

October 23, 2014

Energy Division  
Attn: Tariff Unit  
California Public Utilities Commission  
505 Van Ness Avenue  
San Francisco, California 94102

Re: Withdrawal of SCE's Advice 3061-E

Dear Energy Division Tariff Unit:

On June 20, 2014, Southern California Edison Company (SCE) filed Advice 3061-E, Submission of Agreement Between SCE and Native American Energy Resources (NAER).

SCE requested approval of an agreement for the purchase of energy, capacity, and all related products between SCE and NAER (the Agreement) from Dry Creek Unit 1-B (Dry Creek). The Agreement was executed as part of SCE's 2013 Combined Heat and Power (CHP) Request for Offers (RFO).

Although SCE diligently engaged in good faith efforts to provide Dry Creek with reasonable options to comply with the terms of the Agreement, Dry Creek was unable to do so. As a result, SCE terminated the Agreement.

SCE submits this request for withdrawal of Advice 3061-E pursuant to General Order 96-B, General Rule 5.3, and asks that a confirmation letter be returned regarding this withdrawal.

Should you have any questions, please contact me.

Sincerely,

/s/ MEGAN SCOTT-KAKURES  
Megan Scott-Kakures

cc: Edward Randolph, Director, CPUC Energy Division  
Damon Franz, CPUC Energy Division  
Noel Crisostomo, CPUC Energy Division  
Don Lafrenz, CPUC Energy Division  
GO 96-B, R.13-12-010, and A.08-11-001 et al. Service Lists



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June 20, 2014

**ADVICE 3061-E**  
**(U 338-E)**

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA  
ENERGY DIVISION

**SUBJECT:** Submission of Agreement Between Southern California Edison  
Company and Native American Energy Resources

**PURPOSE**

The purpose of this advice letter is to seek approval of an agreement for the purchase of energy, capacity, and all related products between Southern California Edison Company (SCE) and Native American Energy Resources (the Agreement) from Dry Creek Unit 1-B (Dry Creek). The agreement was executed as part of SCE's 2013 Combined Heat and Power (CHP) Request for Offers (RFO).

**BACKGROUND**

**A. Combined Heat and Power Settlement**

In 2008, diverse parties with divergent interests, including the three investor-owned utilities (IOUs), representatives of Qualifying Facilities (QFs),<sup>1</sup> customer advocacy groups, and the California Public Utilities Commission (Commission), engaged in settlement negotiations to, among other things, resolve numerous disputes between the IOUs and QFs before the Commission and state court. After a year and a half of negotiations, the participating parties reached an agreement that, among other things,

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<sup>1</sup> The Public Utility Regulatory Policies Act of 1978 (PURPA) established a class of generating facilities known as QFs, which, in the furtherance of a variety of energy policy goals, receive special rate and regulatory treatment. QFs fall into two categories: (1) qualifying small power production facilities and (2) qualifying cogeneration facilities. For the purpose of this Advice Letter, QFs are defined as: "An electric energy generating facility that complies with the qualifying facility definition established by PURPA and any FERC rules . . . implementing PURPA and has filed with FERC (i) an application for FERC certification, . . . which FERC has granted, or (ii) a notice of self - certification . . . ." CHP Settlement Agreement, Term Sheet, Glossary of Defined Terms, at p. 73.

developed a state CHP program, which includes megawatt (MW) and greenhouse gas (GHG) emissions reduction targets, and settled all outstanding CHP/QF litigation issues.

The parties then filed a joint motion for Commission approval of the QF and CHP Settlement Agreement, Term Sheet and attached Exhibits (Settlement).<sup>2</sup> Rule 12.1(d) of the Commission's Rules of Practice and Procedure provides that "[t]he Commission will not approve settlements, whether contested or uncontested, unless the settlement is reasonable in light of the whole record, consistent with law, and the public interest." To assess reasonableness, the Commission considers, among other things, whether the settlement negotiations were at arms-length and whether the parties were adequately represented.<sup>3</sup>

After considering the Settlement as a whole, its individual elements, as well as the interests at stake, the Commission approved the Settlement, finding it to be (1) reasonable, (2) the product of protracted, arms-length negotiations between sophisticated and well-represented parties with divergent interests, all of whom were required to compromise on some things, and none of whom received everything they wanted,<sup>4</sup> and (3) in furtherance of the state policy objectives embodied in California Public Utilities Code Section 372(a), Assembly Bill 32, and the Energy Action Plan II.<sup>5</sup>

In particular, Section 4.2.1 of the Term Sheet directs the IOUs to "conduct RFOs exclusively for CHP resources" as a means of achieving the MW and GHG emissions reduction targets set forth in the Settlement.<sup>6</sup> Section 5.1.4 of the Term Sheet requires the IOUs to conduct three RFOs during the Initial Program Period<sup>7</sup> under the Settlement.<sup>8</sup> SCE's 2013 CHP RFO (CHP RFO 2) is the second of the three RFOs that SCE will conduct during the Initial Program Period.

SCE launched the CHP RFO 2 on September 12, 2013. SCE required interested CHP parties to submit indicative offers on November 7, 2013. SCE evaluated the indicative offers and created a short-list of bidders on December 19, 2013. SCE then negotiated contracts with the short-listed bidders. The short-listed bidders with whom SCE reached an agreement submitted final binding offers on February 27, 2014. SCE used the final valuation and selection process vetted through the Cost Allocation Mechanism (CAM) Group and approved by the Energy Procurement Risk Management Committee (epRMC) for evaluating and selecting successful offers. The successful offers were

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<sup>2</sup> Any capitalized terms used in this Advice Letter but not defined herein have the meaning set forth in the Term Sheet.

<sup>3</sup> Decision (D.) 88-12-083, 30 CPUC 2d 189, 89 (approving Pacific Gas and Electric Co.'s Diablo Canyon settlement as in the public interest.)

<sup>4</sup> D.10-12-035 at pp. 28, 35, Conclusion of Law No. 21.

<sup>5</sup> *Id.* at pp. 35, 37, 38, Conclusion of Law No. 19.

<sup>6</sup> See Term Sheet at p. 12.

<sup>7</sup> The Initial Program Period is defined as the period commencing on the Settlement Effective Date and concluding forty-eight (48) months thereafter. See Term Sheet at p. 70.

<sup>8</sup> See Term Sheet at pp. 27-28.

presented to the CAM Group on March 26, 2014. Efforts to resolve concerns raised during the CAM presentation resulted in the postponement of the close of the CHP RFO 2 by two weeks. Thereafter, SCE again presented the successful offers to the epRMC and the CAM Group on April 8 and 10, 2014, respectively. SCE notified all of the parties that submitted successful offers of their selection on April 10, 2014.

**DESCRIPTION OF THE DRY CREEK FACILITY AND AGREEMENT**

**A. General Project Summary**

SCE is purchasing 48 MW of firm capacity from Dry Creek, a New CHP Facility located in Bakersfield, California. A general summary of the project is provided in Table 1 below:

<b>Table 1: General Project Summary</b>	
Project Name	Dry Creek Unit 1-B
Owner/Developer	Native American Energy Resources
Technology	Combined Heat and Power
Nameplate Capacity (MW)	69.8
Contract Capacity (MW)	48
Expected Generation (GWh/Year)	369.9
Delivery Pattern (As-available, Firm, Utility Prescheduled Facility)	Firm
Delivery/Contract Term (months)	144
Vintage (New / Existing / Repower/Expanded/Utility Prescheduled Facility)	New
Location (city and state)	Bakersfield, CA
Source of Agreement (e.g., RFO or Bilateral Negotiations)	2013 CHP RFO

The Agreement is attached as Confidential Appendix B. A summary of the Agreement is attached as Confidential Appendix C. A comparison of the Agreement with the CHP RFO Pro Forma PPA is attached as Confidential Appendix D.

**A. General Project Description**

Dry Creek is a new topping-cycle cogeneration facility to be constructed in Bakersfield, California. The generator nameplate rating for the combustion turbine is 69.8 MW, of which 48 MW is offered as the Contract Capacity. The plant will utilize natural gas as primary fuel. The facility will consist primarily of one combustion turbine generator (Unit 1-B) and its associated heat recovery steam generator. The facility will be located on portions of oil fields owned and used by the thermal host, E&B Natural Resources Management Corporation, who produces oil from mineral rights in the Kern River Oil

Field. All generated steam will be used for enhance oil recovery (EOR) operations, while hot water will be returned by thermal host to generating facility for re-use.

Native American Energy Resources (NAER) is the seller of Dry Creek. The project was initially offered to SCE as part of a new facility to be shared with San Diego Gas & Electric (SDG&E). SCE was offered the CHP output of Unit 1-B, while Unit 1-A was dedicated to SDG&E under the name of Jasmine Power III. At the time of the filing of this Advice Letter, however, SDG&E had withdrawn its filing for Jasmine Power III and terminated the Agreement with NAER.

In November 2013, Jasmin Power III – SD 6000, LLC (Jasmin Power) filed a Form 556 with the Federal Energy Regulatory Commission (FERC) requesting QF status under PURPA. FERC granted Jasmine Power's request on January 27, 2014.<sup>9</sup> Because FERC's order only applied to Jasmine Power and the NAER's facility configuration has since changed, NAER has agreed to file a new application with FERC for Dry Creek's QF status by June 2014. The Agreement with Dry Creek is contingent on FERC's acceptance and approval of the new Form 556 request for QF certification. In addition, Dry Creek must maintain its QF status for the duration of the Agreement.

## **B. Safety**

The standard terms of all of SCE's power purchase agreements attempt to secure energy products that are produced in a safe and reliable manner by requiring the generator – the entity with legal and physical control over on site-decisions -- to warrant that they will conform to certain safety requirements, including, but not limited to, operating and maintaining the generating facility in accordance with Prudent Electrical Practices.<sup>10</sup>

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<sup>9</sup> 146 FERC ¶ 61,042 at 3, citing 16 U.S.C. § 824a-3(n) (2012); 18 C.F.R. § 292.205(d)(2) (2013).

