Pacific Gas and Electric Company

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July 15, 2013

Energy Division Tariff Unit
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

Subject: **Proposed Alternate Resolution E-4529 of Commissioner Ferron**
PG&E's Advice 4074-E filed on July 2, 2012

Dear Energy Division Tariff Unit:

Pacific Gas and Electric Company ("PG&E") respectfully submits its comments on the Proposed Alternate Resolution ("PAR") E-4529 of Commissioner Ferron, which denies PG&E's request for approval of the Confirmation for Resource Adequacy ("RA") Capacity Product from the Los Medanos Energy Center ("LMEC") between PG&E and Calpine Energy Services, L.P. ("LMEC Agreement") and prohibits PG&E from inviting or accepting capacity-only contracts in any Combined Heat and Power ("CHP") Request for Offer ("RFO") unless those contracts are for Utility Prescheduled Facilities ("UPF") .

Summary

Advice 4074-E asks the California Public Utilities Commission ("CPUC" or "Commission") to find that the LMEC Agreement is reasonable and will count toward the CHP megawatt ("MW") target assumed by PG&E in the Qualifying Facilities ("QF")/CHP Settlement Agreement ("Settlement Agreement") adopted by Commission Decision ("D.") 10-12-035. The PAR denies the counting request and does not address the reasonableness issue. Findings and Conclusions ("F/C") #5 of the PAR states:

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

The PAR is deeply flawed and should not be adopted. It relies on ill-conceived policy, ignores due process requirements for the amendment of CPUC decisions, imposes a poor economic outcome on investor-owned utility ("IOU"), Energy Service Provider, and Community Choice Aggregation customers, contains factual errors, and arbitrarily limits choices for CHP sellers.

The PAR states that LMEC was eligible to participate in the CHP RFO because it met the criteria in the Settlement Agreement Term Sheet ("Term Sheet").[1] In order to disqualify LMEC, the PAR attempts to impose additional eligibility criteria and thereby amend the Term Sheet. These modifications are proposed almost three years after the CPUC's approval of the Settlement Agreement, change the benefits and burdens of the Settlement Agreement with respect to the Settling Parties, are not based on fact, and contravene the principles of the Settlement Agreement and the Commission's own findings in D.10-12-035. In addition, by imposing a new term in the Settlement Agreement, the PAR would trigger the provision in the Settlement Agreement that allows any party that is unwilling to accept such change to

[1] "Under Section 4.2.2.1 of the QF/CHP Settlement Term Sheet, LMEC qualifies to participate in the CHP RFO. Specifically: …the facility exceeds the 5 MW threshold; the facility satisfies the definition of "CHP Facility"…; the facility is certified as Qualifying Facilities with the FERC…." PAR, p. 8.

notify the other Settling Parties[2] of the need to negotiate a resolution acceptable to all parties; failure to resolve the new term and obtain Commission approval of the resolution will cause the Settlement Agreement to terminate.[3] The resolution would amend D.10-12-035 without conforming to the due process requirements of Public Utilities Code Section 1708 and adopt findings that are not supported by substantial evidence. These defects would subject the PAR to reversal on appeal. It is entirely unnecessary for the Commission to take this road because it can achieve its CHP policy objectives by adopting the compromise embodied in the Alternate Draft Resolution ("ADR") offered by President Peevey.[4] If the Commission believes that the LMEC Agreement would occupy too much of the CHP MW target, it should authorize PG&E to count 50% of the LMEC Agreement capacity toward its MW Target.

A. The Unilateral Imposition of New Terms Violates the Principles of the Settlement Agreement and Well-Established CPUC Procedure.

