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PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ID # 11953

ENERGY DIVISION **RESOLUTION E-4569 (Rev. 2)**

June 27, 2013

R E D A C T E D
R E S O L U T I O N

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 approves, without modification, SCE's two Confirmations for Resource Adequacy ("RA") Capacity Products, which are two separate Agreements for Combined Heat and Power Resource Adequacy Capacity Product: (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.

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: Both contract costs are confidential at this time, since both the Los Medanos Energy Center and Calpine Gilroy Cogen agreements for Combined Heat and Power Resource Adequacy Capacity Product contain competitive pricing terms for capacity. As both agreements are capacity-only transactions, there are no pricing components for energy deliveries, ancillary services, or other variable costs.

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

SUMMARY

Southern California Edison's ("SCE's") two Confirmations for Resource Adequacy ("RA") Capacity Products, which are both capacity-only confirmation agreements with Calpine Energy Services, L.P. ("Calpine" or "Seller") for 280.5 megawatts ("MWs") of capacity associated with the Los Medanos Energy Center, LLC ("LMEC") facility and for 120 MWs of capacity associated with the Calpine Gilroy Cogen, L.P. ("Gilroy") facility complies 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") and are approved without modification.

On August 31, 2012, SCE filed Advice Letter ("AL") 2771-E requesting Commission approval of two new capacity-only agreements with the Los Medanos Energy Center or 84 months, or seven years, and also with the Calpine Gilroy Cogen Facility for 60 months, five years. Both agreements between SCE and the Seller will become effective upon the approval of this resolution, and both facilities will start delivery on January 1, 2014.

Table 1. LMEC and Gilroy Project Summaries

Project Name	Los Medanos Energy Center, LLC	Calpine Gilroy Cogen, L.P.
Owner/Developer	Calpine Energy Services, L.P.	Calpine Energy Services, L.P.
Technology	Combined Cycle Gas Turbine	Combined Cycle Gas Turbine
Capacity (MW)	Facility Power Rating:[1] 561 SCE Contract Capacity:	Facility Power Rating: 120

[1] "Power Rating" is defined in the Term Sheet as "[t]he electrical power output value indicated on the generating equipment nameplate." *See* Term Sheet at 72.

	280.5	SCE Contract Capacity: 120
Expected Generation (GWh/Year)	N/A under RA Confirmation	N/A under RA Confirmation
Delivery Pattern	N/A under RA Confirmation	N/A under RA Confirmation
Delivery/Contract Term	84 months from January 1, 2014 to December 31, 2020	60 months from January 1, 2014 to December 31, 2018
Vintage	Existing	Existing
Location	Pittsburg, California	Gilroy, California
Source of Agreement	SCE's 2011 CHP RFO	SCE's 2011 CHP RFO

Calpine's Gilroy facility is a 120MW nameplate capacity natural gas topping-cycle combined heat and power facility located in Gilroy, California. The Gilroy facility produces and sells thermal energy to its thermal host, Conagra Foods, Inc., under a long-term contract. Gilroy is recognized by the CAISO as an RA Resource and is also a Qualifying Facility ("QF") certified as a QF in Federal Energy Regulatory Commission Docket No: QFID-08C002. Gilroy has been in operation since September 18, 1987 and has previously sold, under a QF contract, to Pacific Gas and Electric Company ("PG&E") as a QF CHP facility.

Under the Gilroy Agreement, SCE contracted 120 MWs of Gilroy's capacity. However, SCE's Gilroy Agreement contributes 130 MW towards the MW target assigned to SCE under the QF/CHP Settlement because Gilroy formerly sold to PG&E and was listed in PG&E's July 2002 Cogeneration and Small Power Production Semi-Annual Report[2] with an operating size of 130 MW. The MW accounting rules that apply to Gilroy can be found in Section 5.2.3.2 of the

[2] The latest report Gilroy was listed in was PG&E's July 2002 Report. http://www.pge.com/includes/docs/pdfs/b2b/qualifyingfacilities/cogeneration/jul2002cogen.pdf

QF/CHP Settlement Term Sheet ("Term Sheet"). The Gilroy facility will count as neutral (0 MMTCO2e) with respect to SCE's Greenhouse Gas ("GHG") Emissions Reduction Target of 2.15 MMTCO2e. The calculation metrics behind the Gilroy facility's GHG accounting can be found in the Term Sheet Section 7.3.3.1, which states that an Existing CHP facility with no change in operations, such as Gilroy, "is neutral for GHG accounting purposes."

