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

Re: Opposition of CAC to Alternate Draft Resolutions E-4569[1] (SCE) and E-4529[2] (PG&E)

I. Introduction

The Cogeneration Association of California (CAC) opposes the Alternate Draft Resolutions offered by President Peevey permitting the adoption of two Calpine Resource Adequacy-only contracts, and other similar contracts, under the CPUC QF/CHP Program Settlement.[3] Accepting any accounting of these RA-only resources, or other similar resources, under the CHP-only RFOs contemplated by the Settlement undermines the policies, legal objectives and goals of the CPUC CHP program and must not be permitted.

The two Calpine contracts, LMEC and Gilroy, are RA agreements in the guise of a purported CHP operation. RA products have their own procurement program, deemed to be separate and distinct from the CHP program, and on legal and policy grounds should not count against the procurement targets for CHP under the Settlement. While appropriately adopting a bar against future RA-only agreements accounting under the Settlement, the Alternates advocate adoption of some uncertain portion of the capacity from the LMEC, Gilroy and similar contracts from the first CHP RFOs. The Alternates should be rejected to the extent they permit any accounting for these agreements to meet the MW procurement targets under the Settlement.

II. Discussion

A. The Misplaced and Misapplied "Fairness" Standard. The Alternate resolution mistakenly identifies a standard of "fairness" that recognizes only the interests of

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[1] Resolution E-4569; SCE requests the Commission approve two Confirmations for Resource Adequacy Capacity Products that SCE executed with Calpine Energy Services, L.P.; LMEC for 280.5 MW and Gilroy Cogen, L.P. for 130 MWs; Advice Letter 2771-E filed on August 31, 2012. The Alternative Draft offers options to accept some unknown portion of this capacity.

[2] Resolution E-4529; PG&E requests the Commission approve the Confirmation for 280.5 MW of Resource Adequacy Capacity Product that PG&E has executed with Calpine Energy Services, L.P.; Los Medanos Energy Center; Advice Letter 4074-E filed on July 2, 2012. The Alternative Draft offers options to accept some unknown portion of this capacity.

[3] The Qualifying Facility and Combined Heat and Power Program Settlement Agreement, October 8, 2010, referred to as "Settlement."

the Investor-Owned Utilities and Calpine for their "reliance" on the acceptance of RA only bids in the initial CHP RFOs. This "fairness" standard is both misplaced and misapplied. It is misplaced because it ignores the explicit waivers acknowledged by all RFO participants that there is no right or expectation to an approved CPUC contract under the RFO process. Calpine had and has no justifiable reliance on the approval of its RA-only bid under the CHP RFO protocols.[4]

The Alternate's "fairness" standard is misapplied because it ignores the interests of the real parties in interest - CHP parties. CHP parties who accepted the Settlement did so for the purposes of securing a limited number of MWs for CHP facilities. As virtually every Commissioner acknowledged in public comments at the April 4, 2013 business meeting, the express objective of the Settlement is to provide for CHP that cannot otherwise complete with RA-only or all-source bid solicitation merchant generation providers. These entities supply materially different products (and at materially different costs) than baseload CHP facilities meeting host thermal and electric demands. There is no denying from the Settlement provisions, the performance factors in the pro forma CHP Agreement, and the distinct market conditions articulated to FERC regarding separate RA-markets from CHP that the Settlement must not account for these resources. The Alternate would unfairly denigrate and materially devalue the Settlement for CHP parties. It would ignore the "fairness" to the displaced CHP resources to rely on CHP-to-CHP competition and pricing under the Settlement.

B. Pricing and Product Distortions in the CHP RFO. It is axiomatic that an RA-only product has materially lower costs and different product qualities than a baseload CHP resource. The latter cannot "compete" against the former in terms of price or resource flexibility. This fact was a fundamental premise for the establishment of the Settlement. What has occurred and is occurring is the distortion of a CHP only RFO competition established by the Settlement. The Alternate would unreasonably and unlawfully permit this distortion for the initial RFOs for the RA-only capacity from Calpine and "similar" projects. What has happened under the uncertainty created by the eligibility of RA-only capacity is the unfair displacement of real CHP resources that could not complete in the first RFOs since they were competing with a different product and price distorted by a "non-CHP only" bid.

Moreover, as publicly articulated by several Commissioners on April 4, 2013, the Calpine RA-only offers are not competitive with other RA offers, and are materially lower than other CHP offers. This result is not surprising since these are two distinct products. But beyond the adverse implications for CHP products securing a fair CHP market, there are adverse implications for the interests of all stakeholders concerning the costs and price competition in the RA market

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[4] For SCE, see, generally, Article 8, SCE's 2011 CHP RFO Participant Instructions, and Article 8.03, specifically, which provides in part – *"By submitting an Offer, Offeror knowingly, voluntarily and completely waives any rights under statute, regulation, state or federal constitution or common law to assert any claim, complaint or other challenge in any regulatory, judicial or other forum…."* For PG&E, see Section XV, Waiver of Claims and Limitations of Remedies, PG&E's CHP RFO Protocol for First Solicitation, December 7, 2011. These comprehensive waivers are consistent between the SCE instructions and the PG&E protocols, and undermine any claimed reliance on the acceptance or approval of the Calpine bids.

C. Do Not Presume Acceptance of the Premise that there is an Ambiguity in the Settlement. CAC and other CHP parties have urged the Commission to rely upon its policymaking authority to resolve accounting treatment for RA-only resources under the Settlement. However, the Commission should not take liberties with the willingness of CHP parties to assume for the purposes of argument that the Settlement is ambiguous on the issue of eligibility for such resources once the entire record is taken into account. The Settlement is not ambiguous in terms of: i) its express objectives relative to CHP resources that are unable to compete with RA-only resources; ii) the recognition of energy and capacity performance under the pro forma CHP agreement at high capacity factors; and iii) the express contemplation of a separate RA-only market from the CHP RFO process. These facts eliminate ambiguities over the eligibility of RA-only resources. The Alternates resolution remains flawed as they permits the counting of any capacity from these resources to depreciate the agreed upon MW targets for CHP resources under the Settlement. The targeted CHP Program resources are not RA-only projects. The Alternates are not supported by public policy, legal standards of interpretation associated with the Settlement, logic, or fairness.

