Date of Issuance 5/29/2013

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION **RESOLUTION E-4571**
May 23, 2013

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

Resolution E-4571. Southern California Edison Company requests approval of Transition Agreements with Kern River Cogeneration Company and Sycamore Cogeneration Company, affiliates of SCE.

PROPOSED OUTCOME: This Resolution approves two Transition Power Purchase Agreements and Dispatchable Agreements ("Transition Agreements") between Southern California Edison Company ("SCE") and both Kern River Cogeneration Company ("KRCC") and Sycamore Cogeneration Company ("Sycamore"), affiliates of SCE, pursuant to the terms of the Qualifying Facility and Combined Heat and Power Program Settlement Agreement.

SAFETY CONSIDERATIONS: The two Transition Agreements are between Southern California Edison Company and both KRCC and Sycamore. The Commission's jurisdiction extends only over SCE, but not KRCC or Sycamore. Based on the information before us, this PPA does not appear to result in any adverse safety impacts on the facilities or operations of SCE.

ESTIMATED COST: Energy and capacity payments under the Transition Agreements are $161.2 million ("M") for KRCC between July 2013 and June 2015 and $88.4 M for Sycamore between July 2013 and June 2014. Compared to Legacy PPA payments for those periods, the Agreements save $11.4 M and $4.8 M, respectively.

By Advice Letter 2825-E Filed on December 14, 2012, supplemented by AL 2825-E/A Filed on December 21, 2012 and by AL 2825-E/B Filed on February 21, 2013.

66068977

SUMMARY

Southern California Edison Company's ("SCE's") Transition Power Purchase Agreements and Dispatchable Agreements ("Transition Agreements") with both Kern River Cogeneration Company ("KRCC") and Sycamore Cogeneration Company ("Sycamore") (or collectively "Sellers"), affiliates of SCE, are the result of bilateral negotiations on a Transition PPA that is amended to incorporate Additional Dispatchable Capacity ("ADC"). These Transition Agreements comply with the requirements of Decision ("D.") 10-12-035, in which the Commission adopted the Qualifying Facility and Combined Heat and Power Settlement Agreement ("Settlement"), and the Transition PPAs with ADC amendments are approved.

On December 14, 2012, SCE filed Advice Letter ("AL") 2825-E requesting Commission approval of Transition Agreements with both KRCC and Sycamore effective upon CPUC and FERC approval until the completion of the Settlement Transition Period, no later than June 30, 2015.[1] KRCC and Sycamore have common owners[2] and management and are both affiliates of SCE. Due to the commonalities between the two companies and facilities, the Transition Agreements were negotiated together.

KRCC owns an existing natural gas-fired combined cycle topping-cycle qualifying cogeneration facility in Bakersfield, California. The facility has four combustion turbines with a maximum operating capacity of 296 MW. SCE and KRCC executed an initial contract on January 16, 1984, for 20 years. Under an agreement executed on December 15, 2005, with SCE, KRCC operated two units as baseload and two units as dispatchable for a five year term. On June 28, 2011, SCE and KRCC entered into a letter agreement that extended the term of the 2005 agreement pursuant to the pricing established in D.07-09-040. KRCC is currently selling baseload and dispatchable capacity to SCE under an extension of its existing PPA, referred to as a "Legacy PPA" under the Settlement.

---

[1] The term end date of these Transition Agreements is dependent on the CPUC's disposition of SCE AL 2784-E and PG&E AL 4190-E regarding Sellers' PPA resulting from the IOUs' respective CHP RFOs. See the Transition PPA Matters section.

[2] Both KRCC and Sycamore are owned 50% by an indirect wholly-owned subsidiary of Edison Mission Group, an affiliate of SCE, and 50% by an indirect wholly-owned subsidiary of Chevron Corporation.

Sycamore owns an existing natural gas-fired combined cycle topping-cycle qualifying cogeneration facility in Bakersfield, California. The facility has four combustion turbines and a maximum operating capacity of 300 MW. SCE executed an initial contract based on a QF Standard Offer Contract with Sycamore's predecessor, KRCC, on December 18, 1984, for 20 years. In 1986, SCE agreed to KRCC's assignment of the PPA to Sycamore and to a restated agreement of 284 MW of contract capacity and baseload energy. On June 17, 2008, SCE and Sycamore entered into a letter agreement pursuant to the pricing established in D.07-09-040 for 300 MW of firm capacity and energy. Sycamore is currently selling baseload capacity to SCE under an extension of its existing PPA, referred to as a "Legacy PPA" under the Settlement.

Per Section 3.1.1 of the Settlement Term Sheet, which was adopted by the Commission in D.10-12-035, KRCC and Sycamore are eligible for Transition PPAs with SCE because they are currently operating under extensions of Legacy PPAs that are expiring during the Transition Period. Section 3.4.1.2 of the Settlement Term Sheet provides for a modification of the Standard Form Transition PPA for eligible CHP Facilities that opt for the "Sale of Additional Dispatchable Capacity [("ADC")] beyond the Transition PPA Capacity Product."

Per Section 3.4.1.2, the option to accommodate ADC is "limited to a few CHP Facilities, each with unique operational constraints" and requires an amendment to the Transition PPA. ADC is differentiated as a "product"[3] that Seller would provide in addition to the standard capacity and associated energy and RA products that are sold at prices set forth in Section 3.2 of the Settlement Term Sheet. Instead of these established prices, ADC is sold at a "competitive market price"—the result of up to 120 days of good faith negotiations.

Section 3.4.1.2 of the Settlement Term Sheet provides that, "If the negotiations are unsuccessful, Buyer and Seller will mediate the terms of the Amendment per Section 10.02 of the Transition PPA." Within 90 days of the execution of a Transition PPA, "Seller shall designate the initial ADC offered to Buyer for the term of the PPA." Section 3.4.1.2 also requires the IOU Buyer to facilitate "an

[3] While the Settlement does not specifically define Additional Dispatchable Capacity, Section 3.4.1.2 sets forth parameters. Seller must have at least 25 MW of ADC and must schedule at least 10 MW for delivery. Seller will offer ADC with an associated fixed Heat Rate or Fixed HR Curve that will be used in the energy price formula of Section 10.2.1.1 of the Term Sheet. ADC must meet CPUC/CAISO RA requirements and be consistent with the CAISO Tariff and Protocols.

alternative sale and delivery of the Dispatchable Capacity to the CAISO market," if the Buyer is the Seller's Scheduling Coordinator.

This option for ADC is suitable for KRCC and Sycamore due to the anticipated declining steam requirements of their thermal host, Chevron U.S.A., for enhanced oil recovery operations in the Kern River oil field. This reduced thermal need precludes the facilities from maintaining economic baseload operations. As a result, in July 2011 Sellers indicated to SCE that they would be interested in pursuing Utility Prescheduled Facility ("UPF")[4] operations for KRCC and Sycamore.

Section 11.2.1 of the Settlement Term Sheet establishes a procedure to prevent the interruption of power delivery from a CHP Facility or UPF by allowing Legacy PPAs extended pursuant to D.07-09-040 to remain in effect until Seller commences deliveries under a new or amended ("Subsequent") PPA. Negotiating parties "shall use all reasonable efforts to meet conditions" to enter into a Subsequent PPA by March 22, 2012. "Absent good cause shown," e.g., the pendency of regulatory approvals that would prevent the commencement of a Subsequent PPA, extensions of Legacy PPAs terminate on March 22, 2012. In the case of a dispute between Buyer and Seller that prevents the delivery of power under a Subsequent PPA by March 22, 2012, Section 11.2.1 of the Term Sheet allows the Director of the CPUC Energy Division ("ED Director") to authorize Seller requests for further extensions to Legacy PPAs based on good cause, but "requests shall not be unreasonably repetitive or designed primarily to delay terminations of the extension of the Legacy CHP PPA."

Initial discussion about negotiations between SCE and KRCC and Sycamore began August 9, 2011. In December 2011 Sellers provided SCE an initial draft of the proposed agreement without pricing. SCE requested pricing and other terms, which Sellers provided in January 2012. In March 2012 SCE rejected Sellers' pricing on the basis that it was above-market and gave Sellers the opportunity to resubmit their offer, which Sellers declined. Sellers requested a counter-offer, which SCE declined.

SCE and Sellers disputed how negotiations for ADC related to the entry into a Transition PPA. Sellers sought to enter an agreement for the Transition Period

[4] The Settlement Term Sheet defines a UPF as an Existing CHP Facility that has changed operations to convert to a utility controlled and scheduled dispatchable generation facility.

with SCE that covered the units maintaining baseload operations and those seeking conversion to dispatchable operations. While SCE agreed to negotiate for an agreement, it was only willing to do so if mutually acceptable negotiations could be completed within the timeframes as set forth in Sections 3 and 11 of the Settlement Term Sheet. SCE posited that the Seller under a Legacy PPA would first enter a Transition PPA and later negotiate a "competitive market price" for ADC and, upon agreement, amend the Transition PPA to incorporate ADC.

On March 8, 2012, with the 120 day deadline to execute a Subsequent PPA approaching, Sellers supported and joined a request by Watson Cogeneration Company ("Watson"), another SCE affiliate, for an extension of time of an unspecified length from the ED Director to commence the term of a Subsequent PPA.[5] SCE supported an extension that would apply to all QFs on extensions of Legacy PPAs, but to no later than June 1, 2012. The extension request was granted by the ED Director on March 20, 2012 effective through June 1, 2012.

Concurrently, KRCC and Sycamore participated in SCE's and PG&E's First CHP Requests for Offers ("RFO"). From March to May, Sycamore and SCE negotiated a CHP RFO contract that was executed on July 2, 2012. From April to October, KRCC and PG&E negotiated a CHP RFO contract that was executed December 19, 2012. During this time SCE's and Sellers' resources were occupied in negotiations and were not able to progress on the Transition PPA negotiations.

On May 18, 2012 KRCC and Sycamore wrote the ED Director and asserted that the Transition PPA was "inapplicable" to KRCC and Sycamore's unique position to "transition from CHP to UPF status" and to offer multiple products. Sellers asserted that a Subsequent Agreement must include multiple products. Similarly to Watson's request submitted on May 17, Sellers requested a 180 day extension. On May 24, 2012 SCE responded, arguing that the Transition PPA "is precisely applicable" to KRCC and Sycamore's situation. SCE asserted that Sellers could execute and at a subsequent time amend the Transition PPA to provide such products through terms for ADC. The ED Director agreed with SCE and denied Sellers' requests for further extensions unless they executed a Transition PPA or Subsequent PPA by June 1, 2012 (the deadline was later extended to June 8).

On June 8, Energy Division permitted an extension of time for KRCC and Sycamore to negotiate an amended Transition PPA or Subsequent PPA with SCE

[5] See E-4537, p. 3.

until October 1, 2012. The ED Director acknowledged that if SCE were to exchange price information during a bilateral negotiation with an affiliate prior to the forthcoming conclusion of Track 1 of SCE's 2011 CHP RFO (on July 2, 2012) there would be a concern of improperly advantaging a counterparty. The ED Director noted that after July 2, 2012, based on SCE's CHP RFO schedule, SCE would have knowledge about "competitive market prices for CHP facilities operating as UPFs."

SCE and Sellers disputed the appropriate benchmark for determining a "competitive market price" for ADC. SCE posited that this price referred to the price for energy in the CAISO market and the price for Resource Adequacy ("RA") capacity, while considering the short term of the agreement (2013-2015) and the 12,000+ Btu/kWh heat rates of the facilities. KRCC and Sycamore posited that the market price was for dispatchable capacity from CHP facilities that participated in the CHP RFO.

