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August 5, 2013

California Public Utilities Commission
ED Tariff Unit, Energy Division
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Re: Comments of California Cogeneration Council on Draft Resolution E-4554

I. Introduction

The California Cogeneration Council ("CCC") provides these comments on Draft Resolution E-4554 ("Draft Resolution"), which denies approval of the two agreements between Southern California Edison Company ("SCE") and Harbor Cogeneration Company, LLC ("Harbor"), submitted to the California Public Utilities Commission ("Commission") by Advice Letter 2772-E ("AL 2772-E"). The CCC supports the Draft Resolution. Set forth herein are comments on a few issues that require refinement or adjustment to help ensure that the Combined Heat and Power ("CHP") solicitations ("RFOs") of California's investor-owned utilities ("IOUs") result in contracts that meet the requirements and objectives of the Combined Heat and Power Program ("CHP Program") Settlement Agreement ("Settlement").

II. Discussion

A. The Thermal Host Commitment Associated with a CHP Facility Must be Defined Sufficiently Enough to Allow for a Complete Evaluation by the IOU and the Commission

Although the CCC agrees with the determination set forth in the Draft Resolution that a CHP facility need not have secured a contract with a thermal host prior to participating in a CHP RFO,[1] it is imperative that the thermal host commitment be firm and sufficient enough to allow the IOU and the Commission (i) to assess whether the facility will actually meet the eligibility requirements set forth in Section 4.2.2.1 of the Settlement Term Sheet ("Eligibility Requirements") at the time that the CHP agreement commences, and (ii) to assess the facility's comparative contribution to meeting the goals of the Settlement, including the MW Targets and greenhouse gas ("GHG") Emissions Reduction Targets. Without such level of granularity, it is not possible to make the requisite determinations and commensurate comparisons with other bidders. In fact, the Harbor facility presents a case perfectly demonstrating the problems associated with speculative bids. Specifically, as set forth in the report of the Independent Evaluator ("IE"), SCE chose the Harbor bid over other qualified bidders based upon an understanding that Harbor intended to deploy, but had not yet obtained, a thermal host.[2] Quite simply, at the time of Harbor's submittal into SCE's 2011 CHP RFO, such a host was not in place, and there was no way for SCE either to evaluate compliance with the Eligibility Requirements or to make comparisons regarding the facility's contribution towards achieving the goals of the Settlement in relation to other bidders. When such information was supplied approximately six months after Harbor was selected by SCE, the data was inconsistent and troubling, as meticulously set forth in the Draft Resolution. In short, SCE

[1] Draft Resolution at p. 23.
[2] Report of the Independent Evaluator, Southern California Edison Company First Combined Heat and Power Request for Offers—Tack 1 and Power Purchase Agreement with Harbor Cogeneration Company, LLC (Aug. 2012) at p. 37.

should have never chosen the Harbor facility, and the resulting damage to the CHP RFO process and unsuccessful bidders should have been avoided. Once a CHP facility has a commitment upon which the IOU and the Commission can rely, an IOU can evaluate the bid and potentially select the facility in its CHP RFO bid process. Before such time, the CHP facility bid should be rejected.

The Harbor situation provides particularly compelling evidence as to how conjecture can compromise the evaluation process and the CHP Program. It is at best troubling that the information brought to light by the Draft Resolution evidences that SCE lacked fundamental information about the Harbor facility at the time it short listed Harbor as well as at the time that it submitted AL 2772-E. The Draft Resolution describes "the conflicting descriptions from SCE, the IE and Harbor of the facility's operational configuration for purposes of meeting the QF cogeneration standards stipulated for recipients of power purchase agreements resulting from the CHP RFO."[3] Specifically, the Draft Resolution explains that it was SCE's understanding that Harbor would convert from a combined cycle gas turbine generating facility into a simple cycle gas turbine facility and according to the IE, "steam will be directed to the steam host instead of the two steam turbines when Harbor is being dispatched by the CAISO."[4] In contrast, Harbor's Form 556 filing at the Federal Energy Regulatory Commission ("FERC") describes components and operations of a combined cycle CHP facility.[5] This serious discrepancy in the descriptions of the Harbor facility demonstrates the unacceptable risk associated with an IOU selecting a facility during its CHP solicitations based upon "intent" instead of reliable information as to how a proposed CHP facility will operate, what thermal host that facility will serve and how the facility will serve that host.