D. Unclear and Uncertain Standards for Pre-Approved RA-Only Capacity. The Alternates inappropriately find that, pursuant to three options, some amount of RA-only capacity from the Calpine agreements may count against the Settlement's CHP procurement targets. The Alternates propose a preapproved adoption of Calpine agreements that meet any one of these three options. The third of these capacity counting options is clear enough. That third option calls for preapproval of one-half of the capacity from the Calpine RA-only projects. The other two options appear to be an effort to define capacity associated with a thermal match for these operations, or for a baseload, energy and capacity, delivery. However, the options are vague and subject to distorted interpretations that could reflect all of the disputed capacity. With the exception of the third option there are no figures upon which parties can properly assess the capacity claimed as eligible. Moreover, the pre-approval removes the Commission's necessary discretion and proper review of proposed agreements under the Settlement. CAC opposes any crediting of capacity from these projects against the Settlement CHP procurement targets. But if the Commission determines to proceed with some form of the Alternates, a cap – no greater than the one-half limit reflected in the third option – should be incorporated into any adopted resolutions.

E. Future and Pending CHP RFO Treatment for RA-Only Capacity. The Alternates expressly and conclusively hold that no future RA-only capacity will be accounted for under the CHP Settlement. The Commission should not unbalance the CHP procurement targets by adopting any RA-only capacity under the CHP Program. To suggest that fairness supports prospective- only limits fails to address the harm created in the first RFOs to the CHP parties. It ignores the waiver provisions and unjustified reliance by Calpine and other "similar" bidders. Moreover, the rationale for this resolution is painfully illogical since the Commission allowed the May 2, 2013 bids in the PG&E second CHP RFO to proceed. That RFO expressly sought RA-only products to compete with baseload CHP providers; a competition that all know is unbalanced. Accordingly, the Commission should reject the distinction between future and the pending first CHP RFOs in

terms of the accounting for RA-only product from the Calpine projects or other "similar" projects from the first CHP RFOs. The "fair" result for the Commission is to allow the refilling of the Calpine RA-only contracts and "similar" contracts under the RA program and to preclude the RA only capacity from devaluing the CHP Settlement MW targets for CHP capacity.

F. If the Commission Adopts the Accounting for the First CHP RFO RA-only Capacity, Fairness Dictates a Commensurate Adjustment of the CHP Procurement Target. The Alternates propose an objectionable option to count some amount of RA-only capacity from the Calpine and "similar" projects from the first CHP RFOs. If the Commission decides to adopt these resolutions, then a commensurate adjustment to the CHP procurement target is needed. The adjustment to the procurement target from the Settlement devalued by the adoption of RA-only capacity is an alternative means to "fairly" treat all the stakeholders if there is an accommodation for such capacity as proposed in the Alternates. There are two linked principles to such an alternate solution. First the condition in the Alternates that no other RA-only facilities would count in the future, and second, the MW for MW adjustment of the procurement targets equal to the values established under the options in the Alternates. The Commission is expressly authorized under the Settlement to make such adjustments to the targets.[5]

III. Conclusion

While considering the "fairness" for facilities that bid into the initial CHP RFOs, the Alternates are devoid of any consideration of the unfairness to eligible CHP facilities. The CHP bids could not fairly compete with an RA-only product and were effectively excluded from the RFO. Moreover, the Alternates ignore the distorted pricing comparisons between a real CHP and an RA-only product in its "fairness" metrics.

The Energy Division Resolution and the Alternate contain the following passage regarding the treatment of the RA-only contracts:

> *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 regret the situation we now find ourselves in.*

CAC agrees, but this regret does not serve to fairly reach the proposed result under the Alternates. The appropriate accommodation is not to allow the Calpine contracts and "similar" first CHP RFO bids to discount the CHP Program procurement. The proper and fair accommodation is to treat these contracts as what they are: RA-only contracts. The

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[5] Term Sheet Section 5.1.4.5 provides –

"*Any MW shortfall that occurs in the Initial Program Period shall be rolled over into the Second Program Period to reach the 3,000 MW Target;* ***however, such shortfall may also be addressed by other actions deemed appropriate by the CPUC.***" (Emphasis supplied.)

RA-only contracts belong in the program that is specifically reserved for those facilities – the RA Program.

CAC does not oppose the approval of the Calpine and similar agreements with SCE and PG&E, as part of the RA procurement program. CAC opposes the counting of the RA-only capacity, in whole or in part, whether in future or past CHP RFOs, as part of the CHP Program, specifically to meet the MW targets for CHP procurement under the Settlement.

Federal and state policies had their origins in PURPA. PURPA's explicit design and intent is to support the development of Qualifying Facility CHP facilities built to serve an industrial, manufacturing or commercial purpose. Amendments to PURPA adopted in the Energy Policy Act of 2005 and FERC's implementation of those changes reaffirmed the goal of encouraging CHP development when built to serve an industrial, manufacturing or commercial purpose.[6] Over years of CHP regulation and policy development, policymakers have disdained "PURPA machine" projects built primarily to deliver electricity, as opposed to the balanced and integrated use of cogeneration.

The CHP Settlement recognized the same purpose. It incorporated by reference the FERC regulations under EPAct 2005 and stated as an express goal that the targeted CHP resources are to support California's manufacturing, industrial and commercial base.[7] All indications, both by incorporating FERC regulations as eligibility thresholds and by direct expression, are that the Commission intended the CHP Settlement program to continue to support the state's manufacturing, industrial and commercial base, not to encourage RA-only product operations masking as CHP resources.

The promise of the Commission's CHP Program is to provide a viable and real alternative for existing and new baseload CHP that could not provide dispatchable resources sought by the IOU all-source "market" solicitations. The Commission should decline to adopt the Alternate Draft Resolutions and disallow the counting of RA-only capacity under the CHP Program.

Respectfully submitted,

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Cogeneration Association of California

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6 For example, the Fundamental Use Test, 18 CFR Part 292.205(d)(3).