After several months of negotiations, SCE concluded that the negotiations were unsuccessful and then proposed mediation, in accordance with Section 3.4.1.2 of the Settlement Term Sheet. On September 12, 2012, Buyer and Sellers entered mediation directed by a CPUC Administrative Law Judge. Parties discussed the terms of amendments, but were unsuccessful in negotiating an ADC price.

In anticipation of another extension request, on September 25, 2012, SCE wrote the ED Director. In this letter SCE requested that no further extension should be granted and stated that Sellers should sign Standard Form Transition PPAs or Subsequent PPAs for all products by September 30, 2012. SCE asserted that Sellers had since been unwilling to either sign Transition PPAs or to offer competitive prices, the effect of which was a continued extension of their Legacy PPAs at ratepayers' expense. On September 27, 2012, Sellers sought further extensions until October 20, 2012, to continue negotiations. Sellers explained that they agreed with SCE to use the form Sycamore CHP RFO Dispatchable Agreements as the basis for the KRCC and Sycamore Transition PPAs for the dispatchable units. However, Sellers noted that the parties disagreed on pricing and sought the Commission's "guidance…on the proper pricing standards." Sellers also cited the ED Director's previous letter as evidence, in their opinion, to support their argument that SCE now had the UPF market pricing from the results of the CHP RFO. In response, the ED Director granted a "final extension" to October 15, 2012, but did not provide guidance on the proper pricing standard.

On October 9, 2012, KRCC and Sycamore made an "emergency request" to the ED Director for an indefinite extension and reiterated their view that dispatchable capacity pricing should be based on Sycamore's CHP RFO pricing. Sellers also asserted that the Settlement did not contemplate that "transition pricing would be subject to negotiation." SCE responded on October 10, 2012, in opposition. SCE reasoned that since the KRCC/Sycamore PPAs were both affiliate transactions, SCE had an obligation to justify the pricing in these PPAs before FERC as "consistent with prices in the short-term capacity market," and that the Sycamore CHP RFO PPA does not best reflect short-term competitive market prices. On October 10, 2012, the ED Director denied the Sellers' extension request.

By October 15, 2012, SCE and Sellers agreed to \$1.18/kW-month ("-mo") for RA Capacity and \$3.15/kW-month for UC Toll Capacity, for a total ADC price of \$51.96/kW-year ("-yr"). In addition, SCE and Sellers agreed upon terms and conditions for Transition PPAs and Dispatchable Agreements, which are of the same form as the Sycamore CHP RFO Agreements.

Table 1: Contract Term Periods for KRCC and Sycamore

Facility	Type	Start	Termination
KRCC	Legacy PPA	1/16/1984	Extended
KRCC	Letter Agreement ext. Legacy PPA	6/28/2011	Reg. Approval
KRCC	Transition Agreements	Reg. Approval	6/30/2015[Note1]
Sycamore	Legacy PPA	12/18/1984	Extended
Sycamore	Letter Agreement ext. Legacy PPA	6/17/2008	Reg. Approval
Sycamore	Transition Agreements	Reg. Approval	6/30/2015[Note1]

AL 2825-E requests approval for two sets of five documents —one set each for KRCC and Sycamore— that structure the provision of baseload and dispatchable power products from the four generation unit facilities. The Transition Agreements between SCE and each respective Seller is comprised of a modified:

1) Transition Standard Contract for Existing Qualifying Cogeneration Facilities pursuant to which Sellers will supply SCE capacity and energy from certain baseload units;

2) Resource Adequacy Confirmation pursuant to which Sellers will provide SCE RA capacity from certain dispatchable units;

3) Unit Contingent Toll Confirmation pursuant to which Sellers will provide SCE dispatchable capacity, energy, and other products;

4) Edison Electric Institute Master Power Purchase and Sale Agreement, which the RA and Toll Confirms are both subject to; and

5) Paragraph 10 to the Collateral Annex to the EEI Master Agreement.

While each set of documents has facility-specific modifications, they otherwise are virtually identical. The modified non-price terms are reasonable.

Table 2: Applicability of Transition Agreements to KRCC and Sycamore

Agreement Type	Transition Standard Contract for Existing Qualifying Cogeneration Facilities ("Transition PPA")	"Dispatchable Agreements"	
		Resource Adequacy Confirmation ("RA Confirm")	Unit Contingent Toll Confirmation ("Toll Confirm")
Agreement subject to		Edison Electric Institute Master Power Purchase and Sale Agreement ("EEI Master") Paragraph 10 to the Collateral Annex ("Paragraph 10")	
KRCC	Units #2 & #4	Units #1 & #3	
Sycamore	Units #1 & #3	Units #2 & #4	

The Commission analyzed the final negotiated price for Additional Dispatchable Capacity in comparison to transaction data under both SCE's and Sellers' proposed standards for a "competitive market price." The final negotiated price is in excess of the prices for similar transactions where the standard is pricing from forecasts of the short term CAISO energy market and forecasts of RA capacity prices. Contrary to SCE's assertion, the Capacity Procurement Mechanism, an administratively-set price for resources that are in risk of retirement but are needed for reliability, is not a relevant basis for justifying the reasonableness of this negotiated price. The final negotiated price is competitive with the dispatchable capacity prices where the standard is pricing from dispatchable CHP facilities that participated in the SCE CHP RFO.

Sellers disagreed with SCE and the Division of Ratepayer Advocates (which protested the AL) about the basis upon which to determine a competitive market price. The Commission recognizes that (1) the parties to this AL were also Parties to the QF/CHP Settlement and (2) parties interpreted Section 3.4.1.2 differently and requested Commission guidance on this section. When evaluating the meaning in Section 3.4.1.2 of "competitive market price," the Commission considers this Section in the context of other Sections that discuss the Transition Period and Legacy PPAs. It is reasonable for the final negotiated price for ADC to be a compromise between these two price standards given the processes the Settlement has established to "smoothly transition" CHP facilities like the Sellers off of their Legacy PPAs. Based on the Commission's analysis of market data this negotiated price is reasonable.

Furthermore, as done previously in other QF/CHP Settlement resolutions, the Commission compares the proposed agreement to the Existing PPA. In this regard, the execution of the Transition Agreements provides substantial customer savings and merits Commission approval.

Detailed analyses regarding the modifications to the Standard Form Transition PPA and propriety of the affiliate transaction are, respectively, included in the Transition PPA Matters and Independent Evaluator Review sections below. An analysis of the pricing terms and negotiations for ADC are included in the Cost Reasonableness section and Confidential Appendix B.

BACKGROUND

On December 16, 2010, the Commission adopted the Qualifying Facility and Combined Heat and Power Program Settlement Agreement 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 ("IOUs") 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 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") by the end of 2020.

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 Offer Contracts for QFs with a Power Rating that is Less than or Equal to 20 MW (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 greenhouse gas ("GHG") regulation is developed in California or nationally.

One of the three stated goals and objectives of the Settlement (Section 1.1.2) was to create a smooth transition from the existing QF CHP PURPA Program to a State-Administered CHP Program. Section 2.1 of the Term Sheet defines a Transition period, beginning on the Settlement Effective Date, November 23, 2011, and ending on July 1, 2015. During the Transition Period, existing CHP Facilities will obtain a new PPA per Section 4, sell into the wholesale market, shut down, or cease to export to the grid.

The Settlement makes available a Transition PPA to CHP facilities currently selling to an IOU under a Legacy PPA or an extension thereof that is expiring during the Transition Period. Settlement Term Sheet Section 3.4.1.2 describes a permitted amendment to the Standard Form Transition PPA for the Sale of Additional Dispatchable Capacity beyond the Transition PPA Capacity Product. As will be described below in the Transition PPA Matters section, the Settlement establishes terms and conditions regarding the negotiation and sale of a CHP facility's Additional Dispatchable Capacity at a "competitive market price."

The Settling Parties' objective was to assure that a CHP or Utility Prescheduled Facility operating under an extension ordered by the Commission in D.07-09-040[6]

[6] D.07-09-040 adopted policies and pricing mechanisms applicable to the IOUs' purchase of energy and capacity from QFs pursuant to PURPA. Specifically, the Market Index Formula, which includes market and administrative heat rates to calculate avoided cost energy pricing, a

Footnote continued on next page

will be able to deliver power without interruption pursuant to the extension of the Legacy CHP PPA until the first day of the term of a new amended PPA. The Legacy PPA Matters for All Existing QFs section below describes how Section 11.2.1 of the Settlement Term Sheet establishes a procedure to achieve this objective.

NOTICE

Notice of AL 2825-E was made by publication in the Commission's Daily Calendar. Southern California Edison ("SCE") states that a copy of the Advice Letter and the two supplements, ALs 2825-E/A and 2825-E/B were mailed and distributed in accordance with Section 3.14 of General Order 96-B. AL 2825-E and its supplements were served to the service list of R.12-03-014, regarding the Long Term Procurement Plans and the service list of A.08-11-001, the consolidated QF/CHP docket.

PROTESTS

Advice Letter 2825-E was timely protested by the Division of Ratepayer Advocates ("DRA") on January 2, 2013. AL 2825-E received a timely reply from SCE on January 10, 2013. KRCC and Sycamore filed a response to the Advice Letter late on January 14, 2013. Energy Division accepts the late-filed response. Neither supplemental AL 2825-E/A nor AL 2825-E/B was protested.

DRA recommends that the Commission reject the Transition Agreements on the basis that the negotiated amendments for Additional Dispatchable Capacity are not "competitive with market price" per Section 3.4.1.2 of the Settlement Term Sheet.

DRA referenced recent public estimates for capacity prices to conclude that the negotiated price of $51.96/kW-yr is excessive and asserted that "if KRCC or Sycamore offered such a price in the market with other generators, the IOUs would reject those offers." DRA assents to SCE's interpretation that the "competitive market price" refers to the forecasted price for dispatchable

---

Standard Short Term As-Available Power Contract, and a Standard Long Term Firm, Unit-Contingent Power Contract for QFs.

generating facilities in the CAISO market. DRA contends that the Settling Parties would have specified if their intent was to limit the "market" to the CHP RFO.[7]

SCE, KRCC and Sycamore reply that despite the lack of a clear basis for a "competitive market price" for ADC, the final price is fair and reasonable because it was a result of good faith negotiations, at arms-length, with CPUC mediation.

SCE replied by reiterating that the final price was a result of substantial disagreement upon the basis for which a competitive market price would be determined. KRCC and Sycamore asserted that the Sycamore CHP RFO Agreement capacity price was an appropriate benchmark. Conversely SCE believed that this price did not reflect short term forecasts of energy prices in the CAISO market and of prices for bilateral RA capacity contracts. SCE asserted that given this conflict and the urgency to terminate the Legacy PPA and payments under it, the significant negotiation and CPUC-supported mediation resulted in a reasonable price.[8] KRCC and Sycamore provided a similar reply to justify the reasonableness of the ADC price, explaining that the disagreement persisted because the Settlement "does not proscribe any basis for the price of UPF capacity." KRCC and Sycamore added that a competitive market price for UPF power must "account for all of the qualities and features of the product."[9]

SCE, KRCC, and Sycamore agree that the Transition Agreements result in reduced payments to the facilities in comparison to those that would have occurred under a continuation of the Legacy PPAs.