<sup>10</sup> See Agreement at pp. 23-24: "Prudent Electrical Practices means those practices, methods and acts that would be implemented and followed by prudent operators of electric generating facilities in the Western United States, similar to the Generating Facility, during the relevant time period, which practices, methods, and acts, in the exercise of prudent and responsible professional judgment in the light of the facts known at the time a decision was made, could reasonably have been expected to accomplish the desired result consistent with good business practices, reliability, and safety."

Prudent Electrical Practices includes, at a minimum, those professionally responsible practices, methods, and acts described in the preceding sentence that comply with the manufacturer's warranties, restrictions in this Agreement, and the requirement of Governmental Authorities, WECC standards, the CAISO and Applicable Laws..."

**SETTLEMENT ACCOUNTING FOR CHP PROCUREMENT AND GHG EMISSIONS REDUCTION TARGET**

Set forth in Table 2 below are the Settlement’s MW and Emission Reduction Targets<sup>11</sup> and the amount procured through the Agreement that should be counted toward those targets.

<b>Table 2: Settlement Accounting</b>		
<b>Target</b>	<b>SCE’s Portion of Statewide Target<sup>12</sup></b>	<b>Quantities Procured from Dry Creek Toward SCE’s Settlement Target</b>
MW	1,402 MW	48 MW
GHG Emissions Reduction Target	2.17 MMT	.048 MMT

**A. MW Target**

Pursuant to the Term Sheet, SCE must procure at least 1,402 MW (MW Target) of CHP through the CHP Procurement Processes by the end of the Initial Program Period. Section 5.2.5 of the Term Sheet states that for purposes of calculating a contract’s impact on SCE’s MW Target,

The capacity of a New CHP Facility to be used to count progress towards the MW Targets shall be established by a Capacity Demonstration Test. The CHP Facility’s capacity, as demonstrated by this test, shall exclude auxiliary/station power load.

Dry Creek is a New CHP facility. As such, the final MW counted toward SCE’s MW Target from this Agreement will be determined by a capacity demonstration test. As the Agreement requires Dry Creek to provide 48 MW of output to SCE, SCE will assume 48 MW toward its MW Target until such a capacity demonstration may be undertaken.

**B. GHG Emissions Reduction Target**

Section 6 of the Term Sheet sets forth the GHG Emissions Reduction Target by which each IOU’s CHP PPAs are measured. Pursuant to Section 7.3.1.1 of the Term Sheet, a new CHP facility is compared against the double benchmark to calculate any credit against GHG’s Emissions Reduction Target:

<sup>11</sup> MW = megawatt, MT = metric ton, MMT = million metric tons.

<sup>12</sup> The MW Target must be achieved by the end of the Initial Program Period, November 22, 2015. The GHG Target must be met by the end of the Second Program Period, November 22, 2020.

New CHP Facilities: Efficient New CHP Facilities as compared to the Double Benchmark will count as a GHG Credit toward the contracting IOU's GHG Emissions Reduction Target regardless of where the CHP Facility is located. Measurement is based on the Double Benchmark in place at the time of PPA execution compared to the anticipated operations reflected in the PPA.

Because Dry Creek is a New CHP Facility, SCE compared against the Double Benchmark, as measured by Term Sheet Section 7.2. After performing this calculation, SCE determined that the Agreement counts as 47,989 MT GHG Credit towards SCE's GHG Emissions Reduction Target under the Settlement.<sup>13</sup>

### **EMISSIONS PERFORMANCE STANDARD**

The Agreement is compliant with the Emissions Performance Standard (EPS) that the Commission adopted in D.07-01-039.

Pursuant to D.07-01-039, the EPS is applicable to "covered procurement," meaning long-term financial commitments, such as an electricity contract with a term of five years or more, for "baseload generation." Covered procurement must have a GHG emissions rate "no higher than the GHG emissions rate of a combined-cycle gas turbine (CCGT) powerplant,"<sup>14</sup> which D.07-01-039 found was 1,100 pounds per MWh.<sup>15</sup> "Baseload generation" is defined as "electricity generation from a powerplant that is designed and intended to provide electricity at an annualized plant capacity factor of at least 60%."<sup>16</sup> "Annualized plant capacity factor" means "[t]he ratio of the annual amount of electricity produced, measured in kilowatt hours, divided by the annual amount of electricity the unit could have produced if it had been operated at its maximum permitted capacity, expressed in kilowatt hours."<sup>17</sup>

The combined-cycle gas turbine baseload power plants in operation on D.07-01-039's effective date, or that had a California Energy Commission (CEC) final permit decision to operate as of June 30, 2007, are deemed automatically compliant with the EPS.<sup>18</sup> D.07-01-039 directs utility buyers to examine historical plant capacity factors for the underlying facility to determine whether the EPS applies.<sup>19</sup>

The Agreement is for twelve years and thus constitutes a long-term financial commitment. The facility also qualifies as baseload generation per the aforementioned definition, and was not in operation on the effective date of D.07-01-039. Thus, the

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<sup>13</sup> This calculation is discussed in greater detail in Confidential Appendix A.

<sup>14</sup> D.07-01-039 at p. 3.

<sup>15</sup> D.07-01-039, Finding of Fact 57.

<sup>16</sup> D.07-01-039 at p. 4; Publ. Util. Code § 8340 (a).

<sup>17</sup> D.07-01-039, Conclusions of Law 52.

<sup>18</sup> D.07-01-039, Finding of Fact 16.

<sup>19</sup> D.07-01-039 at 187.

Agreement constitutes covered procurement subject to the EPS and cannot be deemed automatically compliant.

SCE thus determined whether the net emissions of the facility exceeded 1,100 pounds of carbon dioxide per MWh. D. 07-01-039 states that “it is reasonable to adopt the Conversion Method of calculating cogeneration emissions rates for the purpose of determining compliance with the interim EPS.”<sup>20</sup> To determine whether or not Dry Creek’s net emissions exceeded 1,100 pounds of carbon dioxide per MWh, SCE reviewed the expected operating data provided by NAER. The analysis shows that the Agreement is EPS compliant because the net emissions did not exceed 1,100 pounds of carbon dioxide per MWh.

See Confidential Appendix E for this detailed assessment.

### **CONFIDENTIALITY**

In accordance with D.91-05-007, D.06-06-066, D.08-04-023, D.11-07-028 and General Order (GO) 96-B, SCE requests confidential treatment of the material in the confidential appendices as set forth below.

Confidential Appendix A:	Offer Evaluation Methodology
Confidential Appendix B:	Agreement
Confidential Appendix C:	Agreement Summary
Confidential Appendix D	Comparison of Dry Creek PPA with SCE’s CHP <i>Pro Forma</i> PPA
Confidential Appendix E:	EPS Workpaper
Confidential Appendix F:	Performance of Counterparty
Public Appendix G-1/ Confidential Appendix G-2:	Independent Evaluator Report
Public Appendix H:	Confidentiality Declaration
Public Appendix I:	Proposed Non-Disclosure Agreement

The confidential material in this Advice Letter will be made available to non-market participants in accordance with and upon execution of SCE’s Proposed Non-Disclosure Agreement. Parties wishing to obtain access to the confidential material of this Advice

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<sup>20</sup> D.07-01-039, Conclusion of Law 33. The Conversion Method is further defined in D.07-01-039 § 4.9.1.1 which states that “[t]his method accounts for the thermal energy output associated with cogeneration as follows:  $\frac{\text{TOTAL GHG EMISSIONS FROM COGENERATION FACILITY}}{\text{KWH ELECTRICITY} + \text{BTU THERMAL ENERGY (expressed in kWh)}}$ .”

Letter may contact Rebecca Meiers-De Pastino in SCE's Law Department at [Rebecca.Meiers.DePastino@sce.com](mailto:Rebecca.Meiers.DePastino@sce.com) to obtain a non-disclosure agreement.

The information in this Advice Letter for which SCE requests confidential treatment, and the length of time it should remain confidential, are provided in Public Appendix G. This information is entitled to confidentiality protection, as provided in the IOU Matrix, pursuant to D.06-06-066. The specific provisions of the IOU Matrix that apply to the confidential information in this Advice Letter are identified in Public Appendix G.

### **COST ALLOCATION MECHANISM (CAM) GROUP PARTICIPATION**

The Settlement authorizes the utilities to enter into contracts for CHP resources and to recover the net costs of the resources from all bundled service customers, direct access (DA) customers, community choice aggregation (CCA) customers, and others.

SCE's CAM Group includes Procurement Review Group (PRG) participants as well as certain other non-wholesale market participant representatives of bundled service, DA and CCA customers.

SCE's PRG includes representatives from certain non-market participants, including the Commission's Energy and Legal Divisions, the Division of Ratepayer Advocates, The Utility Reform Network, California Utility Employees, the Union of Concerned Scientists, and the California Department of Water Resources.

SCE consulted with its CAM Group regarding SCE's CHP RFO 2 on five conference calls:

- On September 4, 2013, SCE presented its CHP RFO 2 Launch and Short List Selection Process.
- On December 18, 2013, SCE presented its Short List Selection.
- On February 11, 2013, SCE presented its Final Offer Valuation and Selection Process.
- On March 26, 2014, SCE first consulted about its Final Selection. Resolution of concerns raised during this consultation resulted in the postponement of the close of CHP RFO 2 by two weeks.
- On April 10, 2014, SCE consulted for the second time about its Final Section.

During each of these teleconference calls, the CAM members were updated on the progress of SCE's CHP RFO 2 and consulted about the valuation and merits of the individual projects. SCE properly responded to all comments and questions, and provided additional data as requested.