7 Term Sheet §1.2.4.6.

CAC REDLINE OF ALTERNATE DRAFT
[Note: this set of redline edits is to the SCE Alternative Draft Resolution for the LMEC, Gilroy and similar RA offers; the SCE edits should be applicable to the LMEC provisions PG&E Draft Resolution]

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

I.D. # 12141
ALTERNATE RESOLUTION E-4569
June 27, 2013

REDACTED RESOLUTION

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 rejects, in its current form, SCE's Confirmation for Resource Adequacy ("RA") Capacity Product, which is 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. The Resolution provides guidance to SCE for potential modifications to the Agreements which the Commission ~~would~~ may approve in a subsequent ~~Tier 1~~ Advice Letter filing, and provides additional guidance to SCE for Combined Heat and Power solicitations in the future.

SAFETY CONSIDERATIONS: The two agreements approved here are Confirmations for Resource Adequacy associated with the Los Medanos Energy Center and Calpine Gilroy Cogen facilities. The Commission's jurisdiction extends only over SCE, not to either of the Calpine facilities. Based on the information before us, neither agreement appears to result in any adverse safety impacts on the facilities or operations of SCE.

ESTIMATED COST: None

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

SUMMARY
Southern California Edison's ("SCE") 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") and for 120 MWs of capacity associated with the Calpine Gilroy Cogen, L.P. ("Gilroy") ~~is consistent~~raises legal and public policy with the requirements and objectives 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").

However, the QF/CHP Settlement Agreement contains ambiguity that the Commission clarifies in this Resolution for ~~subsequent~~ all CHP solicitations. For the ~~second~~ CHP RFOs ~~and any subsequent RFOs~~, the Commission clarifies that no RA-only bids shall be accepted.

For contracts signed as a result of the first CHP RFO, the Commission recognizes that a Commission clarification/interpretation of the QF/CHP Settlement requirements was not yet available, and therefore Calpine, and any other bidder, may have relied on the utilities' acceptance of RA-only bids as eligible in the first solicitation. However, such reliance is misplaced, particularly in light of the express waiver conditions accepted by all bidders as part of the RFO protocols or instructions. [1]Thus, this Resolution ~~acknowledges that a reasonable compromise is necessary to address RA-only contracts successful during the first solicitation~~rejects these contracts under the QF/CHP Settlement, but offers an alternative path, under the Commission's RA program, to secure RA-compliant contracts.

This Resolution offers SCE several options for renegotiating the instant LMEC and Gilroy Agreements and resubmitting the contracts as ~~Tier 1~~ Advice Letters for Commission approval~~, if it complies with one of several options discussed in~~

[1] For SCE, see, generally, Article 8, SCE's 2011 CHP RFO Participant Instructions, and Article 8.03, specifically, which provides in part – "By submitting an Offer, Offeror knowingly, voluntarily and completely waives any rights under statute, regulation, state or federal constitution or common law to assert any claim, complaint or other challenge in any regulatory, judicial or other forum…" For PG&E, see, Section XV, Waiver of Claims and Limitations of Remedies, PG&E's CHP RFO Protocol for First Solicitation, December 7, 2011. These comprehensive waivers are consistent between the SCE instructions and the PG&E protocols, and undermine any claimed reliance on the acceptance or approval of the Calpine bids.

~~this Resolution~~. The contract options available to SCE that the Commission would accept ~~in Tier 1 Advice Letters~~ are as follows:

I. QF/CHP Agreements for ~~RA-only~~ capacity and energy consistent with the Pro Forma CHP Agreement in the Settlement that match the level of CHP energy output delivered to the LMEC and Gilroy steam hosts, ~~but are otherwise identical to the instant LMEC and Gilroy Agreements~~; provided that in no circumstance shall the capacity exceed one-half of the originally proposed RA-only capacity from these projects.

II. QF/CHP Agreements for ~~RA-only~~ capacity that match the level of baseload power output from the LMEC and Gilroy facilities consistent with the Pro Forma CHP Agreement in the Settlement~~but are otherwise identical to the instant LMEC and Gilroy Agreements~~; provided that in no circumstance shall the capacity exceed one-half of the originally proposed RA-only capacity from these projects.

III. QF/CHP Agreements for RA-only capacity that are for one half or less of the contracted amount in the instant Agreements (up to no more than 140.25 MW associated with LMEC and 60 MW associated with Gilroy), but at prices consistent with RA market pricing and are otherwise identical to the instant LMEC and Gilroy Agreements.

The RA-only capacity from these contracts shall not count towards meeting the CHP MW procurement targets under the QF/CHP Settlement.

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 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

and reduce GHG emissions consistent with the California Air Resources Board ("CARB") Scoping Plan, currently set at 4.8 million metric tonnes ("MMT"). Among other things, D.10-12-035 updates methodologies and formulas for calculating the Short Run Avoided Cost ("SRAC") energy price for QFs to be used in the Standard Contract for QFs with a Power Rating that is Less than or Equal to 20MW (the "QF Standard Offer Contract"), Transition PPAs, amendments to existing QF PPAs, and Optional As-Available PPAs. The SRAC methodology under the QF/CHP Settlement includes:

(1) By January 1, 2015, transitioning SRAC pricing from a formula that is based in part on administratively-determined heat rates to a formula that solely uses market heat rates;

(2) IOU-specific time-of-use ("TOU") factors to be applied to energy prices to encourage energy deliveries during the times when the energy is most needed by customers;

(3) A locational adjustment based on California Independent System Operator ("CAISO") nodal prices; and,

(4) Pricing options based on whether a cap-and-trade program or other form of GHG regulation is developed in California or nationally.

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. The First Track solicited Existing CHP Facilities, Utility Prescheduled Facilities ("UPFs"), Expanded Facilities, and New or Repowered CHP Facilities with an existing interconnection and a CAISO Phase I Interconnection Study. If the bidder had no such study completed the bidder permitted SCE to terminate the contract if network upgrade costs based on a future study exceeded a certain amount. The Second Track was for New or Repowered CHP Facilities where the bidder was unwilling to give SCE the termination right.

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. However, these contracts are not reflective of the terms and conditions in the Pro Forma CHP Agreement established by the QF/CHP Settlement. 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,[2] which adopted the QF/CHP Settlement.

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

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

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.

(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 interpreted 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"),[3] 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

[3] 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.

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. 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
- Cost reasonableness
- Public Safety
- Project viability
- Consistency with the Emissions Performance Standard
- Consistency with D.02-08-071, which requires Procurement Review Group (PRG) participation
- Consistency with D.07-12-052, which requires Cost Allocation Mechanism group participation

In considering these factors, Energy Division also considers the analysis and recommendations of an Independent Evaluator, if available.[43] In this case, we have reviewed and weighed the conclusions from the IE report in determining the outcome of this resolution.