The Settling Parties designated the CHP RFO to be one of the primary avenues for IOU procurement of QF power under the Public Utility Regulatory Policies Act ("PURPA") after the expiration of power purchase agreements ("PPAs") signed in the 1980s. Eligibility to participate in the CHP RFO is primarily based on whether the facility currently meets the energy efficiency standards embodied in the federal definition of a qualifying cogeneration facility; if it does not meet the CHP definition, it may qualify if it met the standards as of a specific date and has converted its operations to be utility-dispatchable, i.e. becomes a UPF.[5]

Eligibility to participate in the CHP RFO relates to the size and efficiency of the generating facility, not to the type of electricity product (i.e., energy, capacity, ancillary service, etc.) offered by the generator. The PAR correctly notes that capacity-only products are neither expressly authorized to compete in CHP RFOs nor expressly prohibited.[6] The PAR's decision to disqualify the LMEC Agreement from counting toward MW targets is based on new criteria that are categorically different from those provided in the Term Sheet, would clearly amend the Settlement Agreement. It would also impermissibly amend D.10-12-035, which approved the Settlement Agreement.

Pursuant to the specific request of Settling Parties,[7] D.10-12-035 found that the Settlement Agreement

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[2] The nine Settling Parties consist of PG&E, Southern California Edison Company ("SCE"), San Diego Gas & Electric Company ("SDG&E"), Cogeneration Association of California ("CAC"), Energy Producers and Users Coalition ("EPUC"), California Cogeneration Council ("CCC"), The Utility Reform Network, Independent Energy Producers Association, and the Division of Ratepayer Advocates.

[3] See Settlement Agreement at p. 4, "Each party shall review any Commission orders regarding this Settlement Agreement to determine if the Commission has changed, modified, or severed any portion of the Settlement Agreement, deleted a term, or imposed a new term…(f)ailure to resolve such change, modification, severance, deletion or new term to this Settlement Agreement to the satisfaction of all Parties within ninety (90) calendar days of notification, and to obtain Commission approval of such resolution promptly thereafter, shall cause this Settlement Agreement to terminate." Both PG&E and SCE have submitted capacity-only agreements with LMEC arising out of their respective CHP RFOs. SCE also cited this provision in its June 17, 2013 comments on Draft Alternate Resolution E-4569, concerning SCE's LMEC Agreement.

[4] See, "I.D. #12140, Alternate Resolution ("ADR") E-4529, June 27, 2013." PG&E accepts the ADR's offer to approve the LMEC Agreement if it is modified in accordance with one of three specified options to reduce the number of megawatts ("MW") procured. In addition, PG&E accepts the Commission's preference to avoid the solicitation and execution of contracts for capacity-only products in future CHP RFOs to meet its CHP MW procurement requirements under Settlement Agreement.

[5] Settlement Agreement Term Sheet, 4.2.2.1 states that a CHP generator with a nameplate larger than 5 MW may bid into the CHP RFO provided that it meets the definition of a qualifying cogeneration facility under 18 CFR Sec 292.305 ("PURPA Efficiency Standards") and the CPUC's Emissions Performance Standard. Section 4.2.2.2 makes eligible a CHP facility that met the PURPA Efficiency Standards as of September 2007 and converts to a Utility Prescheduled Facility. A Utility Prescheduled Facility is defined as "An Existing CHP Facility that has changed operations to convert to a utility controlled scheduled dispatchable generation facility, including but not limited to an EWG (exempt wholesale generator)."

[6] PAR, F/C #2.

[7] "As provided under Rule 12.5 of the Commission's Rules of Practice and Procedure, the Parties request that the Commission expressly find the Settlement Agreement Term Sheet is precedential." Settlement Agreement, p. 5.

Term Sheet is precedential.[8] Accordingly, the Commission established that the terms of the Settlement Agreement constitute precedent to be applied in the proceedings that gave rise to the Settlement Agreement and "any future proceeding."[9] The Commission's failure to enforce the terms of the Settlement Agreement could constitute an amendment of D.10-12-035. While evidentiary hearing is not required to alter or amend the decision in this case, the Commission must provide parties an opportunity for notice and comment before amending any Commission decision.[10] Like all CPUC decisions, D.10-12-035 is subject to modification under Commission Rule 16.4, Petition for Modification, which requires the petitioner bear certain responsibilities to justify its requested modification, such as to properly support its allegations of fact.

