ELLISON, SCHNEIDER & HARRIS L.L.P.

ANNE J. SCHNEIDER
1947-2010

CHRISTOPHER T. ELLISON
JEFFERY D. HARRIS
DOUGLAS K. KERNER
ROBERT E. DONLAN
ANDREW B. BROWN
PETER J. KIEL
LYNN M. HAUG
CHRISTOPHER M. SANDERS
GREGGORY L. WHEATLAND
ELIZABETH P. EWENS

ATTORNEYS AT LAW
2600 CAPITOL AVENUE, SUITE 400
SACRAMENTO, CALIFORNIA 95816
TELEPHONE: (916) 447-2166
FACSIMILE: (916) 447-3512
http://www.eslawfirm.com

BRIAN S. BIERING
CRAIG A. CARNES, JR.
JEDEDIAH J. GIBSON
CHASE B. KAPPEL
SHANE E. C. McCOIN
SAMANTHA G. POTTENGER

OF COUNSEL:
RONALD LIEBERT

June 17, 2013

ED Tariff Unit
Energy Division
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
E-mail: EDTariffUnit@cpuc.ca.gov

Re: Comments of The Independent Energy Producers Association on Alternate Draft Resolution(s) E-4569 (SCE) and E-4529 (PG&E).

To the Energy Division:

In comments previously filed, IEP supported the original Draft Resolution(s) E-4569 and E-4529 supporting Southern California Edison Company's Advice Letter (AL) 2771-E and Pacific Gas & Electric Company's Advice Letter (AL) 4074-E. Those comments are attached for convenience. The essential basis of that recommendation is that the projects are consistent with the terms of the Settlement. There is nothing in the Alternate Draft Resolution(s) or the advances of the antagonists to this competitive outcome that changes IEP's view that the subject projects should be approved.

The Alternate Draft Resolutions and the positions of antagonists that underly it admit the conformance of the RFO outcome with the letter of the Settlement but rely on some concept of unintended consequences (the "spirit of the deal") as a basis for adjusting that outcome. IEP submits that a party's, or the CPUC's surprise or even dissatisfaction at the outcome of a competitive auction that was approved by it, whose terms were known, relied upon and for which bids were prepared at non insubstantial expense, and was properly conducted is not a proper basis for adjusting the outcome. If the inclusion in the RFO of certain (RA) eligible CHP was incompatible with the rules, action taken to result in stopping the RFO process in its tracks could have been taken. IEP would probably have opposed such a move (IEP didn't get everything it wanted out the Settlement either), but the action was never taken. Again, mere dissatisfaction or surprise at the outcome is not a sound basis for altering its results.

The suggestion that the affected contracts, being RA agreements, are somehow in the guise of a purported CHP operation are without merit. The Settlement explicitly contemplates 1) counting rules based on megawatts, not production 2) accommodates differential or special operational products like dispatchability, and 3) negotiated outcomes that differ from the pro forma templates. The mere fact that the prevailing project(s) do not look like projects that did not prevail is sour grapes and regret; moreover, since there is an apparent stipulation that the non-prevailing projects were not competitive IEP does not understand the concern since by virtue of the process customers are getting the highest value CHP participant. The Alternate Draft Resolution(s) seems to be machinating to ensure the position of a sub-class of eligible CHP. That, IEP respectfully submits, is not within the proper "spirit" of any arrangement and certainly not one it would have endorsed. As raised in IEP's prior comments, the use of MWs of capacity as the counting metric, without specific reference to CHP energy production, is necessarily the correct implementation of the QF/CHP Settlement. Otherwise, unless a project had a perfect (100%) capacity factor, the MW counting would be uncertain depending upon actual operation over time. That obviously is not and could not practicably be the case. Moreover, the QF/CHP Settlement specifically contemplates that eligible projects that are selected and counted toward the MW target are not required to operate continuously or at any particular level. Furthermore, no requisite nexus exists between MW counting and actual CHP energy production in the QF/CHP Settlement.