The Commission evaluates not only those features identified by the Energy Division, but also the legal and public policy objectives of the QF/CHP Settlement as a whole. This evaluation includes consideration of the Pro Forma CHP Agreement, the express statements of objectives in the Settlement and the representations made by the Settlement Parties and the Commission before the Federal Energy Regulatory Commission related to the Settlement. These considerations lead the Commission to reject the accounting for the RA-only capacity from the LMEC and Gilroy projects. The Commission finds these RA-only contracts, and similar agreements from the first CHP RFOs are inconsistent with the CPUC QF/CHP Program.

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

[4] 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."

issues regarding the contractual obligations and procurement options for facilities operating under legacy and new QF contracts. Among other things, it establishes methodologies and formulas for calculating SRAC to be used in new QF Standard Offer contracts. Furthermore, the Settlement allows for bilaterally negotiated contracts with QFs to determine alternative energy and capacity payments mutually agreeable by relevant parties and subject to CPUC approval. Finally, 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. In evaluating the consistency of the LMEC and Gilroy agreements, we have considered consistency with the CHP RFO eligibility requirements, MW accounting, GHG accounting and cost recovery.

Consistency with CHP Requests for Offers (CHP RFOs) - Capacity-Only Agreements

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[5] 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 either facility's agreement, Calpine states that LMEC and Gilroy are CHP Facilities, as defined in the QF/CHP Settlement, as of the agreement's Effective Date; both agreements also provide that if LMEC or Gilroy

[5] 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.

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 successfully bid into SCE's CHP RFO as qualifying CHP facilities, were shortlisted and selected as successful bids in SCE's competitive CHP solicitation.

While these several provisions of the Settlement Term Sheet, when considered in isolation, seemingly suggest the LMEC and Gilroy bids meet eligibility standards for the CHP RFO, a more comprehensive evaluation indicates otherwise. For several reasons, including the stated objectives of the Settlement, the contemplated CHP energy and capacity deliveries under the Pro Forma CHP Agreement and the Settlement Parties' and this Commission's filings at FERC calling for a distinct RA market separate from the CHP Settlement, we find the LMEC, Gilroy and similar RA-only bids are not eligible for accounting under the QF/CHP Settlement.

For these reasons, we find both the LMEC agreement and the Gilroy agreement, as well as other similar RA-only agreements from the first CHP RFOs are inconsistent with the Settlement's eligibility requirements and policy objectives. ~~allowing LMEC and Gilroy to participate in the utility's CHP requests for offers.~~

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. 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 staff response, followed by the Commission's conclusions.

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, there is an ambiguity in the Settlement Agreement that is open to interpretation by the Commission, assuming a limited evaluation of isolated Settlement Term Sheet provisions. As noted, a more expansive evaluation is required by the Commission.

Due to this identified ambiguity, we take this opportunity to clarify our interpretation of the Settlement Agreement as it applies to ~~future~~ RFOs conducted for CHP. We will then turn to the consequences of this interpretation for contracts that emerged from the first RFO, such as the instant LMEC and Gilroy contracts at issue in this Resolution.

~~Going forward, w~~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, absent express conditions like Utility Prescheduled Facilities and Additional Dispatchable Capacity as established by the Settlement. 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 purpose of the QF/CHP program is altogether different. The QF/CHP S~~s~~ettlement 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. The preservation of this purpose in the implementation of the CHP Program remains a primary objective of the Commission.

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 (PURPA). In the context of the Settlement Agreement, those CHP parties agreed to remove the must-take obligation voluntarily in return for certain opportunities to bid in CHP-only RFOs. The CHP-only RFOs were intended to be an opportunity for like CHP resources to compete. The majority of CHP facilities may have some marginal flexibility to offer RA-only 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 t~~The majority of CHP facilities ~~that~~ do not have the ability to provide the majority of their capacity as RA-only. Thus, the Commission wishes to target the CHP RFOs to be 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.

In addition to this basic policy reasoning, the Commission also finds that the Settlement Agreement did already explicitly contemplate some type of option for RA-only contracts that might result from the CHP solicitations. 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 the overall purpose of the Settlement Agreement, convinces us to resolve the ambiguity in the Settlement Agreement in favor of denying the opportunity for capacity-only contracts that are not UPFs~~, going forward~~.

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 regret the situation we now find ourselves in. However this situation does not justify materially altering the objectives and CHP procurement targets for CHP facilities by adopting RA-only projects as part of the CHP Program. Moreover, given the waivers adopted by all bidders, no detrimental reliance by any bidder, particularly a well-informed market participant like Calpine, is reasonable or justified.

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 Settlement Agreement ambiguity to eviscerate the contractual opportunities for so many other potential CHP facilities during this time period, in favor of approving such a large contract here in this Resolution as accounting for the CHP MW capacity targets.

To mitigate this situation, we offer SCE the following guidance~~: for compromise options that we would accept and approve.~~ Should SCE and Calpine choose one of these options, SCE is required to submit a revised Agreement within 30 days of the adoption of this Resolution~~ as a Tier 1 Advice Letter~~.

Option 1

QF/CHP Agreements for ~~RA-only~~ capacity and energy consistent with the Pro Forma CHP Agreement in the Settlement that match the level of CHP energy output delivered to the LMEC and Gilroy steam hosts, ~~but are otherwise identical to the instant LMEC and Gilroy Agreements~~; provided that in no circumstance shall the capacity exceed one-half of the originally proposed RA-only capacity from these projects. ~~SCE and Calpine may restructure the Agreements for RA-only capacity that matches the level of energy output delivered to the LMEC and Gilroy steam hosts. This would reduce the number of MW to be commensurate with the level of thermally-matched CHP, but would otherwise be identical to the instant LMEC and Gilroy Agreements.~~

Option 2

QF/CHP Agreements for ~~RA-only~~ capacity that match the level of baseload power output from the LMEC and Gilroy facilities consistent with the Pro Forma CHP Agreement in the Settlement ~~but are otherwise identical to the instant LMEC and Gilroy Agreements~~; provided that in no circumstance shall the capacity exceed one-half of the originally proposed RA-only capacity from these projects ~~SCE and Calpine may restructure the Agreements for RA-only capacity that matches the level of baseload power output from the LMEC and Gilroy facilities. This would reduce the number of MWs to be commensurate with the level of baseload power output typical for the facilies, but would otherwise be identical to the instant LMEC and Gilroy Agreements~~.