## **INDEPENDENT EVALUATOR (IE)**

As required by D.10-12-035 and D.07-12-052, SCE engages an IE to monitor the integrity of its competitive solicitations, selection, and contracting for resources with a delivery term of two years or more. Section 4.2.5 of the Term Sheet states that the IOUs “shall use an Independent Evaluator” and that the independent evaluator “shall review the entire CHP RFO process.”<sup>21</sup>

SCE engaged Merrimack Energy Group, Inc. (Merrimack Energy) to act as the IE for its CHP RFO 2 and related QF/CHP Program procurement activities. Merrimack Energy reviewed the design and protocols of SCE’s CHP RFO 2 prior to launch and reviewed the evaluation criteria prior to the submission of offers. An IE representative was present at the opening of indicative offers, received a copy of all offer materials, and performed an independent review of the evaluation of the offers. In addition, the IE monitored all communications between the parties and had access to negotiating sessions between the parties. The IE participated in SCE’s internal meetings and discussions regarding its CHP RFO 2. Finally, to date, the IE participated in every CAM meeting related to SCE’s CHP RFO 2.

Merrimack Energy’s IE report is found in Public Appendix F-1 (public version) and Confidential Appendix F-2 (confidential version).

## **REQUEST FOR COMMISSION APPROVAL**

Commission approval is a condition precedent of the Agreement. SCE therefore requests that the Commission issue a final and non-appealable resolution containing:

1. Approval of the Agreement in its entirety;
2. A finding that the Agreement, and SCE’s entry into the Agreement, is reasonable and prudent for all purposes, subject only to further review with respect to the reasonableness of SCE’s administration of the Agreement;
3. A finding that the 48 MW associated with Agreement applies toward SCE’s procurement target of 1,402 MW of CHP capacity in the Initial Program Period, as established by the QF/CHP Program;
4. A finding that the 47,989 MT of GHG reductions associated with the Agreement applies toward SCE’s GHG Emissions Reduction Target; and
5. A finding that the Agreement is in compliance with the EPS;
6. A finding that SCE’s costs under the Agreement shall be recovered through SCE’s CAM;

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<sup>21</sup> See Term Sheet at p. 14.

7. Any other relief the Commission finds just and reasonable.

SCE asks the Commission to approve the Agreement within 180 days to meet the requirements of the contract.

### **TIER DESIGNATION**

Pursuant to Section 4.10.2 of the Settlement, which provides that "IOUs will utilize a Tier 3 Advice Letter for all other PPAs (new, repowering, or existing PPAs that contain any material modification of the PPAs approved in this Settlement)," SCE submits this Advice Letter with a Tier 3 designation.

### **EFFECTIVE DATE**

This Advice Letter will become effective upon Commission approval.

### **NOTICE**

Anyone wishing to protest this advice filing may do so by letter via U.S. Mail, facsimile, or electronically, any of which must be received no later than 20 days after the date of this advice filing. Protests should be mailed to:

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

California Public Utilities Commission, Energy Division  
Attn: Noel Crisostomo  
505 Van Ness Avenue  
San Francisco, California 94102  
E-mail: [noel.crisostomo@cpuc.ca.gov](mailto:noel.crisostomo@cpuc.ca.gov)

In addition, protests and all other correspondence regarding this advice letter should also be sent by letter and transmitted via facsimile or electronically to the attention of:

Megan Scott-Kakures  
Vice President, Regulatory Operations  
Southern California Edison Company  
8631 Rush Street  
Rosemead, California 91770  
Facsimile: (626) 302-4829  
E-mail: [AdviceTariffManager@sce.com](mailto:AdviceTariffManager@sce.com)

Leslie E. Starck  
Senior Vice President, Regulatory Affairs  
c/o Karyn Gansecki  
601 Van Ness Avenue, Suite 2030  
San Francisco, California 94102  
Facsimile: (415) 929-5544  
E-mail: [Karyn.Gansecki@sce.com](mailto:Karyn.Gansecki@sce.com)

With a copy to:

Rebecca Meiers-De Pastino  
Senior Attorney  
2244 Walnut Grove Avenue  
Rosemead, California 91770  
Facsimile: (626) 302-6961  
Email: [rebecca.meiers-depastino@sce.com](mailto:rebecca.meiers-depastino@sce.com)

There are no restrictions on who may file a protest, but the protest shall set forth specifically the grounds upon which it is based and shall be submitted expeditiously.

In accordance with Section 4 of GO 96-B, SCE is serving copies of this advice filing to the interested parties shown on the attached GO 96-B, R.13-12-010, and A.08-11-001 et al service lists. Address change requests to the GO 96-B service list should be directed by electronic mail to [AdviceTariffManager@sce.com](mailto:AdviceTariffManager@sce.com) or at (626) 302-4039. For changes to all other service lists, please contact the Commission's Process Office at (415) 703-2021 or by electronic mail at [Process\\_Office@cpuc.ca.gov](mailto:Process_Office@cpuc.ca.gov).

Further, in accordance with Public Utilities Code Section 491, notice to the public is hereby given by filing and keeping the advice filing at SCE's corporate headquarters. To view other SCE advice letters filed with the Commission, log on to SCE's web site at <http://www.sce.com/AboutSCE/Regulatory/adviceletters>.

For questions, please contact Katie Sloan at (626) 302-6842 or by electronic mail at [Katie.Sloan@sce.com](mailto:Katie.Sloan@sce.com).

**Southern California Edison Company**

/s/ Megan Scott-Kakures  
Megan Scott-Kakures

MSK:ks:jm  
Enclosures

# CALIFORNIA PUBLIC UTILITIES COMMISSION

## ADVICE LETTER FILING SUMMARY ENERGY UTILITY

MUST BE COMPLETED BY UTILITY (Attach additional pages as needed)

Company name/CPUC Utility No.: Southern California Edison Company (U 338-E)

Utility type:

ELC       GAS  
 PLC       HEAT       WATER

Contact Person: Darrah Morgan

Phone #: (626) 302-2086

E-mail: [Darrah.Morgan@sce.com](mailto:Darrah.Morgan@sce.com)

E-mail Disposition Notice to: [AdviceTariffManager@sce.com](mailto:AdviceTariffManager@sce.com)

EXPLANATION OF UTILITY TYPE

ELC = Electric      GAS = Gas  
 PLC = Pipeline      HEAT = Heat      WATER = Water

(Date Filed/ Received Stamp by CPUC)

Advice Letter (AL) #: 3061-E

Tier Designation: 3

Subject of AL: Submission of Agreement Between Southern California Edison Company and Native American Energy Resources

Keywords (choose from CPUC listing): Agreement, Procurement, Qualifying Facility, Capacity, Cogeneration

AL filing type:  Monthly  Quarterly  Annual  One-Time  Other

If AL filed in compliance with a Commission order, indicate relevant Decision/Resolution #:

Does AL replace a withdrawn or rejected AL? If so, identify the prior AL: \_\_\_\_\_

Summarize differences between the AL and the prior withdrawn or rejected AL: \_\_\_\_\_

Confidential treatment requested?  Yes  No

If yes, specification of confidential information:

Confidential information will be made available to appropriate parties who execute a nondisclosure agreement.

Name and contact information to request nondisclosure agreement/access to confidential information:

Rebecca Meiers-De Pastino, Law Department, (626) 302-6016 or [Rebecca.Meiers-DePastino@sce.com](mailto:Rebecca.Meiers-DePastino@sce.com)

Resolution Required?  Yes  No

Requested effective date: Upon Commission Approval      No. of tariff sheets: -0-

Estimated system annual revenue effect (%): \_\_\_\_\_

Estimated system average rate effect (%): \_\_\_\_\_

When rates are affected by AL, include attachment in AL showing average rate effects on customer classes (residential, small commercial, large C/I, agricultural, lighting).

Tariff schedules affected: None

Service affected and changes proposed<sup>1</sup>: \_\_\_\_\_

Pending advice letters that revise the same tariff sheets: N/A

<sup>1</sup> Discuss in AL if more space is needed.

**Protests and all other correspondence regarding this AL are due no later than 20 days after the date of this filing, unless otherwise authorized by the Commission, and shall be sent to:**

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

Megan Scott-Kakures  
Vice President, Regulatory Operations  
Southern California Edison Company  
8631 Rush Street  
Rosemead, California 91770  
Facsimile: (626) 302-4829  
E-mail: [AdviceTariffManager@sce.com](mailto:AdviceTariffManager@sce.com)

Leslie E. Starck  
Senior Vice President, Regulatory Affairs  
c/o Karyn Gansecki  
Southern California Edison Company  
601 Van Ness Avenue, Suite 2030  
San Francisco, California 94102  
Facsimile: (415) 929-5544  
E-mail: [Karyn.Gansecki@sce.com](mailto:Karyn.Gansecki@sce.com)

With a copy to:

Rebecca Meiers-De Pastino  
Senior Attorney  
2244 Walnut Grove Avenue  
Rosemead, California 91770  
Facsimile: (626) 302-6962  
E-mail: [Rebecca.Meiers.DePastino@sce.com](mailto:Rebecca.Meiers.DePastino@sce.com)

**CONFIDENTIAL Appendix A**

**Offer Evaluation Methodology, Consistency with Commission Decisions and Rules,  
and Project Development Status**

**Confidential Protected Materials – Public Disclosure Prohibited**

**CONFIDENTIAL Appendix B**  
**POWER PURCHASE AND SALE AGREEMENT**  
*between*  
**Southern California Edison Company**  
*and*  
**NATIVE AMERICAN ENERGY RESOURCES, LLC**  
**(RAP ID #2822)**

**CONFIDENTIAL Appendix C**

**Contract Summary**

**Confidential Protected Materials – Public Disclosure Prohibited**

**CONFIDENTIAL Appendix D**

**Comparison of NATIVE AMERICAN ENERGY RESOURCES, LLC PPA with SCE's  
CHP *Pro Forma* PPA  
and Summary of Modifications**

**Confidential Protected Materials – Public Disclosure Prohibited**

**CONFIDENTIAL Appendix E**

**EPS COMPLIANCE TOOL**

**Confidential Protected Materials – Public Disclosure Prohibited**

**CONFIDENTIAL Appendix F**  
**Performance of Counterparty**

**Confidential Protected Materials – Public Disclosure Prohibited**

**PUBLIC Appendix G-1**  
**Public Independent Evaluator Report**

***Southern California Edison Company  
2013 Combined Heat and Power  
Request for Offers  
Final Report  
Confidential Version***

***Independent Evaluator Report  
Bid Evaluation and Selection Process  
and  
Power Purchase Agreement with  
Native American Energy Resources, LLC***

***June 2014***

***Prepared by  
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***and***

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Confidential Appendix

## I. Introduction

### A. Executive Summary

Effective April 23, 2014, Southern California Edison Company (“SCE”) executed a power purchase agreement (“PPA”) with Native American Energy Resources, LLC (“NAER”) for the purchase of firm and as-available capacity and energy from NAER’s Dry Creek Unit 1-B project, a new CHP resource, pursuant to SCE’s 2013 Combined Heat and Power Request for Offers (“CHP RFO”). This CHP RFO is the second of three required under the “Qualifying Facility and Combined Heat and Power Program Settlement Agreement” (“CHP Settlement” or “Settlement”).