Notwithstanding these facts, as further developed in IEP's comments before (attached) the Alternate Draft Resolution(s) reaches the conclusion that the QF/CHP Settlement Agreement contains "ambiguity" that the Commission will clarify in subsequent CHP RFOs so that no RA-only bids shall be accepted, while acknowledging in the interest of fairness that a reasonable compromise is necessary to address the RA-only contracts that were successful during the first CHP RFO solicitation. IEP does not agree that there is any ambiguity in the Settlement. If, however, the CPUC believes a ban on RA-only participation going forward is warranted, it can certainly take that up in proper order. The Alternate Draft Resolution(s) also concludes that in the interest of fairness, a concept that IEP embraces, the projects may go forward (albeit on adjusted rules that are largely undefined). CPUC is essentially conditioning approval on a contract amendment and presumably subsequent request for approval. Whether that outcome is acceptable is a matter for the contracting parties to decide; with regard to either AL 2771-E (SCE) and AL 4074-E (PG&E).

Respectfully submitted,

Douglas K. Kerner

Attorneys for The Independent Energy Producers Association.

cc: President Michael R. Peevey
Commissioner Michel Peter Florio
Commissioner Catherine J.K. Sandoval
Commissioner Mark J. Ferron
Commissioner Carla J. Peterman
Director of the Energy Commission, Ed Randolph
Chief Administrative Judge, Karen V. Clopton
General Counsel, Frank Rich Lindh

Brian Stevens
Advisor for President Michael Peevey
E-mail: brian.stevens@cpuc.ca.gov

Jennifer Kalafut
Advisor for Commissioner Carla J. Peterman
Jennifer.kalafut@cpuc.ca.gov

Cem Turhal
Analyst, Energy Division
E-mail: Cem.turhal@couc.ca.gov

Damon Franz
Supervisor, Energy Division
E-mail: Damon.franz@cpuc.ca.gov

Tom Jarman
Energy
Pacific Gas and Electric Company
E-mail: TAJ8@pge.com

John Leslie
McKenna Long & Aldridge LLP
E-mail: jleslie@mckennalong.com

Nicholas Castillo, CPUC: Nicholas.Castillo@cpuc.ca.gov
Dahlia Siegel, SCE: Dahlia.Siegel@sce.com
Laura Genao, SCE: Laura.Genao@sce.com
John Leslie, McKenna Long & Aldridge LLP: jleslie@mckennalong.com
Amber Wyatt, SCE: Amber.Wyatt@sce.com
Tariff Unit, SCE: AdviceTariffManager@sce.com
Akbar Jazayeri, SCE: akbar.jazayeri@sce.com
Leslie E. Starck (c/o Karyn Gansecki), SCE: Karyn.Gansecki@sce.com
Marc Ulrich (c/o Katie Sloan), SCE: Katie.Sloan@sce.com

Claire Torchia, SCE: claire.torchia@sce.com
Beth Vaughan, CCC: beth@beth411.com
Evelyn Kahl, Counsel for the Energy Producers and User Coalition: ek@a-klaw.com

Steven Kelly
Policy Director
The Independent Energy Producers Association
1215 K Street
Sacramento, CA 95814
Telephone: (916) 448-9499
Facsimile: (916) 448-0182
E-mail: Steven@iepa.com

Douglas K. Kerner, Esq.
Ellison, Schneider & Harris L.L.P.
2600 Capitol Avenue, Suite 400
Sacramento, CA 95816
Telephone: (946) 447-2166
Facsimile: (916) 447-3512
E-mail: dkk@eslawfirm.com

Prior Submittals

ELLISON, SCHNEIDER & HARRIS L.L.P.