The PAR modifications achieve an outcome desired by a minority of the Settling Parties representing the interests of certain CHP sellers. The PAR would amend the Term Sheet in favor of EPUC/CAC and CCC ("CHP Parties"), who are three Settling Parties who represent the interests of CHP sellers. The amendments are likely to increase the cost of CHP procurement and are opposed by PG&E and SCE, two of the Settling Parties that purchase CHP generation on behalf of their customers. If the Commission were to issue the PAR, it would effectively amend D.10-12-035 through the issuance of a resolution and skirt the procedural protections to which the Settling Parties are entitled.

The PAR's objective is to disqualify an eligible participant in the CHP RFO by modifying D.10-12-035 retroactively, with none of the safeguards provided by the Commission's Rules and the Public Utilities Code. CAC/EPUC claims that LMEC's RA product "is not base load operations reflecting high load factors sustaining a thermal host's industrial operations, i.e., the facilities contemplated by the Settlement."[11] In their comments on the draft resolution approving PG&E's LMEC Agreement, CAC/EPUC argued that LMEC's RA operations are not CHP operations for purposes of the Settlement Agreement.[12] There is no basis for this claim, and any implied difference between CAC/EPUC's notion of CHP operations and LMEC cannot be used to disqualify LMEC for several reasons. First, the eligibility criteria for participation in the CHP RFO do not include an operational profile. Second, CHP facilities come in diverse sizes, technologies, and operational profiles. The use of eligibility criteria serving the economic interests of a subset of CHP Parties to disqualify the LMEC agreement would constitute unfair bias. Third, the asserted criteria are so vague that they cannot be applied to potential CHP RFO participants without violating their right to due process. There are no standards for "high load factors" or "balanced and integrated" operation.

The PAR would reject the entire LMEC Agreement because as a capacity-only contract, "it is inconsistent with the requirements of the Combined Heat and Power Request for Offer ("CHP RFO") competitive solicitation under the Qualifying Facility and Combined Heat and Power Program Settlement Agreement ("QF/CHP Settlement"). Only contracts that include energy can be solicited through a CHP RFO."[13] This statement wrongly assumes that the PAR can unilaterally change the precedential Term Sheet and D.10-12-035. This change may occur only through procedures designed to protect the due process rights of all of the Settling Parties. Because unilateral change through a resolution is not one of those procedures, that language must be stricken from the resolution.
On the other hand, LMEC's lower cost CHP procurement would provide substantial economic benefit for

[8] D.10-12-035, Ordering Paragraph ("OP") 1, Conclusions of Law ("COL") 20.

[9] CPUC Rules of Practice and Procedure, Rule 12.5.

[10] California Public Utilities Code Sections 1708 and 1708.5(f).

[11] CAC and EPUC protests of SCE AL 2771-E, Agreements between SCE and Calpine Energy Services, L.P. for Resource Adequacy Capacity, Sept. 20, 2012, p.1.

[12] Opposition of CAC to Draft Resolution E-4569 March 21, 2013, p. 3; see "Opposition of CAC to Draft Resolution E-4569 (Pacific Gas & Electric Company), p. 2, "CAC asks that the Commission refer to the March 21, 2013 filings as equally applicable to the PG&E draft Resolution E-4529."

[13] PAR, p. 2.

customers of PG&E and consumers subject to the Cost Allocation Mechanism ("CAM").[14] The resolution's rejection of the entire LMEC Agreement while failing to assure customers that the benefits of "eligible" CHP facilities will at least match those of the LMEC Agreement is simply irresponsible.