The CHP Settlement had been negotiated by SCE and the two other major investor-owned utilities (“IOUs”) in California, four advocacy groups for combined heat and power (“CHP”)/qualifying facilities (“QFs”) and other independent generators and two ratepayer advocacy organizations.<sup>1</sup> Necessary regulatory approvals were received from the California Public Utilities Commission (“CPUC” or “Commission”) in Decision 10-12-035 and subsequent orders<sup>2</sup> and the Federal Energy Regulatory Commission (“FERC”),<sup>3</sup> with FERC granting an application to terminate the California IOU’s mandatory purchase obligation pursuant to section 201(m) of the Public Utility Regulatory Policies Act of 1978 (“PURPA”).<sup>4</sup> The Settlement became effective on November 23, 2011 (“Settlement Effective Date”).<sup>5</sup>

SCE launched the 2013 CHP RFO in September 2013, received indicative bids in November 2013, and received final offers in March 2014. On April 23, 2014, SCE signed six power purchase agreements (“PPAs”) for capacity, energy and other products from six different projects representing a total of 396 MW, including 48 MW of firm and as-available capacity and energy purchased under the PPA with NAER from the Dry Creek Unit 1-B generating facility.<sup>6</sup>

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<sup>1</sup> The parties to the CHP Settlement were SCE, Pacific Gas and Electric Company, San Diego Gas & Electric Company, Independent Energy Producers Association, Cogeneration Association of California, California Cogeneration Association, Energy Producers and Users, Coalition, The Utility Reform Network, and the Division of Ratepayer Advocates.

<sup>2</sup> Decision Adopting Proposed Settlement, D.10-12-035 (December 21, 2010), Decision Granting Petition to Modify Decision 10-12-035, D. 11-07-010 (July 15, 2011), Decision Granting, In Part, Petition to Modify Decision 11-07-010 and Request to Establish a Settlement Agreement Effective Date and Grant Motion for Closure, D. 11-10-016 (October 11, 2011), Order Dismissing Application for Rehearing of Decision 10-12-035 (October 18, 2011), and Order Denying Rehearing of Decision 10-12-035 On Certain Issues Raised by the City and County of San Francisco (October 24, 2011)..

<sup>3</sup> Order Granting Application to Terminate Purchase Obligation, 135 FERC ¶ 61,234 (June 16, 2011).

<sup>4</sup> 16 U.S.C. § 824a-3(m) (2006).

<sup>5</sup> The CPUC’s orders of approval became final and non-appealable 30 days after the issuance on October 24, 2011 of the CPUC’s Order Denying Rehearing of Decision 10-12-035 On Certain Issues Raised by the City and County of San Francisco.

<sup>6</sup> NAER offered an estimated 47 MW of monthly firm contract capacity and 1 MW of As-Available Contract Capacity.

The agreement with NAER involves SCE's purchase of capacity and energy from a new natural gas-fired CHP facility located near 34740 Merced Avenue in Bakersfield, California (Dry Creek Unit 1-B). The Dry Creek Unit 1-B generating facility consists of one General Electric ("GE") LM 6000 combustion turbine generator, Unit 1-B, its associated heat recovery steam generator with Select Catalytic Reduction ("SCR"), a CO catalyst and Continuous Emission Monitoring. Unit 1-B is part of an overall plant comprising two such GE LM6000 combustion turbine and Brush generator, each with an associated heat recovery steam generator with SCR (with an NOx and CO catalyst), and Continuous Emission Monitoring. Electric metering for the facility will be done through a separate CAISO meter on each combustion turbine.<sup>7</sup> The generator nameplate rating for each combustion turbine is 69.8 MW. The plant utilizes natural gas as the primary fuel. Natural gas will be supplied to the overall plant through a single pipeline but separately metered for each of the Units. Under the NAER Dry Creek PPA, Dry Creek will provide firm and as-available capacity and energy for a twelve-year term commencing on June 1, 2018, and lasting for 12 years.

SCE retained Merrimack Energy Group, Inc. ("Merrimack Energy") to serve as Independent Evaluator ("IE") to oversee SCE's second competitive solicitation for long-term purchase contracts from eligible facilities under the CHP Settlement, to monitor contract negotiations between SCE and counterparties, especially those between SCE and its affiliates, and to provide a report to the CPUC regarding its oversight and monitoring efforts and to the FERC if a contract with an affiliate were to be concluded. The purpose of this report is to communicate the results of the IE's oversight of SCE's 2013 CHP RFO, the negotiations between SCE and NAER for the Dry Creek Unit 1-B, and the resulting PPA. It is the IE's assessment that SCE reasonably designed and fairly implemented its second CHP RFO pursuant to the Settlement Agreement and reasonably selected NAER's Dry Creek offer. Although the Dry Creek unit [REDACTED] of the projects selected by SCE, the project is a new CHP project and is among two of the six projects selected that provide GHG emission reductions. Because there is a limited amount of GHG reductions resulting from the projects selected in this solicitation (and likely for the remaining projects available in the market) and the project is a new CHP project,<sup>9</sup> despite the high cost of power from this project and potential project viability risks, in the IE's opinion, it is reasonable for the Commission to approve the contract with NAER.

## **B. The Settlement Agreement and the CHP RFO**

The CHP Settlement, which was negotiated over an extended period by the California IOUs, representatives of California's QFs/CHPs, and ratepayer advocates to replace California's QF PURPA Program, is embodied in the CHP Program Settlement

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<sup>8</sup> The lower value of the Dry Creek project can be partially attributed to the higher cost of a new project relative to existing projects and the twelve year contract term which requires the Seller to amortize the cost of the project over fewer years.

<sup>9</sup> Section 1.2.2.5 of the CHP Settlement Agreement Term Sheet states as an objective of the Settlement the encouragement of the development of new, clean, and efficient CHP.

Agreement Term Sheet dated October 8, 2010 (“Settlement Agreement”). The Settlement Agreement requires that the three major California IOUs enter into new power purchase agreements with eligible facilities under the Settlement in specified MW amounts (subject to various qualifications) with an objective of achieving certain levels of greenhouse gas (“GHG”) emission reductions.

Specifically, in the Initial Program Period, starting with the Settlement Effective Date, and concluding 48 months afterwards, November 22, 2015, each IOU is required to conduct three Requests for Offers (“RFOs”) with the goals of entering into new PPAs with either CHP facilities or existing CHP facilities that have changed operations to convert to utility-scheduled dispatchable facilities (referred to as “Utility Prescheduled Facilities” or “UPFs”). SCE’s target for the Initial Program Period is 1,402 MW, with a target of 2.17 MMT (million metric tons) in GHG emission reductions to be procured by the end of the Second Program Period, which extends from the end of the Initial Program Period through December 31, 2020.<sup>10</sup> During the Second Program Period, IOUs will procure any portion of the MW targets not procured in the Initial Program Period plus additional CHP capacity to meet GHG emission reduction targets as established by the CPUC in the Long Term Procurement Planning proceeding (“LTPP”).

The CHP program has a number of goals and objectives which are set forth in Section 1 of the Settlement Agreement. Among them are the retention of existing efficient CHP, support for changes in operations and upgrades of inefficient CHP to provide greater benefits, providing an orderly exit for CHP Facilities that cannot participate, or are unsuccessful, in the new CHP program, retaining existing CHP GHG emissions reductions benefits and incrementally reducing GHG emissions through new or repowered CHP or changes in operations in existing CHP Facilities, and the resolution of long-standing disputes and litigation regarding California’s prior QF PURPA Program.

### **CHP RFOs**

Section 4 of the Settlement Agreement describes the procurement processes, including the CHP RFOs, which are applicable for acquiring eligible resources under contracts with the objective of meeting the MW targets and GHG emissions reduction targets under the CHP program. Key features applicable to procurements under CHP RFOs are summarized below.

#### *Eligible Offers*

- Meets the federal definition of qualifying cogeneration facility under 18 C.F.R. §292.205 (“CHP Facility”);

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<sup>10</sup> The MW target for SCE is set forth in Sections 2.2.2 and 5.1.2 of the Settlement Agreement. The total GHG emissions reduction target for the IOUs is 4.3 MMT of GHG emissions reductions, based on the California Air Resources Board’s statewide target of 6.7 MMT of GHG emissions reductions, based on their bundled retail customers and an additional 0.5 MMT for non-IOU load serving entities serving direct access (“DA”) and community choice aggregator (“CCA”) customers in the IOU service territories. SCE’s GHG emissions reduction target is approximately 2.17 MMT with the DA/CCA customers included.