ANNE J. SCHNEIDER
1947-2010

CHRISTOPHER T. ELLISON
JEFFERY D. HARRIS
DOUGLAS K. KERNER
ROBERT E. DONLAN
ANDREW B. BROWN
PETER J. KIEL
LYNN M. HAUG
CHRISTOPHER M. SANDERS
GREGGORY L. WHEATLAND
ELIZABETH P. EWENS

ATTORNEYS AT LAW
2600 CAPITOL AVENUE, SUITE 400
SACRAMENTO, CALIFORNIA 95816
TELEPHONE: (916) 447-2166
FACSIMILE: (916) 447-3512
http://www.eslawfirm.com

BRIAN S. BIERING
CRAIG A. CARNES, JR.
JEDEDIAH J. GIBSON
CHASE B. KAPPEL
SHANE E. C. McCOIN
SAMANTHA G. POTTENGER

OF COUNSEL:
RONALD LIEBERT

March 21, 2013

ED Tariff Unit
Energy Division
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
E-mail: EDTariffUnit@cpuc.ca.gov

Re: Comments of The Independent Energy Producers Association on Draft Resolution E-4569 Addressing Southern California Edison Company's Advice Letter (AL) 2771-E.

To the Energy Division:

The Independent Energy Producers Association ("IEP") supports the Energy Division's ("ED") proposed outcome in Draft Resolution E-4569 for approval of two separate Agreements for Combined Heat and Power Resource Adequacy ("RA") Capacity Product: (1) 280.5 Megawatts ("MW") of new RA–only capacity associated with Calpine's Los Medanos Energy Center, LLC, and (2) 120 MW of RA–only capacity associated with Calpine's Gilroy Cogen, L.P. facility ("Calpine Agreement"). As discussed in greater detail below, these RA–only transactions comply with the requirements of the Qualifying Facility and Combined Heat and Power Program Settlement Agreement ("QF/CHP Settlement") established with the issuance of Decision ("D.") 10-12-035. IEP urges the Commission to expeditiously approve the Calpine Agreement resulting from Southern California Edison Company's ("SCE") *2011 Combined Heat and Power Request for Offers ("CHP RFO")* ("Advice 2771-E").

In timely protests filed 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"), collectively ("Joint Parties"); (2) Energy Producers and Users Coalition ("EPUC"); and (3) California Cogeneration Council ("CCC"), collectively ("Protesting Parties"), a number of arguments were made to suggest that (1) the QF/CHP Settlement did not contemplate RA–only contracts as eligible under SCE's CHP RFO, (2) the RA capacity costs from the Calpine Agreement was not approved in D. 10-12-035; and (3) the Calpine Agreement does not comport with the CPUC's QF/CHP Program Settlement standards for MW targets. The suggestion is that the only MWs that count towards the target are those associated with simultaneous production of CHP energy. That suggestion is clearly wrong, and Resolution (E-4569) correctly repudiates these arguments.

As an initial matter, the use of MWs of capacity as the counting metric, without specific reference to CHP energy production, is necessarily the correct implementation of the QF/CHP Settlement. Otherwise, unless a project had a perfect (100%) capacity factor, the MW counting would be uncertain depending upon actual operation over time. That obviously is not and could not practicably be the case. Moreover, the QF/CHP Settlement specifically contemplates that eligible projects that are selected and counted toward the MW target are not required to operate continuously or at any particular level. Furthermore, no requisite nexus exists between MW counting and actual CHP energy production in the QF/CHP Settlement. The following QF/CHP Settlement Term Sheet excerpts support this fact.

For example:

- 4.2.12 PPA Options in CHP RFOs

  As part of the bid package…"each IOU may request offers with specific… (3) dispatchability terms that differ from the CHP RFO Pro Forma PPA."

  "As part of the bid package, IOUs may also offer the all source RFO in addition to the CHP–Only RFO and may also sign a hybrid contract of the two."

The QF/CHP Settlement therefore contemplates variations in both operational and PPA Pro Forma terms that are consistent with the Calpine Agreement with SCE. So long as the cogeneration facility is a QF and is available to operate when called upon, nothing in the QF/CHP Settlement limits or prohibits the parties from negotiating alternative operational characteristics, including for example, enhanced dispatchability.