Moreover, the timing of Harbor's FERC filing further illustrates that SCE should never have selected the Harbor facility during its 2011 CHP RFO. SCE notified Harbor that its facility had been selected on June 21, 2012 and executed the Harbor Agreements on July 2, 2012,[6] but Harbor did not file a Form 556 with FERC that actually reports the facility's projected fuel use and energy and thermal output, information "which can be used for estimating compliance with the standards for cogeneration facilities under P.U. Code Section 216.6, and 18 C.F.R. 292.205",[7] until December of 2012.[8] Essentially, SCE selected the Harbor facility based upon its understanding that Harbor "intend[ed] to become a CHP Facility"[9] and to find a steam host[10] six months before data was submitted to FERC that could actually be used to ascertain whether or not the facility would meet the Eligibility Requirements. In the context of the CHP Program, this is especially troubling because the Harbor facility was "evaluated" and chosen over projects with real commitments and data. To be clear, the CCC concurs that the thermal agreement with the host need not be executed at the time of bid submittal. This is particularly true for new projects. However, it is imperative that the thermal commitment be firm enough to allow a bid evaluation based on more than conjecture.

Further, under the Settlement, a key consideration for an IOU in selecting facilities during a CHP RFO is whether bidders meet the "Double Benchmark", which measures the additional amount of GHG emissions that otherwise would exist if the CHP facility did not exist.[11] In fact, a justification that can be claimed by an IOU for failure to meet its MW Targets under the Settlement is the efficiency of the CHP facilities participating in the IOU's procurement programs as compared to the Double Benchmark.[12] If a facility's bid package does not even identify the thermal host that will be served, an IOU cannot make a

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[3] Draft Resolution at p. 3; *see also* Form 556 of Harbor Cogeneration Company, LLC under FERC Docket No. QF13-218 (Dec. 27, 2012) (hereinafter "Harbor Form 556, FERC Docket No. QF13-218") at p. 9.
[4] *Id.*
[5] *Id.*
[6] AL-2772-E at p. 3
[7] Draft Resolution at p. 24.
[8] *Id.* at p. 3; *see also* Harbor Form 556, FERC Docket No. QF13-218 at p. 18.
[9] Reply of Southern California Edison to the protests of: (1) the California Cogeneration Council; the Energy Producers Coalition; and (3) Cogeneration Association of California to Advice Letter 2772-E (hereinafter "SCE Reply") at p. 3.
[10] AL-2772-E at p. 4.
[11] Settlement Term Sheet at § 7.1.2.
[12] Settlement Term Sheet at § 5.4.

reasoned determination regarding that facility's efficiency as compared to the Double Benchmark, and therefore the contribution of the facility toward the IOU's GHG Emissions Reduction Targets under the Settlement. The CCC is fully cognizant and appreciative of the fact that the Commission has ruled that it is acceptable for some winning bidders not to provide GHG benefits.[13] However, if the thermal host provides only a small demand for thermal energy, the result might be that, although the CHP project would qualify for QF status, it would increase GHG emissions based on the Double Benchmark. The Commission certainly needs to know the size of the thermal load before it can evaluate the resulting GHG emission impacts. The key point is that, without data from an existing or actual steam host, there was no way for SCE to make any valid determinations and therefore a fair comparison against other bidders.

As recognized in the Draft Resolution, SCE has made only minimal progress towards meeting its MW Target "A" goal and its GHG Emissions Reduction Target under the Settlement. The Draft Resolution "urges SCE to be judicious in its future CHP solicitations and to engage with counterparties that meet the requirements and objectives of the Settlement."[14] A key aspect of being judicious in future solicitations is to select facilities that provide sufficient information in their bid packages for the IOU to conclude that the facility will actually meet the Eligibility Requirements at the time that the CHP agreement commences, and to evaluate the facility's contributions toward MW Targets and GHG reduction goals. To ensure that these targets and goals are met, the Commission should clearly state in its resolution of AL 2772-E that each bid package must include sufficient information about the operation of the CHP facility, the thermal host and the manner in which the thermal host will be served. With such information, the IOU can reliably ascertain whether the facility actually meets the Eligibility Requirements, and how the Facility compares to the Double Benchmark and other bidders.