Option 3

QF/CHP Agreements for RA-only capacity that are for one half or less of the contracted amount in the instant Agreements (up to no more than 140.25 MW associated with LMEC and 60 MW associated with Gilroy), but at prices consistent with RA market pricing and are otherwise identical to the instant LMEC and Gilroy Agreements ~~SCE and Calpine may restructure the Agreements for RA-only capacity that is for one half or less of the contracted amount in the instant Agreement (up to no more than 140.25 MW for LMEC and 60 MW for Gilroy). This would also reduce the number of MWs, but would otherwise be identical to the instant LMEC and Gilroy Agreements~~.

In the case of the three options above, the terms of the amended or renegotiated Agreements would either reflect the CHP Pro Forma Agreement (Options 1 or 2)

or be identical to the instant LMEC and Gilroy Agreements, except for the amount of MWs procured and the reflection of the RA market price. Therefore, we make additional findings in this Resolution that would apply to those Options, should SCE and Calpine choose to exercise one of them, and bring back an amended Agreement for our consideration.

We reject 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~~.

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~~is inconsistent with the objectives of the Settlement. The Settlement ~~specifically includes~~recognizes projects that do not contribute toward the GHG targets, i.e., Utility Prescheduled Facilities, 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. Regardless of the GHG accounting features for such facilities, these are not the projects that are the primary targets for CHP procurement under the CHP program.

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.

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

For contracts signed as a result of the first CHP RFO, the Commission recognizes that a Commission clarification/interpretation of the QF/CHP Settlement requirements was not yet available, and therefore Calpine, and any other bidder, may have relied on the utilities' acceptance of RA-only bids as eligible in the first solicitation. This reliance, as previously noted, is unreasonable and misplaced in light of the express waivers adopted by all bidders. Thus, this Resolution ~~acknowledges that a reasonable compromise is necessary to address RA-only contracts successful during the first solicitation~~rejects the capacity from these ore similar RA-only bids to account for CHP MW procurement targets under the CHP Program.

This Resolution offers SCE several options for renegotiating the instant LMEC and Gilroy Agreements and resubmitting the contracts RA contracts or compliant CHP Pro Forma Agreements ~~as Tier 1 Advice Letters~~ for Commission approval, if it complies with one of several options discussed above in this Resolution.

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.

~~Per Section 5.2.3.2 of the Term Sheet, the MW accounting for CHP PPAs executed with QFs who formerly sold to the IOUs and were never listed in any QF Semi-Annual Report will be based on the contract nameplate in the most recent QF or CHP agreements. On October 12, 2006, PG&E and Calpine executed a previous RA Confirmation Agreement for LMEC listing the contract quantity, though not the contract nameplate, as 561 MW. Pursuant to this 2006 Confirmation Agreement, Calpine formerly sold a Resource Adequacy Capacity Product to PG&E between 2008-2011. While LMEC's gross nameplate is 620.3 MW, the maximum operating capacity, or "PMax," is 561 MW. LMEC's Reportable Capacity, based on the facility's maximum operating capacity, is 561 MW. Since SCE is only purchasing 50% of the facility's capacity in the instant agreement, 280.5 MW (i.e., .5x 561 MW= 280.5 MW) of this CHP-eligible facility would have counted toward SCE's MW Target.~~

~~Similarly, Gilroy formerly sold to PG&E and was listed in PG&E's July 2002 Cogeneration and Small Power Production Semi-Annual Report with an operating size of 130 MW. Per the Term Sheet Section 5.2.3.2, 100% of this 130 MW amount would have counted toward SCE's MW Target under the Settlement even though 120 MW would have been contracted with the Gilroy facility.~~

~~After reviewing SCE's LMEC and Gilroy entry into the QF/CHP reporting template, staff determined that the MW accounting for the two Calpine facilities is consistent with the MW accounting methodology set forth by the Settlement. Accordingly, the Confirmations contribute 410.5 MW (130 MW + 280.5 MW) toward SCE's MW Target.~~

~~If SCE and Calpine negotiate revised Agreements for the purchase of half or less of the MW of the current Agreements and resubmit the contracts as a Tier 1 Advice Letters, pursuant to the QF/CHP Settlement Term Sheet Section 5.2.3.2, the contracted MW from the LMEC and Gilroy facilities shall count toward SCE's CHP MW targets.~~ As noted, the Commission finds that the RA-only capacity from the LMEC and Gilroy contracts and similar contracts, will not account for MWs under the QF/CHP Settlement targets for CHP. There are options for renegotiation of the contracts as compliant CHP Pro Forma Agreements or as RA market contracts.

Consistency with Greenhouse Gas accounting - Capacity-Only Agreements

~~As noted above, Section 7.3.3.1 of the Settlement Term Sheet states: "Existing CHP Facility with no change in operations: Regardless of contract status (i.e., a new agreements with an Existing CHP Facility or one that sells to the market) the CHP Facility is considered neutral for GHG accounting purposes."~~
~~SCE's entry into the QF/CHP reporting template calculated LMEC's and Gilroy's respective GHG contributions and since both projects are Existing CHP Facilities under the Term Sheet, with no change in operations, the two agreements have no impact, positive or negative, on SCE's progress toward its GHG Targets under the Settlement. Therefore, both projects will be counted as "GHG neutral" CHP facilities for SCE's GHG accounting purposes under the Settlement.~~
~~Both the LMEC and Gilroy contracts do not contribute to SCE's GHG Emissions Reduction Targets because both facilities are existing CHP facilities with no~~

~~change in operations, which, under the Settlement, is counted as GHG neutral.~~ In light of the Commission's determination to reject the adoption of these and similar RA-only contracts, the issue of accounting for GHG credits associated with these facilities under the QF/CHP Settlement 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.