Section 3.4.1.2 of the Settlement Term Sheet does not define the scope of the market in the requirement to incorporate a "competitive market price" for the sale of Additional Dispatchable Capacity. We discuss the merits of the negotiated

[7] Confidential Protest of the Division of Ratepayer Advocates of SCE's AL 2825-E, (January 2, 2013), p. 3-5.

[8] Reply of SCE to the Confidential Protest of the DRA to Advice 2825-E ("SCE Reply"), (January 10, 2013), p. 2.

[9] Reply of Sycamore Cogeneration Company and Kern River Cogeneration Company to the Confidential Protest of the Division of Ratepayer Advocates ("Sycamore and KRCC Response"), (January 14, 2013), p. 3.

price within the Cost Reasonableness section and in detail within Confidential Appendix B.

<u>KRCC and Sycamore 1) differentiate their UPF products from Resource Adequacy-only products and 2) distinguish the Transition Agreements to be "UPF Transition PPAs" as separate from the Pro Forma Transition PPA.</u>

KRCC and Sycamore reply to the protest by claiming that the power products provided by certain KRCC and Sycamore units are not "Additional Dispatchable Capacity," but firm power under a tolling arrangement with an UPF. Sellers differentiate their products by claiming that ADC "applies to operations that a CHP Facility may dispatch from a CHP operation."[10] KRCC and Sycamore assert that DRA's comparison of Resource Adequacy-only prices to KRCC and Sycamore's RA and Tolling price are inappropriate because they do not recognize the firm and dispatchability attributes provided under UPF operations.

KRCC and Sycamore note that the Settlement did not establish a pro forma Transition PPA specific to UPF operations. Sellers argue that the "Subsequent PPA" mentioned in Section 11.2.1 of the Settlement Term Sheet is distinct from the "Transition PPA." Sellers note that this terminology was intended to safeguard facilities like KRCC and Sycamore, "whose contracts would otherwise expire but needed a UPF contract different from the Transition PPA." Sellers assert that SCE's Transition Agreements "fulfill the obligation" to safeguard these types of facilities, which serve as a "UPF Transition PPA."[11]

The Settlement did not provide a Transition PPA specifically for UPFs, but specified options on the negotiation of "Subsequent PPAs" for such UPFs (in Section 11.2.1) and products beyond the standard Transition PPA capacity product (in Section 3.4.1.2). The Commission discusses the reasonableness of the negotiation process for these options in the Legacy PPA Matters for All Existing QFs section.

---

[10] *Id*. p. 1.

[11] *Id*. p. 2

DISCUSSION

On December 14, 2012, SCE filed Advice Letter ("AL") 2825-E requesting Commission approval of Transition Agreements with KRCC and Sycamore that replace their existing Legacy PPAs. The Transition Agreements will become effective upon requisite CPUC and FERC approvals, and the Transition Agreements will end at the election of the Seller but no later than June 30, 2015. On December 21, 2012, SCE filed a supplement AL 2825-E/A providing data on the costs of the Transition Agreements with Sycamore and KRCC. On February 21, 2013, SCE filed a supplement AL 2825-E/B at the request of Energy Division providing an updated analysis from the Independent Evaluator regarding SCE's recent Resource Adequacy transactions and updated capacity price forecasts.

Specifically, SCE requests that the Commission issue a final resolution that contains:

1. Approval of the Transition Agreements in their entirety; and
2. Any other and further relief as the Commission finds just and reasonable.

Energy Division evaluated the Proposed PPAs based on the following criteria:

- Consistency with D.10-12-035, which approved the QF/CHP Program Settlement, including:
    - Consistency with Transition PPA Matters
    - Consistency with Legacy PPA Matters for All Existing QFs
    - Consistency with MW Counting Rules
    - Consistency with GHG Accounting Methodology
    - Consistency with Cost Recovery Requirements
- Need for Procurement
- Cost Reasonableness
- Public Safety
- Project Viability
- Consistency with the Emissions Performance Standard
- Consistency with D.02-08-071 and D.07-12-052, which respectively require Procurement Review Group ("PRG") and Cost Allocation Mechanism Group participation

In considering these factors, Energy Division also considers the analysis and recommendations of an Independent Evaluator ("IE"), if available.[12] In this case an IE oversaw all negotiations and communications between SCE, KRCC and Sycamore.[13]

Consistency with D.10-12-035 which approved the QF/CHP Program Settlement:

On December 16, 2010, the Commission adopted the QF/CHP Program 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 the new QF Standard Offer Contract. Furthermore, the Settlement allows for bilaterally negotiated contracts with CHP QFs to determine 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 a minimum of 3,000 MW of CHP. The IOUs must reduce greenhouse gas emissions consistent with their allocation of the CARB Scoping Plan CHP Recommended Reduction Measure in proportion to the IOUs' and ESPs/CCAs' current share of statewide retail electricity load. The QF/CHP Settlement became effective on November 23, 2011. The Settlement Term Sheet establishes criteria for contracts with Facilities including:

Consistency with Settlement Requirements for Transition PPA Matters

Per Section 2.1.1 of the Settlement Term Sheet, the Transition Period is a period in which a CHP Facility will either obtain a new PPA as per Section 4, sell into the wholesale market, shut down, or cease export to the grid. In addition, per Section 3.1, during the Transition Period only certain CHP Facilities are eligible to execute a Transition PPA. These Transition Period actions are permitted in

[12] Per 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.

[13] Report of the Independent Evaluator, Two Sets of Transition Power Purchase Agreements Between Southern California Edison Company and Sycamore Cogeneration Company and Southern California Edison Company and Kern River Cogeneration Company (December 2012), p. 17. ("IE Report").

part to meet the Objectives of the State CHP Program ("CHP Program") outlined in Section 1.2.2, which include provid[ing] an orderly exit strategy for CHP Facilities that cannot participate, or are unsuccessful, in the new CHP Program.[14]

The Transition Period and Transition PPA are part of the CHP Program as defined in the Settlement Term Sheet.

Per Section 3.1 of the Settlement Term Sheet, a CHP Facility currently selling to an IOU under a Legacy PPA or an extension thereof that is expiring during the Transition Period is eligible to sign a Transition PPA with the same IOU-Buyer.

Pursuant to the QF/CHP Settlement, SCE is permitted to enter Transition Agreements with Kern River Cogeneration Company and Sycamore Cogeneration Company because both facilities are currently selling to SCE under an extension of a Legacy PPA.

Per Section 3.1.2 of the Settlement Term Sheet, the Transition PPA begins upon expiration of the Legacy PPA or extensions of the Legacy PPA and ends at the election of the Seller but no later than July 1, 2015.

As KRCC, Sycamore, and SCE are affiliated companies, the Transition PPA is subject to approvals by both the CPUC pursuant to the Affiliate Transaction Rules and FERC as required by Section 205 of the Federal Power Act. The terms of the Transition Agreements commence upon their approval by both Commissions.

The Sycamore Transition Agreements will terminate on a date contingent upon the Commission's disposition of AL 2784-E regarding agreements between SCE and Sycamore that resulted from Track 1 of the 2011 SCE CHP RFO. The Sycamore Transition Agreements will terminate the day prior to the start date of the Sycamore CHP RFO Agreements, if they receive regulatory approval prior to June 30, 2014. AL 2784-E requests that the term of the Sycamore CHP RFO agreement begin January 1, 2014. If the Sycamore CHP RFO Agreements do not receive regulatory approval prior to June 30, 2014, the term of the Sycamore Transition Agreements terminates June 30, 2015.

The KRCC Transition Agreements will terminate on a date contingent upon the Commission's disposition of AL 4190-E regarding agreements between PG&E and KRCC that resulted from their first CHP RFO. The KRCC Transition

[14] D.10-12-035 p. 2.

Agreements will terminate upon election of the Seller. AL 4190-E requests that the term of the KRCC CHP RFO Agreement begin January 1, 2014.

Since the Transition PPAs are transactions between affiliates, the Transition Agreements commence upon CPUC and FERC approvals, and end at the election of the Seller at dates contingent upon the regulatory approval of agreements resulting from SCE's and PG&E's respective CHP Request for Offers, but no later than June 30, 2015.

Per Section 3.1.3 of the Settlement Term Sheet, the capacity and energy that the CHP Facility may sell to the IOU are limited to an amount consistent with the QF's historical deliveries under its Legacy PPA, but energy delivery may be lower upon election of the Seller.

The amount of energy and capacity Sycamore and KRCC deliver to SCE are limited to each Facility's historical deliveries under the Legacy PPA extended pursuant to D.07-09-040. Per Section 1.02(e) of the KRCC and Sycamore Transition PPAs both facilities have an Expected Term Year Energy Production ("ETYEP") of 1,280 GWh. This is approximately equivalent to KRCC's average deliveries from 2009-2011 of 1,271 GWh/year. The IE notes that KRCC's ETYEP is less than the maximum of their historical production during 2008-2011, which occurred in 2010. On average from 2010-2011, Sycamore delivered 1,493 GWh/year. The IE notes that Sycamore's ETYEP is less than historical production since two units with high heat rates previously operating as baseload will become dispatchable units with low capacity factors. Historical and expected deliveries and contract capacities are shown in Table 3.

Under the Transition PPA, Sellers' energy and capacity deliveries to SCE are consistent with historical deliveries under the Legacy PPA.

Table 3: Historical and Transition Agreement Deliveries

	Legacy PPA			Transition Agreements		
	Energy (GWh)	Firm (MW)	Dispatch (MW)	Energy (GWh)	Transition PPA (MW)	RA & Toll Confirm (MW)
KRCC	1,271	147.5	(Summer) 148.5 (Winter) 156	1,280	154	154 & 148
Sycamore	1,493	300	none	1,280	152	148 & 148

The Transition PPA is a modification of the QF Standard Offer Contract ("SOC") modified for the Transition Period. The Standard Form Transition PPA was attached to the QF/CHP Settlement Agreement Term Sheet as Exhibit 4.

Section 3.4 of the Term Sheet outlines the modifications to the SOC for the Transition PPA.

The Transition PPAs contain the terms of the Standard Form Transition PPA with two major exceptions. KRCC, Sycamore, and SCE agreed to modify or add sections regarding (1) the need to create cohesive, integrated contracts in consideration of the Facilities' two baseload and two dispatchable generating units; and (2) requirements for CPUC and FERC regulatory approvals.

First, Recitals G and H, Section 1.01, Section 2.02 (f), Section 2.06, Section 3.17, 6.01, and Exhibit A of the Transition PPA are modified to recognize the fact that SCE is entering the Dispatchable Agreements concurrently with the Transition PPAs. These modifications unify the terms, conditions, obligations of the Buyer and Sellers and specify which generating facilities are subject to the Transition PPA and Dispatchable Agreements.

Second, Section 1.01, Section 2.01(j), Section 2.02(e), Section 2.04 and 2.05, Section 9.01(b), and Exhibit A of the Transition PPA are modified to address CPUC and FERC regulatory approvals required because the PPA is transaction between affiliated companies. The modifications clarify precedential conditions and party obligations in acquiring CPUC and FERC approvals.