B. SCE's Interpretation of the Applicability of the Fundamental Use Test is Flatly Wrong and Rightfully Rejected in the Draft Resolution

Contrary to the position taken by SCE,[15] the Draft Resolution correctly concludes that the Harbor facility is a "new" cogeneration facility and, as such, is subject to the Fundamental Use Test[16]—the requirement under 18 C.F.R. 292.205(d)(3) and Section 1253 of the 2005 Energy Policy Act. Specifically, a new cogeneration facility (i) must use at least 50% of its annual energy output for industrial, commercial, residential or industrial purposes, or (ii) if the facility fails to meet this "safe harbor", the facility must present evidence to FERC that it "should nevertheless be certified given state laws applicable to sales of electric energy or unique technological, efficiency, economic, and variable thermal energy requirements."[17] The Draft Resolution also correctly concludes that the Harbor facility fails to meet the Fundamental Use Test[18] and therefore does not meet the Eligibility Requirements.[19]

Notwithstanding any further arguments that SCE may proffer to the contrary, the Draft Resolution is entirely correct that the Harbor facility must be designated a new cogeneration facility under Section 292.205(d) because: (1) the Harbor facility was not a QF on the date of enactment of Section 210(m) of the Public Utility Regulatory Policies Act ("PURPA") and (2) Harbor had relinquished its original QF status on February 15, 1999.[20] The fact that a new docket had to be established at FERC subsequent to Harbor's filing of QF certification in December of 2012 fully supports the new facility determination.[21] If Harbor had been an Existing CHP Facility, there would have been an existing QF docket at FERC. The Draft Resolution explains that Congress' intent was to "grandfather" existing certified QFs and cogeneration facilities that existed upon enactment of Section 210(m), but had not filed for FERC certification prior to its issuance of the final rule

[13] Alternate Resolution E-4529 (rev. 3) (July 25, 2013) at p. 13.
[14] Draft Resolution at p. 4.
[15] SCE Reply at p. 4.
[16] Draft Resolution at p. 3.
[17] 18 C.F.R. 292.205(d)(3).
[18] Draft Resolution at p. 37.
[19] *Id.* at p. 37, Finding and Conclusion #10.
[20] *Id.* at p. 20 (citing Section 1253, parts (n)(2)(A) and (n)(2)(B) of the amendments to Section 210 of PURPA).
[21] *See* Harbor Form 556, FERC Docket No. QF13-218.

amending the QF regulations.[22] The CCC concurs and emphasizes that it certainly was not Congress' intent to provide a loophole that would allow any entity that once operated a CHP generating facility to circumvent the Fundamental Use Test, especially if that entity had ceased CHP operations many years prior to adoption of the new laws and regulations. Simply put, any SCE argument that "existing" means existing at *any* time before enactment and implementation of the Section 210(m), even if not existing at that specified time, is clearly wrong and disingenuous. Further, as the CCC explained in its protest of AL 2772-E, the parties to the Settlement similarly never intended the term "Existing CHP Facility" to be so broadly defined for purposes of issuing contracts under the CHP RFOs.[23]

Moreover, even assuming *arguendo* that Harbor might be considered an Existing CHP Facility, the Draft Resolution correctly finds that the proposed changes to the facility, as compared to the facility's operations prior to the 1999 relinquishment of its QF status, are so significant that the Harbor facility must be deemed a new cogeneration facility under FERC Order 671.[24] As described in the Draft Resolution, Harbor's Form 556 states that the facility is configured to operate not only with its original 80 MW gas turbine, but also with two steam turbines that were added in 2001, raising its gross power production capacity to 102.2 MW.[25] This twenty-five percent expansion of the facility's capacity certainly qualifies as a change "so great to require 'that what an applicant is claiming to be an existing facility should, in fact, be considered a 'new' cogeneration facility at the same site.'"[26]