- 4.3 Bilaterally Negotiated PPAs

  "Bilaterally negotiated and executed CHP PPAs or Utility Prescheduled Facilities PPAs are part of the procurement options in this CHP Program." (Term Sheet 4.3.1)

Here again the QF/CHP Settlement provides eligible CHP facilities the ability to negotiate procurement alternatives under the CHP Program, none of which expressly prohibit capacity–only contracts with CHP facilities.

- 5.2 MW Counting Rules

  "The MWs counted for New PPAs executed with Existing CHP Facilities will be the published Contract Nameplate value, unless otherwise noted in this Settlement." (Term Sheet 5.2.3.1)

  "CHP PPAs executed with QFs who formerly sold to the IOUs and are not listed in the July 2010 Semi-Annual Reports will count towards the MW Targets based on the Contract Nameplate…" (Term Sheet 5.2.3.2)

Hereto, the QF/CHP Settlement directly addresses the IOU's MW targets, and how these targets are to be determined. As properly assessed and determined by ED staff, fifty-percent (50%) of Calpine's Los Medanos Energy Center's reported nameplate capacity of 561 MW (i.e., 280.5 MW); and 120 MW of Calpine's Gilroy facilities reported nameplate capacity properly counts toward SCE's MW Target. This too is consistent with the Calpine Agreement and with the MW accounting methodology outlined in the QF/CHP Settlement.

Given that the MW's associated with the Calpine Agreement are eligible per the QF/CHP Settlement eligibility requirements; that the QF/CHP Settlement clearly provides multiple procurement pathway options to meet SCE's MW and greenhouse gas targets; and that no nexus exists between the MW counting and actual cogeneration energy production, IEP requests Commission approval of Draft Resolution E-4569.

Respectfully submitted,

Douglas K. Kerner

Attorneys for The Independent Energy Producers Association.

cc: President Michael R. Peevey
Commissioner Michel Peter Florio
Commissioner Catherine J.K. Sandoval
Commissioner Mark J. Ferron
Commissioner Carla J. Peterman
Director of the Energy Commission, Ed Randolph
Chief Administrative Judge, Karen V. Clopton
General Counsel, Frank Rich Lindh

Cem Turhal
Analyst, Energy Division
E-mail: Cem.turhal@couc.ca.gov

Damon Franz
Supervisor, Energy Division
E-mail: Damon.franz@cpuc.ca.gov

Nicholas Castillo, CPUC: Nicholas.Castillo@cpuc.ca.gov
Dahlia Siegel, SCE: Dahlia.Siegel@sce.com
Laura Genao, SCE: Laura.Genao@sce.com

John Leslie, McKenna Long & Aldridge LLP: jleslie@mckennalong.com
Amber Wyatt, SCE: Amber.Wyatt@sce.com
Tariff Unit, SCE: AdviceTariffManager@sce.com
Akbar Jazayeri, SCE: akbar.jazayeri@sce.com
Leslie E. Starck (c/o Karyn Gansecki), SCE: Karyn.Gansecki@sce.com
Claire Torchia, SCE: claire.torchia@sce.com
Beth Vaughan, CCC: beth@beth411.com
Evelyn Kahl, Counsel for the Energy Producers and User Coalition: ek@a-klaw.com

Steven Kelly
Policy Director
The Independent Energy Producers Association
1215 K Street
Sacramento, CA 95814
Telephone: (916) 448-9499
Facsimile: (916) 448-0182
E-mail: Steven@iepa.com

Douglas K. Kerner, Esq.
Ellison, Schneider & Harris L.L.P.
2600 Capitol Avenue, Suite 400
Sacramento, CA 95816
Telephone: (946) 447-2166
Facsimile: (916) 447-3512
E-mail: dkk@eslawfirm.com

ELLISON, SCHNEIDER & HARRIS L.L.P.