<u>SCE modified the Transition PPAs to integrate their terms and conditions with the Dispatchable Agreements that it executed with KRCC and Sycamore. SCE modified the Transition PPAs to condition approval of the agreement with its affiliates upon the requisite CPUC and FERC approvals.</u>

Section 3.4.1.2 of the Settlement Term Sheet outlines a procedure to modify the Transition PPA for the sale of Additional Dispatchable Capacity. The use of this process and the standard for a "competitive market price" were two major sources of contention during the negotiations. Sellers asserted that the Transition PPA and its option for the sale of ADC did not apply to hybrid operations and preferred that their "Subsequent PPA" take the form of a "UPF Transition PPA." SCE asserted that regardless of UPF operations, Section 3.4.1.2 required the Sellers to first execute the Transition PPA and enter "a specific amendment to the Transition PPA" to incorporate the facilities' dispatchable capacity regardless of the "ADC" nomenclature. The ED Director stated that the Settlement Term Sheet "does not specifically define" ADC and supported SCE's interpretation in a May 31, 2012 letter. The Commission considers the reasonableness of the ADC negotiation process in the context of the Subsequent PPA extension process established in Section 11 of the Settlement Term Sheet within the Legacy PPA Matters for All Existing QFs section.

As a result of the negotiations, SCE and Sellers agreed to use the form of the Sycamore CHP RFO Agreements as the basis of the KRCC and Sycamore Dispatchable Agreements. The IE found that the Sycamore CHP RFO Agreements were negotiated without preference for the counterparty.[15] The IE found the modifications to the Transition Agreements were not a result of preferential treatment to an affiliate.[16]

<u>The Dispatchable Agreements are based on the Sycamore CHP RFO Agreement, none of which was modified with affiliate preference.</u>

KRCC and Sycamore are providing Additional Dispatchable Capacity to SCE as described in Section 3.4.1.2 of the Settlement Term Sheet. Pursuant to this Section, Sellers and SCE are using two Confirmation Letters as specific amendments to accommodate the sale of ADC. Section 4.1 of the KRCC and Sycamore RA Confirms includes pricing terms for Resource Adequacy Capacity at $1.18/kW-mo. Appendix 3.1(a) of the KRCC and Sycamore Toll Confirms includes pricing terms for Unit Contingent Tolling Agreement at $3.15/kW-mo. These power products, which Sellers elected to provide to SCE above and beyond the standard contract capacity that is set forth in the Transition PPA, meet the criteria of "Additional Dispatchable Capacity" per Section 3.4.1.2 of the Settlement Term Sheet. Additional information on these power products is included in the Public Appendix A.

The Settlement does not specifically define the types of power products that constitute "Additional Dispatchable Capacity." Section 3.4.1.2 of the Settlement Term Sheet describes it as an optional product provided "above" or "beyond" the standard capacity product and associated energy and RA that is provided in the Transition PPA. As a result, contrary to Sellers' response to the protest, the Settlement does not preclude a UPF's provision of firm power under a tolling agreement from qualifying as ADC, nor does it restrict the application of ADC to "operations that a CHP Facility may dispatch from a CHP operation."

[15] Advice 2784-E, Appendix B.1, IE Report, p. 43.

[16] IE Report, p. 5.

Pursuant to Section 3.4.1.2 of the Settlement Term Sheet, SCE negotiated the Dispatchable Agreements as amendments to the Transition PPAs to incorporate Additional Dispatchable Capacity beyond the standard Transition PPA products.

The KRCC and Sycamore Dispatchable Agreements are modified versions of the EEI Master Agreement, RA Confirmation, and UC Tolling Confirmation used previously in the SCE 2011 All-Source RFO. The parties negotiated substantive modifications to standard terms in the RA Confirms, the Toll Confirms, and the EEI Master.

The RA Confirmation included two modifications. These include: (1) Restricting Seller's right to replace RA from any one unit by using another unit. Under this restriction SCE has sole discretion for approving Sellers' replacement RA. (2) Modifying the Confirm to incorporate changes to CAISO Tariff to (i) capture flexibility in the definition of "Product", (ii) flatten price shape, (iii) amend the settlement calculation to account for the RA Replacement Rule, and (iv) specify a reduction in payment if SCE replaces RA on Seller's behalf.

The Toll Confirmation included three modifications. These include: (1) Requiring that SCE assume a portion of the risk of GHG offset credit invalidation if the following conditions exist: (i) the invalidation occurred after SCE's transfer of the GHG emission allowance to seller; (ii) offset credits were still in the possession of the seller or the regulatory program implementer, (iii) seller represents that it holds title to the invalidated offset credits. (2) Requiring seller to post a full floating independent amount of 10% of the market value of the Transaction if seller's credit rating falls below a threshold. (3) Requiring seller to execute per the CAISO Tariff a Participating Generator Agreement, Meter Services Agreement and any grid interconnection agreements in advance of the delivery period.

The EEI Master's sole modification conformed its dispute provisions to those of the Standard Form Transition PPA.

The Dispatchable Agreements also contain a number of immaterial modifications made to the Standard Form Transition PPA including the need for regulatory approval and integration with the Transition PPA.

The six modifications that SCE made to the Pro Forma Dispatchable Agreements used for both KRCC and Sycamore are reasonable.

Consistency with Legacy PPA Matters for All Existing QFs

Section 11.2.1 of the Settlement Term Sheet establishes a procedure to prevent the interruption of power delivery by allowing Legacy PPAs extended pursuant to D.07-09-040 to remain in effect until Seller commences deliveries under a new or amended PPA ("Subsequent PPA") pursuant to D.10-12-035. The ED Director is authorized to grant Seller requests to extend Legacy PPAs beyond 120 days after the Settlement Effective Date for good cause.

SCE and Sellers began discussions regarding a Subsequent PPA in advance of the Settlement Effective Date, but, unable to complete negotiations for a Subsequent PPA prior to the March 22, 2012 deadline, agreed to an extension request. The ED Director found the parties' disagreement upon the inclusion of terms for ADC to be "good cause" for an extension, and permitted the Legacy PPA to continue until June 1, 2012 (and later extended to June 8).

Sellers requested an additional extension of 180 days by citing that the Transition PPA procedures for ADC were inapplicable to KRCC and Sycamore's case as a UPF. In a May 31, 2012, letter, the ED Director agreed with SCE's opposition to the request and cited that the Settlement allows for modification of the Transition PPA "to include provisions that allow [KRCC and Sycamore] to sell multiple power products."

While the ED Director disallowed the 180 day extension, he recognized the risk of improperly advantaging the Sellers if SCE were to exchange price information from the CHP RFO during negotiations prior to the close of the RFO. As a result, Sellers were allowed an additional (115 day) extension to October 1, 2012.

Section 3.4.1.2 of the Settlement Term Sheet requires that a Buyer negotiate an amendment to the Transition PPA to incorporate ADC for at least 120 days. The parties disputed the appropriate standard on which to determine a competitive market price. SCE asserted that Sellers' offer, which was based on a seven year term for a dispatchable CHP facility, did not reflect forecast prices for the short term CAISO energy market or for short term RA capacity. SCE deemed negotiations unsuccessful and proposed mediation as required by Section 3.4.1.2. A CPUC ALJ mediated parties' discussions on September 12, 2012. While the standard for a market price was not resolved during mediation, in subsequent letters to the ED Director both parties agreed that the Sycamore CHP RFO Agreements could serve as a template for a Subsequent PPA. In a letter dated September 25, 2012, SCE stated that the conclusion of the mediation "effectively ended all negotiations." Sellers received a "final extension" to October 15, 2012 to execute a Subsequent PPA which would continue until regulatory approval.

Pursuant to Section 11.2.1 of the Settlement Term Sheet, KRCC and Sycamore received four extensions to their Legacy PPAs[17] to provide them time to negotiate and execute a Subsequent PPA, specifically to include pricing and terms for dispatchable capacity. The final extension will expire upon regulatory disposition of the Transition Agreements. Given the contention between the parties on multiple issues and SCE's constraints from negotiating with an affiliate concurrently with a competitive solicitation, the Commission finds these extensions reasonable and within the Settlement's requirements.

<u>KRCC's and Sycamore's Legacy CHP PPAs were reasonably extended four times and continue in effect, pending the regulatory approval of an executed "Subsequent PPA," as required by Section 11.2.1 of the Settlement Term Sheet.</u>

Pursuant to Section 3.4.1.2 of the Settlement Term Sheet, Buyer and Seller must negotiate a competitive market price to incorporate Additional Dispatchable Capacity to the Transition PPA for at least 120 days. SCE states that they negotiated on terms for ADC for nine months. It may be futile to distinguish the exact date during Subsequent PPA extensions at which the parties began negotiating the ADC price, given their disagreement on the applicability of the Transition PPA.[18] Despite this, the total length of the extensions allowed for purposes of executing a Subsequent PPA is sufficient to determine that SCE is compliant with the ADC negotiation process. Sellers were permitted Legacy PPA extensions from March 22 to October 15, 2012 (204 days), a timeframe well in excess of the 120-day minimum requirement set forth in Section 3.4.1.2 of the Settlement Term Sheet.

<u>SCE has fulfilled is obligations to negotiate with Seller for Additional Dispatchable Capacity as required by Section 3.4.1.2 of the Settlement Term Sheet and was reasonable in seeking mediation as a result of unsuccessful negotiations.</u>

As KRCC and Sycamore executed Transition Agreements with SCE in accordance with the October 15 deadline set by the ED Director to execute a

---

[17] From the ED Director until June 1, 2012; June 8, 2012; October 1, 2012 and October 15, 2012.

[18] The Commission may estimate a date at which parties began negotiations of ADC by subtracting 120 days from August 1, 2012 (the point at which SCE considered negotiations unsuccessful and proposed mediation). This date, April 3, 2012, is conservative when considering that Sellers provided SCE an initial offer in late January 2012 and negotiations were completed October 15, 2012.

Subsequent PPA, the Legacy PPA will continue until approval by CPUC and FERC.

Pursuant to Section 11.2.1 of the Settlement Term Sheet, the Transition Agreements constitute "Subsequent PPAs" and therefore commence their terms upon regulatory approval.

Consistency with Settlement MW Counting Rules

Per Term Sheet Section 5.1.3, the IOUs are directed to enter into PPAs to meet the MW and GHG Emissions Reduction Targets consistent with the CHP Procurement Processes in Section 4. Transition PPAs are not listed as a Procurement Process in Section 4, their terms expire no later than the end of the Transition Period, and capacity under contract in a Transition PPA does not count toward a utility's MW Target. This is appropriately reflected in the Advice Letter.

Pursuant to the QF/CHP Settlement, Sellers' contract capacities under the Transition PPAs do not count toward SCE's MW procurement target.

Consistency with Settlement Greenhouse Gas Accounting Methodology

Per Term Sheet Section 5.1.3, the IOUs are directed to enter into PPAs to meet the MW and GHG Emissions Reduction Targets consistent with the CHP Procurement Processes in Section 4. The measure of progress of an IOU procurement activity toward the IOU's GHG Emissions Reduction Target will be determined according to the GHG Emissions Accounting Methodology in Section 7. Transition PPAs are not listed as a Procurement Process in Section 4 nor do the Project GHG Accounting Methodologies apply to Transition PPAs. Therefore the Transition PPA does not count toward SCE's GHG Target. This is appropriately reflected in the Advice Letter.

Pursuant to the QF/CHP Settlement, any change in Sellers' operations under the Transition PPAs do not count toward SCE's GHG Emissions Reduction Target because Transition PPAs are not an eligible procurement process and are inapplicable to the GHG Accounting Methodology.