For each of the foregoing reasons, any further claim by SCE that the Harbor Facility is an Existing CHP Facility under the Settlement and thus exempt from the Fundamental Use Test must be squarely rejected. The Harbor facility is a new cogeneration facility, and the Harbor facility does not meet the Fundamental Use Test. Therefore, the Harbor facility does not meet the Eligibility Requirements. The Harbor Agreements must be rejected, as set forth in the Draft Resolution.[27]

C. SCE's Selection of CHP Bids for Unanticipated Products as well as Ineligible Facilities is Taking a Serious Toll on the CHP Program

As the CCC explained in its comments on AL 2772-E, Section 4.2.12 of the Settlement Term Sheet makes explicit that an IOU in a CHP RFO is required to select the bid of any eligible generator submitting a bid based on the pro forma CHP RFO purchase agreement over a non-pro forma bid, so long as the pro forma bid is "competitive (based on the standards in the Settlement and . . . commensurate with the product solicited)".[28] As contracts for a fully dispatchable tolling product and for resource adequacy only, the Harbor agreements are the result of a non-pro forma bid. The Draft Resolution errs by implying that because one of four projects selected in SCE's 2011 CHP RFO Track 1 (existing generators) resulted from a pro forma offer, SCE has complied with the requirements of the Settlement.[29] With all due respect, the fact that 75% of the bids selected by SCE were non-pro forma offers strongly suggests the contrary. The Draft Resolution should be revised to order SCE to comply with the Settlement Term Sheet going forward, including the requirement that it give preference to pro forma offers. Simply put, one in four contracts is not a preference and is not enough if the State is to retain and promote efficient CHP generation.[30]

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[22] Draft Resolution at p. 20.
[23] Protest of the California Cogeneration Council to Southern California Edison Company's Request for Approval of Certain Agreements for CHP Products with Harbor Cogeneration Company, LLC (Advice Letter 2772-E) at pp. 5-6.
[24] Draft Resolution at pp. 21-22.
[25] *Id.* at 21; *see also* Harbor Form 556, FERC Docket No. QF13-218 at p. 9..
[26] Draft Resolution at p. 21 (quoting FERC Order 671 at pp. 58-59).
[27] Draft Resolution at p. 37-38, Finding and Conclusion #10 and Ordering Paragraph #1.
[28] Settlement Term Sheet at § 4.2.12.
[29] Draft Resolution at p. 16.
[30] While SCE recently filed for approval of a contract with a new generator, Chevron Refinery, under a pro forma contract, it remains clear that non-pro forma bids and products are still getting preference over pro forma bids. The inability of facilities offering standard CHP products to win in solicitations against non-standard CHP products was exactly the driver leading to CHP-only RFOs and the preference for pro forma bids adopted as part of the Settlement.

The CHP facilities that entered into the Settlement did so relying on the fact that the IOUs would exercise good faith in carrying out its terms. The CCC emphasizes the harm that has already been done by SCE's failure to comply with its obligations under the Settlement. SCE has dallied negotiating a contract entered into based on a non-pro forma bid from a facility that had not even identified its steam host, much less provided concrete operational data and specifications upon which SCE could evaluate its bid. In the meantime, other bidders, including CCC members that had submitted pro forma bids based on real data and real specifications have spent the last fourteen months in limbo —unable to proceed through the transition process or, when applicable, to continue developing their projects because their bids were rejected in SCE's first CHP RFO and it has not yet initiated its second CHP RFO.

The CHP Program is in the transition phase and it is critical that appropriate signals be sent in the initial RFOs to those who must use the transition period to decide if they will be able to re-contract with an IOU or will need to make alternative arrangements, including the unfortunate determination that they will have to shut down their CHP facility and install conventional steam boilers. Timing is of the essence and incorrect signals are taking their toll on the CHP Program. Based on the results of the 2011 CHP RFOs, the signal is that MW targets are being filled with products that were never anticipated or, in the case of Harbor, with projects that lack the requisite eligibility. If a different signal is not shortly forthcoming, the goals of the Settlement to retain existing efficient CHP and to encourage new efficient CHP will be unduly compromised.