Calpine's LMEC facility is a 561 MW nameplate capacity natural gas topping-cycle combined heat and power facility located in Pittsburg, California. LMEC was self-certified as a QF in Federal Energy Regulatory Commission Docket No. QF01-14-000 on October 31, 2000 and is an existing CHP QF. In total, LMEC provides its two thermal hosts an average of approximately 190 MMBtu/hour of steam without seasonal variation. The two thermal hosts, USS-POSCO Industries and Dow Chemical Company, use the steam for process heating at their respective steel mill and chemical processing facilities.

Under the LMEC Agreement, SCE contracted for 280.5 MWs of LMEC's available 561 MWs of total capacity. SCE's LMEC Agreement thus contributes 280.5 MW towards the MW target assigned to SCE under the QF/CHP Settlement. The MW accounting rules that apply to LMEC can be found in Section 5.2.3.2 of the Term Sheet. The LMEC facility will count as neutral (0 MMTCO2e) with respect to SCE's GHG Emissions Reduction Target of 2.15 MMTCO2e. The calculation metrics behind the LMEC facility's GHG accounting can be found in the Term Sheet Section 7.3.3.1, which states that an Existing CHP facility with no change in operations, such as LMEC, "is neutral for GHG accounting purposes."

LMEC has been operating since July 2001 and thus has over ten years of experience operating as a CHP facility. Although it has sold to Investor Owned Utilities ("IOUs") previously, it was not listed in any of the Cogeneration and Small Power Production Semi-Annual Reports of the three IOUs. The LMEC and Gilroy agreements are the first capacity-only CHP contracts Calpine has signed with SCE. Under these Agreements, SCE will purchase the CHP Attributes, RA Attributes, , and the Capacity Attributes of the LMEC and Gilroy generating facilities. These products will be used for compliance with the Commission's RA program. The RA program ensures the availability of sufficient resources to reliably serve customer load.

In filing Advice 2771-E, SCE provided multiple confidential appendices detailing the pricing terms and conditions for the LMEC and Gilroy facilities capacity-only agreements. Upon further review of the appendices filed by SCE, staff determined that other than pricing and project-specific terms, both agreements are virtually identical, and, therefore, saw fit to dispose of both agreements in a single resolution. The confidential version of the Independent Evaluator's ("IE's") report further explained the procurement process for both contracts and found both agreements reasonable and as meriting Commission approval. A summary of staff's review of the capacity-only agreements, pricing details, and an analysis of the benefits can be found in the Confidential Appendix A of this Resolution.

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. On July 2, 2012, SCE executed the CHP agreement 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") ; (3) 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,[3] 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.

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

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

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 sepeate 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 Confirmation does not provide any obligation to provide energy nor ancillary services for Gilroy or Los Medanos, and does 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"),[4] 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 MW's associated with the RA only agreements should be counted since both facilities are eligible per the Settlement eligibility 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 claim 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

[4] 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.

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.[5] In this case, we have reviewed and weighed the conclusions from the IE report in determining the outcome of this resolution.

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 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.

[5] 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."

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[6] for cogeneration and the Emissions Performance Standard.

The LMEC and Gilroy facilities are both eligible to participate in the CHP RFO per the Term Sheet Section 4.2.2.1 for the following reasons: 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 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. For these reasons, we find both the LMEC agreement and the Gilroy agreement consistent with the Settlement's eligibility requirements, allowing LMEC and Gilroy to participate in the utility's CHP requests for offers.

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[6] 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.

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.

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.

This issue was raised by the Joint Parties and EPUC/CAC. The failure of the Settlement to expressly identify RA-only contracts as eligible is not tantamount to a prohibition on RA-only contracts as the Joint Parties suggest. As noted above the facility appears to be eligible under Section 4.2.2.1 of the QF/CHP Settlement Term Sheet:

> Any CHP Facility with a nameplate larger than 5 MW may bid into the CHP RFO, including CHP Facilities seeking firm and as-available capacity PPAs, provided that the CHP Facility meets the definition of cogeneration under California Public Utilities Code §216.6 and the Emissions Performance Standard established by Public Utilities Code §8341 (Senate Bill 1368). A CHP Facility must meet the federal definition of a qualifying cogeneration facility under 18 CFR §292.205 implementing PURPA.

