



August 5, 2013

California Public Utilities Commission
Attention: Energy Division, Tariff Unit
505 Van Ness Avenue
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Re Qualified Support of the Cogeneration Association of California to Draft Resolution E-4554¹

I. Introduction

The Cogeneration Association of California (CAC) supports the conclusions in the Draft Resolution disapproving the adoption of two contracts under the CPUC QF/CHP Program Settlement.² The reservations by CAC are to certain explanations or passages in the Draft Resolution that may be subject to misapplication in future Settlement implementation actions. The attached redline of the Draft Resolution identifies revisions to address these concerns.

Broadly, CAC's comments address the following:

- a. Eligibility Requirements under the Settlement require sufficient data and information regarding the host electrical and thermal demands and greenhouse gas (GHG) emissions profiles to reflect compliance with the Settlement standards and objectives.
- b. The rejection of eligible CHP facilities to reserve CHP RFO megawatts for Harbor caused material harm that warrants careful Commission action.
- c. Harbor is a "new" CHP facility under the Settlement and the PURPA Fundamental Use Test properly applies.
- d. Failure to give preference and regard to the CHP RFO pro forma contract offers undermines and defeats the stated objectives of the Settlement.

¹ The Draft Resolution denies approval of two agreements between Southern California Edison Company (SCE) and Harbor Cogeneration Company, LLC (Harbor), submitted to the California Public Utilities Commission by Advice Letter 2772-E.

² The Qualifying Facility and Combined Heat and Power Program Settlement Agreement, October 8, 2010 (Settlement); adopted pursuant to Decision 10-12-035, as modified by Decisions 11-03-051 and 11-07-010. See, *Application of S. Cal. Edison Co. (U338E) for Applying the Market Index Formula & As-Available Capacity Prices Adopted in D.07-09-040 to Calculate Short-Run Avoided Costs for Payments to Qualifying Facilities Beginning July 2003 & Associated Relief*, Cal. Pub. Utils. Comm'n D.10-12-035, Application 08-11-001 (Dec. 21, 2010), available at http://docs.cpuc.ca.gov/word_pdf/FINAL_DECISION/128624.pdf. FERC also considered the Settlement as part of its evaluation of PURPA 210(m) conditions in *Pacific Gas and Elec. Co.*, 135 FERC ¶ 61,234 (2011).



II. Discussion

A. Defining CHP Resources Targeted by the Settlement Necessarily Requires Sufficient Data and Information Regarding the Host Facility

To meet the objectives of the Settlement, an eligible CHP should have sufficient information and projected data regarding the thermal host and operations of the CHP facility. Only with such information may the Commission assess compliance with eligibility requirements set forth in Section 4.2.2.1. CAC acknowledges that such compliance is required at the time the contract commences, but the standards cannot be simply speculative or ignored in establishing the eligibility of the CHP facility under the Settlement. Moreover, the Settlement requires an assessment of the GHG accounting for the facility, which cannot be accomplished without such operating data. Absent this specific information, the Settlement's standards to compare CHP to CHP bids cannot be accomplished. In the case of Harbor, this failure of implementation caused eligible CHP bidders to be impermissibly disregarded. The Commission's action on the Draft Resolution should take steps to eliminate a repeat of this flawed evaluation process.

The Settlement establishes a "Double Benchmark" as part of the CHP RFO evaluation. This benchmark measures the additional amount of GHG emissions that otherwise would exist if the CHP facility did not exist.³ The Settlement recognizes the significance of this benchmark by permitting a utility to be excused from meeting its MW Targets if the CHP bidder fails this efficiency standard.⁴ Accordingly, a bid that does not address the demands and operation of the thermal host cannot demonstrate requisite comparisons to the Double Benchmark.

In short, SCE could not make a Settlement-viable assessment of Harbor without sufficient information regarding the demands and operation of the thermal host and the integrated CHP facility. The Draft Resolution appears to embrace these cognizable concerns with the proposed Harbor contracts and the failure to implement the Settlement conditions related to a proper efficiency and eligibility assessment.⁵ These provisions should be strengthened to restrain future implementation actions that fail to regard these terms of the Settlement.

B. The Draft Resolution Properly Applies the PURPA Fundamental Use Test to Harbor as a New CHP Facility

FERC established the Fundamental Use Test regulation⁶ pursuant to provisions of the 2005 Energy Policy Act. This regulation essentially divines the distinction between a Qualifying Facility/CHP operation and a merchant power plant operation. Under the regulation, in order to be deemed a cogeneration facility, the operation:

³ Settlement Term Sheet §7.1.2.

⁴ Settlement Term Sheet §5.4.

⁵ The Draft Resolution at p. 23 provides that a CHP facility need not have secured a contract with a thermal host prior to participating in a CHP RFO. While this is true in isolation for a new CHP bid, there are other provisions of the Settlement that must also be considered to temper this statement.

⁶ 18 CFR §293.305(d)(3); see Section 1253 of the 2005 Energy Policy Act.



- (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.”

It seems undisputed that if the Fundamental Use Test applies to Harbor, then Harbor does not meet the test and is not an eligible CHP facility under the Settlement. SCE argues that Harbor is not a “new” CHP, and therefore the Fundamental Use Test does not apply.

CAC supports the determination, on several grounds, that Harbor is not an existing, but a new CHP in light of its history in terms of relinquishing its QF status under PURPA, its current operating status as a non-QF, and under FERC Order 671. Claims to the contrary are specious and should be ignored. Harbor does not meet the applicable Fundamental Use Test and does not meet eligibility standards under the Settlement.

C. Failure to Implement the Settlement to Target CHP Facilities Meeting the Operational Obligations under the CHP RFO Pro Forma Contract Distorts the CPUC QF/CHP Program

The Settlement targeted integrated, baseload CHP operations that could not otherwise compete with all-source bid products on cost and operational grounds. Harbor is not an integrated, baseload operation; rather it is a merchant facility looking for a contract. It is inappropriate that this facility poach critical megawatts from the CHP program. The failure to sustain this standard will permit other still-to-be-imagined operations to undercut and void the efforts of integrated, baseload CHP operations from securing needed contracts. The CHP Settlement established a CHP RFO pro forma contract. Among other things this contract contemplated specific operational requirements to target baseload, integrated, highly efficient CHP operations. Harbor is not meeting the operating or efficiency requirements under the CHP RFO pro forma contract under any of the speculative operating conditions that it might meet. Other bidders in the SCE CHP RFO meet these standards. These eligible CHP facilities would utilize the CHP RFO contract for most, if not all, of the operating requirements of the pro forma. The failure to police the implementation requirements for Harbor caused SCE to disregard inappropriately other eligible CHP resources under the Settlement. The Commission should take steps in this Resolution to preclude a repeat of this action under future CHP RFOs.



III. Conclusion

CAC supports the conclusions in the Draft Resolution, but seeks language changes to reinforce the Settlement provisions to avoid misinterpretation. The attached redline provides recommended modifications to reach these objectives.

Respectfully submitted,

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- Service List R.12-03-014
- Service List A.08-11-001

Attachment CAC Redline of the 07-10-13 Harbor draft ED Resolution and Comment
Letter Res E-4554