B. The PAR's Exclusion of an RA-only Product From the CHP RFO Is Based on Incorrect Facts and Poor Regulatory Policy.

1. CHP Parties' Characterization of CHP Resources Is Inconsistent With PG&E's Actual Portfolio.

The PAR attempts to distinguish the RA-only market from the QF/CHP market in order to reject CHP facilities that offer an RA product into the CHP RFO. The PAR states, "The majority of CHP facilities may have some flexibility to offer RA-only, additional dispatchable capacity or ancillary services products to the grid, but the majority of their capacity and energy is devoted to their industrial host. … (I)t is not the majority of CHP facilities that have the ability to provide the majority of their capacity as RA-only."[15] In PG&E's experience, these assumptions are false. First, the majority of the CHP facilities in PG&E's portfolio sell the majority of their capacity and energy to PG&E under "firm capacity" sales. Most devote a minority fraction of their capacity and energy to their industrial host. Second, the Net Qualifying Capacity ("NQC") value for CHP facilities, which is established by the California Independent System Operator ("CAISO") based on the generator's historic deliveries, is generally close to their firm contract capacity. These facilities have the ability to offer RA products and schedule electricity to the CAISO market, even if that is not their commercial preference. PG&E knows of several CHP facilities that operate by selling RA into the RA market and electricity into the CAISO market. There is no physical limitation that prevents a CHP facility from doing this.

2. CHP That Expected to Be Eligible to Participate in PG&E's Current CHP RFO Should Not Be Disqualified by This Resolution.

Ordering Paragraph ("OP") 2 prohibits PG&E from inviting or accepting "any capacity-only contracts in their (sic) existing or future Combined Heat and Power solicitations, except as Utility Prescheduled Facilities as defined in the Qualifying Facility/Combined Heat and Power Settlement Agreement adopted in D.10-12-035." This ruling is more stringent that other statements regarding the eligibility of capacity-only contracts throughout the PAR and should be modified in two respects. Most importantly, it should be made advisory to avoid triggering a potential renegotiation of the Settlement Agreement; it should also address only future combined heat and power solicitations consistent with the intent expressed on PAR p. 9 to "speak to this point as it pertains to future RFOs conducted for CHP." The words "invite or" should be stricken from OP 2 to avoid invalidating the current CHP solicitation, which allowed capacity-only products to be submitted. The remaining text will prevent PG&E from accepting capacity-only products.

3. CHP Sellers and Customers Are Harmed by the Disqualification of an RA-Only Product From the CHP RFO.

The PAR directs IOUs to refrain from soliciting RA-only contracts in their CHP solicitations primarily because an RA program already exists for capacity-only resources, and doing so could lead to "forum shopping" in the RA market.[16] Excluding a CHP product from the CHP RFO simply because the product may be offered into a different RFO limits the sales opportunities of more versatile CHP generators; it also denies electricity customers access to a potentially cost-effective means of procurement. Clearly,

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[14] CAM customers pay a pro-rata share of the cost of capacity procured under the Settlement Agreement pursuant to Settlement Agreement Term Sheet Sections 13.1.2.1 and 13.1.2.2.

[15] PAR, p. 10.

[16] PAR, p. 9.

renewable generation may compete under the Renewable Auction Mechanism, the RPS RFO, or sign a QF PURPA pro-forma agreement. CHP generators should be able to exercise a full range of options for selling capacity and energy, whether individually (such as RA and toll) or together (as in a PURPA PPA) and be evaluated in accordance with the criteria of each particular procurement venue. EPUC/CAC and CCC's proposal to bar RA-only products from the CHP RFO should be rejected due to its anticompetitive effects. Further, the PAR's suggestion that a participant's offer might not be properly evaluated if the same product were tendered in response to different solicitations is a red herring. The IOUs routinely value different products provided by facilities and have discussed this evaluation methodology with the PUC.