The LMEC and Gilroy facilities meet the eligibility requirements set forth by Section 4.2.2.1 of the Settlement. Additionally, to the degree the intent of the Settlement is to create a robust market for CHP and provide revenue generating opportunities that facilitate its deployments and operation, which is consistent with that objective. We further note that the goals of the Settlement include goals that are explicitly denominated in units of capacity, specifically megawatts. This

is at least suggestive that capacity procurement is not inconsistent with the objectives the Settlement was intended to achieve.

Issue #2: As a capacity-only contract, the project does not provide any GHG benefits and so are inconsistent with the Settlement given the GHG reduction targets the IOUs are required to meet.

This issue was raised by the Joint Parties. 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 inconsistent with the Settlement. The Settlement specifically includes projects that do not contribute toward the GHG targets 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 facilities 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, they would have been neutral for purposes of GHG accounting under the Settlement.

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

This issue was raised by CCC as well as EPUC/CAC. Section 4.2.5.1 of the Term Sheet states that "[a] CHP Facility may also elect to participate in an all-source RFO or a renewable energy solicitation provided it meets the eligibility requirements for the solicitation." While SCE could have procured RA through other solicitations and procurement options, the Term Sheet clearly contemplates that CHP facilities that bid into the CHP RFO may bid into other RFOs.[7] Since both facilities are eligible to participate in the CHP RFO per the Settlement

[7] See, e.g., QF/CHP Settlement Term Sheet Section 4.2.5.1.

eligibility requirements, SCE can procure RA-only capacity through the CHP RFO. In addition, both Gilroy and LMEC RA Agreements, within SCE's competitive solicitation, were among the most competitive bids which yielded the lowest cost, in terms of Settlement MW's, for the ratepayers. [8]

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.

This issue was raised by CCC and EPUC/CAC. Both the CCC and EPUC/CAC argued that neither LMEC nor Gilroy should count towards SCE's Settlement MW targets since the 3,000 MW number was carefully derived and that contracts similar to the LMEC and Gilroy confirmations were not envisioned to be a part of the 3,000 MW number. Since any eligible CHP facility could have bid into SCE's CHP RFO as a capacity only facility, the MW accounting rules did not benefit a certain CHP facility over others within the scope of SCE's initial CHP RFO. For the reasons mentioned earlier, RA Confirmation MW's associated with LMEC and Gilroy are allowed under the Settlement and since both projects are eligible facilities under the Settlement eligibility requirements, the MW's SCE will procure through these plants are eligible to count towards the MW goals set forth by the Settlement. The only way for an eligible CHP facility to be limited from participating in the RFO is through the evaluation process. Since both Calpine projects were competitive in the solicitation against all other bids, LMEC and Gilroy were shortlisted and ultimately awarded contracts with SCE through SCE's CHP RFO.

As stated earlier, the goals of the Settlement include goals that are explicitly denominated in units of capacity, specifically megawatts. This is at least suggestive that capacity procurement is not inconsistent with the objectives the Settlement was intended to achieve.[9]

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[8] In calculating the capacity value, SCE took into account the lack of energy deliveries in evaluating both Calpine bids.

[9] Sections 5.1.2 of the Settlement Term Sheet

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, 280.5 MW (i.e., .5x 561 MW= 280.5 MW) of this CHP-eligible facility will count 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 counts toward SCE's MW Target under the Settlement even though 120 MW will be 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.

<u>Pursuant to the QF/CHP Settlement Term Sheet Section 5.2.3.2, 280.5 MW from the LMEC facility; and per Section 5.2.4.1, 130 MW from the Gilroy facility shall count toward SCE's CHP MW targets.</u>

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.

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.

This issue was raised by the Joint Parties. 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.

