation.
3. A finding that the 280.5 MW associated with the LMEC Agreement apply toward PG&E's procurement target of 1,387 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.

The Commission evaluated the LMEC PPA 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's procurement

In considering these factors, we also consider the analysis and recommendations of an Independent Evaluator.[2] For the proposed Conformation, we have reviewed the conclusions from the IE with respect to eligibility, but not regarding price reasonableness and other factors since they are not necessary in determining the outcome of this resolution.

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.

[2] 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."

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[3] for cogeneration and the Emissions Performance Standard.

Under Section 4.2.2.1 of the QF/CHP Settlement Term Sheet, LMEC qualifies to participate in the CHP RFO. Specifically: with an operating capacity of 561 MW for LMEC, the facility exceeds the 5 MW threshold; the facility satisfies the definition of "CHP Facility" in its respective agreement; the facility is certified as Qualifying Facilities with the FERC. LMEC self-certified itself as a QF with FERC.

As a condition of the LMEC Agreement, Calpine covenants that LMEC is a CHP Facility, as defined, as of the agreement's Effective Date; the LMEC Agreement also provides that if LMEC is unable to maintain Qualifying Cogeneration Facility status because it has lost its steam host, PG&E will have the option to terminate the agreement.

As an eligible QF CHP resource per Section 4.2.2 of the Term Sheet, LMEC bid into PG&E's CHP RFO as a qualifying CHP facility, was shortlisted and selected as a bid in PG&E's competitive CHP solicitation. For these reasons, we find the LMEC agreement consistent with the requirements for CHP eligibility, granting LMEC the ability to participate in the utility's CHP requests for offers.

We now turn our attention to the eligibility of PG&E to procure an RA-only contract with LMEC.

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[3] 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.

In their protest, the Joint Parties raise a number of arguments for why RA-only contracts are ineligible under the QF/CHP Settlement. Each of these arguments is identified below along with a response.

While we discuss in greater detail below, we agree with Joint Parties that RA-only contracts are ineligible. Here we address the protests as they relate to this issue jointly.

Joint Parties' Claim #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, this Calpine facility is not an eligible UPFs. Accordingly, the fact that there is a contracting pathway for capacity-only contracts that is not utilized for the proposed agreement, 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 this contract, 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 this contract without prejudice. However, PG&E and Calpine may pursue an RA contract to satisfy PG&E's RA program requirements; as a result, we deny this contract without prejudice for re-submission for future consideration, as long as PG&E does not proposed to count the MWs as part of the QF/CHP Program.

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

Joint Parties' Claim #2: As a capacity-only contract, the project does not provide any GHG benefits and so is 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. This Calpine facility existed but was not under a QF contract at the time. Therefore, the Commission did not calculate its embedded GHG emissions (or potential GHG emissions reductions) against the double benchmark using the methodology in Section 7.3. Since we reject this 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 PG&E were to execute a different eligible contract from LMEC, 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.

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.

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. The Settlement specifically includes 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. The underlying facility in the instant case would be treated as neutral for GHG accounting purposes as an existing CHP facility with no change in operations, pursuant to Section 7.3.3.1 of the Term Sheet, irrespective of whether the contract included the sale of energy and/or ancillary services. In other words, even if the contract included sale of energy or ancillary services, it would have been neutral for purposes of GHG accounting under the Settlement.

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.

Joint Parties' Claim #3: CAM treatment, involving the allocation of Net Capacity Costs, cannot be applied to an RA only contract because the contract offers no energy or ancillary service value.

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

However, if PG&E and Calpine renegotiate the Agreement and resubmit them using the existing RA framework, we will evaluate the costs at that time. Our rejection of the contract should offer no commentary on the price of the contract or on its 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 this contract should not adversely impact PG&E's operations of its system.

Project Viability

Since we reject the contract, 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.

Consistency with the Emissions Performance Standard

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

Independent Evaluator Review

PG&E retained Independent Evaluator (IE) Merrimack Energy Group, Inc ("Merrimack Energy") to oversee the filing of Advice 4074-E and to evaluate the overall merits for Commission approval of the LMEC Agreement. AL 4074-E included a public and confidential Independent Evaluator's report. In its report, the IE determined that[4]:

1. PG&E provided adequate outreach to potential sellers,
2. The CHP RFO evaluation and selection methodology was appropriate,
3. Administration of the offer evaluation process was just and fair,

[4] Pacific Gas and Electric Company Combined Heat and Power Request for Offers for First Solicitation 2011 - 2012, June 29,2012 , p.1.

4. Treatment of affiliate bids were handled properly,
5. The need for procurement was reasonable in achieving the settlement goals

IE concludes that PG&E selected the appropriate bids from the CHP RFO and acted without prejudice and therefore, recommends Commission approval of the Calpine Agreement. 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 this contract. As stated above, we find this contract 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 July 15, 2013.

FINDINGS AND CONCLUSIONS

1. The LMEC facility is an eligible CHP resource with two steam hosts; is a CHP 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 authorized to compete in CHP-only RFOs. They are not expressly prohibited either.

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

4. 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.

5. The LMEC Agreement in Advice Letter 4074-E should be rejected because capacity-only contracts are ineligible to participate and because approval of the contract would occupy too many reserved CHP MW with a capacity-only contract, removing opportunities for other CHP facilities to provide benefits to PG&E.

6. The Commission should deny this contract without prejudice. If PG&E were to execute a modified Agreement, consistent with the existing RA-only framework, the Commission shall consider that it in due course.

THEREFORE IT IS ORDERED THAT:

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 without prejudice.

2. 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 D.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