ANNE J. SCHNEIDER
1947-2010

CHRISTOPHER T. ELLISON
JEFFERY D. HARRIS
DOUGLAS K. KERNER
ROBERT E. DONLAN
ANDREW B. BROWN
PETER J. KIEL
LYNN M. HAUG
CHRISTOPHER M. SANDERS
GREGGORY L. WHEATLAND
ELIZABETH P. EWENS

ATTORNEYS AT LAW
2600 CAPITOL AVENUE, SUITE 400
SACRAMENTO, CALIFORNIA 95816
TELEPHONE: (916) 447-2166
FACSIMILE: (916) 447-3512
http://www.eslawfirm.com

BRIAN S. BIERING
CRAIG A. CARNES, JR.
JEDEDIAH J. GIBSON
CHASE B. KAPPEL
SHANE E. C. McCOIN
SAMANTHA G. POTTENGER

OF COUNSEL:
RONALD LIEBERT

March 25, 2013

ED Tariff Unit
Energy Division
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
E-mail: EDTariffUnit@cpuc.ca.gov

Re: Comments of The Independent Energy Producers Association on Draft Resolution E-4529 Addressing Pacific Gas and Electric Company's Advice Letter (AL) 4074-E.

To the Energy Division:

The Independent Energy Producers Association ("IEP") supports the Energy Division's ("ED") proposed outcome in Draft Resolution E-4529 for approval of 280.5 megawatts ("MW") of new Combined Heat and Power Resource Adequacy ("RA–only") capacity associated with the Los Medanos Energy Center ("LMEC Agreement"). As disused in greater detail below, this RA–only transaction complies with the requirements of the Qualifying Facility and Combined Heat and Power Program Settlement Agreement ("QF/CHP Settlement") established with the issuance of Decision ("D.") 10-12-035. IEP urges the Commission to expeditiously approve the LMEC Agreement resulting from Pacific Gas and Electric Company's ("PG&E") *first Combined Heat and Power Request for Offers ("CHP RFO")* ("AL 4074-E").

In timely protests filed 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"), a number of arguments were made to suggest that (1) the QF/CHP Settlement did not contemplate RA–only contracts as eligible under PG&E's CHP RFO, (2) the RA capacity costs from the LMEC Agreement was not approved in D. 10-12-035; and (3) the LMEC Agreement does not comport with the CPUC's QF/CHP Program Settlement standards for MW targets. The suggestion is that the only MWs that count towards the target are those associated with simultaneous production of CHP energy. That suggestion is clearly wrong, and Resolution (E-4529) correctly repudiates these arguments.

As an initial matter, the use of MWs of capacity as the counting metric, without specific reference to CHP energy production, is necessarily the correct implementation of the QF/CHP Settlement. Otherwise, unless a project had a perfect (100%) capacity factor, the MW counting would be uncertain depending upon actual operation over time. That obviously is not and could not practicably be the case. Moreover, the QF/CHP Settlement specifically contemplates that eligible projects that are selected and counted toward the MW target are not required to operate continuously or at any particular level. Furthermore, no requisite nexus exists between MW counting and actual CHP energy production in the QF/CHP Settlement. The following QF/CHP Settlement Term Sheet excerpts support this fact.

For example:

- 4.2.12 PPA Options in CHP RFOs

  As part of the bid package…"each IOU may request offers with specific… (3) dispatchability terms that differ from the CHP RFO Pro Forma PPA."

  "As part of the bid package, IOUs may also offer the all source RFO in addition to the CHP–Only RFO and may also sign a hybrid contract of the two."

The QF/CHP Settlement therefore contemplates variations in both operational and PPA Pro Forma terms that are consistent with the LMEC Agreement with PG&E. So long as the cogeneration facility is a QF[1] and is available to operate when called upon, nothing in the QF/CHP Settlement limits or prohibits the parties from negotiating alternative operational characteristics, including for example, enhanced dispatchability.