In D.10-12-035, Ordering Paragraph 5, the Commission ordered the IOUs to purchase CHP resources on behalf of the Electricity Service Providers and Community Choice Aggregators. Given this, Section 13.1.2.2 of the Term Sheet, directs the IOUs to recover the net capacity costs associated with the CHP Program from all bundled service, DA and CCA customers and all Departing Load Customers except for CHP Departing Load Customers on a non-by passable basis. Section 13.1.2.2 goes on to define how Net Capacity Costs are calculated and directs that LSEs serving DA and CCA load should receive a pro-rata share of the RA credits procured via the CHP Program.

It is also worth noting that ESP and CCA customers will be allocated RA credits commensurate to the proportion of the net capacity costs that they pay as required by the terms of Section 13.1.2.2.

Because both Calpine projects are being entered into pursuant to the terms of the QF/CHP Settlement, and in order to satisfy the QF/CHP Settlement requirements for MW Targets which includes procurement on behalf DA and CCA customers, it is appropriate that the costs associated with this agreement be allocated consistent with Section 13.1.2.1 of the QF/CHP Settlement Term Sheet.

SCE can recover costs in accordance with Section 13.1.2.2 of the Term Sheet and AL-2771-E is consistent with the directives of the QF/CHP Settlement.

Need for Procurement

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[10] 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

Upon the approval of this resolution, SCE will receive and purchase the CHP Attributes, the RA Attributes, the Local RA Attributes, and the Capacity Attributes equivalent to 280.5 MW from the LMEC facility and 130 MW from the Gilroy facility. 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

[10] 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.

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:

$$\frac{\$NPV}{MW} = \frac{(Benefits - Costs)\ discounted\ at\ rate = 10\%}{Settlement\ MW}$$, 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 debt-like 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.

After reviewing and evaluating all the bids that entered into SCEs CHP RFO, we agree with SCE's selection of the LMEC and Gilroy facilities. Given the targets set forth by the Settlement, SCE's agreements with Calpine were two of the best offers for the ratepayers out of all the bids that participated in SCE's competitive solicitation. For additional information on the contract cost reasonableness, please refer to Confidential Appendix A.

<u>The terms of both Calpine Agreements for a capacity-only AGREEMENT will provide the CHP Attributes, the RA Attributes, the Local RA Attributes, and the Capacity Attributes equivalent to 280.5 MW associated with the LMEC Agreement and 120 MWs associated with Gilroy to the ratepayers.</u>

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.

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 appears to result in any adverse safety impacts on the facilities or operations of SCE.

Project Viability

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

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.[11] 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.

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,

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

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 and CAM.

Independent Evaluator Review

SCE retained Independent Evaluator (IE) Merrimack Energy Group, Inc ("Merrimack Energy") to oversee the filing of Advice 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.[12]

[12] Public IE Report p.38

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.

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.

The 30-day comment period for the draft of this resolution was neither waived nor reduced. Accordingly, this draft resolution was mailed to parties for comments on March 4, 2013. Comments on the draft were due March 21, 2013. There were a total of six comments to the publicly circulated draft resolution E-4569. The parties that commented on the circulated draft resolution are as follows:

1. Pacific Gas and Electric ("PG&E")
2. California Cogeneration Council ("CCC")
3. Shell Energy North America (US), L.P. ("Shell Energy") and the Alliance for Retail Energy Markets ("AReM"), collectively ("Joint Parties")
4. Independent Energy Producers ("IEP")
5. Southern California Edison ("SCE")
6. Cogeneration Association of California ("CAC")

Below staff identifies and summarizes each issue that the parties have raised in their respective comments and further discusses staffs position if it had not been addressed in the publicly circulated draft resolution.

1. Pacific Gas and Electric ("PG&E") Comments

It is worth noting that, PG&E also entered into an agreement with LMEC for 280.5 MW of RA-only product. PG&E's agreement is the subject of Draft Resolution E-4529, which is pending a Commission vote and which proposes approving PG&E's RA-only contract with LMEC. In its comments PG&E broadly supports the draft resolution E-4569.

2. California Cogeneration Council ("CCC") Comments

In its comments the CCC asks the Commission to keep RA-only procurement separate from the CHP program and reject SCE's request to count the LMEC and Gilroy RA Contract against its MW Targets.

