

June 17, 2013

ED Tariff Unit
Energy Division
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102**Subject: Comments on Alternate Draft Resolution E-4529 Rejecting PG&E's
Advice 4074-E**

Dear Energy Division Tariff Unit:

Pacific Gas and Electric Company ("PG&E") respectfully submits its comments on Alternate Draft Resolution ("ADR") E-4529, which both rejects the Confirmation for Resource Adequacy ("RA") Capacity Product from the Los Medanos Energy Center ("LMEC") between PG&E and Calpine Energy Services, L.P. ("LMEC Agreement") and provides guidance for submission of a revised LMEC Agreement. PG&E accepts the ADR's offer to approve the LMEC Agreement if it is modified in accordance with one of three specified options to reduce the number of megawatts ("MW") procured. In addition, PG&E acknowledges the Commission's preference to avoid the solicitation and execution of contracts for capacity-only products in Combined Heat and Power ("CHP") requests for offers ("RFO") to meet its CHP MW procurement ("CHP Procurement") requirements under the CHP Program Settlement Agreement ("Settlement Agreement") adopted by Decision ("D.") 10-12-035.

PG&E appreciates the policy guidance provided by the ADR and will accept the Commission's disposition of the current LMEC Agreement and RA-only CHP Procurement to meet Settlement Agreement targets as guidance for its prospective CHP Procurement. However, the ADR must be drafted carefully so that the rejection and conditional approval of the LMEC Agreement does not effectively amend the Settlement Agreement by creating newly-adopted rules that were not part of the fabric of the Settlement Agreement.

PG&E's comments suggest how the ADR should be modified to avoid the appearance of modifying the Settlement Agreement, suggest clarification to avoid unintentional prejudice to PG&E's second CHP RFO ("CHP RFO2"), correct errors, and provide essential findings and conclusions to support the ADR.

1. The ADR's rejection of the LMEC Agreement and other RA capacity-only procurement should be supported by existing Settlement Agreement terms.

One of the goals of the Settlement is "securing CHP generation resources as part of a

diversified portfolio of resources for California generation supply.”¹ The ADR draws upon this goal to determine that CHP Procurement was intended to accommodate a diverse mixture of CHP resources, and in view of the various types of CHP generation in the context of PG&E’s 1,387 MW CHP Procurement target, determine that it would be unreasonable for PG&E to procure 280 MW from LMEC as a capacity-only resource, as seen in the third paragraph on p. 12 and Finding/Conclusion #6 of the ADR. Other, more specific reasons for rejecting the LMEC Agreement (e.g. that the Settlement is ambiguous and that the CHP RFO should meet the needs of CHP facilities whose primary purpose is to serve an industrial host, there is a Utility Prescheduled Facility (“UPF”) set-aside) that may be interpreted as redefining the terms of the Settlement Agreement are unnecessary.

The LMEC facility is eligible to participate in the CHP RFO² and the LMEC Agreement is consistent with the requirements of the CHP RFO³. However, the ADR states that “...capacity-only contracts were not expressly called for under the terms of the Settlement Agreement. They also were not expressly prohibited. Therefore, there is an ambiguity in the Settlement Agreement that is open to interpretation by the Commission.”⁴ PG&E disagrees that the Settlement Agreement is ambiguous on whether or not capacity-only contracts are permitted. The Settlement Agreement does not limit the type of products that may be procured through CHP RFOs. Therefore, PG&E suggests that the reasoning for the Resolution be guided by existing Settlement language to avoid the risk of appearing to modify Settlement terms.

2. Factually incorrect statements should be deleted.

The ADR cites several reasons for rejecting the LMEC Agreement. These reasons include a statement that the Settlement Agreement sets aside a specific MW amount to be filled by the UPF procurement option, and “capacity-only resources” should be accommodated within the UPF option.⁵ This is not so. While UPF transactions are eligible to count toward the CHP MW target, no portion of the CHP MW target is set aside to be filled by UPF procurement. PG&E suggests that this paragraph on page 12 of the ADR be deleted.

3. The preference against RA capacity-only PPAs should be clarified to avoid the termination of PG&E’s on-going CHP RFO.

PG&E acknowledges the Commission’s direction to avoid the procurement of RA-only capacity and apply it to its selection of offers submitted into its CHP RFO2. PG&E will also

¹ Term Sheet Section 1.2.4.5.

² ADR, p.10.

³ ADR, pp. 1-2.

⁴ ADR, pp. 10-11.

⁵ ADR, p. 12.

refrain from soliciting capacity-only offers in any of its subsequent CHP RFOs. However, the ADR's language should be refined to avoid unintended disqualification of eligible participants in PG&E's current solicitation.

The ADR states, "*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"⁶ (emphasis added.) However, Ordering Paragraph 6 of the ADR states, "Pacific Gas and Electric Company shall not invite or accept any capacity-only contracts in their *existing* or future *Combined Heat and Power solicitations*." This contradiction raises concerns because the ADR can be interpreted as rejecting PG&E's ongoing CHP RFO2, not just certain offers within the solicitation. If the ADR is adopted as scheduled, the Commission's Resolution would become non-appealable and effective on about July 27, 2013.