- Meets the definition of cogeneration under California Public Utilities Code §216.6 and the Emissions Performance Standard under Public Utilities Code §8341;
- Nameplate capacity larger than 5 MW;
- If a CHP Facility met the PURPA efficiency requirements (18 C.F.R. §292.205) as of September 2007, it may be eligible as a UPF, which is defined as an “Existing CHP Facility that has changed operations to convert to a utility controlled scheduled dispatchable generation facility, including, but not limited to an EWG [Exempt Wholesale Generator];”
- Eligible facilities may be existing, new, expanded or repowered CHP facilities or existing CHP facilities (as of September 2007) that have changed operations to become UPFs.

#### *Allowable Duration of Contracts*

- Up to seven (7) years for:
  - Existing CHP Facilities (CHP facilities that were operational before the Settlement Effective Date);
  - Expanded CHP Facilities (as defined in the Settlement Agreement), if they do not provide credit and collateral applicable to all new or repowered CHP facilities;
- Up to twelve (12) years for:
  - New CHP Facilities (CHP facilities that become operational after the Settlement Effective Date);
  - Repowered CHP Facilities (CHP facilities that repower after the Settlement Effective Date and otherwise meet the definitional requirements in the Settlement Agreement)
  - Expanded CHP Facilities, if they provide credit and collateral applicable to all new or repowered CHP Facilities.

#### *Credit and Collateral*

- None required for Existing CHP Facilities or Expanded CHP Facilities;
- New or Repowered CHP Facilities: development security of \$60/kW and performance assurance required, but sellers may select one among the following options for performance assurance:
  - Twelve (12) months of capacity payments;
  - Twelve (12) months of total revenues;
  - Five percent (5%) of anticipated revenues over the term of the PPA;
  - Negotiated provisions, agreeable to both seller and buyer.
- IOUs may seek credit and collateral terms that are not required and such provisions “will be evaluated by IOUs and Sellers accordingly.”<sup>11</sup>

#### *Pricing*

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<sup>11</sup> Settlement Agreement § 4.2.8.2.

- Pricing is as defined in the executed PPA.

#### *PPAs*

- CHP RFO Pro Forma PPA is Exhibit 5 to the Settlement Agreement;
  - Offerors may offer Firm Contract Capacity, As-Available Contract Capacity, or a combination of the two;
  - GHG compliance cost: Seller must offer an option where the Seller assumes GHG compliance costs *and* an option where the Buyer assumes GHG compliance costs; in addition, Seller may offer a hybrid approach for GHG cost recovery;
  - Sellers under the CHP Pro Forma PPA must satisfy an efficiency performance requirement; failure to do so triggers contractual rights and remedies;
  - The CHP Pro Forma PPA will contain an economic curtailment option that may be selected, at an Offeror's option:
    - Curtailment will only occur when energy market prices are negative;
    - Offerors, in their offers, will determine the maximum amount of economic curtailment per calendar year quarter;
  - The CHP Pro-Forma PPA may be modified on a bilateral basis during negotiations for a particular CHP PPA or UPF PPA.
- As part of a CHP RFO bid package, IOUs may:
  - Request offers with specific credit and collateral, voluntary curtailment and dispatchability terms that differ from the CHP Pro Forma PPA;
  - Offer the all source RFO pro forma contract(s) in addition to the CHP RFO Pro Forma PPA and may sign a hybrid contract of the two.

#### *CHP RFO Scope, Evaluation and Selection Criteria*

- The CHP RFO will recognize that CHP has unique attributes, and CHP offers shall be compared only against other CHP offers;
- The IOU will conduct an evaluation process, including an analysis of market value;
- CHP offers shall be evaluated on all CHP Program goal characteristics, including GHG emissions;
- The IOU will “give preference to Pro Forma offers with no options, relative to non-Pro Forma offers, to the extent that such Pro Forma offers are competitive with non-Pro Forma offers.”<sup>12</sup>

#### *Approval of PPAs*

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<sup>12</sup> Settlement Agreement §4.2.12.

- IOUs will utilize a Tier 2 Advice Letter for Existing CHP Facilities that execute the CHP Pro Forma PPA without material modification;
- IOUs will utilize a Tier 3 Advice Letter for all other PPAs;
- PPAs of less than five years do not require advance CPUC approval according to existing CPUC policy.

## MW Targets

Section 5 of the Settlement Agreement sets forth the MW targets during the Initial Program Period, the MW counting rules, and justifications for failure to meet the MW targets. The MW targets for SCE during the Initial Program Period are set forth in Table 1 below.

**Table 1: SCE MW Targets**

Utility	MW Target A	MW Target B	MW Target C	Total MW Target
SCE	630 MW	378 MW	394 MW	1,402 MW

These targets may be met through CHP RFOs, but also through bilaterally negotiated contracts, Feed-In Tariffs for new or repowered CHP facilities 20 MW or less in size (AB 1613), PURPA contracts for QFs 20 MW or less in size, and new behind-the-meter CHP facilities.

Each IOU is required to conduct three RFOs during the Initial Program Period to seek PPAs for the portion of MW targets not procured by other CHP procurement processes.

The amount of MW sought in each CHP RFO shall not be less than the Net MW target for each IOU. For SCE, the target for the first RFO was 630 MW, with a collective target of 1,402 MW for all three RFOs. An IOU may procure MWs in excess of the MW targets in a particular RFO.

The Settlement Agreement sets forth specific rules for counting MWs for purposes of meeting the MW target, including the following:

- PPAs executed after September 1, 2009 and before the Settlement Effective Date count toward the IOUs MW Targets (as well as GHG Emissions Reduction Targets);
- Existing CHP Facilities are gas-fired topping cycle CHP Facilities that sold electric power to an IOU listed in each IOU’s July 2010 Cogeneration and Small Power Production Report (“July 2010 Report”), with the MW’s used for counting purposes equal to the published Contract Nameplate (unless otherwise noted in the Settlement Agreement);
  - CHP PPAs executed with QFs who formerly sold to IOUs and are not listed in the July 2010 Report will count toward the MW Targets based on

the Contract Nameplate in the most recent report, but if not listed, the contract nameplate in the most recent QF or CHP PPA will be counted;

- If an IOU contracts with an Existing CHP Facility that is currently operating in California but has never sold to an IOU, the countable MW will be determined by a capacity demonstration test;
- For New CHP Facilities and Repowered CHP Facilities, countable MW will be determined by capacity demonstration tests.

An IOU that does not meet its MW Targets must show justification. Valid justifications may be:

- Lack of sufficient offers;
- With respect to GHG emissions, inefficiency of CHP Facilities submitting offers compared to the Double Benchmark (described below);
- Excessive offer prices, based on independent or publicly-available sources of information.<sup>13</sup>

### **GHG Emissions Reduction Targets**

Section 6 of the Settlement Agreement sets forth the strategy for reducing statewide GHG emissions through the CHP Program, IOU GHG emissions reduction targets and how they are determined, and justifications for failure to meet GHG emissions reduction targets. The strategy includes the following:

- Maintain existing GHG emissions reduction attributable to efficient existing CHP facilities;
- Reduce GHG emissions from inefficient existing CHP facilities by encouraging their repowering, retirement or conversion to UPFs;
- Add efficient CHP resources;
- Achieve GHG Emissions Reductions Targets by December 31, 2020.

The GHG Emissions Reduction Targets for the IOUs are as follows:

- Maintain an equivalent amount of GHG emissions reductions attributable to CHP facilities included in each IOU's July 2010 Semi-Annual Reports for PPAs that expire in the Initial Program Period;
- Achieve additional GHG emissions reductions of 4.3 MMT for the IOUs collectively, based on the California Air Resources Board ("CARB") Scoping Plan, which estimates that, by 2020, the State can add 4,000 MW of additional efficient CHP, which are estimated to reduce GHG emissions by 6.7 MMT;

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<sup>13</sup>Section 9 of the Settlement Agreement sets forth circumstances under which the CHP Parties to the Settlement may retain a CHP Auditor, the objectives, terms and conditions of the CHP Auditor's work, and provisions regarding confidentiality. A potential audit by a CHP Auditor is triggered when an IOU provides written notice that it will not meet, or anticipates that it will not meet, a MW Target or a GHG Emissions Reduction Target established by, or pursuant to, the CHP Settlement.

- SCE’s portion of the 4.3 MMT (based on the most recent update provided by the Commission) is 2.17 MMT;
- If community choice aggregators and electric service providers in IOU service territories (“CCAs/ESPs”) do not procure their own share of CHP GHG emissions reduction measures, the IOUs will collectively procure additional amounts for them (0.5 MMT), with CCAs/ESPs allocated cost responsibility.

An IOU that does not meet its GHG Emissions Reduction Targets must show justification. Valid justifications may be:

- With respect to GHG emissions, inefficiency of CHP Facilities submitting offers compared to the Double Benchmark (described below);
- Excessive offer prices, based on independent or publicly-available sources of information;
- A lack of need exists (a reason that does not justify failure to meet the MW Targets).

### **GHG Emission Accounting Methodology**

Section 7 of the Settlement Agreement sets forth the GHG emissions accounting methodology.

- The Double Benchmark is intended to reflect the GHG emissions that would have occurred if the same amount of electricity and thermal output were obtained from conventional generation resources and a stand-alone boiler;
- The current Double Benchmark is as follows:
  - The heat rate for the electricity generated is 8,300 Btu/kWh HHV at the busbar and excluding line losses;
  - The thermal efficiency of a standard boiler is 80%;
- An “efficient” CHP refers to one that reduces GHG emissions as compared to the Double Benchmark; an “inefficient” CHP refers to one that increases GHG emissions as compared to the Double Benchmark;
- Projects counting as a (positive) GHG credit:
  - Efficient New CHP facilities;
  - Physical change from a repowered CHP facility, MW expansion or fuel change that results in reduced GHG emissions
    - Measured as the difference between (a) the previous two years of operational data compared to the Double Benchmark and (b) the anticipated change in operations as identified in the PPA compared to the Double Benchmark;
  - CHP Facility change in operations or conversion to a UPF
    - Measured as the emissions from the average of the previous two years of operational data minus the projected PPA emissions and emissions associated with replacing 100% of the decreased electric generation at a time-differentiated heat rate.