CCC first argues that a single provision of the Settlement Term Sheet (Section 4.2.2.1) cannot be determinative as to whether RA-only contracts count against CHP Program MW targets. CCC, however, errs in its characterization of our analysis. Section 4.2.2.1 of the Term Sheet determines the eligibility of entities to participate in the CHP RFOs. The title of Section 4.2 is "CHP RFOs." Thus, the purpose of that section is to outline the CHP RFOs' procurement method. The title of Section 4.2.2 is "Eligibility." Therefore, the purpose of that section is to determine what facilities are eligible to participate in the CHP RFOs. Section 4.2.2.1, under the "Eligibility" header, indicates that the following CHP Facilities are eligible to participate in a CHP RFO:

> Any CHP Facility with a nameplate larger than 5 MW may bid into the CHP RFO, including CHP Facilities seeking firm and as-available capacity AGREEMENTs, provided that the CHP Facility meets the definition of cogeneration under California Public Utilities Code §216.6 and the Emissions Performance Standard established by Public Utilities Code §8341 (Senate Bill 1368). A CHP Facility must meet the federal definition of a qualifying cogeneration facility under 18 CFR §292.205 implementing PURPA.[13]

[13] Section 4.2.2.1of the Settlement Term Sheet.

CCC's argument is unsupported as the Term Sheet does not specify capacity types for any other type of contract besides a long-term contract. Given this inconsistency, a product type's absence from Section 4.2.2 is of no consequence in terms of the CHP Facility's eligibility to participate in the CHP RFO. Since the bidders were all aware of the possibility to bid into the solicitation as an RA Confirmation only resource SCE is within the bounds of the Settlement Term Sheet and therefore, can procure LMEC as an RA-only resource.

CCC next argues that the Commission should look beyond the eligibility provision under the QF/CHP Settlement and look to the FERC's order terminating the PURPA Mandatory Purchase Obligation, the Commission's RA program policies, D.10-12-035, and the remainder of the Term Sheet to determine the eligibility of RA-only contracts under the CHP Program.

CCC's arguments are unpersuasive. Simply because FERC's suspension of the PURPA Mandatory Purchase Obligation was based on a finding of separate RA, RPS, and CHP Programs does not mean that RA can only be purchased pursuant to the RA program. There are other programs such as California's RPS Program with which CHP procurement may overlap. Renewable CHP facilities are eligible to participate in both programs and count towards the CHP Program MW Target; it would not stand to reason that MWs procured from a renewable CHP facility could not count towards the Settlement goals. Likewise, that argument does not stand for RA-only contracts.

Despite the RA Program's limitation on multi-year contracts, the CHP Program places no similar restriction and does not exclude RA-only contracts. We are guided by the Settlement Term Sheet to implement the CHP Program, and the eligibility criteria for participating in a CHP RFO are set forth in Term Sheet Section 4.2.2. Since the LMEC facility meets the eligibility requirements of the Settlement and the contract otherwise meets the MW counting rules of the Settlement, the LMEC RA-only contract should be counted towards SCE's MW Targets.

CCC claims that the LMEC facility is more akin to a Utility Prescheduled Facility, a dispatchable merchant facility. However, as CCC points out, the Commission intended that only facilities "when a thermal need no longer exists" are eligible as a Utility Prescheduled Facilities. CCC itself points out that LMEC serves a thermal demand of 190 MMBtu per hour. While 90% of LMEC's electrical generation capacity does provide merchant power, nothing in the Settlement

requires that a facility be sized to its thermal load to generate an equal amount of electrical power, as CCC suggests. The Commission is indeed interested in preventing an expansion of "PURPA machines," but this interest is captured in the requirement that facilities meet the Fundamental Use Test embodied in 18 C.F.R. § 292.205. LMEC satisfies the federal definition of a qualifying cogeneration facility under 18 C.F.R. §292.205 and so is consistent with the D.10-12-035 and the Commission's CHP Program.

CCC urges the Commission to read other provisions of the QF/CHP Settlement to demonstrate that RA-only contracts should not count toward utilities' MW Targets. CCC interprets the Settlement Term Sheet Section 4.2.3.1 as indicating that Existing CHP Facilities may contract only for firm capacity and as-available capacity. Such a limitation, however, should be provided under Settlement Term Sheet Section 4.2.2 governing Eligibility.