D. The Draft Resolution Attributes Comments Submitted by Other Parties to the CCC and Those Mistakes should be Corrected

As set forth in the Index and Appendix that are attached hereto, certain comments submitted by other parties have erroneously been attributed to the CCC. As the CCC has not expressed an opinion with respect to the identified issues, those mistakes can be easily corrected.

III. Conclusion

For the foregoing reasons, the CCC urges adoption of the Draft Resolution with the limited refinements suggested herein and as set forth in the Index and Appendix that are attached hereto.

Respectfully submitted,

/s/ Jerry R. Bloom

Jerry R. Bloom
Attorney for the California Cogeneration Council

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Attachment 1:
Index of Recommended Changes to
Draft Resolution E-4554

Page	Recommended Changes to Alternate Resolution
3	Add the additional text shown with double-underline to the first sentence of the second paragraph: "After selection by SCE in the CHP RFO in July 2012, Harbor self-certified in December 2012; a new QF docket, QF13-218, was established for Harbor subsequent to that filing."
4	Add the additional text shown in double-underline to the second paragraph: Although the Commission finds that Harbor does not meet the definition of a qualifying cogeneration facility, the Commission clarifies in this Resolution that CHP facilities need not have a thermal host under contract in order to participate in the CHP RFOs pursuant to the Settlement, but there needs to be sufficient information about the thermal host for the investor-owned utility ("IOU") and the Commission to assess whether the facility will meet the eligibility requirements set forth in Section 4.2.2.1 of the Settlement Term Sheet and to assess the facility's comparative contribution to meeting the goals of the Settlement, including the MW Targets and greenhouse gas ("GHG") Emissions Reduction Targets. A facility will need to meet the definition of a qualifying cogeneration facility upon commencing the CHP agreement and, per federal requirements, fulfill operational and efficiency requirements annually thereafter. SCE had insufficient information about the Harbor facility's thermal host to evaluate whether the facility would meet the eligibility requirements set forth in Section 4.2.2.1 of the Settlement Term Sheet and to evaluate the facility's contribution to meeting the goals of the Settlement, as compared to other bidders. Thus, SCE should not have selected the Harbor facility during its 2011 CHP RFO.
13	Delete the reference to the CCC, shown below in strikethrough, from the second full paragraph: The commission rejects ~~CCC and~~ CAC/EPUC's recommendations to deny the GHG Credit based on its magnitude or verifiability pursuant to the GHG Accounting Methodologies in Sections 7.3.2 and 7.4.1 of the Settlement Term Sheet.
16	Delete the second full paragraph in its entirety and replace it with the following text: SCE did not reply to this protest. The Commission agrees with the CCC that SCE appears not to have given preference to Pro Forma offers, as required by the Settlement. The Commission disagrees with the Independent Evaluator's assessment that SCE "appropriately selected Harbor's qualifying offer" (cite to IE Report, p. 2), among the four other executed contracts from the 2011 CHP RFO, particularly in light of the fact that SCE had insufficient information about the thermal host that would be served by the Harbor facility to evaluate its bid against the bids of other generators, including generators who submitted Pro Forma offers. The Commission emphasizes

