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June 17, 2013

CPUC Energy Division
Attention: ED Tariff Unit
505 Van Ness Avenue
San Francisco, CA 94102

Re: Alternate Draft Resolution E-4529: Comments of the Joint Parties

To the Energy Division:

In accordance with Commission Rule 14.5 and the Energy Division letter accompanying the above-referenced Alternate Draft Resolution (“ADR”), the following interested and affected parties: Shell Energy North America (US), L.P. (“Shell Energy”) and the Alliance for Retail Energy Markets (“AReM”)¹ (hereinafter the “Joint Parties”) submit these comments on the May 24, 2013 ADR of President Peevey. The Joint Parties support, in part, and oppose, in part, the ADR.

I.

INTRODUCTION

The Joint Parties support the ADR’s recommendation to prohibit, in future RFOs conducted in accordance with the QF/CHP settlement agreement, bids exclusively for resource adequacy (“RA”) capacity. The ADR properly concludes, based on the terms of the QF/CHP settlement, that an RA capacity-only bid from any generation facility, including a CHP facility, should be submitted in response to an investor-owned utility’s (“IOU”) all-source solicitation.

The Joint Parties object, however, to the ADR’s recommendation to provide an exception for the RA capacity-only contract that resulted from PG&E’s initial solicitation under the QF/CHP

¹ AReM is a California mutual benefit corporation whose members are electric service providers that are active in California’s direct access market. The positions taken in this filing represent the views of AReM but not necessarily those of any individual member of AReM or the affiliates of its members with respect to the issues addressed herein.

settlement agreement. The ADR properly notes that RA capacity-only contracts “were not expressly called for” under the QF/CHP settlement. ADR at p. 10. The bidder assumed the risk that an RA capacity-only contract would be deemed by the Commission to be incompatible with the CHP solicitation process under the QF/CHP settlement. The Commission should not grant a preference to any RA capacity-only bidder, and the Commission should not allow PG&E to allocate the net capacity costs of any RA capacity-only contract to direct access and CCA customers through the QF/CHP settlement.

The Joint Parties also request that the Commission determine that the “MW targets” in the QF/CHP settlement establish the “cap” on the net capacity costs from eligible CHP projects that each IOU may allocate to direct access customers and CCA customers under the cost allocation mechanism (“CAM”). Finally, as contemplated in D.10-12-035 (December 16, 2010), the Commission should institute a process to establish an “opt-out” mechanism for ESPs and CCAs that purchase qualifying capacity from CHP facilities on their own.

II.

THE ADR PROPERLY EXCLUDES RA CAPACITY-ONLY BIDS FROM THE CHP SOLICITATION

For the reasons set forth in the ADR, and for the further reasons explained in their March 25, 2013 comments on the original Draft Resolution, the Joint Parties agree with President Peevey that RA capacity-only bids should not be eligible under the QF/CHP settlement agreement. As stated in the ADR, “[t]he 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.” ADR at p. 11. The ADR properly recommends that the Commission recognize that the QF/CHP settlement limits the types of bids that may be made through the CHP solicitation process by eligible CHP facilities.

A further justification for the ADR’s recommendation is that there must be a limit on the types of CHP products purchased by the IOUs, for through which the net capacity costs may be allocated to direct access customers and CCA customers. If the Commission were to allow PG&E to accept RA capacity-only bids from CHP facilities under the QF/CHP settlement, and if the Commission were to allow PG&E to take advantage of the CAM for every RA capacity-only contract that it enters into with an eligible CHP facility, ESPs and CCAs would be forced to accept an allocation of CHP capacity (and net capacity costs) that is beyond the anticipation of the QF/CHP settlement.

Allowing bids for RA capacity-only products under the QF/CHP settlement would constrain ESP and CCAs’ ability to purchase lower-priced RA capacity, or different RA capacity products, independently, as is currently required under the RA program. The ADR properly recommends that

the Commission prohibit RA capacity-only bids in the CHP solicitation. The ADR is correct that the Commission's RA program "already exists for capacity-only resources seeking revenues from utilities." ADR at p. 11.

III.

THE COMMISSION SHOULD NOT MAKE AN "EXCEPTION" FOR THE RA CAPACITY CONTRACT IN PG&E'S ADVICE LETTER

In view of the ADR's recommendation to limit the types of bids from CHP facilities that are permitted in the CHP solicitation, the Joint Parties oppose the ADR's recommendation to make an exception for the RA capacity-only contract at issue in this PG&E advice letter. The ADR attempts to rationalize this exception by stating that the QF/CHP settlement is "ambiguous" respecting the eligibility of RA capacity-only contracts. The ADR states that "[i]n general, we are reluctant to modify terms of competitive solicitations after they have been completed." ADR at p. 12. The ADR continues: "We value certainty in commercial transactions and regret the situation we now find ourselves in." Id.

The eligibility of RA capacity-only contracts under the QF/CHP settlement was hardly "certain" when RA capacity-only bids were presented in PG&E's first CHP solicitation. The Independent Evaluator's Report on PG&E Advice No. 4074-E acknowledged that a CHP capacity only product "was not explicitly identified in the . . . Settlement . . ." IE Report at p. 3. The ADR acknowledges that PG&E had to revise its CHP RFO protocol to accept offers for RA-only products. ADR at p. 4; PG&E Advice Letter at p. 2. Clearly, neither PG&E nor potential bidders were "certain" that PG&E could purchase RA capacity-only products from eligible CHP facilities through the CHP solicitation process.