- Projects counting as a (negative) GHG debit:
  - Inefficient New CHP Facilities;
  - Shut-down or retirement of an existing, efficient CHP facility and the thermal need continues
  - Physical change in a CHP Facility that results in increased GHG emissions.

Existing CHP Facilities with no change in operations are counted as neutral.

### **C. SCE's First CHP RFO and Implications for the Second CHP RFO**

SCE's first CHP RFO was launched in December 2011 and resulted in SCE's execution of five contracts, with 832 total CHP countable MWs and slightly less than 100,000 in countable metric tonnes ("MT") of GHG emissions reductions under the Settlement Agreement. However, of these contracts, only 542 MW were approved, with 95,936 MT (0.096 MMT) of countable GHG reductions. The contracts approved were with Sycamore Cogeneration Company (300 MW and 95,936 MT in GHG reductions), CPUC Resolution E-4555 (September 9, 2013) and Berry Petroleum with respect to its Newhall facility (41.56 MW, 0 MT GHG reductions), CPUC Resolution E-4553 (February 28, 2013).

The Commission did not fully approve two Resource Adequacy-only ("RA-only") contracts—with Calpine Energy Services, L.P. for 280.5 MW from the Los Medanos Energy Center and 120 MW from the Calpine Gilroy Cogen, L.P. facility. CPUC Resolution E-4569 (July 31, 2013). The Commission directed that future RFOs not accept RA-only bids. However, given the lack of clarity of the Settlement Agreement regarding eligibility of RA-only contracts, the Commission allowed SCE to contract for a RA-only product for up to 50 percent of the capacity from these two contracts and allowed SCE to count such MWs toward its MW Settlement Agreement obligations. SCE subsequently entered into contracts for RA-only capacity from Los Medanos (140.25 MW) and Gilroy (60 MW).

In Resolution E-4554 (August 19, 2013), the Commission rejected the contracts SCE had entered into with Harbor Cogeneration, LLC ("Harbor") on the basis that (a) Harbor's facility (80 MW) was a New CHP Facility under the Settlement Agreement, rather than an Existing CHP Facility, since it had not been operating as a qualifying cogeneration facility for many years, and (b) Harbor did not satisfy the Federal Energy Regulatory Commission's Fundamental Use Test, which is applicable to a New CHP Facility under the Settlement Agreement.

SCE has indicated that it has procured 74 MW of eligible CHP capacity through other channels allowable under the Settlement Agreement. With the 542 MW of countable CHP capacity from the first RFO, SCE's approved CHP MW are 616 MW, 14 MW short of the first CHP RFO's target of 630 MW.

SCE's procurement target for the second CHP RFO was 392 MW, which is the 378 MW Settlement Agreement target for the second RFO plus the 14 MW shortfall from SCE's first CHP RFO. According to SCE, it had approved GHG reductions of 0.24 MT, which represents 11 percent of its GHG reduction target.

#### **D. SCE's 2013 CHP RFO—Summary of the Process**

In planning for its second CHP RFO, SCE decided to use the same “two step” solicitation process it used in the first CHP RFO. Under that approach, following the launch of the RFO, indicative bids are solicited. From those offers, a short list is selected. SCE then negotiates contractual terms with the Offerors on the shortlist, which if acceptable and mutually agreed, allow the Offeror to make a final offer that is contractually binding on the Offeror if selected by SCE. SCE then evaluates the final offers, makes selections, and signs contracts with the winning bidders. This “two step” process differs from the “one step” process SCE had used in Renewables Portfolio Standard (“RPS”) solicitations in past years (but not the current 2013 RPS RFP), where following the launch of the solicitation, proposals are sought from bidders, SCE selects a short list, then negotiates contracts with bidders on the short list, and usually enters into contracts with a subset of the short listed bidders. The proposals from the RPS bidders under the “one step” process are not required to be contractually binding on the bidder.

As set forth in SCE's Participant Instructions for the 2013 CHP RFO, there were a variety of changes from SCE's first CHP RFO.

- Consistent with Resolution E-4554, any New CHP Facility is required to meet the fundamental use test as established by the FERC.
- RA-only bids are not permissible.
- Out-of-state facilities are not eligible.
- Rather than having a Track 1 for existing facilities and new facilities willing to accept a cap on interconnection costs and a Track 2 for other new facilities, as in CHP RFO 1, the 2013 CHP RFO has a single process and timeframe for all types of offers.
- For Offerors that wished to modify the terms and conditions of the CHP RFO Pro-Forma PPA (negotiated by the parties to the Settlement Agreement and included as Exhibit 5 to the Settlement Agreement) other than adding its GHG proposal in Exhibit S, SCE requested that Offerors utilize the SCE-specific form of CHP PPA that included SCE's negotiating position on a number of provisions.<sup>14</sup>

Another change from SCE's first CHP RFO was that the evaluation framework for evaluation of indicative bids for shortlisting would be substantially the same as that for

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<sup>14</sup> See Participant Instructions §§ 2.01, 2.05, 2.08; 2013 CHP RFO Offeror's Conference presentation, p. 12. [https://www.sce.com/wps/portal/home/procurement/renewable-alternative-power-contract-opportunities/chp/combined-heat-and-power-facilities-request-for-off/?ut/p/b0/04\\_Sj9CPykssy0xPLMnMz0vMAfGjzOINLdwdPTyDDTwNzH0sDTydAoJcLUMsjUODDfULsh0VAUt8Xe4!/.](https://www.sce.com/wps/portal/home/procurement/renewable-alternative-power-contract-opportunities/chp/combined-heat-and-power-facilities-request-for-off/?ut/p/b0/04_Sj9CPykssy0xPLMnMz0vMAfGjzOINLdwdPTyDDTwNzH0sDTydAoJcLUMsjUODDfULsh0VAUt8Xe4!/)

the evaluation of final offers, including consideration of GHG reductions for each indicative offer as a metric to be used for short list selection. In addition, SCE developed an optimization process for final project selection. The optimization process was designed to allow SCE to view the portfolio of projects that minimizes net NPV cost while controlling for MW and GHG targets based on predetermined MW and GHG constraints.

On September 12, 2013, SCE launched the 2013 CHP RFO and posted the solicitation documents on its website,<sup>15</sup> including the Participant Instructions, an offer template, pro forma contract documents for CHP and UPF offers, and other information.

The Participant Instructions referenced the pro forma contracts for both CHP and UPF (dispatchable) offers, and described eligibility requirements, outlined the maximum contract years based on whether the proposal was based on an existing CHP facility, new CHP facility or repowered CHP proposal, the RFO schedule, required submission materials, evaluation criteria, and other important information. To be eligible, a facility must be larger than 5 MW, and constitute either a New CHP Facility, an Existing CHP Facility, a Repowered CHP Facility or a Utility Prescheduled Facility under the Settlement Agreement.<sup>16</sup>

Dispatchable UPFs were required to submit proposals under several separate, but interrelated agreements (collectively, the “UPF Documents”): Unit Contingent Tolling Confirmation (“UC Toll Confirmation”); Resource Adequacy Confirmation (“RA Confirmation”); and the EEI Master Power Purchase and Sale Agreement Cover Sheet and EEI Paragraph 10 to the Collateral Annex. Baseload CHP offers were required to use (a) the CHP Pro Forma PPA if there were no proposed modifications to terms and conditions other than those relating to the GHG provisions in Exhibit S<sup>17</sup> or (b) SCE’s version of the CHP Pro Forma PPA.

On October 3, 2013, SCE held an Offeror Conference webinar and conference call for interested participants. SCE provided a presentation on the elements of the RFO and answered questions from prospective bidders. All Offerors were required to submit indicative offers, along with a complete offer submittal package, on November 7, 2013.

Offers for the sale of capacity and energy from 25 projects for over 1,800 countable CHP MWs were received on or by November 7, 2013.<sup>18</sup> After evaluating these offers, SCE [REDACTED] projects, providing notice of its short list on December 19, 2013. Thereafter, for the next two months, SCE engaged in contract negotiations with the short listed Offerors. Due to a delay in the process of evaluating, conducting due diligence on

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<sup>15</sup> [https://www.sce.com/wps/portal/home/procurement/renewable-alternative-power-contract-opportunities/chp/combined-heat-and-power-facilities-request-for-off!/ut/p/b0/04\\_Sj9CPykssy0xPLMnMz0vMAfGjzOINLdwdPTyDDTwnZH0sDTydAoJcLUMsjUODDfULsh0VAUt8Xe4!/.](https://www.sce.com/wps/portal/home/procurement/renewable-alternative-power-contract-opportunities/chp/combined-heat-and-power-facilities-request-for-off!/ut/p/b0/04_Sj9CPykssy0xPLMnMz0vMAfGjzOINLdwdPTyDDTwnZH0sDTydAoJcLUMsjUODDfULsh0VAUt8Xe4!/)

<sup>16</sup> Participant Instructions §2.01.

<sup>17</sup> Offerors were allowed to fill in project-specific information in the Settlement Agreement version of the CHP Pro Forma PPA.