Page	Recommended Changes to Alternate Resolution
	that only one of the four existing facilities selected from the RFO was a Pro Forma offer. Thus, 75% of the offers from existing facilities selected by SCE were not Pro Forma offers, which strongly indicates that SCE is not granting a preference to Pro Forma offers, as was agreed by the parties to the Settlement. In the future, SCE must comply with the Settlement Term Sheet, including the requirement that it give preference to Pro Forma offers.
20	Add the additional text shown in double-underline to, and delete the text shown in strikethrough from, the second full paragraph: While Harbor was a qualifying cogeneration facility prior to August 8, 2005, it was not a "qualifying cogeneration facility" "on the date of enactment." Harbor relinquished its original qualifying facility status on February 15, 1999. On December 27, 2012 Harbor filed a notice for self-certification with FERC. Following that filing, a new docket had to be established at FERC—QF13-218; there was no existing docket for the Harbor facility. If Harbor had been an Existing CHP Facility, there would have been an existing QF docket at FERC. For all of the foregoing ~~these~~ reasons, Harbor must be designated a "new cogeneration facility" under Section 292.205(d).
23	Add the additional text shown in double-underline to the first full paragraph: The Commission agrees with SCE that a CHP facility need not have secured a contract with a thermal host prior to participating in the CHP RFO. First, it is reasonable that a thermal host could potentially require that a CHP Facility to have a contract with a utility buyer prior to committing to co-locating with the CHP Facility. Second, it would be unnecessarily prohibitive to require a new qualifying cogeneration facility to satisfy the Operating Standard and Efficiency Standard in advance of participation in the RFO. CAC/EPUC's recommendation that the Commission, "confirm satisfaction of [the Operating and Efficiency] prerequisites" is impractical, particularly for CHP Facilities that have not commenced operation. 18 C.F.R. Sections 292.205(a)(1) and 292.205(a)(2) require the standards to be met during the first 12 months the facility produces electric energy and subsequent years thereafter. The Commission recognizes SCE's discretion to ensure a "robust, fair, and competitive" solicitation that is inclusive of New, Expanded, and Repowered CHP Facilities and agrees that CHP Facilities must meet the Eligibility Requirements of Section 4.2.2.1 of the Term Sheet upon commencement of operations. Notwithstanding the foregoing, there needs to be sufficient information about the thermal host for the IOU and the Commission to assess whether the facility will meet the eligibility requirement sets forth in Section 4.2.2.1 of the Settlement Term Sheet and to assess the facility's comparative contribution to meeting the goals of the Settlement, including the MW Targets and GHG Emissions Reduction Target.
23	Add the following new paragraph following the first full paragraph: The Commission emphasizes that under the Settlement, a key consideration for an IOU in selecting facilities during a CHP RFO is whether bidders meet the "Double

Page	Recommended Changes to Alternate Resolution
	Benchmark", which measures the additional amount of GHG emissions that otherwise would exist if the CHP facility did not exist (cite Settlement Term Sheet at § 7.1.2). A justification that can be claimed by an IOU for failure to meet its MW Targets under the Settlement is the efficiency of the CHP facilities participating in the IOU's procurement programs as compared to the Double Benchmark (cite Settlement Term Sheet at § 5.4). If a facility's bid package does not even identify the thermal host that will be served, an IOU cannot make a reasoned determination regarding the facility's efficiency as compared to the Double Benchmark and therefore the contribution of the facility toward the IOU's GHG Emissions Reduction Targets under the Settlement. This underscores the importance of the inclusion, in each CHP RFO bid package, of sufficient information about a facility's thermal host for a reasonably accurate evaluation and comparison with other bidders to be made.

Attachment 2:
Appendix of Proposed Findings and Conclusions
and Ordering Paragraphs

Set forth below are the California Cogeneration Council's proposed changes to the findings, conclusions and ordering paragraphs set forth in Draft Resolution E-4554. Deletions are shown in ~~strikethrough~~ and additions are shown in double underline.

FINDINGS AND CONCLUSIONS

1. Southern California Edison Company filed Advice Letter ("AL") 2772-E on August 31, 2012, in which it requested Commission approval of Resource Adequacy and Unit Contingent Tolling Confirmation Letters with Harbor Cogeneration Company ("Harbor"). AL 2772-E was timely protested by the California Cogeneration Council ("CCC"), Cogeneration Association of California, and Energy Producers and Users Coalition. ("CAC/EPUC") on September 20, 2012. SCE provided a timely reply to the protests on September 27, 2012.
2. The Commission agrees with CCC and CAC/EPUC that Harbor does not qualify as an "Existing CHP Facility."
3. Harbor is designated a "new cogeneration facility" under Section 292.205 because it was not a qualifying cogeneration facility as of August 8, 2005 and self-certified with FERC after February 2, 2006, specifically, on December 27, 2012, and a new "QF" docket, Docket No. QF13-218 was established for the facility subsequent to that filing.
4. Harbor does not meet the definition of an "Existing CHP Facility" under the Settlement; rather it is a "New CHP Facility."
5. Harbor proposes to operate with a capacity expansion and thermal host, neither of which were part of the Facility when it was previously a qualifying cogeneration facility in 1999. Therefore it is reasonable per the clarifications in FERC Order 671 that the Commission considers Harbor to be a "new cogeneration facility" under Section 292.205(d).
6. CCC protests that Harbor may not meet the Fundamental Use Test given the intermittent thermal product that it would supply under a tolling agreement.
7. The Commission rejects SCE's reply that the Fundamental Use Test of 18 C.F.R. Section 292.205(d)(3) is inapplicable to Harbor, because Harbor is a "new cogeneration facility" and therefore is subject to the Fundamental Use Test.
8. The Commission agrees with SCE that contracted CHP Facilities will meet the prerequisite definitions and eligibility for contracts upon the commencement of the agreement, but emphasizes that an IOU should not select any facility during a CHP RFO unless the facility's bid package includes sufficient information regarding the facility's thermal host for the IOU and the Commission to evaluate the facility's comparative contributions to meeting the goals of the Settlement, including the MW Targets and GHG Emissions Reduction Targets.
9. Harbor fails to demonstrate compliance with the Fundamental Use Test requirement.

