

# ELLISON, SCHNEIDER & HARRIS L.L.P.

ANNE J. SCHNEIDER  
1947-2010

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

## ATTORNEYS AT LAW

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

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

OF COUNSEL:  
RONALD LIEBERT

August 26, 2013

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

Re: Comments of The Independent Energy Producers Association on Draft Resolution E-4555 Addressing Southern California Edison Company's Advice Letter 2784-E.

To the Energy Division:

Independent Energy Producers Association ("IEP") respectfully submits these comments in support of Draft Resolution E-4555 and Southern California Edison Company's ("SCE") Advice Letter ("AL") 2784-E requesting approval of six agreements ("Sycamore Agreement") between SCE and Sycamore Cogeneration Company pursuant to the terms of the Qualifying Facility and Combined Heat and Power Settlement Agreement ("QF/CHP Settlement") adopted in Commission Decision ("D") 10-12-035.

The Commission has reached the appropriate proposed outcome in concluding that Sycamore meets the eligibility requirements (in this case, as a "Utility Prescheduled Facility" or UPF that executed a hybrid contract); correctly recognizes that Investor Owned Utilities ("IOUs") can request offers with dispatchability terms that differ from the CHP RFO Pro Forma PPA; and, correctly concludes that Sycamore is a viable project able to participate in SCE's 2011 Combined Heat and Power Request for Offers ("CHP RFO") solicitation process. As more fully discussed below, the Sycamore Agreement should be expeditiously approved.

### **1. The Commission Correctly Identifies Sycamore as an Eligible CHP Resource Under the Terms of the QF Settlement Agreement**

Shell Energy North America, Marin Energy Authority, and Alliance for Retail Energy Markets (collectively "Joint Parties"), in a partial protest, assert that due to low forecasted capacity factors, the Sycamore Agreement is essentially a Resource Adequacy-only contract and Commission Decision ("D") 10-12-035 did not anticipate that IOUs would purchase capacity only contracts via the RFOs and therefore ineligible to participate in the CHP RFO. Joint Parties further state that because capacity-only contracts are not within the scope of the Settlement, the

Sycamore Agreement is ineligible for Cost Allocation Mechanism (“CAM”) treatment and recommend rejection of the RA and Toll Contracts for dispatchable capacity.

The Sycamore Agreement and its approval by Energy Division properly recognize that the CHP/QF Settlement contemplated (1) that eligibility to participate depended only on CHP or UPF status as defined therein; and (2) that the pro forma PPA may be modified to reflect different operating profiles.

The eligibility criteria to bid into the CHP RFO is described in Section 4.2.2.1 and involves only that the project meet the definition for CHP defined in that Settlement; the special eligibility criteria for CHP facilities converting to Utility Prescheduled Facilities (“UPF”) is spelled out in the Section 4.2.2.2 of the Settlement Term Sheet.

“CHP Facility that met the PURPA efficiency requirements (18 C.F.R. §292.205) as of September 2007 and converts to a Utility Prescheduled Facility is also eligible to participate in the CHP RFOs. After the Existing CHP Facility converts to a Utility Prescheduled Facility, it may be either a Qualifying Facility or an Exempt Wholesale Generator if the facility otherwise meets the criteria in this Section 4.2.2.2.”

Given the context in which the Settlement Agreement was developed, reflected by its assertion that CHP RFOs are designed to work for *CHP Facilities that convert to a Utility Prescheduled Facility*, IEP finds no basis for the conclusion that Sycamore is not eligible to participate in SCE’s 2011 CHP RFO, and is not permitted to be considered for a procurement contract. Sycamore’s status as a UPF resource under the terms of the Settlement Agreement ensures this eligibility.

## **2. The CHP Pro Forma was Properly Modified.**

Section 4.2.12 of the Settlement Term Sheet states that IOUs can request offers with dispatchability terms that differ from the CHP RFO Pro Forma PPA. As shown by the modifications in Table 2 (“Structure of Agreements between SCE and Sycamore”) which accommodate low capacity factors associated with UPF operations, Sycamore’s declining thermal need necessitates its conversion to a UPF with dispatchable generating capacity. The CHP PPA, Confirms, and Master Agreement were each modified by amendment to address the UPF conversion process to ensure that Sycamore remains a viable project.

## **3. The Commission Appropriately Rejects Joint Parties’ Protest that Sycamore Only Provides Resource Adequacy Capacity.**

The Joint Parties’ assert that the Sycamore Agreement is essentially a Resource Adequacy-only contract that is ineligible under the CHP RFO solicitation process. Contrary to this assertion, the structure underlying the Sycamore Agreement for multi-unit operations to provide multiple power products as a UPF were negotiated consistent with the Settlement Term

Sheet. Having negotiated this suite of energy products in aggregate to accommodate the declining steam demand of Sycamore's thermal host and multiple generating units, the Sycamore Agreement is consistent with the megawatt counting rules of the Settlement and therefore eligible to participate in the CHP RFOs whether as a Qualifying Facility or Exempt Wholesale Generator.

#### 4. Conclusion.

Draft Resolution E-4555 correctly finds that Sycamore meets the eligibility requirements to bid into SCE's 2011 CHP RFO; that dispatchability terms can differ from the CHP Pro Forma to accommodate low capacity factors associated with UPF operations such as Sycamore, and appropriately rejects Joint Parties' protest that Sycamore only provides Resource Adequacy Capacity without taking into consideration multi-unit operations. Therefore, the Commission should adopt this Resolution as consistent with the requirements of the QF/CHP Settlement and keeping with the integrity of the CHP Program.

Respectfully submitted,



Douglas K. Kerner  
*Attorneys for The Independent Energy Producers  
Association.*

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

Noel Crisostomo  
Energy Division  
[Noel.crisostomo@cpuc.ca.gov](mailto:Noel.crisostomo@cpuc.ca.gov)

Damon Franz  
Energy Division  
[Damon.franz@cpuc.ca.gov](mailto:Damon.franz@cpuc.ca.gov)

John Leslie, [jleslie@mckennalong.com](mailto:jleslie@mckennalong.com), for Shell, MEA, & AREM  
Michael Alcantar, [mpa@a-klaw.com](mailto:mpa@a-klaw.com), and Katy Rosenberg, [klc@a-klaw.com](mailto:klc@a-klaw.com), for CAC  
Akbar Jazayeri, [advicetariffmanager@sce.com](mailto:advicetariffmanager@sce.com), SCE  
Leslie Starck, [karyn.gansecki@sce.com](mailto:karyn.gansecki@sce.com), SCE  
Marc Ulric, [marc.ulric@sce.com](mailto:marc.ulric@sce.com), SCE  
Claire Torchia, [Claire.torchia@sce.com](mailto:Claire.torchia@sce.com), SCE  
Katie Sloan, [Katie.sloan@sce.com](mailto:Katie.sloan@sce.com), SCE

Service List: R.12-03-014