The Resolution would retroactively invalidate CHP RFO2 because it prohibits PG&E from "inviting" any capacity only contracts from its existing CHP solicitation. PG&E initiated its second CHP RFO on February 20, 2013 by issuing a protocol document which permitted capacity-only products to submit offers into the RFO solicitation. Prospective sellers submitted their offers on May 2, 2013.

By rejecting the solicitation, the Commission would disqualify all of the offers submitted by the participating CHP generators. PG&E does not believe this is the intent of the ADR. The Commission can just as effectively prevent PG&E from submitting capacity-only contracts toward its CHP MW goal by inserting the words "new or not yet issued" into the ADR, which would clarify that the Commission will reject any new solicitations and new contracts that are brought forward as capacity-only. Ordering Paragraph #6 should be revised to state that PG&E should not invite any capacity-only contracts in its future CHP solicitations or accept any such contracts in its CHP solicitations.

4. Procurement over and above PG&E's Target A goal cannot be rejected as "over-procurement."

Finding/Conclusion #6 states that "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" as well as occupying too many reserved CHP MW. Settlement Agreement Term Sheet Section 5.12 adopts three intermediate CHP MW procurement targets that add up to the CHP MW Target for each of the IOUs. Term Sheet Section 5.1.4.3 states, "An IOU may procure MWs in excess of the MW Targets in Section 5.1.2 above relying upon an RFO or any other CHP Procurement Processes listed in Section 4." This parameter is not constrained by PG&E's "need" for CHP resources. The 783 MW cited as the basis of 153 MW of "over-procurement" includes 280.5 MW from LMEC.⁷ PG&E has not over-procured CHP MW in

⁶ ADR, p. 11.

⁷ ADR, pp. 17-18.

either a theoretical or actual sense, and it is incorrect to state that PG&E does not need additional CHP MW. Accordingly, PG&E recommends deletion of the words first quoted above from Finding/Conclusion #6. The remaining language of Finding/Conclusion #6, “The current LMEC Agreement...would occupy too many reserved CHP MW with a capacity-only contract, removing opportunities for other CHP facilities to provide benefits to PG&E” provides a reasonable basis for rejecting the current version of the LMEC Agreement.

5. Findings and Conclusions should be revised to correct errors and to support the adopted outcome.

Finding/Conclusion #7 specifies modifications to the LMEC Agreement that would make the LMEC Agreement acceptable if it is submitted through the Tier 1 advice letter process administered by the Energy Division. Finding/Conclusion #8 sets forth a list of findings that would apply to the revised LMEC Agreement. A finding that the capacity of the modified LMEC Agreement will count toward PG&E’s CHP MW target is missing. This oversight appears to be inadvertent, given that PG&E would renegotiate the LMEC Agreement so that it would count toward PG&E’s QF/CHP Settlement obligations. This omission and other errors should be corrected in the final Resolution, as explained below. Corresponding changes are provided in the Appendix to these comments.

- 8.a. The phrase “with no change in operations” should be added to the explanation that as an existing facility, LMEC will not contribute toward PG&E’s GHG Target and is neutral for GHG accounting purposes. This clarification is needed because an existing facility with a change in operations could have a positive or negative effect on an IOU’s GHG Target.
- 8.b. (new, renumber existing following subsections) The number of MW contracted under the LMEC Agreement would contribute to the MW target assigned to PG&E under the QF/CHP Settlement.
- 8.e. The word “not” should be deleted from the confirmation that PG&E will be allowed to allocate the net capacity costs and associated RA benefits of the revised LMEC Agreement to certain customer classes. The word “not” is obviously misplaced because it makes this finding inconsistent with every other discussion of PG&E’s cost recovery of LMEC Agreement capacity costs in the ADR.
- 8.f. Modifications are needed to clarify that net capacity costs recovered through the NSGBA will be credited to ERRRA.
- 8.g. The abbreviation, “PRG” should be replaced by “CAM” because procurement for which capacity costs are recovered from Community

Choice Aggregation (“CCA”) and direct access (“DA”) customers must be reviewed by PG&E’s IOU’s CAM group, which includes representatives of CCA and DA consumers.⁸

6. An additional ordering paragraph is required so that Energy Division approval of a renegotiated LMEC Agreement through the Tier 1 advice letter process will authorize PG&E to recover the cost of the revised LMEC Agreement in rates.

The Commission’s intent to authorize PG&E to include the costs of a properly revised LMEC Agreement in its electric rates is clear from Finding/Conclusion 8.f., which states, “Actual LMEC Agreement costs will be recovered through ERRAs, less net capacity costs recovered in the NSG&A.” However, unlike the original Draft Resolution, the ADR does not contain an ordering paragraph authorizing PG&E to collect the cost of the Agreement in rates. To avoid potential misunderstanding, the Commission should explicitly find the revised LMEC Agreement to be reasonable and authorize PG&E to recover revised LMEC Agreement costs in electric rates. A proposed ordering paragraph, which includes those terms and incorporates the ratemaking citations found in Ordering Paragraph 2 of the Energy Division’s revised Draft Resolution, is included in the Appendix.