<sup>18</sup> One offer was classified as ineligible because it was an out-of-state project.

and selecting offers, SCE, on March 27, 2014, notified the Offerors that had reached agreement with SCE on contract terms and had timely submitted final offers that they would be afforded additional time to submit refreshed offers.<sup>19</sup> Following receipt of refreshed final offers (or notice from Offerors that they did not wish to refresh their offers), and having conferred with the Cost Allocation Mechanism (“CAM”) group, SCE selected six qualifying offers from five counterparties and executed contracts with them effective April 23, 2014, with 396 total countable CHP MWs and approximately 105,000 MT of GHG emissions reductions under the Settlement Agreement. Among the selected offers was Dry Creek Unit 1-B with 48 MW of CHP countable MWs, providing firm and as-available capacity and energy under the Dry Creek Unit 1-B PPA, and 47,989 MT of GHG emission reductions under the Settlement Agreement.

The offer selected by SCE and resulting contracts are summarized below.

**Table 2**

SCE 2013 CHP RFO Contracts					
Project	CHP MW	Project and Contract Type	Start Date	Term (Years)	GHG Reductions (MT/year)
Berry Petroleum University Cogen	37	Existing CHP	7/1/2015	7	0
Dry Creek Unit 1-B	48	New CHP	6/1/2018	12	47,989
Elk Hills Power	200	New CHP	1/1/2016	5	57,006
New-Indy Ontario	41	Existing CHP	1/1/2016	7	0
New-Indy Oxnard	25	Existing CHP	4/1/2016	7	0
U.S. Borax Cogen	45	Existing CHP	7/1/2015	7	0
<b>TOTAL</b>	<b>396</b>				<b>104,995</b>

These projects provide 396 MW of countable CHP MW, which is in line with SCE’s revised procurement target of 394 MW for this RFO while contributing to achievement of the total Initial Program Period procurement target of 1,402 MW.

The schedule for the RFO, both before and after all of the revisions, is set forth below.

<sup>19</sup> SCE also notified affected Offerors that SCE was extending the schedule for notification of selected offers in its 2013 CHP RFO by two weeks to April 10, 2014.

**Table 3**

SCE 2013 CHP RFO: Schedule		
Milestone Description	Initial Dates	Revised Dates
SCE Launch	9/12/2013	
Offeror Conference	10/3/2013	
Submission of Non-Binding Notice of Intent to Offer	10/10/2013	
Submission of Complete Offer Submittal Package	11/7/2013	
SCE Notice of Short Listing	12/19/2013	
Finalize Enabling Agreements: UPFs	1/23/2014	
Finalize Offer Template	2/6/2014	
Finalize All Agreements	2/20/2014	
Submission of Final Binding Offers	2/27/2014	3/31/2014
SCE Notification of Selected Offers	3/27/2014	4/10/2014
Execution of Final Agreements	4/1/2014	4/23/2014

With the conclusion of the second CHP RFO, SCE is, or will be, seeking approvals through advice letters for the six contracts, including the Dry Creek Unit 1-B PPA.

**E. Description of the NAER Dry Creek Contract Negotiation Process and PPA<sup>20</sup>**

For reviewing and evaluating the performance of the utility with regard to specific contract negotiations, the IE has addressed the issues raised in the CPUC Independent Evaluator Report Template. These include:

- Identify the principles the IE used to evaluate negotiations;
- Using the above principles, evaluate the project-specific negotiations. Highlight any issues of interest/concern including unique terms and conditions;
- Was similar information/options made available to other bidders when appropriate, (i.e., if a bidder was told to reduce its price, was the same information made available to others?);
- Describe and explain any differences of opinion between the IE and utility. If resolved, describe the reasonableness of the outcome;
- Any other information relevant to negotiations not asked above but important to understanding the IOU's process.

The general principles followed by the IE in evaluating contract negotiations include assurance that the risk allocation provisions in the contract are reasonably balanced between the counterparties and that the utility customers are not placed at undue risk through the resulting contract negotiation process. The IE also attempts to ensure that similarly situated counterparties are treated the same or similarly and that all counterparties are provided the same information or message by the utility.

<sup>20</sup> Capitalized terms not defined herein are defined in the applicable agreements.

The contract negotiation process with NAER Dry Creek represented a very complex process, marked by changes to the project structure as well as revisions to the expected operations of the project over the course of negotiations. This section of the report will describe how the project evolved from the indicative offer originally submitted on November 7, 2013 to final execution of the PPA on April 23, 2014.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

<sup>24</sup> According to Federal Energy Commission procedures (Section 292.207) the Commission’s “safe harbor” provides that, if at least 50% of the total energy output of a new cogeneration facility is used for industrial, commercial, residential or institutional purposes, the facility is considered to have met the fundamental use test.

[REDACTED]



Shortly after the initial negotiation session described above, NAER received its FERC Order and provided SCE with a copy of the FERC Order. The FERC Order granted the requested certification for the project in response to NAER's application seeking Commission certification of its cogeneration facility as a qualifying facility (QF) pursuant to Section 292.207(b) of the Commission's regulations and the Public Utility Regulatory Policies Act of 1978. In its application, Jasmin Power III also stated that its facility satisfies the Fundamental Use Test even though it does not come within the Commission's "safe harbor" which provides that, if at least 50% of the total energy output of a new cogeneration facility is used for industrial, commercial, residential or institutional purposes, the facility is considered to have met the Fundamental Use Test. Jasmin Power III stated that its proposed facility is designed to provide steam and electric energy for an oil field and is integral to operations of that oil field, and is not intended fundamentally for sale to an electric utility. Jasmin III also stated that while only 44% of the facility's net energy output is expected to be used for industrial purposes when the facility is initially installed, once the oil field is more fully developed, the oil field will consume a higher percentage of the total energy output of the facility for industrial purposes. The FERC Order in Docket QF14-53-000 stated:

"Jasmin Power's request for certification of its facility as a QF is hereby granted. Jasmin Power has shown in its Form 556 submittal that it meets the requirements for certification as a qualifying cogeneration facility, including the requirement that "the electrical, thermal and chemical output of the cogeneration facility is used fundamentally for industrial, commercial, or institutional purposes and is not intended fundamentally for sale to an electric utility, taking into account technological, efficiency, economic, and variable thermal energy requirements. To the extent that the facts or representations which form the basis of this order change, the facility might still be a QF under the changed circumstances. However, self-certification or Commission recertification at that point will be necessary to assure QF status." (page 3)



[REDACTED]

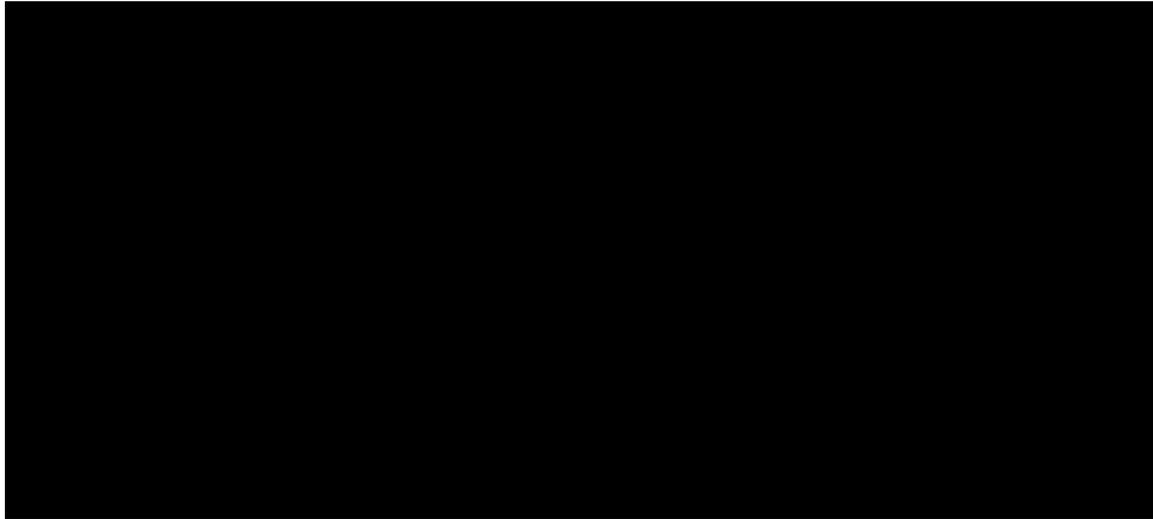
**NAER Dry Creek PPA**

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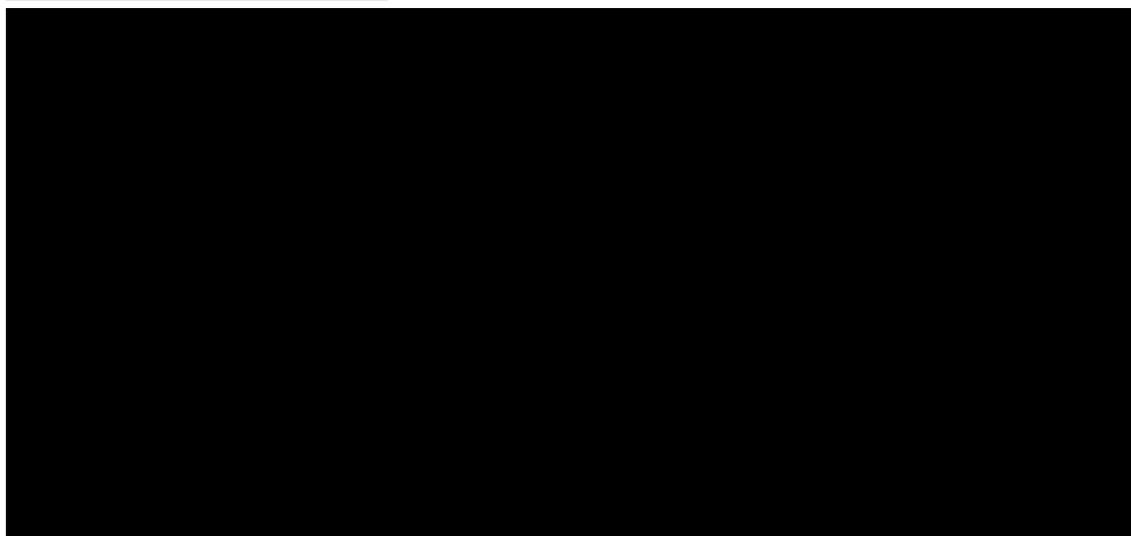
Section 4.10.1 of the Settlement Agreement provides that “IOUs will utilize a Tier 2 Advice Letter for Existing CHP Facilities that execute the CHP RFO Pro Forma PPA without material modification.” Tier 3 Advice Letters are to be used for all other agreements with a term of five years or more. Accordingly, SCE plans to file a Tier 3 Advice Letter for approval of the NAER Dry Creek PPA.