Consistency with Cost Recovery Requirements

Ordering Paragraph 5 of D.10-12-035 orders the three large electric IOUs to recover the net capacity costs from CHP Program contracts on a non-bypassable basis from all bundled service, Direct Access ("DA") and Community Choice Aggregator ("CCA"), and Departing Load Customers ("DLC"), except for CHP DLC. With this authorization, the Settlement supersedes to the extent necessary

D.06-07-029 and D.08-09-012, which established and modified the Cost Allocation Mechanism, respectively. Section 13.1.2.2 of the Settlement Term Sheet requires that the IOU recover CHP contract costs, net of the value of energy and ancillary services provided to the IOU. Non-IOU load-serving entities ("LSEs") receive ("Resource Adequacy") RA credits in proportion to the allocation of the net capacity costs that they pay.

On January 17, 2012 the Commission made effective SCE AL 2645-E as of November 23, 2011, which authorized SCE to revise its New System Generation Balancing Account to recover the net capacity costs of CHP contracts as it was directed by D.10-12-035. AL 2645-E determines the net capacity costs as the result of a debit and credit, where:[19]

- Debits include: Capacity and energy costs, including QF/CHP Program contracts that are eligible for net capacity cost recovery
- Credits include: Energy revenues for QF/CHP Program contracts that are eligible for net capacity cost recovery

Section 13.1.2.2 of the Settlement Term Sheet states: "In exchange for paying a share of the net costs of the CHP Program, the LSEs serving DA and CCA customers will receive a pro-rata share of the RA credits procured via the CHP Program." In addition to standardized Power Product, the terms of the Transition PPA require the sale of Related Products, which include "Resource Adequacy Benefits."

<u>Resource adequacy benefits are to be allocated according to the share of the net capacity costs paid by load-serving entities serving direct access and community choice aggregation customers as prescribed in Section 13.1.2.2 of the QF/CHP Settlement Term Sheet.</u>

Need for Procurement

SCE's total MW procurement goal for the CHP Program is 1,402 MW, with 630 MW allocated to Target A. SCE's 2020 GHG Emissions Reduction Target is 2.15 MMT. As of the October 8, 2012 CHP Semi-Annual Report, SCE has executed contracts contributing 847 MW and 0.09 MT toward these goals.

The Transition PPA does not count toward the MW or GHG Targets set forth in the Settlement, as it is not an eligible procurement process. Therefore the

[19] SCE Advice Letter 2645-E, http://www.sce.com/NR/sc3/tm2/pdf/2645-E.pdf.

execution of the Transition Agreements with Sycamore and KRCC do not affect the need to procure additional CHP resources required to achieve the MW and GHG Targets.

The execution of the KRCC and Sycamore Transition Agreements do not count towards SCE's obligation to procure additional CHP resources to meet the remaining MW and GHG Targets.

Cost Reasonableness

Cost of Power Products under the Pro Forma Transition PPA

The Settlement defines pricing for the *Pro Forma* Transition PPAs in Term Sheet Section 3.2. Article One, Section 1.06 of the *Pro Forma* Transition PPA outlines the Power Product Prices. Per Term Sheet Section 3.2.1, capacity prices shall be paid as established in D.07-09-040. The Firm Capacity and As-Available Capacity Prices are consistent with the methodology adopted in D.07-09-040.

Table 4: Capacity Prices ($/kW-year) established by D.07-09-040

Year	Firm Capacity	As-Available Capacity
2013	$91.97	$45.00
2014	$91.97	$46.97
2015	$91.97	$48.98

Per Term Sheet Section 3.2.2, energy pricing will be Short Run Avoided Cost (SRAC) as defined in Section 10 of the Term Sheet, "SRAC Energy Pricing Structure." Exhibit D, Section 2 of the Transition PPA outlines the calculation of the monthly energy payment:

Time-of-Day ("TOD") Period Energy Payment = the sum from the first hour of the applicable TOD Period to the last hour of the applicable TOD Period,

[(TOD Period Energy Price – Location Adjustment) *
Allowed Payment Energy + Location Adjustment * Metered Accounts]

The TOD Period Energy Price (EP) and Hourly Location Adjustment Price (LA) refer to Sections of Exhibit S of the Transition PPA, which is an adapted form of Section 10 of the Term Sheet.

The pricing terms of the Transition PPAs are determined by Commission-approved capacity pricing per D.07-09-040 and energy pricing per the SRAC Energy Pricing Structure as defined within the Settlement.

Cost of Additional Dispatchable Capacity sold under the Dispatchable Agreements

To determine cost reasonableness the Commission first considers the power products offered under the Dispatchable Agreements: (1) Resource Adequacy capacity and (2) unit contingent energy tolling. KRCC and Sycamore are both located in the Big Creek-Ventura Local RA Area along Southern Path 26 ("SP26") and provide Local and System RA to SCE. SCE values Local RA higher than System RA. The Facilities' 12,000+ Btu/kWh heat rates provide relatively low additional energy toll value to the Local and System RA value. The term of the Transition Agreements are dependent on the Commission's disposition of Sellers' CHP RFO agreements with SCE and PG&E, but without prejudging the reasonableness of those requests, this analysis assumes a term of 2013-2015.

The Settlement does not establish a price for Additional Dispatchable Capacity. Rather, Section 3.4.1.2 of the Settlement Term Sheet requires that the "Buyer must negotiate…to amend the Transition PPA to incorporate a competitive market price for the ADC." If after unsuccessful negotiations and mediation the "Buyer elects not to accept Seller's offer of Additional Dispatchable Capacity" then the Buyer "will facilitate an alternative sale and delivery of the Dispatchable Capacity to the CAISO market." The Settlement does not define "competitive market price" or "CAISO market." Based on this language, it is reasonable to conclude that the Settlement does not characterize the "CAISO market," in this limited case specific to ADC under the Transition PPA, as the preferred market or as the primary benchmark of what a competitive market price is for ADC. Instead, the CAISO market serves as an "*alternative*" market intended to accommodate ADC if negotiations to agree on a "competitive market price" are unsuccessful.

The counterparties' respective positions on these issues appear to stem, in part, from an ambiguity regarding which noun ("market" or "price") the word "competitive" modifies. To analyze the reasonableness of the negotiated price of $51.96/kW-yr, the Commission examines the benchmarks that parties considered in negotiations and compares the costs of the Transition Agreements to the existing power purchase agreements as has been done in previous resolutions concerning bilaterally negotiated Transition PPAs.[20] These benchmarks include:

1. Short Term Price Forecasts for CAISO Energy and for RA Capacity
2. Payments under the CAISO Capacity Procurement Mechanism

[20] E-4537 to SCE AL 2673-E approving a Transition PPA with Watson Cogeneration Co.

3. Prices for Dispatchable CHP Facilities in the SCE CHP RFO
4. Costs of Existing Power Purchase Agreements

For additional information about proposed ADC pricing, please refer to Confidential Appendix B.

In addition to evaluating whether the ADC prices are reasonable, which is subject to Commission interpretation, the Term Sheet introduces the notion of fairness (Section 1.2.5.4) as a ratepayer objective to consider when striving to meet the broader Settlement goals of smoothly transitioning existing QFs to the State-administered CHP Program (Section 1.1.2), and providing an "orderly exit strategy for CHP Facilities that cannot participate, or are unsuccessful, in the new CHP Program" (Section 1.2.2.4).

1. Short Term Price Forecasts for CAISO Energy and for RA Capacity

SCE argues that Seller's initial offer of $73/kW-yr for ADC, which was based on the Sycamore RFO PPA, was excessive in comparison to short term forecast prices of the competitive market (See Figure 1). The IE states that there is limited public information on the prices of individual capacity transactions in California, but references aggregated public information. An October 2012 Brattle Group report characterizes that existing resources earn "approximately $18-38/kW-yr (or less)" under the Resource Adequacy Requirement program.[21] This report references the CPUC's 2010 Resource Adequacy Report, which stated that the median price of 126 contracts for System-only RA was $18.00/kW-yr and that the median price of 82 contracts for Local and System RA in NP26 was $38.28/kW-yr. The most appropriate metric to consider within this 2010 RA Report is the median price of contracts for Local and System RA in SP26. For 2010, the median price of 159 contracts was $30.84/kW-yr.[22] Based on a CPUC Report released after SCE filed AL 2825-E, for 2011 the median price of 261 contracts decreased to $30/kW-yr (See Figure 1).[23] The IE's assessment of

[21] The Brattle Group, "Resource Adequacy in California: Options for Improving Efficiency and Effectiveness," (October 2012), p. 1.

[22] CPUC, "2010 Resource Adequacy Report," (April 22, 2011), p. 24.

[23] CPUC, "2011 Resource Adequacy Report," (February 5, 2013), p. 22.

both public and confidential market-based information is that the market price is lower than the final negotiated ADC price.[24]

The final negotiated price for ADC is in excess of a "competitive market price" where the standard of comparison is the short term price forecast of RA capacity.

DRA's protest reiterates the IE's assessment that the market price is lower than the final negotiated ADC price to recommend the Commission's rejection of the Transition Agreements. KRCC and Sycamore respond that the price comparison to median RA prices is improper because RA-only prices do not reflect the power product attributes of dispatchable, firm power under the tolling agreement in the Transition Agreements. The Commission understands Sellers' concerns and reaffirms the IE's conclusion that the market for capacity prices "is not highly visible." It would be improper to compare the prices of past RA-only products with those of future RA, dispatchable capacity, and energy products, whose value is dependent on SCE's forecast of the need for such RA, capacity, and energy. Furthermore, a strict comparison of the products offered in the Dispatchable Agreements to RA-only prices ignores the other non-price objectives of the Settlement.

It is tenuous to compare a price for future RA and energy products with a price aggregate for previous Resource Adequacy contracts of varying and dissimilar delivery and location attributes. The Commission finds that rejecting the Transition Agreements on that basis alone would not provide a fair assessment of cost reasonableness and therefore denies DRA's recommendation.

In Supplemental AL 2825-E/B, the Independent Evaluator reported more current market price information based on SCE agreements for Resource Adequacy capacity. SCE entered these agreements in the same month as the Transition Agreements with resources within the Big Creek/Ventura Local Capacity Area for a term contemporaneous to the Transition Period. The IE notes that while this information does not change the conclusions in the December 2012 IE Report, it demonstrates "a strengthening of the RA market" potentially due to CAISO's replacement requirement rule effective for 2013.[25]

---

[24] IE Report, p. 31.

[25] Supplemental Report of the Independent Evaluator, Two Sets of Transition Power Purchase Agreements between Southern California Edison Company and Sycamore Cogeneration

Footnote continued on next page

SCE's contemporaneously executed RA agreements within the Big Creek/Ventura Local Capacity Area indicate a strengthening of market prices and provide additional information for determining cost reasonableness.

The Commission compares the final negotiated price to the value of KRCC and Sycamore's power products, to proprietary forecasts of the short term CAISO market, and to similar RA transactions in Confidential Appendix B.

DRA's protest repeats one of the IE's assertions that the Settling parties could have written Section 3.4.1.2 of the Settlement Term Sheet to refer to a "competitive market price *for dispatchable CHP facilities*," if their intent was to do so. The IE adds that the broader market interpretation is consistent with the latter part of the Section, which requires Buyer to facilitate the sale of ADC to the CAISO market. SCE and Sellers rebut this argument by referencing that the negotiations preceded the Settlement-required mediation, and later resulted in an agreed-upon price. The Commission understands the potential for ambiguity within Section 3.4.1.2. While it is evident that this causes disagreement between the Settling Parties, the resolution is not the venue for parties to renegotiate the terms of the Settlement. It is inappropriate for parties to attempt to do so by deriving meaning from individual Term Sheet sections –particularly where no single definition is provided. Therefore the Commission refines this analysis of cost reasonableness based on the context provided on the QFs' Transition from Legacy PPAs within other Sections of the Settlement Term Sheet.