Sincerely,



Vice President – Regulatory Relations

cc: Commissioner Michael Peevey
Commissioner Mark Ferron
Commissioner Mike Florio
Commissioner Catherine Sandoval
Commissioner Carla Peterman
Edward Randolph – Director, Energy Division
Karen Clopton – Chief Administrative Law Judge
Frank Lindh – General Counsel
Energy Division Tariff Unit – Energy Division
Brian Stevens – Advisor for President Michael Peevey
Jennifer Kalafut – Advisor for Commissioner Carla J. Peterman
Cem Turhal – Energy Division
Damon Franz – Energy Division
John Leslie – McKenna Long & Aldridge LLP
Service List for Alternate Draft Resolution E-4529

⁸ D.07-12-052, Ordering Paragraph 8.

Appendix
PG&E's Comments on Alternate Draft Resolution E-4529

Correction of Errors and
Recommended Revisions to Findings and Conclusions and Ordering Paragraphs

Correction of Errors

ADR p. 12, first paragraph, second sentence.	The Settlement Agreement defines Utility Pre-Scheduled Facilities (UPFs) and identifies a specific set aside of MW that would be eligible to be used by such capacity-only resources. This specific set aside, together with (T)he overall purpose of the Settlement Agreement convinces us to interpret the Settlement Agreement in favor of denying the opportunity for capacity-only contracts that are not UPFs, going forward.
ADR p. 11, second full paragraph, first sentence.	Going forward, we clarify that we will reject any <u>new or not yet issued</u> solicitations and contracts that are brought forward as <u>CHP</u> capacity-only in the context of the QF/CHP Program.

Findings and Conclusions ("F & C")

F & C #6 should be modified as shown:	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 MW with a capacity-only contract, removing opportunities for other CHP facilities to provide benefits to PG&E.
F & C #8 should be modified as shown:	<p>a. As an existing CHP Facility <u>with no change in operations</u>, per QF/CHP 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.</p> <p>b. (new, renumber existing following subsections) <u>The number of MW contracted under the LMEC Agreement would contribute to the MW target assigned to PG&E under the QF/CHP Settlement.</u></p> <p>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</p>

	<p>consistent with D.10-12-035, as modified by D.11-07-010, and PG&E's Advice 3922-E, approved December 19, 2011.</p> <p>f. Actual LMEC Agreement costs will be recovered through ERRAs, less <u>with</u> net capacity costs recovered in the NSGBA <u>being credited to ERRAs</u>.</p> <p>g. PG&E has complied with the Commission's rules for involving the PRG CAM. Should PG&E renegotiate the LMEC Agreement, they should be encouraged but not required to consult again with their CAM.</p>
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Ordering Paragraphs ("OP")

OP 6	<p>Pacific Gas and Electric Company shall <u>should</u> not invite or accept any capacity-only contracts in <u>its</u> their existing or future Combined Heat and Power solicitations <u>or accept any such contracts in any of its Combined Heat and Power solicitations,</u> except as Utility Prescheduled Facilities as defined in the Qualifying Facility/Combined Heat and Power Settlement Agreement adopted in Decision 10-12-035.</p>
OP 8 (new)	<p><u>Costs incurred by Pacific Gas and Electric Company pursuant to a renegotiated LMEC Agreement submitted in accordance with Ordering Paragraph 3 shall be deemed to be reasonable and shall be collected through the cost recovery mechanisms set forth in D.10-12-035 (as modified by D.11-07-010), Section 13.1.2.2 of the Qualifying Facility / Combined Heat and Power Settlement Term Sheet, and Pacific Gas and Electric Company's Advice 3922-E.</u></p>

CERTIFICATE OF SERVICE

I certify that I have by mail, e-mail, or hand delivery this day served a true copy of Pacific Gas and Electric Company's comments on Alternate Draft Resolution E-4529, regarding PG&E's Advice Letter 4074-E on:

- 1) Commissioner Michael Peevey
- 2) Commissioner Mark Ferron
- 3) Commissioner Mike Florio
- 4) Commissioner Catherine Sandoval
- 5) Commissioner Carla Peterman
- 6) Edward Randolph – Director, Energy Division
- 7) Karen Clopton – Chief Administrative Law Judge
- 8) Frank Lindh – General Counsel
- 9) Brian Stevens – Advisor for President Michael Peevey
- 10) Jennifer Kalafut – Advisor for Commissioner Carla J. Peterman
- 11) Cem Turhal – Analyst, Energy Division
- 12) Damon Franz – Supervisor, Energy Division
- 13) Energy Division Tariff Unit – Energy Division
- 14) John Leslie - McKenna Long & Aldridge LLP
- 15) Service List for Alternate Draft Resolution E-4529

/S/ KIMBERLY CHANG _____
Kimberly Chang
PACIFIC GAS AND ELECTRIC COMPANY

Date: June 17, 2013