CCC further argues the IOUs should contract under the CHP Program only with facilities selling both capacity and energy. We do not find anything in D.10-12-035 or the CHP Program that guarantees every CHP facility a contract under the QF/CHP Settlement or that requires the purchase only of both energy and capacity. Moreover, we find nothing in D.10-12-035 or the QF/CHP Settlement that requires that eligible facilities "must produce electricity as part of an integrated process" to the degree CCC suggests.
Staff has closely examined CCC's comments and believes that the resolution adequately covers each of the issues raised by the CCC in its public comments.

3. Shell Energy North America (US), L.P. ("Shell Energy") and the Alliance for Retail Energy Markets ("AReM"), collectively ("Joint Parties")

The Joint Parties repeated some of their original comments that staff has already resolved in its draft resolution and further introduced the following issues in their comments:

The Joint Parties argue that the QF/CHP Settlement's MW Targets should constitute "CAPs" on net capacity cost allocation. We disagree. The Settlement was agreed upon by multiple settling parties and the Settlement was ultimately adopted by the Commission, and the Joint Parties were able to participate in the Commission proceedings considering the Settlement and raise such issues. Regardless, the Joint Parties are concerned that if the Commission allows for RA procurement, ESPs and CCAs will be constrained in their ability to purchase

lower-priced RA capacity, or different RA capacity products, in order to compete with SCE for customer share. However, if the IOUs continue to procure RA-only MWs they will not be able to meet their respective GHG goals set forth by the Settlement and therefore the IOUs cannot continue to only procure the MW's associated with the RA-only contracts. The need for GHG beneficial CHP procurement will counterbalance the cheap MW's SCE procured in its first CHP RFO. Therefore, the Commission rejects the Joint Parties' suggestion to set a limit on the IOU's RA procurement.

The Joint Parties next argue that the Commission should allow ESPs and CCAs to count capacity purchases from the facilities against their Net Capacity Cost Allocation. However, the LMEC Agreement is eligible for cost recovery and net capacity costs of the LMEC agreement are allocated pursuant to the ratemaking mechanisms defined in Section 13.1.2.2 of the Term Sheet. The adopted cost allocation methodology is not contingent on the type of capacity or GHG reduction procured, so long as it is procurement in compliance with the CHP Program. Therefore, the CPUC rejects the Joint Parties' request to count capacity purchases from the facilities against their Net Capacity Cost Allocation.

4. Independent Energy Producers ("IEP") Comments

IEP supports the publicly circulated draft resolution E-4569. IEP requests Commission approval of Draft Resolution E-4569.

5. Southern California Edison ("SCE") Comments

SCE broadly supported the publicly circulated draft resolution 4569-E and recommended various non-substantive changes to the draft resolution. After reviewing SCE's suggestions staff made some minor, non-substantive edits to the resolution. SCE's comments can be summarized as follows:

- Draft Resolution's finding that RA-only contracts are consistent with the Settlement and Term Sheet.
- Draft Resolution's conclusion that GHG-neutral, RA-only contracts are consistent with the Settlement.
- All RA-Only contracts, no matter how large, must count toward the statewide MW target.
- SCE requests that the resolution deny the CAC's protest on the same grounds as the protest filed by EPUC.

6. Cogeneration Association of California ("CAC") Comments

The publicly circulated version of the draft resolution and our responses to the comments of other commenting parties addresses all of the issues CAC raises in it comments. To reiterate, LMEC and Gilroy are legitimate existing CHP facilities under the letter of the settlement. Either facility can claim that it: has operational steam host(s); is a facility larger than 5 MWs; meets the definition of cogeneration under California Public Utilities Code §216.6 and the Emissions Performance Standard established by Public Utilities Code §8341; it can meet the federal definition of a qualifying cogeneration facility under 18 CFR §292.205 implementing PURPA; and has previously sold to an IOU as a QF. For the reasons explained throughout this resolution, nuances in Term Sheet do not impose eligibility criteria above and beyond the criteria in the term sheet section 4.2.2.1.