In light of the Commission's determination to reject the adoption of these and similar RA-only contracts, the issue of accounting for GHG credits associated with these facilities under the QF/CHP Settlement is moot.~~The fact that the energy value and ancillary service value under the contract are equal to zero does not mean the net capacity cost cannot be calculated. Rather it simply means the net capacity cost equals the contract cost. Pursuant to the QF/CHP Settlement, the net capacity costs of this contract should be allocated pursuant to the cost allocation rules defined in Section 13.1.1 of the QF/CHP Settlement Term Sheet.~~

~~This argument seems to suggest that the ability to calculate a "net" value requires that any elements that are being netted out to have non-zero values. This argument appears to fly in the face of basic algebra. In the case of the Net Capacity Cost calculation, Section 13.1.2.2 of the Term Sheet states, "The net capacity costs of the CHP program shall be defined as the total costs paid by the IOU under the CHP program less the value of the energy and any ancillary services supplied to the IOU under the CHP program". Mathematically, this would be represented as follows:~~
~~NCC = TCC – E – AS~~
~~Where:~~
~~NCC = Net Capacity Cost~~
~~TCC = Total Contract Cost~~
~~E = Energy Value~~
~~AS = Ancillary Service Value~~
~~If the Energy Value and the Ancillary Service Value are both equal to zero, this equation resolves to:~~
~~NCC = TCC~~

~~In other words, the Net Capacity Cost can be calculated, it just happens to be equal to the Total Contract Cost in this instance. Thus, CAM treatment may be applied to capacity-only CHP contracts.~~

~~The CHP settlement specifies that when facilities are contracted via non-RPS contracting vehicles available in the settlement, the costs and benefits of those contracts are to be allocated to all benefitting customers. This in general refers to the Cost Allocation Mechanism (CAM) process that the Commission uses when contracting for system capacity that will help overall system reliability.~~

Need for Procurement

In light of the Commission's determination to reject the adoption of these and similar RA-only contracts, the issue of need for procurement for these facilities under the QF/CHP Settlement is moot. ~~Per the Settlement Term Sheet Section 5.1.2, SCE's MW procurement goal for Target A is 630 MW. As of SCE's October, 2012 CHP Semi-Annual Report filing, SCE has procured 847 MW[6][5] and 0. 1 MMTCO2e of GHG Reductions towards its targets. While SCE will be over-procured by 217 MW beyond its Target A goal of 630 MW, after reviewing the bids in SCE's CHP RFO, staff recognizes that while there is no immediate need to procure either Calpine project for SCE's Target A goals, given the overarching 1,402 MW target for SCE the procurement of LMEC and Gilroy can be justified as reasonable. In addition, without the LMEC and Gilroy projects, SCE would not be able to meet its Target A MW goals. Importantly, nothing precludes the IOUs from exceeding their *Target A capacity amounts and there may be strategic value in procuring in* excess in the initial RFO to the extent lower cost projects are available.~~

~~The procurement of the MWs associated with either project can be justified per the Settlement Term Sheet section 4 as SCE is required to procure at least 630 MWs for its Target A MW Goals.~~

Cost reasonableness

In light of the Commission's determination to reject the adoption of these and similar RA-only contracts, the issue of cost reasonableness for these facilities under the QF/CHP Settlement is moot. However, the Commission notes that

[6] ~~The 847 MWs of CHP includes non-CPUC approved contacts, since the Settlement Term Sheet Section 8.2.2 states that the reporting template includes all executed contacts with the IOU.~~

these RA resources need to reflect RA market pricing and are not reasonable when priced as CHP Program resources. It is also unreasonable to compare RA-only capacity bids with the bids of a baseload CHP provider necessarily supplying thermal and electric capacity and energy consistent with the obligations in the CHP Pro Forma Agreement. ~~Although both facilities have sold to PG&E previously, and while Gilroy was listed in PG&E's July 2002 Cogeneration report, LMEC was not listed in any of the Cogeneration and Small Power Production Semi-Annual Reports of the three IOUs. In the confidential appendix below staff has reviewed all the bids that SCE received in its first CHP RFO and found both Agreements to be cost reasonable.~~

~~Similarly the IE concludes that the evaluation methodology used to evaluate the cost and benefits of the two Calpine agreements are reasonable for this type of analysis and effectively evaluates offers with different products, terms, and contract structures. The IE found no evidence of bias in the evaluation methodology as a result of review of the model operation.~~

~~As discussed in detail in the confidential appendix, when compared to other bids in SCE's CHP RFO, both agreements are reasonable and rank amongst the highest value bids that were submitted.~~

~~SCE's bid evaluation methodology uses a two stage approach. The first stage evaluates Indicative Offers almost exclusively by the net present value of their costs and benefits and their contribution to the Settlement MW Target. Inputs to calculate $NPV/MW include:~~

~~(), where:~~

~~Benefits include:~~

~~ Capacity benefits based on monthly firm capacity offered according to CPUC Resource Adequacy accounting, pursuant to CPUC and CAISO rules for dispatchable and non-dispatchable facilities;~~

~~ Energy benefits based on the forecasted market and locational value of energy; Ancillary Service and Real-Time flexibility benefits for dispatchable facilities based on a production simulation~~

~~ Credit/Collateral values based on providing performance assurance per Term Sheet Section 4.2.8~~

~~Costs include:~~

~~□ Capacity charges; Variable O&M charges; Energy Payments; Other costs~~

~~□ Seller and/or Buyer responsibility of GHG Compliance Cost per Term Sheet Sections 4.2.7.2 – 4.2.7.3~~

~~□ Annual Transmission system upgrade costs for new, expanded, or repowered facilities based on a CAISO Phase I Interconnection Study~~

~~□ Debt Equivalence indirect costs estimated to be incurred as a debtlike obligation by executing long-term PPAs~~

~~To determine whether offer prices were excessive to alternatives, SCE developed long-term forecasts of RA capacity, natural gas, electricity, and GHG costs per Term Sheet Section 5.4.1.~~

~~The quantification of $NPV/MW is used in order to minimize cost while choosing projects that fulfill the MW Target, which SCE considered to be a procurement need. As required by Section 4.2.5.7 of the Settlement Term Sheet, SCE used this measure as an analysis of market value for the Offers. $NPV/MW was the primary metric used in determining the Short List. Once notifying the Short Listed bidders of their status, SCE began negotiations with the counterparties.~~

~~If SCE and Calpine renegotiate the Agreements according to one of the options described above and the per-MW capacity costs do not change, the costs of the Agreement will be deemed reasonable.~~

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. Public safety in all utility services is a primary objective of the Commission in all forums. In light of the Commission's determination to reject the adoption of

these and similar RA-only contracts, the issue of safety in this proceeding relative to these specific contracts is moot. However, in conducting its review the Commission finds that the LMEC and Gilroy projects do not give rise to safety issues with regard to the Commission's regulated utilities. ~~The two agreements approved here are Confirmations for Resource Adequacy between SCE and the Los Medanos Energy Center and Calpine Gilroy Cogen.~~ The Commission's jurisdiction extends only over SCE, not the Los Medanos Energy Center or Calpine Gilroy Cogen. Based on the information before us, neither of the two ~~agreements~~ projects appears to result in any adverse safety impacts on the facilities or operations of SCE.