4. **The PAR Outcome Rejects the Best Option for Customers of PG&E and CAM Members and Flies in the Face of the RFO Process. The PAR Should Authorize PG&E to Resubmit the LMEC Agreement With up to 50% of Its Capacity.**

The PAR acknowledges that the Commission should have ruled on the eligibility of capacity-only contracts before PG&E and SCE had conducted its RFO and signed contracts with counterparties.[17] Yet, the PAR does not adequately justify its decision to change the CHP procurement rules in order to reject an offer that was among the most cost-effective, which PG&E signed in reliance upon the explicit terms of the Settlement Agreement and which the IE recommended for CPUC approval.[18] The retroactive application of the new eligibility criteria will most likely result in higher CHP procurement costs to PG&E's customers and CAM member customers. It compromises the integrity of the RFO process by changing the rules after the utility has signed a contract with an eligible counterparty. The PAR's rejection of the entire LMEC Agreement is not necessary to protect any other interests. If the Commission believes that the LMEC Agreement would occupy too much of the CHP MW target, it should authorize PG&E to count 50% of the LMEC Agreement capacity toward its MW Target.

Conclusion

LMEC is a CHP facility that meets the eligibility criteria for participation in the Commission-mandated CHP RFO, and there is no prohibition against procuring the capacity-only product offered by LMEC and counting it toward PG&E's CHP target. The PAR is unsupportable because it retroactively and unilaterally adds eligibility criteria proposed by a faction within the Settling Parties in order to unconditionally reject the contract of a CHP facility that is not a member of a protesting party. It unfairly disadvantages one type of eligible CHP facility by attempting to circumvent the Settlement Agreement and the Commission's rules on modifying decisions. Moreover, the proposed eligibility criteria are based on assumptions contrary to the actual operations of CHP facilities that sell to PG&E. The PAR threatens to trigger the renegotiation of the Settlement Agreement by forcibly adopting a new term to the agreement. On the other hand, the ADR (Peevey) would allow PG&E to execute and count a new LMEC Agreement with only half the originally-proposed capacity and provide guidance regarding future CHP RFOs. PG&E has already acquiesced to avoid capacity-only agreements in subsequent CHP RFOs, so that renegotiation of the Settlement Agreement will not occur. For all of these reasons, the PAR should be rejected.

Sincerely,

Brian Cherry /IG

Vice President – Regulatory Relations

[17] PAR, p. 7.

[18] *See,* ADR, p. 21.

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

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

Reference to PAR	Corrections and Revisions
(1) Ordering Paragraph 1	**Analysis:** The basis for rejection of PG&E's Advice Letter is wrong – capacity-only contracts are not ineligible to participate in CHP RFOs. However, PG&E would accept rejection subject to approval of a renegotiated LMEC Agreement providing 50% of the original contract capacity counting toward the MW target. **Recommendation:** Ordering Paragraph 1 should be amended as follows: The request of Pacific Gas and Electric Company in Advice Letter 4074-E for Commission approval of the Los Medanos Energy Center Agreement with Calpine in its entirety is denied without prejudice. An amendment to Advice Letter 4074-E requesting Commission approval of a renegotiated Agreement for 50% of the capacity proposed by the original Advice Letter will be approved.
(2) Ordering Paragraph 2	**Analysis:** Participants that made an RA-Only offer in PG&E's current CHP RFO before the issuance of the PAR should not be disqualified; however, PG&E will not accept any such offers. **Recommendation:** Strike "invite or" as shown below to avoid disqualification of eligible participants in PG&E's current CHP RFO. Pacific Gas and Electric Company shall not ~~invite or~~ accept any capacity-only contracts in their existing or future Combined Heat and Power solicitations, except as Utility Prescheduled Facilities as defined in the Qualifying Facility/Combined Heat and Power Settlement Agreement adopted in D.10-12-035.