- 4.2.6 PPA Modifications

Consistent with the foregoing, the QF/CHP Settlement, that includes a number of pro forma PPAs, provides "[t]he CHP Pro-Forma PPA may be modified on a bilateral basis during negotiations for a particular CHP PPA…As set forth in Section 4.2.12…the IOUs may also offer other contract options in the CHP RFO." IEP believes other CHP RFP proposed projects are involved with modified pro forma PPAs.

- 4.3 Bilaterally Negotiated PPAs

  "Bilaterally negotiated and executed CHP PPAs or Utility Prescheduled Facilities PPAs are part of the procurement options in this CHP Program." (Term Sheet 4.3.1)

[1] The Draft Resolution recognizes that participation in a CHP RFO is open to QFs that meet applicable requirements under applicable regulations; which requirements vary depending on the configuration of the project. Accordingly, some will apply to LMEC and some, such as the so-called "fundamental use test" in the Federal rules, will not.

Here again the QF/CHP Settlement provides eligible CHP facilities the ability to negotiate procurement alternatives under the CHP Program, none of which expressly prohibit capacity–only contracts with CHP facilities.

- 5.2 MW Counting Rules

  "The MWs counted for New PPAs executed with Existing CHP Facilities will be the published Contract Nameplate value, unless otherwise noted in this Settlement." (Term Sheet 5.2.3.1)

  "CHP PPAs executed with QFs who formerly sold to the IOUs and are not listed in the July 2010 Semi-Annual Reports will count towards the MW Targets based on the Contract Nameplate…" (Term Sheet 5.2.3.2)

Hereto, the QF/CHP Settlement directly addresses the IOU's MW targets, and how these targets are to be determined. As properly assessed and determined by ED staff, fifty-percent (50%) of Calpine's Los Medanos Energy Center's reported nameplate capacity of 561 MW (i.e., 280.5 MW) properly counts toward PG&E's MW Target. This too is consistent with the LMEC Agreement and with the MW accounting methodology outlined in the QF/CHP Settlement.

Given that the MW's associated with the LMEC Agreement are eligible per the QF/CHP Settlement eligibility requirements; that the QF/CHP Settlement clearly provides multiple procurement pathway options to meet PG&E's MW and greenhouse gas targets; and that no nexus exists between the MW counting and actual cogeneration energy production, IEP requests Commission approval of Draft Resolution E-4569.

Respectfully submitted,

Douglas K. Kerner

Attorneys for The Independent Energy Producers Association.

cc: President Michael R. Peevey
Commissioner Michel Peter Florio
Commissioner Catherine J.K. Sandoval
Commissioner Mark J. Ferron
Commissioner Carla J. Peterman
Director of the Energy Commission, Ed Randolph
Chief Administrative Judge, Karen V. Clopton
General Counsel, Frank Rich Lindh

Cem Turhal
Analyst, Energy Division
Cem.turhal@couc.ca.gov

Damon Franz
Supervisor, Energy Division
Damon.franz@cpuc.ca.gov

Nicholas Castillo: Nicholas.Castillo@cpuc.ca.gov
John Leslie: jleslie@mckennalong.com
Tom Jarman: TAJ8@pge.com
KXFT@pge.com
Kwcc@pge.com

Brian K. Cherry
Vice President, Regulatory Relations
Pacific Gas and Electric Company
77 Beal Street, Mail Code B10C
P.O. Box 770000
San Francisco, California 94177
Facsimile: (415) 973-6520
E-mail: PGETariffs@pge.com

Steven Kelly
Policy Director
The Independent Energy Producers Association
1215 K Street
Sacramento, CA 95814
Telephone: (916) 448-9499
Facsimile: (916) 448-0182
E-mail: Steven@iepa.com

Douglas K. Kerner, Esq.
Ellison, Schneider & Harris L.L.P.
2600 Capitol Avenue, Suite 400
Sacramento, CA 95816
Telephone: (946) 447-2166
Facsimile: (916) 447-3512
E-mail: dkk@eslawfirm.com