Project Viability

In light of the Commission's determination to reject the adoption of these and similar RA-only contracts, the issue of project viability associated with these facilities under the QF/CHP Settlement is moot. ~~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. According to SCE, no project development is expected or planned since LMEC is an existing facility.~~

~~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. According to SCE, no project development is expected or planned since Gilroy is an existing facility.~~

~~A detailed historical generation profiles for both facilities are described in detail in the confidential appendix of resolution.~~

~~Both Gilroy and the Los Medanos Energy Center are existing CHP facilities with proven histories of performance and therefore are viable projects.~~

Consistency with the Emissions Performance Standard

In light of the Commission's determination to reject the adoption of these and similar RA-only contracts, the issue of consistency with the Emissions Performance Standard associated with these facilities under the QF/CHP Settlement is moot. ~~California Public Utilities Code Sections 8340 and 8341, enacted by~~

~~Senate Bill 1368 (2007), require that the Commission consider emissions costs associated with new long-term (five years or greater) power contracts for base load generation on behalf of California ratepayers. D.07-01-039 adopted an interim Emissions Performance Standard ("EPS") that establishes an emission rate for obligated facilities to levels no greater than the greenhouse gas emissions of a combined-cycle gas turbine power plant.~~

~~Pursuant to Sections 4.10.4.1 of the CHP Program Settlement Term Sheet, PPAs greater than five years that are submitted to the CPUC in a Tier 2 or Tier 3 advice letter must be in compliance with the EPS. The EPS applies to all energy contracts that are at least five years in duration for baseload generation, which is defined as a power plant that is designed and intended to provide electricity at an annualized plant capacity factor of at least 60 percent.~~

~~In D.07-01-039, the Commission adopted a GHG EPS which is applicable to a contract for base load generation, as established by SB 1368 and defined in D.07-01-039, having a delivery term of five years or more. All combined-cycle natural gas power plants that were in operation as of June 30, 2007 are deemed to be in compliance with the EPS.[7] The LMEC facility is "deemed to be in compliance" with the EPS per D.07-01-039 Finding of Fact 16, as it is a combined-cycle natural gas facilities which has been in operation prior to June 30, 2007. Furthermore, Gilroy is not subject to the EPS since it is not "baseload generation" and therefore is not a "covered procurement" under D.07-01-039.~~

~~Pursuant to Public Utilities Code §8341 and D.07-01-039, a) the LMEC and facility is a combined-cycle natural gas facility that was in operation prior to June 30, 2007 and is therefore "deemed to be in compliance" with the Emissions Performance Standard and b) the Gilroy facility is not baseload generation and is therefore not "covered procurement" under D.07-01-039 and is exempt from the EPS.~~

~~[7] D.07-01-039, pp. 4-5.~~

Consistent with D.02-08-071 and D.07-12-052, SCE's Procurement Review Group ("PRG") and Cost Allocation Mechanism ("CAM") group were notified of the Capacity-Only Agreement.

SCE's PRG consists of representatives from: certain non-market participants, including the Commission's Energy and Legal Divisions, the Division of Ratepayer Advocates, The Utility Reform Network, California Utility Employees, the Union of Concerned Scientists, and the California Department of Water Resources. SCE's CAM group includes PRG participants as well as certain other non-wholesale market participant representatives of bundled service, direct access and community choice aggregator customers. SCE consulted with its PRG and CAM group regarding this transaction.

SCE consulted with its PRG regarding the launch of SCE's 2011 CHP RFO on December 7, 2011. The SCE PRG members were also invited to attend SCE's 2011 CHP RFO Offeror's Conference which was held on January 13, 2012. SCE consulted with its PRG and CAM advisory groups regarding this transaction on four conference calls regarding SCE's 2011 CHP RFO: (1) On February 8, 2012, SCE presented its RFO launch presentation as well as its Valuation and Short List Selection Process; (2) On March 15, 2012, SCE presented its Short List Selection; (3) On May 23, 2012, SCE presented its Final Evaluation and Selection Process; (4) On June 20, 2012, SCE presented its Final Section. SCE stated that during each of these teleconference calls, the PRG and CAM members were updated on the progress of SCE's 2011 CHP RFO and consulted on the valuation and merits of the individual projects.

SCE has complied with the Commission's rules for involving the PRG. Should SCE choose to renegotiate the Agreements according to any options provided for in this Resolution, SCE ~~is not required, though is encouraged, to~~shall consult with its PRG again prior to submitting an amended Agreement.

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.[8]

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. More information on the findings of the IE Report is included in Confidential Appendix A.

The Independent Evaluator concurs with SCE's decision to execute the LMEC and Gilroy Agreements with Calpine Energy Services, L.P. and finds that the LMEC and Gilroy agreements merit Commission approval. SCE has complied with the Commission's rules for involving the PRG. Should SCE choose to renegotiate the Agreements according to any options provided for in this Resolution, SCE is not required, though is encouraged, to consult with its PRG again prior to submitting an amended Agreement.

The Commission observes that the judgment of the Independent Evaluator regarding consistency with the goals, objectives and broader evaluation of the

[8] Public IE Report p.38

QF/CHP Settlement does not reflect the objective standards hoped for with regard to the "independent" evaluators.

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.