(3) Eligibility of capacity-only procurement to participate in CHP RFO	**Analysis**: In its Summary, the PAR incorrectly states that the LMEC Agreement is rejected because the CHP RFO requires participants to offer to sell energy. This is incorrect. There is nothing in the Settlement Agreement that requires contracts solicited through the CHP RFO to deliver energy. The PAR should authorize PG&E to resubmit the LMEC Agreement with up to 50% of its capacity to address the issues identified in F/C #5. **Recommendation**: Strike the following text: ~~because it is inconsistent with the requirements of the Combined Heat and Power Request for Offer ("CHP RFO") competitive solicitation under the Qualifying Facility and Combined Heat and Power Program Settlement Agreement ("QF/CHP Settlement"). Only contracts that include energy can be solicited through a CHP RFO.~~ **Analysis**: F/C #2 and F/C #5 are contradictory. F/C #2 correctly observes that capacity-only products are not prohibited from participating in CHP RFOs, while F/C #5 states that capacity-only contracts are ineligible to participate in CHP RFOs. The PAR cannot re-write the Settlement Agreement, so the statement that capacity-only contracts are ineligible must be stricken from F/C #5, and guidance regarding the allowable MW should be inserted. **Recommendation**: Retain F/C #2 as written: Pursuant to the QF/CHP Settlement, Section 4.2.2. capacity-only products are not expressly authorized to compete in CHP-only RFOs. They are not expressly prohibited either. Amend F/C #5 as shown: The LMEC Agreement in Advice Letter 4074-E should be rejected, but PG&E should be authorized to submit a revised LMEC Agreement for 50% of the original capacity, because ~~capacity-only contracts are ineligible to participate and because~~ approval of the original contract would occupy too many reserved CHP MW with a capacity-only contract, removing opportunities for other CHP facilities to provide benefits to PG&E.

(4) GHG Counting	**Analysis**: The GHG counting protocol is described incorrectly. LMEC is an eligible facility with no change in operations and is neutral per the Settlement. However, at page 11, the PAR states, "Therefore, the Commission did not calculate its embedded GHG emissions (or potential GHG emissions reductions) against the double benchmark using the methodology in Section 7.3." This statement is misleading because the Settlement Agreement does not provide for this calculation for ANY existing facility, regardless of PPA status under a legacy QF PPA. The actual reason the Commission did not calculate the embedded GHG emissions for the LMEC Agreement is because was no change in operations. **Recommendation:** The following statement, as well as the statement quoted above, should be deleted to avoid treating the LMEC Agreement any differently from other similarly-situated contracts: ~~This Calpine facility existed but was not under a QF contract at the time. Therefore, the Commission did not calculate its embedded GHG emissions (or potential GHG emissions reductions) against the double benchmark using the methodology in Section 7.3. Since we reject this capacity-only contract, we do not calculate the GHG emissions reductions for the purposes of fulfilling the GHG targets set forth in D.10-12-035. However, if PG&E were to execute a different eligible contract from LMEC, we recognize that we will need to re-visit how to count the potential GHG emissions reductions at that time.~~

CERTIFICATE OF SERVICE

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

1) Commissioner Michael Peevey
2) Commissioner Mark Ferron
3) Commissioner Mike Florio
4) Commissioner Catherine Sandoval
5) Commissioner Carla Peterman
6) Edward Randolph – Director, Energy Division
7) Karen Clopton – Chief Administrative Law Judge
8) Frank Lindh – General Counsel
9) Brian Stevens – Advisor for President Michael Peevey
10) Michael Colvin – Advisor for Commissioner Mark J. Ferron
11) Jennifer Kalafut – Advisor for Commissioner Carla J. Peterman
12) Cem Turhal – Analyst, Energy Division
13) Damon Franz – Supervisor, Energy Division
14) Energy Division Tariff Unit – Energy Division
15) John Leslie - McKenna Long & Aldridge LLP
16) Service List for Alternate Draft Resolution E-4529
17) Service List for R.10-05-006

/S/ IGOR GRINBERG
Igor Grinberg
PACIFIC GAS AND ELECTRIC COMPANY

Date: July 15, 2013