10. Harbor is not eligible to commence a contract from the SCE CHP RFO per Section 4.2.2.1 of the Settlement Term Sheet because it fails to meet the Fundamental Use Test requirement under 18 C.F.R. 292.205.

10a. SCE had insufficient information about the Harbor facility's thermal host to evaluate whether the facility would meet the eligibility requirements set forth in Section 4.2.2.1 of the Settlement Term Sheet and to evaluate the facility's contribution to meeting the goals of the Settlement, as compared to other bidders. Thus, SCE should not have selected the Harbor facility during its 2011 CHP RFO.

10b. Only one of the four offers from existing facilities selected during SCE's 2011 CHP RFO was a Pro Forma offer; thus, 75% of the offers from existing facilities selected by SCE were not Pro Forma offers, which strongly indicates that SCE is not granting the preference to Pro Forma offers that the Settlement Term Sheet requires.

11. The 80 MW Contract Nameplate value for the Harbor Facility as listed in SCE's 1999 Semi-Annual Report will not count toward SCE's MW procurement Target.
12. CCC and CAC/EPUC protest that the SCE's GHG Credit proposed from the Harbor Agreements is insubstantial and unfounded.
13. The Commission rejects ~~CCC and~~ CAC/EPUC's recommendations to deny the GHG Credit based on its magnitude or verifiability pursuant to the GHG Accounting Methodologies in Sections 7.3.2 and 7.4.1 of the Settlement Term Sheet.
14. The GHG Credit of 3,215 MT CO_2e proposed to result from the Harbor Agreements is inappropriately calculated as a Physical Change pursuant to Section 7.3.1.2 of the Settlement Term Sheet.
15. Operational parameters from more recent information on Harbor suggest that Harbor's thermal output as a New CHP Facility would result in a net increase of 100 MT CO_2e.
16. The procurement will not be counted toward the QF/CHP Settlement greenhouse gas ("GHG") Emissions Reduction Target.
17. SCE is not authorized to recover costs in accordance with Section 13.1.2.2 of the Settlement Term Sheet and AL 2645-E, consistent with the directives of the QF/CHP Settlement.
18. The Commission does not believe that Harbor provides a viable CHP project.
19. The Emissions Performance Standard does not apply to Harbor, whose annualized plant capacity factor is less than 60%.
20. SCE has complied with the Commission's rules for involving the PRG and CAM groups.
21. The Commission disagrees with the IE's conclusion that the Harbor Agreements merit approval.

THEREFORE IT IS ORDERED THAT:

1. The request of the Southern California Edison Company for the Commission to approve the Harbor Agreements as requested in Advice Letter AL 2772-E is denied.

2. In its future CHP RFOs, Southern California Edison Company (i) may not select a facility that has provided insufficient information about its thermal host for a reasonable assessment to be made regarding the facility's comparative contribution to meeting the goals of the Settlement, including the MW Targets and GHG Emissions Reduction Targets, and (ii) must comply with the Settlement Term Sheet, including the requirement that it give preference to Pro Forma offers.