The goals and objectives of the Commission's CHP Program are clearly outlined in the term sheet Section 1.1. Therefore, we conclude that the LMEC confirmation is consistent with the terms, goals, and objectives of the QF/CHP Settlement. In its comments CAC joins the CCC in a variety of positions including the acceptability of RA-only capacity products in the Settlement Term Sheet. CAC opposes the counting of the LMEC capacity as part of the CHP Program, specifically to meet the MW Targets under the Settlement.

The objective of the Settlement is to develop a state CHP program and create a smooth transition from existing QF CHP PURPA program to a State administered CHP Program as well as settle all CHP/QF litigation referenced in Section 14 of the Settlement term sheet. Since both LMEC and Gilroy are existing QF CHP facilities, staff finds both facilities in compliance with the original intent of the Settlement unlike what the CAC claims in its comments.

We do not find a reason to reject the LMEC Confirmation per the language set forth by the QF/CHP Settlement Term Sheet. In particular, as discussed above, there is no basis to reject the LMEC agreement under D.10-12-035 or under the QF/CHP Settlement Agreement because the facility is not selling baseload generation. Despite the Pro Forma RFO PPA's provisions for capacity factors and availability, the Settlement Term Sheet does provide for bilaterally negotiated changes to the Pro Forma PPAs.

<u>After careful review and consideration of the filed comments to the publicly circulated draft resolution 4529-E, staff has made non-substantive changes to the resolution.</u>

FINDINGS AND CONCLUSIONS

1. The LMEC facility is an eligible CHP resource 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 an eligible CHP resource 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 the QF/CHP Settlement, SCE is permitted to select and execute the LMEC and Gilroy capacity-only agreements per Section 4.2.2 of the QF/CHP Settlement.

4. As a Qualifying Facility, LMEC previously sold a resource adequacy capacity product to PG&E between 2008 and 2011. Similarly, as a Qualifying Facility, Gilroy has been under a long-term QF contract with PG&E since 2002.

5. SCE contracted 280.5 MWs of LMEC's available 561 MW's of total capacity. SCE's LMEC Agreement contributes 280.5 MW towards the MW target assigned to SCE under the QF/CHP Settlement.

6. SCE contracted 120 MWs associated with the Gilroy contract; however, Gilroy formerly sold to PG&E and was most recently 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 counts toward SCE's MW Target under the Settlement even though 120 MW will be contracted with the Gilroy facility.

7. Pursuant to the QF/CHP Settlement Term Sheet Section 5.2.3.2, 280.5 MW from the LMEC facility and per Section 5.2.4.1, 130 MW from the Gilroy facility shall count toward SCE's CHP MW targets. Together, both projects will provide 410.5 MW towards SCE's Settlement MW targets.

8. The terms of both Calpine Agreements for a capacity-only agreement will provide the CHP Attributes, the RA Attributes, the Local RA Attributes, and the Capacity Attributes equivalent to 280.5 MW associated with the LMEC Agreement and 120 MWs associated with Gilroy to the ratepayers.

9. 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.

10. SCE can recover costs in accordance with Section 13.1.2.2 of the Term Sheet and AL-2771-E is consistent with the directives of the QF/CHP Settlement.

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

12. 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.

13. Pursuant to Public Utilities Code §8341 and D.07-01-039, the LMEC 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; <u>the Gilroy facility is not baseload generation and is therefore not "covered procurement" under D.07-01-039 and is exempt from the EPS.</u>

14. 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.

15. SCE has complied with the Commission's rules for involving the PRG and CAM.

THEREFORE IT IS ORDERED THAT:

1. The request of Southern California Edison Company ("SCE") in Advice Letter E-2771 for Commission approval of the Los Medanos Energy Center and Calpine Gilroy Cogen Resource Adequacy Confirmations with Calpine Energy Services, L.P. in their entirety is granted.

2. SCE is authorized to recover the costs associated with the Los Medanos Energy Center and Calpine Gilroy Cogen facilities' confirmations through the cost recovery mechanisms set forth in D.10-12-035 (as modified by D.11-07-010), Section 13.1.2.2 of the Qualifying Facility/Combined Heat and Power Settlement Term Sheet, and Southern California Edison Company's Advice 2771-E.

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

Confidential Appendix A

REDACTED