Per Section 1.2.5.4, a customer objective for the State CHP Program is to move QFs with Legacy PPAs and CHP resources to "viable, market-based compensation…to sustain CHP operations at fair prices." Per Sections 1.1.2 and 2.1.1, the Settlement demarcates a time for the "smooth transition" of QFs with Legacy PPAs to the PPAs under the State-administered CHP Program. During the Transition Period, the QFs' could obtain a new Section 4 PPA, sell into the wholesale market, shut down, or cease grid exports. For up to 120 days during the Transition Period (and per extensions based on good cause) a QF is entitled to remain on extensions of their Legacy PPA until the commencement of a new or amended (Subsequent) PPA per Section 11.2.1.

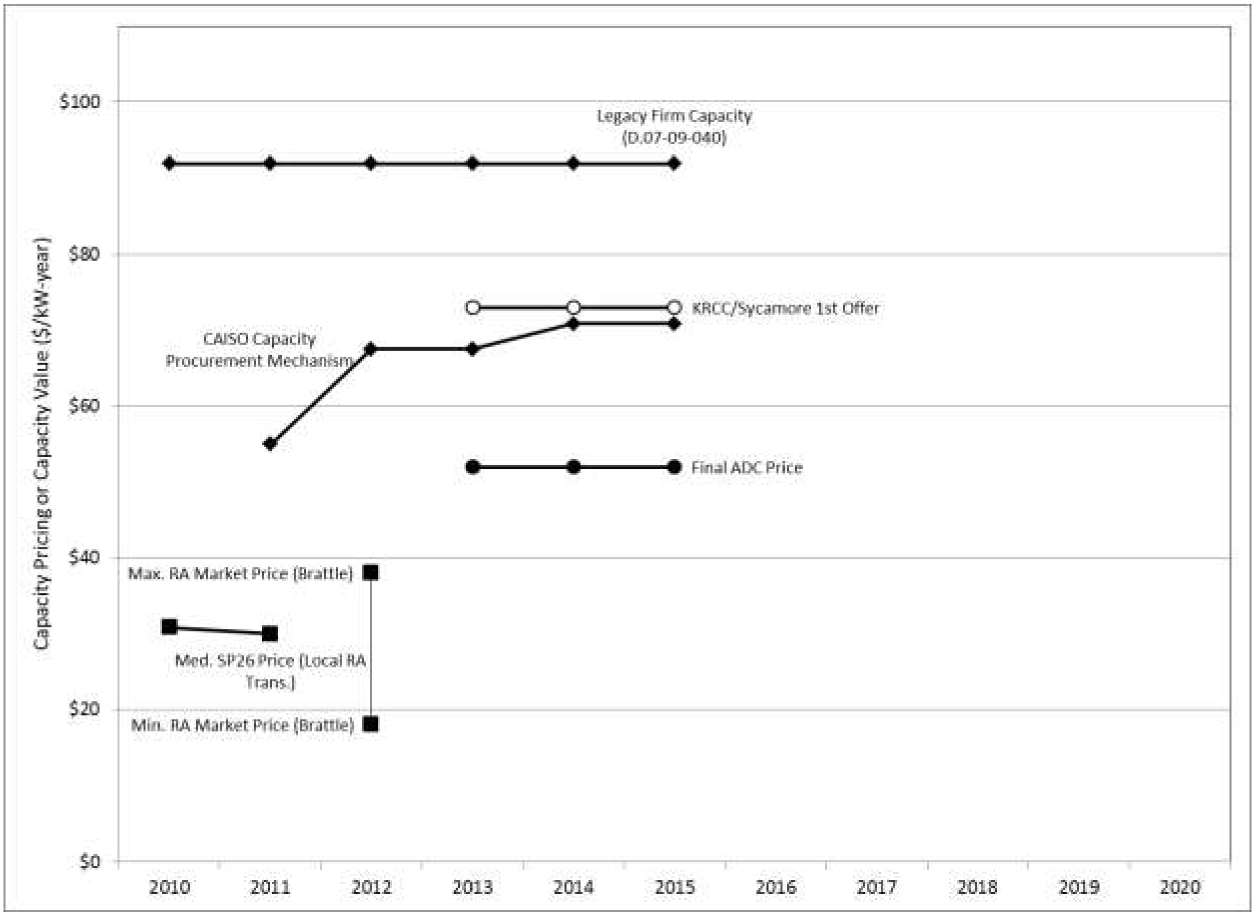
Company and Southern California Edison Company and Kern River Cogeneration Company (February 2013), p. 2. ("Supplemental IE Report")

The Settlement's allowance for Legacy PPA extensions for facilities awaiting the commencement of a Subsequent PPA is intended to prevent the interruption of power deliveries. KRCC and Sycamore, operating under the assumption that the Transition PPA was inapplicable to their UPF-like facilities, believed that they had no way of continuing power deliveries until the start of their (Section 4.2) CHP RFO PPAs. The facilities' high heat rates rendered wholesale market sales uneconomic and their thermal host's significantly reduced load made shutting down or ceasing deliveries unviable. Reading Sections 2.1.1 and 11.2.1 together demonstrates that the Settlement did not intend to thrust CHPs converting to UPFs into the wholesale market with complete disregard in advance of the facility's election for wholesale participation. (Although Sellers' response to the protest conveys this sentiment in their request for a "UPF Transition PPA" that had not yet been developed, the Commission finds that an amended Transition PPA with Additional Dispatchable Capacity serves this purpose.)

The process to incorporate ADC is crafted purposefully, particularly in consideration of Sections 2.1.1 and 11.2.1, such that the competitive market price for ADC would first be negotiated at length and then subject to mediation. Even if the IOU Buyer elects not to purchase ADC, it must then facilitate its sale to CAISO regardless of its role as scheduling coordinator. The negotiation, mediation, and facilitation process outlined for the QFs Transitioning from Legacy PPAs (and in this case, waiting to begin a RFO PPA) contrasts to a scenario where the facility's ADC is immediately sold at CAISO for a market-settled price. This negotiated price enables the smooth transition off of Legacy PPAs to compensation under Subsequent PPAs at fair prices. Therefore, it is reasonable that a negotiated competitive market price for ADC strike a balance between prices of the short term CAISO market and those for dispatchable CHP facilities participating in the CHP RFO.

<u>It is reasonable for a negotiated "competitive market price" for Additional Dispatchable Capacity to compromise between standards set by the short term CAISO market and dispatchable CHP facilities, given the CHP Program's objectives to ensure a smooth transition for CHP facilities on Legacy PPAs.</u>

Figure 1: Comparison of ADC to RA, CPM, and Legacy Prices (Redacted)
[26]



2. Payments under the CAISO Capacity Procurement Mechanism

SCE points to the CAISO Capacity Procurement Mechanism (“CPM”) as a relevant benchmark against which to compare the negotiated price. The CPM tariff Section 43.1.2 provides CAISO a backstop procurement mechanism for unexpected events not anticipated by the RA program or in the event that the RA program leaves a capacity deficiency. The CAISO may issue a CPM designation to a resource whose capacity is at risk of retirement for a defined term, during which the resource will receive a payment as a result of a negotiated settlement. The CPM has increased from $55/kW-yr to $67.50/kW-yr to $70.88/kW-yr (See Figure 1). Neither KRCC nor Sycamore has made a showing to qualify for, or

[26] Adapted from IE Report, CPUC 2010-2011 RA Reports, and CAISO Tariff 43.7.1

have made plans to seek, CPM designation. The negotiated price for the length of the Transition Period is less than the CPM.

Parties discussed SCE's negotiated contract with Calpine's Sutter facility as a relevant benchmark. In 2012 the CAISO proposed to procure Sutter as backstop capacity because while Sutter determined that its operations would be uneconomic, CAISO anticipated that the facility would eventually be needed for reliability. CPUC Resolution E-4471 ordered the IOUs to negotiate a contract with Sutter such that contract costs would be "significantly below" what would be paid if Sutter was subject to CPM. The Commission agrees with the IE and questions the use of Sutter, a negotiated contract deemed necessary for reliability, as an appropriate benchmark. KRCC and Sycamore have not demonstrated a risk of shutdown. On the contrary, both Sellers executed long term contracts resulting from the CHP RFOs. Furthermore, the Sellers are located in an area with a surplus of qualifying capacity for the time of the Transition Period and would not be essential to fulfill reliability needs.

Since the Sellers have not received Capacity Procurement Mechanism designation, the CPM will not be used as a benchmark to determine the reasonableness of the final negotiated price for ADC.

3. Prices for Dispatchable CHP Facilities in the SCE CHP RFO

KRCC and Sycamore's initial offer of $73/kW-yr reflected their position that the competitive market price referred to a market limited to dispatchable CHP facilities. The $73/kW-yr price for additional dispatchable capacity is equivalent to the price Sycamore will be paid for firm capacity under their executed CHP RFO Agreement. There are a limited number of dispatchable CHP projects with which to establish a competitive market price.[27]

SCE's and PG&E's CHP RFOs produced capacity pricing for bidding facilities, but as these contracts are the result of a competitive solicitation, pricing is confidential (See Appendix B, Figure 3 for SCE pricing). Furthermore because these agreements are priced for contracts that extend into the CHP Program's Second Program Period, the capacity prices do not appropriately reflect short term prices for the Transition Period. The IE and the Commission analyze the dispatchable CHP facilities that executed contracts from the SCE CHP RFO by adjusting the prices to account for term length, location, and product offering.

[27] IE Report, p. 32.

These adjustments demonstrate that the final negotiated price is in the range of a competitive market price comprised of dispatchable CHP facilities.

Watson is currently operating under a Transition PPA and is negotiating an amendment for the sale of Additional Dispatchable Capacity. Table 5 summarizes the attributes of known dispatchable CHP facilities that would inform the standard of a competitive market price for such a sub-segment.

Table 5: Characteristics of Dispatchable CHP Facilities

CHP Facility	Product	Local Capacity Area	Pricing Source	Term
Los Medanos	RA	Greater Bay Area	SCE CHP RFO	2014-2020
Gilroy	RA	Greater Bay Area	SCE CHP RFO	2014-2018
Harbor	RA + Toll	LA Basin	SCE CHP RFO	2014-2020
Sycamore	RA + Toll	Big Creek/Ventura	SCE CHP RFO	2014-2020
KRCC	Toll	Big Creek/Ventura	PG&E CHP RFO	2014-2021
Oroville	Toll	None (Oroville, CA)	PG&E CHP RFO	2013-2020
Watson	ADC	LA Basin	To be negotiated	Up to 2015

<u>The final negotiated price for ADC is within the range of a "competitive market price" where the standard of comparison is the market of dispatchable CHP facilities that participated in the SCE CHP RFO.</u>

4. Costs of Existing Power Purchase Agreements

The existing power purchase agreements provide a final basis for comparing the cost reasonableness of the Transition Agreements and are helpful in this case where the interpretation of "competitive market price" is debated. The Legacy PPAs between SCE and KRCC and Sycamore are based on extensions of QF Standard Offer Contracts. SCE signed extensions with KRCC in 2011 and with Sycamore in 2008 that set pricing terms for the Facilities to be consistent with D.07-09-040. Capacity payments were set to $91.97/kW-year for Firm Capacity (see Figure 1 above). Energy payments were set in accordance with the Market Index Formula ("MIF").