Furthermore, bidders offering an RA capacity-only product had no assurance that if the bid were accepted by PG&E, the resulting contract would be approved by the Commission. In fact, the pro forma contract appended to the QF/CHP settlement provides that the contract is not effective unless and until the contract is approved by the Commission.² Bidders assumed the risk that an RA capacity-only contract might not be consistent with the QF/CHP settlement, and might not be approved by the Commission.

There is no reason for the Commission to grant an "exception" in favor of an RA capacity-only contract that was executed as a result of PG&E's initial CHP RFO. Bidders had no enforceable expectation that an RA capacity-only contract would be approved. All bidders may participate in the next CHP solicitation (or in an all-source solicitation) and compete equally with other eligible CHP resources. To grant an exception as proposed in the ADR would improperly discriminate in favor of

² See D.10-12-035 (December 16, 2010), Attachment A, Exhibit 5, Section 2.04.

this RA capacity-only contract, and would conflict with the ADR's fundamental recommendation to prohibit bids for RA capacity-only products under the QF/CHP settlement.

IV.

THE COMMISSION SHOULD ESTABLISH "CAPS" ON NET CAPACITY COST ALLOCATION UNDER THE QF/CHP SETTLEMENT, AS WELL AS AN "OPT-OUT" PROCESS FOR ESPS AND CCAS

Section 5 of the Settlement Term Sheet establishes the MW procurement target for each IOU under the QF/CHP settlement. PG&E's total CHP MW target is 1,387. The ADR states that under the QF/CHP settlement, PG&E must acquire a "minimum" of 1,387 MW of CHP capacity. ADR at p. 3. Whether or not the Commission intends to establish a "floor" for PG&E's CHP procurement, however, the Commission should determine that the MW targets set forth in Section 5 of the Settlement Term Sheet establish "caps" on the net capacity costs of CHP procurement that may be allocated by the IOUs to direct access and CCA customers through the CAM. ESPs and CCAs should not be limited in the quantity of RA capacity they may procure on their own, under more competitive terms and conditions. The Commission should consider the MW target for each IOU as the "cap" on allocation of net capacity costs to direct access and CCA customers under the QF/CHP settlement.

Furthermore, the Commission should take this opportunity to initiate a process to allow ESPs and CCAs to "opt out" of the allocation of net capacity costs under the QF/CHP settlement. In D.10-12-035, the Commission stated that it "remain[s] open to consideration, in a future proceeding, of proposals whereby ESPs and CCAs may opt out of IOU procurement and procure CHP resources on their own behalf." Decision at p. 56. The time has come to establish an opt-out mechanism for ESPs and CCAs under the QF/CHP settlement.

The Commission should allow ESPs and CCAs to purchase capacity from CHP facilities on their own, rather than be subject to continued and increasing allocations of the net capacity costs of IOU contracts under the QF/CHP settlement. ESPs and CCAs should be able to purchase capacity from eligible CHP facilities and offset this capacity against the capacity (and net capacity cost) that would otherwise be allocated to their direct access and CCA customers under the QF/CHP settlement. ESPs and CCAs must have flexibility to purchase RA capacity, including RA capacity from CHP facilities, on their own.

V.

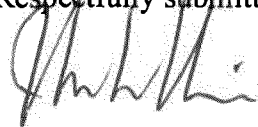
CONCLUSION

The Commission should approve the ADR's recommendation to prohibit RA capacity-only bids under the QF/CHP settlement. The Commission should reject the ADR's recommendation to make an exception for the RA capacity-only contract submitted through PG&E's advice letter.

In addition, the Commission should determine that the MW targets established under the QF/CHP Settlement establish the "cap" on allocation of net capacity costs to direct access and CCA customers pursuant to the QF/CHP settlement. Finally, the Commission should establish an "opt-out" mechanism for ESPs and CCAs that purchase RA capacity from eligible CHP facilities on their own.

Proposed revised findings and conclusions are attached as an Appendix.

Respectfully submitted,



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of
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and on behalf of the Alliance for Retail Energy
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cc: Ed Randolph, Director, Energy Division
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CPUC Energy Division
June 17, 2013
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All Parties on Service List in R.10-05-006

APPENDIX

REVISED FINDINGS AND CONCLUSIONS

2. Replace with the following: RA capacity-only contracts with eligible CHP facilities are not contemplated under the terms of the QF/CHP Settlement.
4. Replace with the following: Under the QF/CHP Settlement, RA capacity-only products may not be bid through the CHP RFO process.
5. Delete the words “[f]or CHP RFOs after the first RFO. . . .”
6. Delete all words after the phrase “. . . should be rejected”
7. Delete this item.
8. Delete this item.

REVISED ORDERING PARAGRAPHS

2. Replace with the following: RA capacity-only contracts with CHP facilities are not authorized under the Settlement.
3. Delete this item.
4. Delete this item.
5. Delete this item.
7. Delete this item.
8. Add a new Ordering Paragraph, as follows: The allocation of net capacity costs (and capacity) to DA and CCA customers under the Settlement is limited to (capped at) the customers’ proportionate share of the IOU’s MW target.
9. Add a new Ordering Paragraph, as follows: PG&E shall develop an “opt-out” mechanism for ESPs and CCAs that purchase capacity from eligible CHP facilities. PG&E shall propose an opt-out mechanism through an advice letter that it shall submit within 60 days of the date of this Resolution. PG&E shall consult with ESPs and CCAs in the development of the opt-out mechanism.

CERTIFICATE OF SERVICE

I hereby certify that I have served, this day, a copy of the foregoing **Alternative Draft Resolution E-4529: Comments of the Joint Parties** on the CPUC Energy Division, the SCE, the Director of Energy Division and all other individuals listed at the end of the letter by electronic mail and on the ED Tariff Unit, CPUC Energy Division by U.S Mail.

Executed on June 17, 2013, at San Diego, California.



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