FINDINGS AND CONCLUSIONS

1. The LMEC facility is not an eligible CHP resource for the purposes of accounting under the QF/CHP Settlement as an RA-only product. This product and the contract related to this product properly belong in the CPUC's RA program. ~~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).~~

2. The Gilroy facility is not an eligible CHP resource for the purposes of accounting under the QF/CHP Settlement as an RA-only product. This product and the contract related to this product properly belong in the CPUC's RA program. ~~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 a limited and isolated consideration of select provisions of the QF/CHP Settlement, for example, Section 4.2.2, capacity-only products are not expressly prohibited from competing in CHP-only RFOs. However, a broader consideration of multiple factors related to the Settlement undeniably indicates that RA-only products are not properly eligible for accounting under the CHP

MW target procurement under the Settlement. The absence of a prohibition in Section 4.2.2 is not dispositive of the issue related to RA-only capacity eligibility under the Settlement. ~~They are not expressly invited either.~~

4. A provision for Utility Prescheduled Facilities and Additional Dispatchable Capacity is expressly provided for in the QF/CHP Settlement Agreement and is designed for select and limited capacity-only contracts from such facilities.

5. The QF/CHP Settlement Agreement, when evaluated as a whole, is not ambiguous as to whether capacity-only products, from RA-only operations should be considered as contributing to the CHP Program MW Targets under the Settlement. ~~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, in part because it 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~~ may allow renegotiated Agreements, consistent with one of the three options presented in this Resolution~~outlined below~~, to be resubmitted to the Commission ~~and~~ for approval~~ed via Tier 1 Advice Letters, as long as they conform to the terms of this Resolution:~~.

~~- QF/CHP Agreements for RA-only capacity that match the level of energy output delivered to the LMEC and Gilroy steam hosts, but are otherwise identical to the instant LMEC and Gilroy Agreements.~~

~~- QF/CHP Agreements for RA-only capacity that match the level of baseload power output from the LMEC and Gilroy facilities but are otherwise identical to the instant LMEC and Gilroy Agreements.~~

~~- QF/CHP Agreements for RA-only capacity that are for one half or less of the contracted amount in the instant Agreements (up to no more than 140.25 MW associated with LMEC and 60 MW associated with Gilroy), but are otherwise identical to the instant LMEC and Gilroy Agreements.~~

8. If SCE renegotiates LMEC and Gilroy Agreements consistent with the options outlined in this Resolution, the following findings in this Resolution would apply to such a conforming new Agreement.

a. As an existing CHP Facility, per QF/CHP Settlement Term Sheet Section 7.3.3.1, LMEC capacity would not contribute towards SCE's GHG Targets and is neutral for GHG accounting purposes.

b. The LMEC and Gilroy facilities are existing ~~CHP~~ operational facilities and therefore would be a viable project.

c. The terms of the LMEC and Gilroy agreements for a capacity-only PPA would provide the CHP Attributes, the RA Attributes, the Local RA Attributes, and the Capacity Attributes equivalent to the capacity associated with the LMEC and Gilroy Agreements to the ratepayers.

d. Capacity-only LMEC and Gilroy PPAs are not subject to the EPS under D.07-01-039 as it was deemed to be compliant with the EPS, as it is a combined-cycle natural gas facility that was in operation prior to June 30, 2007.

e. SCE 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 consistent with D.10-12-035, as modified by D.11-07-010.

f. Actual LMEC and Gilroy Agreement costs will be recovered through ERRA, less net capacity costs recovered in the NSGBA.

g. SCE has complied with the Commission's rules for involving the PRG. Should SCE renegotiate the LMEC and Gilroy Agreements, they should ~~be encouraged but not required to~~ consult again with their PRG.

h. The Independent Evaluator concurred with SCE's decision to execute the LMEC and Gilroy Agreements with Calpine Energy Services, L.P. and found that the LMEC and Gilroy PPAs merits Commission approval. Should SCE renegotiate the LMEC and Gilroy Agreements, as long as the per-MW costs are consistent with the options provided~~do not increase~~, they should not be required to subject the amended Agreement to additional IE analysis prior to resubmitting to the Commission.

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.

2. SCE is authorized to renegotiate amended Agreements with Calpine if they are consistent with one of the ~~following~~ three Options provided in this Resolution. , ~~with Option 3 indicating the maximum procurement amount PG&E is authorized regardless of which Option is executed:~~

~~- Option 1: QF/CHP Agreements for RA-only capacity that match the level of energy output delivered to the LMEC and Gilroy steam hosts, but are otherwise identical to the instant LMEC and Gilroy Agreements.~~

~~- Option 2: QF/CHP Agreements for RA-only capacity that match the level of baseload power output from the LMEC and Gilroy facilities but are otherwise identical to the instant LMEC and Gilroy Agreements.~~

~~- Option 3: QF/CHP Agreements for RA-only capacity that are for one half or less of the contracted amount in the instant Agreements (up to no more than 140.25 MW associated with LMEC and 60 MW associated with Gilroy), but are otherwise identical to the instant LMEC and Gilroy Agreements.~~

3. If SCE renegotiates amended Agreements with Calpine consistent with one of the three options outlined in Resolution~~Order Paragraph 2~~, SCE shall resubmit the amended Agreements ~~via a Tier 1 Advice Letter~~ within 30 days after the approval of this Resolution.

4. SCE ~~is encouraged, but not required, to~~shall consult with its Procurement Review Group about any amended Agreements consistent with the Options presented in the Resolution~~Order Paragraph 2 prior to submitting amended Agreements to the Commission via a Tier 1 Advice Letter~~.

5. If SCE negotiates amended Agreements consistent with the Options presented in the Resolution~~Ordering Paragraph 2, as long as the per-megawatt cost of the contract is not increased from Advice Letter 2771-E~~, additional review by an Independent Evaluator is not required.

6. SCE shall not invite or accept any capacity-only contracts in their existing or future Combined Heat and Power solicitations, except as Utility Prescheduled Facilities or Additional Dispatchable Capacity as defined in the Qualifying Facility/Combined Heat and Power Settlement Agreement adopted in Decision 10-12-035.

7. For any other capacity-only contracts signed by SCE as a result of their first Combined Heat and Power Requests for Offers required under the Qualifying Facility/Combined Heat and Power Settlement Agreement adopted in Decision 10-12-035, the same options outlined in Ordering Paragraph 2 of this Resolution will be available, if contracts are renegotiated and resubmitted for Commission approval, as applicable.

8. In no event shall RA-only capacity from any CHP RFO be accounted for as meeting any part of the CHP MW Procurement Targets under the QF/CHP Program.

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 June 27, 2013; the following Commissioners voting favorably thereon:

_____
Paul Clanon
Executive Director