The Transition PPA sets forth a capacity performance requirement of 60% availability to earn any part of the Firm Capacity Payment and 95% availability to earn full payment. The 95% availability threshold represents an increase from 80% availability under the Sycamore's Legacy PPA. KRCC's Legacy PPA based capacity payments in proportion to its level of availability. Under the Dispatchable Agreements the facilities must remain at 100% availability to receive full capacity payments.

<u>The Transition Agreements require Sellers to perform at a higher level of availability in comparison to their Legacy PPAs.</u>

In Supplemental AL 2825-E/A, SCE provided an approximation of the total energy and capacity payments to each facility. As shown in Table 6 below, for the KRCC Transition Agreements to begin in July 2013 and to continue until the end of the Transition Period, SCE would reduce total payments to KRCC by $11.6 million. These net savings are derived entirely from the renegotiated terms for capacity payments. As shown in Table 7 below, for the Sycamore Transition Agreements to begin in July 2013 and to continue until SCE's requested commencement of the Sycamore CHP RFO Agreements in June 2014, SCE would expect to reduce total payments to Sycamore by $4.8 million. $3.87 million of these net capacity savings are derived from the Transition Agreements' payment structure for capacity products. SCE expects an additional savings of $0.89 million from replacing "must-take" energy to energy procured from the market.

Table 6: Energy and Capacity Payments Estimated between July 2013 and June 2015 for KRCC (Nominal $)

Payment Type	Extension PPA or "Legacy PPA"	Transition Agreements	Delta (Transitions – Legacy)
Energy	$117,543,732	$117,543,732	$0
Baseload Capacity (Max)	$27,131,150	$26,101,380	-$1,029,770
Dispatch Capacity (Max)	$28,166,060	N/A	-$28,166,060
Dispatch RA Capacity (Max)	N/A	$4,191,360	$4,191,360
Dispatch Toll Capacity (Max)	N/A	$13,403,250	$13,403,360
TOTAL	$172,840,942	$161,239,772	-$11,601,220

<u>The Transition Agreements with KRCC will allow for savings in baseload and dispatchable capacity to SCE, which will decrease total payments that would</u>

have otherwise occurred under the Legacy PPA by $11.6 million between July 2013 and June 2015.

Table 7: Energy and Capacity Payments Estimated between July 2013 and June 2014 for Sycamore (Nominal $)

Payment Type	Extension PPA or "Legacy PPA"	Transition Agreements	Delta (Transitions – Legacy)
Energy	$68,041,200	$67,150,642	-$890,558
Baseload Capacity (Max)	$25,154,414	$13,589,450	-$11,564,963
Dispatch RA Capacity (Max)	N/A	$2,095,680	$2,095,680
Dispatch Toll Capacity (Max)	N/A	$5,594,400	$5,594,400
TOTAL	$93,195,614	$88,430,173	-$4,765,441

The Transition Agreements with Sycamore will allow for savings in baseload capacity and energy to SCE, which will decrease total payments that would have otherwise occurred under the Legacy PPA by $4.8 million between July 2013 and June 2014.

Moreover, the execution of the Transition Agreements is consistent with several objectives[28] of the CHP Program about the transition of CHPs from Legacy PPAs to Subsequent PPAs while continuing operations. Per Section 1.2.5.4 of the Settlement Term Sheet, the savings accrued under the Transition Agreements meet the Bundled IOU Customer Goal and Objective of "moving to viable, market-based compensation for QFs with Legacy PPAs and CHP resources to sustain California CHP operations at fair prices." From a customer perspective, the KRCC and Sycamore's Additional Dispatchable Capacity is a fair price given the substantial net savings benefit.

The execution of the Transition Agreements is consistent with the objectives of the CHP Program by providing a means for KRCC and Sycamore to move from a Legacy PPA to a Subsequent PPA at a fair price while maintaining operations.

[28] As defined in Sections 1.2.5.4, 2.1.1, and 11.2.1 of the Settlement Term Sheet.

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 Transition Agreements are between Southern California Edison Company and Sycamore and KRCC. The Commission's jurisdiction extends only over SCE, not Sycamore nor KRCC. Based on the information before us, this PPA does not appear to result in any adverse safety impacts on the facilities or operations of SCE.

Project Viability

KRCC and Sycamore own existing qualifying cogeneration facilities. Both KRCC and Sycamore have been contracted with SCE since 1984. KRCC began deliveries to SCE in 1985. Sycamore began deliveries to SCE in 1987. Under the Transition Agreements the facilities are expected to reduce electricity deliveries in comparison to historical operation due to the decreasing enhanced oil recovery requirements of their steam host. KRCC will continue to operate two generating units as dispatchable and Sycamore will convert the baseload operation of two units to dispatchable operation. Furthermore, KRCC and Sycamore were selected under the first CHP RFO held by PG&E and SCE, respectively, and each have executed seven year PPAs that are pending at the Commission. As existing QFs, the projects face minimal project development risk. The Transition Agreements are effective upon the Commission's approval of the Transition Agreement and approval of the Affiliate Transactions as required by the Federal Energy Regulatory Commission.

<u>KRCC and Sycamore are existing CHP facilities and therefore are viable projects.</u>

Consistency with the Emissions Performance Standard

California Public Utilities Code Sections 8340 and 8341 require that the Commission consider emissions costs associated with new long-term (five years or greater) power contracts procured 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 compliant 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 greater than 60 percent.

The term of the KRCC and Sycamore Transition Agreements begins upon CPUC and FERC approvals and ends no later than July 1, 2015. The term of the PPA is less than five years and therefore the EPS does not apply to this procurement.

The Transition Agreements are not subject to the Emissions Performance Standard under D.07-01-039 as the terms of the PPAs are less than five years.

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 CHP PPA.

SCE's PRG consists of representatives from: the Division of Ratepayer Advocates, The Utility Reform Network, California Department of Water Resources-California Energy Resources Scheduling, Coalition of California Utility Employees, the Union of Concerned Scientists, the Independent Evaluator, and the Commission's Energy and Legal Divisions. SCE's CAM Group includes PRG participants as well as certain other non-wholesale market participants of bundled service, direct access, and community choice aggregator customers.

Negotiations on the Transition Agreements between the Sellers and SCE began in August 2011 and were completed in October 2012. SCE noticed the Transition Agreements to its CAM Group on October 12, 2012 and PRG on November 13, 2012.

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

Independent Evaluator Review

SCE retained Barry Sheingold of New Energy Opportunities, a subcontractor to Merrimack Energy Group, Inc. as the Independent Evaluator (IE) [29] for the

[29] Pursuant to Settlement Term Sheet Sections 4.2.5.7-8, SCE retained Merrimack as the IE for the CHP RFO to ensure consistency of Settlement implementation.

negotiations of the Transition Agreements with KRCC and Sycamore, pursuant to Section 4.3.2 of the Settlement Term Sheet. Previously in D.06-12-029, the Commission prohibited resource procurement from an affiliate without prior approval from the Commission.[30] Pursuant to this Decision, SCE's Compliance Plan required the use of an IE for the solicitation of new or repowered generation sources where an affiliate participates.[31]

FERC is required to approve affiliate contracts pursuant to Section 205 of the Federal Power Act.[32] The IE cites that in 1991, FERC required that a sale of wholesale electric power for resale at market based rates between a seller and an affiliated regulated entity must demonstrate that the rates and other terms and conditions of the power sales contract are not unduly preferential to the affiliate. In later cases, FERC enunciated four guidelines in evaluating whether an affiliate has received undue preference during a competitive procurement solicitation: a) Transparency of the solicitation process; b) Precise definition of products sought through the solicitation; c) Standard and equal application of evaluation criteria; d) Independent oversight by a third party.

The IE identifies that the underlying concern of the CPUC and FERC rules regarding affiliate transactions is to "ensure that affiliates are treated in a non-preferential manner so that prices ultimately paid by captive retail customers are not unduly high as a consequence." To this end, the IE monitored the transaction to ensure that SCE did not treat KRCC and Sycamore in a preferential manner, to oversee that KRCC and Sycamore were treated fairly, and to ensure SCE acted reasonably in accordance with the Settlement. The IE's activities are summarized in a public report attached to AL 2825-E. The IE reports that:

---

30 D.06-12-029 at Appendix A-3, p. 5, Rule III.B.1, http://docs.cpuc.ca.gov/published//Graphics/63089.PDF.

31 2012 Affiliate Transaction Rules Compliance Plan. SCE AL 2822-E, (December 10, 2012), p. 12, Rule III.B.1, https://www.sce.com/NR/sc3/tm2/rpa/reg_info_ctr/affiliatenotices/affiliate_trans_comp_plan.pdf.

32 IE Report, p. 4.

i) SCE based the Transition Agreements upon the Sycamore CHP RFO Agreements, both of which were modified without preference to the affiliate.[33]

ii) Section 3.4.1.2 is applicable to KRCC and Sycamore's proposal for ADC (in agreement with the Energy Division Director).[34]

iii) The applicable standard for determining a "competitive market price" depends on the interpretation of the Settlement Agreement, but in the event that neither SCE's nor Sellers' interpretations are accepted, the negotiated price could be supported based on ratepayer savings.[35]

iv) SCE's internal Risk Management Committee reviewed and approved the Transition Agreements. In addition, SCE's affiliate compliance officer ensured that the PPA was consistent with its Affiliate Transaction Rules Compliance Plan.[36]

The Independent Evaluator concludes that SCE treated KRCC and Sycamore in a non-preferential manner, and that the results of the negotiations were reasonable and not unduly preferential for KRCC and Sycamore. The IE conditions a recommendation for Commission approval of the Transition Agreement on the basis of the competitive market price. If the negotiated price is compared to the general CAISO market, then it is not supported by market prices of similar transactions. Conversely, the negotiated price can be supported in comparison with prices from dispatchable CHP facilities or with savings resulting from the termination of the Legacy PPA.[37] These recommendations are consistent with the Commission's analysis above, which outlines how –given the objectives of the CHP Program's Transition Period– a negotiated competitive market price is a reasonable compromise between SCE and Sellers' proposed standards.

<u>The Independent Evaluator finds that the negotiated price for Additional Dispatchable Capacity, despite ambiguity regarding the standard for the</u>

[33] *Id.*, p. 4-5.

[34] *Id.*, p. 28.

[35] *Id.*, p. 44.

[36] *Id.*, p. 40.

[37] *Id.*, p. 44.

competitive market price, merits Commission approval based on the customer savings under the Transition Agreements.

The Independent Evaluator concludes that SCE's negotiations with KRCC and Sycamore were compliant with the CPUC's Affiliate Transaction Rules and consistent with the requirements of the QF/CHP Settlement.

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 April 23, 2013. SCE timely submitted minor factual corrections on May 13, 2013. Energy Division incorporated these corrections.

FINDINGS AND CONCLUSIONS

1. Southern California Edison Company filed Advice Letter ("AL") 2825-E on December 14, 2012, in which it requested Commission approval of a Transition Agreement with Kern River Cogeneration Company ("KRCC") and a Transition Agreement with Sycamore Cogeneration Company. The Transition Agreements have been modified from the Standard Form Transition PPA approved by the Commission in Decision ("D.") 10-12-035. AL 2825-E was supplemented by two filings: AL 2825-E/A on December 21, 2012 and AL 2825-E/B on February 21, 2013. AL 2825-E was timely protested by the Division of Ratepayer Advocates ("DRA") on January 2, 2013. SCE provided a timely reply to the protest on January 10, 2013. Energy Division accepted KRCC and Sycamore's response to the protest, which was late-filed on January 14, 2013.
2. The Transition Agreements are consistent with the Settlement Requirements for Transition PPAs.
3. The Transition Period and Transition PPA are part of the CHP Program as defined in the Settlement Term Sheet.
4. Pursuant to the QF/CHP Settlement, SCE is permitted to enter Transition Agreements with Kern River Cogeneration Company and Sycamore

Cogeneration Company because both facilities are currently selling to SCE under an extension of a Legacy PPA.

5. Since the Transition PPAs are transactions between affiliates, the Transition Agreements commence upon CPUC and FERC approvals, and end at the election of the Seller at dates contingent upon the regulatory approval of agreements resulting from SCE's and PG&E's respective CHP Request for Offers ("RFO"), but no later than June 30, 2015.
6. Under the Transition PPA, Sellers' energy and capacity deliveries to SCE are consistent with historical deliveries under the Legacy PPA.
7. SCE modified the Transition PPAs to integrate their terms and conditions with the Dispatchable Agreements that it executed with KRCC and Sycamore. SCE modified the Transition PPAs to condition approval of the agreement with its affiliates upon the requisite CPUC and FERC approvals.
8. The Dispatchable Agreements are based on the Sycamore CHP RFO Agreement, none of which was modified with affiliate preference.
9. Pursuant to Section 3.4.1.2 of the Settlement Term Sheet SCE negotiated the Dispatchable Agreements as amendments to the Transition PPAs to incorporate Additional Dispatchable Capacity beyond the standard Transition PPA products.
10. The six modifications that SCE made to the Pro Forma Dispatchable Agreements used for both KRCC and Sycamore are reasonable.
11. The Transition Agreements are consistent with Settlement Requirements for Legacy PPA Matters for Existing QFs.
12. DRA recommends that the Commission reject the Transition Agreements on the basis that the negotiated amendments for Additional Dispatchable Capacity ("ADC") are not "competitive with market price" per Section 3.4.1.2 of the Settlement Term Sheet.
13. SCE, KRCC and Sycamore reply that despite the lack of a clear basis for a "competitive market price" for ADC, the final price is fair and reasonable because it was a result of good faith negotiations, at arms-length, with CPUC mediation.
14. SCE, KRCC, and Sycamore agree that the Transition Agreements result in reduced payments to the facilities in comparison to those that would have occurred under a continuation of the Legacy PPAs.

15. KRCC and Sycamore 1) differentiate their UPF products from Resource Adequacy-only products and 2) distinguish the Transition Agreements to be "UPF Transition PPAs" as separate from the Pro Forma Transition PPA.
16. KRCC's and Sycamore's Legacy CHP PPAs were reasonably extended four times and continue in effect, pending the regulatory approval of an executed "Subsequent PPA" as required by Section 11.2.1 of the Settlement Term Sheet.
17. SCE has fulfilled is obligations to negotiate with Seller for Additional Dispatchable Capacity as required by Section 3.4.1.2 of the Settlement Term Sheet and was reasonable in seeking mediation as a result of unsuccessful negotiations.
18. Pursuant to Section 11.2.1 of the Settlement Term Sheet the Transition Agreements constitute "Subsequent PPAs" and therefore commence their terms upon regulatory approval.
19. The KRCC and Sycamore Transition Agreements are of reasonable cost.
20. The pricing terms of the Transition PPAs are determined by Commission-approved capacity pricing per D.07-09-040 and energy pricing per the SRAC Energy Pricing Structure as defined within the Settlement.
21. The final negotiated price for ADC is in excess of a "competitive market price" where the standard of comparison is the short term price forecast of Resource Adequacy ("RA") capacity.
22. It is tenuous to compare a price for future RA and energy products with a price aggregate for previous Resource Adequacy contracts of varying and dissimilar delivery attributes. The Commission finds that rejecting the Transition Agreements on that basis alone would not provide a fair assessment of cost reasonableness and therefore denies DRA's recommendation.
23. SCE's contemporaneously executed RA agreements within the Big Creek/Ventura Local Capacity Area indicate a strengthening of market prices and provide additional information for determining cost reasonableness.
24. It is reasonable for a negotiated "competitive market price" for Additional Dispatchable Capacity to compromise between standards set by the short term CAISO market and dispatchable CHP facilities, given the CHP Program's objectives to ensure a smooth transition for CHP facilities on Legacy PPAs.

25. Since the Sellers have not received Capacity Procurement Mechanism ("CPM") designation, the CPM will not be used as a benchmark to determine the reasonableness of the final negotiated price for ADC.

26. The final negotiated price for ADC is within the range of a "competitive market price" where the standard of comparison is the market of dispatchable CHP facilities that participated in the SCE CHP RFO.

27. The Transition Agreements require Sellers to perform at a higher level of availability in comparison to their Legacy PPAs. The Transition Agreements with KRCC will allow for savings in baseload and dispatchable capacity to SCE, which will decrease total payments that would have otherwise occurred under the Legacy PPA by $11.6 million between July 2013 and June 2015. The Transition Agreements with Sycamore will allow for savings in baseload capacity and energy to SCE, which will decrease total payments that would have otherwise occurred under the Legacy PPA by $4.8 million between July 2013 and June 2014.

28. The execution of the Transition Agreements is consistent with the objectives of the CHP Program by providing a means for KRCC and Sycamore to move from a Legacy PPA to a Subsequent PPA at a fair price while maintaining operations.

29. Pursuant to the QF/CHP Settlement, Sellers' contract capacities under the Transition PPAs do not count toward SCE's MW procurement target.

30. Pursuant to the QF/CHP Settlement, any change in Sellers' operations under the Transition PPAs do not count toward SCE's GHG Emissions Reduction Target because Transition PPAs are not an eligible procurement process and are inapplicable to the GHG Accounting Methodology.

31. Resource adequacy benefits are to be allocated according to the share of the net capacity costs paid by load-serving entities serving direct access and community choice aggregation customers as prescribed in Section 13.1.2.2 of the QF/CHP Settlement Term Sheet.

32. The execution of the KRCC and Sycamore Transition Agreements do not count towards SCE's obligation to procure additional CHP resources to meet the remaining MW and GHG Targets.

33. KRCC and Sycamore are existing CHP facilities and therefore are viable projects.

34. The Transition Agreements are not subject to the Emissions Performance Standard under D.07-01-039 as the terms of the PPAs are less than five years.
35. SCE has complied with the Commission's rules for involving the PRG and CAM groups.
36. The Independent Evaluator finds that the negotiated price for Additional Dispatchable Capacity, despite ambiguity regarding the standard for the competitive market price, merits Commission approval based on the customer savings under the Transition Agreements.
37. The Independent Evaluator concludes that SCE's negotiations with KRCC and Sycamore were compliant with the CPUC's Affiliate Transaction Rules and consistent with the requirements of the QF/CHP Settlement.

THEREFORE IT IS ORDERED THAT:

1. The request of the Southern California Edison Company for the Commission to approve the KRCC Transition Agreements and the Sycamore Transition Agreements in their entirety as requested in Advice Letter AL 2825-E and supplemented by AL 2825-E/A and AL 2825-E/B is approved without modifications.

2. Southern California Edison Company is authorized to recover the costs associated with the Transition Agreements through the net capacity cost recovery mechanisms set forth in D.10-12-035 (as modified by D.11-07-010), Section 13.1.2.2 of the QF/CHP Settlement, and SCE's Advice Letter 2645-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 May 23, 2013; the following Commissioners voting favorably thereon:

/s/ PAUL CLANON___
PAUL CLANON
Executive Director

MICHAEL R. PEEVEY
President
MICHEL PETER FLORIO
CATHERINE J.K. SANDOVAL
MARK J. FERRON
CARLA J. PETERMAN
Commissioners

PUBLIC APPENDIX A

Analysis of Transition Agreements between:
SCE and Kern River Cogeneration Company
and
SCE and Sycamore Cogeneration Company

Table 8: Summary of Terms and Prices of KRCC Power Products

Agreement	Transition PPA			RA and Toll Confirmation	
Generators	Units 2 & 4			Units 1 & 3	
CAPACITY (MW)					
Month	Firm Contract Capacity	As-Available Contract Capacity	Net Contract Capacity	Resource Adequacy Capacity	Unit Contingent Toll Capacity
January	150	4	154	154	148
February	150	4	154	154	148
March	149	5	154	154	148
April	145	9	154	154	148
May	142	12	154	154	148
June	141	13	154	154	148
July	140	14	154	154	148
August	141	13	154	154	148
September	142	12	154	154	148
October	144	10	154	154	148
November	146	8	154	154	148
December	148	6	154	154	148
Prices	($/kW-yr)	($/kW-yr)		($/kW-mo)*	($/kW-mo)*
2013	$91.97	$45.00		$1.18	$3.15
2014	$91.97	$46.97		$1.18	$3.15
2015	$91.97	$48.98		$1.18	$3.15

ENERGY		
Transition PPA Only		
Expected Term Year Energy Production (kWh)	1,280,000,000	
Pricing	SRAC	
UC Toll Only		
	Unit 1	Unit 3
Heat Rate (Btu/kWh) at Min Generation (MW)	12,500 at 70	12,500 at 70
Heat Rate (Btu/kWh) at Max Generation (MW)	12,200 at 78	12,200 at 80
Variable O&M Charge ($/MWh)	$0.23	
Fuel Charge ($/MMBtu)	Kern River index + $0.01/MMBtu	
Start-Up Charges ($ or energy per Start-up)	$4,100; 235 MMBtu; 0.13 MWh	

* Total ADC of $51.96/kW-yr = ($(1.18 + 3.15)/kW-mo) * 12 mo/yr

Table 9: Summary of Terms and Prices of Sycamore Power Products

Agreement	Transition PPA			RA and Toll Confirmation	
Generators	Units 1 & 3			Units 2 & 4	
CAPACITY (MW)					
Month	Firm Contract Capacity	As-Available Contract Capacity	Net Contract Capacity	Resource Adequacy Capacity	Unit Contingent Toll Capacity
January	152	0	152	148	148
February	151	1	152	148	148
March	151	1	152	148	148
April	149	3	152	148	148
May	149	3	152	148	148
June	148	4	152	148	148
July	147	5	152	148	148
August	147	5	152	148	148
September	147	5	152	148	148
October	149	3	152	148	148
November	151	1	152	148	148
December	152	0	152	148	148
Prices	($/kW-yr)	($/kW-yr)		($/kW-mo)*	($/kW-mo)*
2013	$91.97	$45.00		$1.18	$3.15
2014	$91.97	$46.97		$1.18	$3.15
2015	$91.97	$48.98		$1.18	$3.15

ENERGY	
Transition PPA Only	
Expected Term Year Energy Production (kWh)	1,280,000,000
Pricing	SRAC
UC Toll Only	
	Units 2 & 4
Heat Rate (Btu/kWh) at Min Generation (MW)	12,300 at 70
Heat Rate (Btu/kWh) at Max Generation (MW)	12,000 at 85
Variable O&M Charge ($/MWh)	$0.23
Fuel Charge ($/MMBtu)	Kern River index + $0.01/MMBtu
Start-Up Charges ($ or energy per Start-up)	$4,100, 235 MMBtu, 0.13 MWh

* Total ADC of $51.96/kW-yr = ($(1.18 + 3.15)/kW-mo) * 12 mo/yr

CONFIDENTIAL APPENDIX B

Analysis of Transition Agreements between:
SCE and Kern River Cogeneration Company
and
SCE and Sycamore Cogeneration Company

REDACTED