**NAER Dry Creek Commercial Terms**

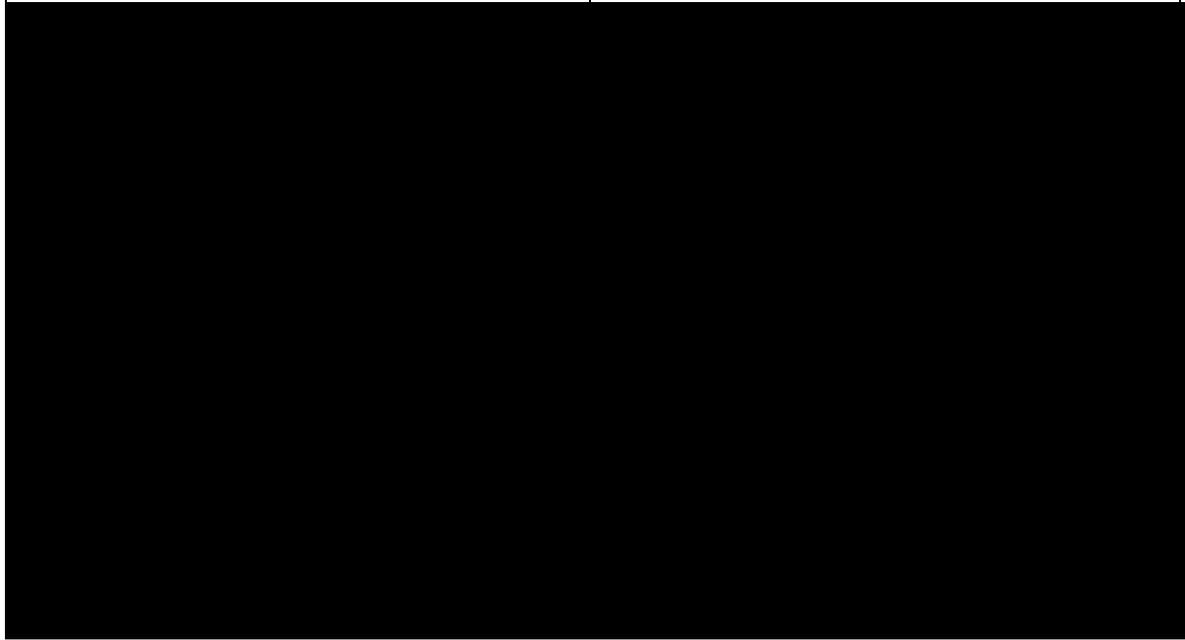


Key economic terms of the NAER Dry Creek PPA are summarized below:

Contract Term	June 1, 2018 – May 31, 2030
Type of Facility	New CHP Facility
Power Rating	69.8 MW

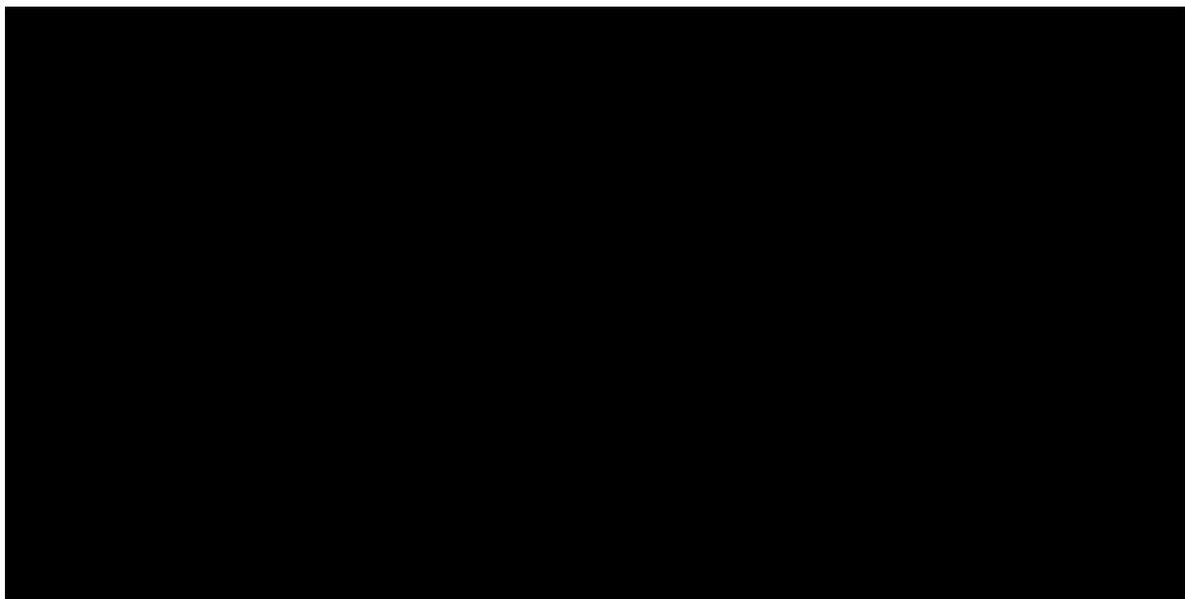


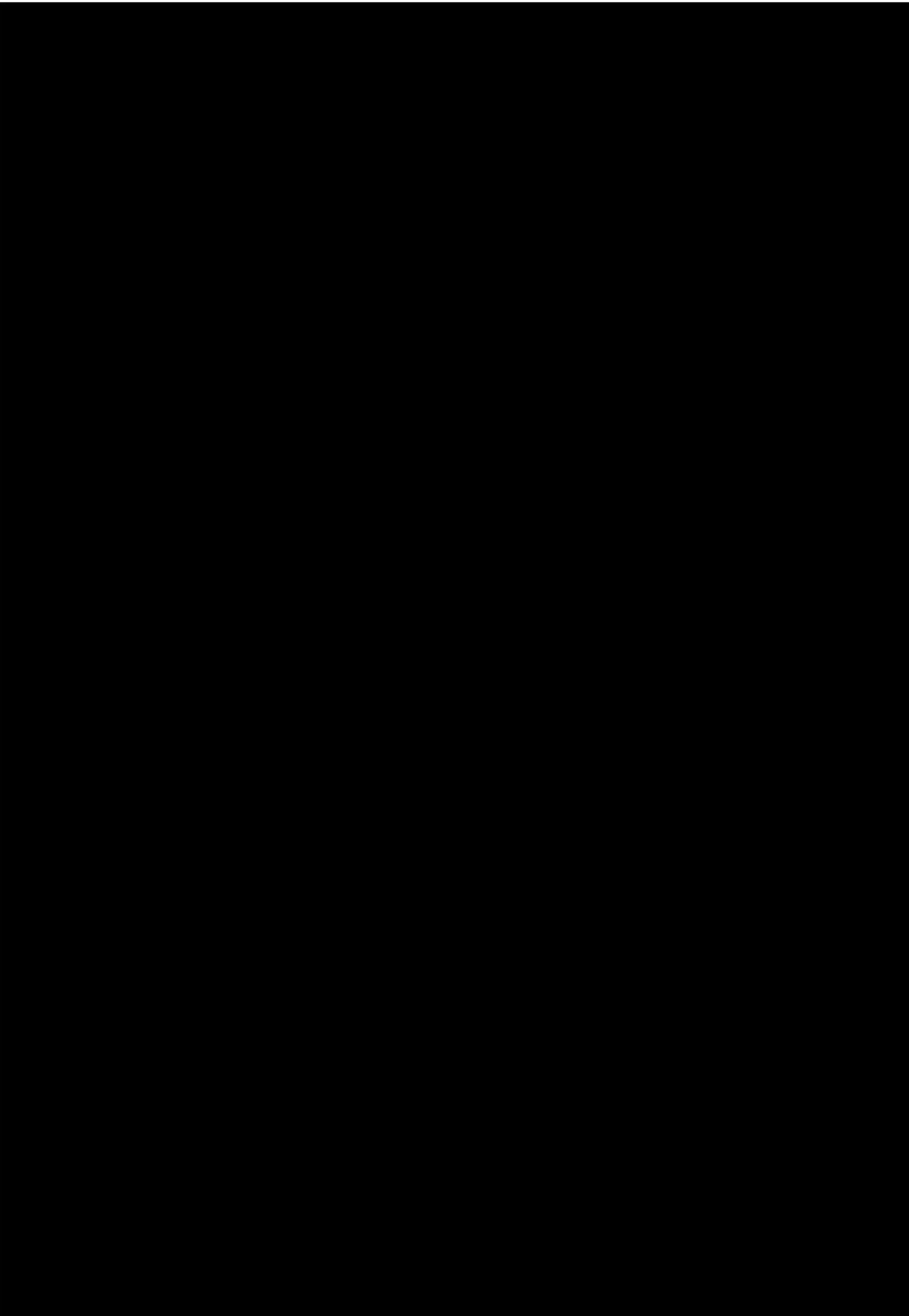
Net Contract Capacity (Average)	48,000 kW
Firm Monthly Contract Capacity	47,000 kW
As-Available Contract Capacity	1,000 kW

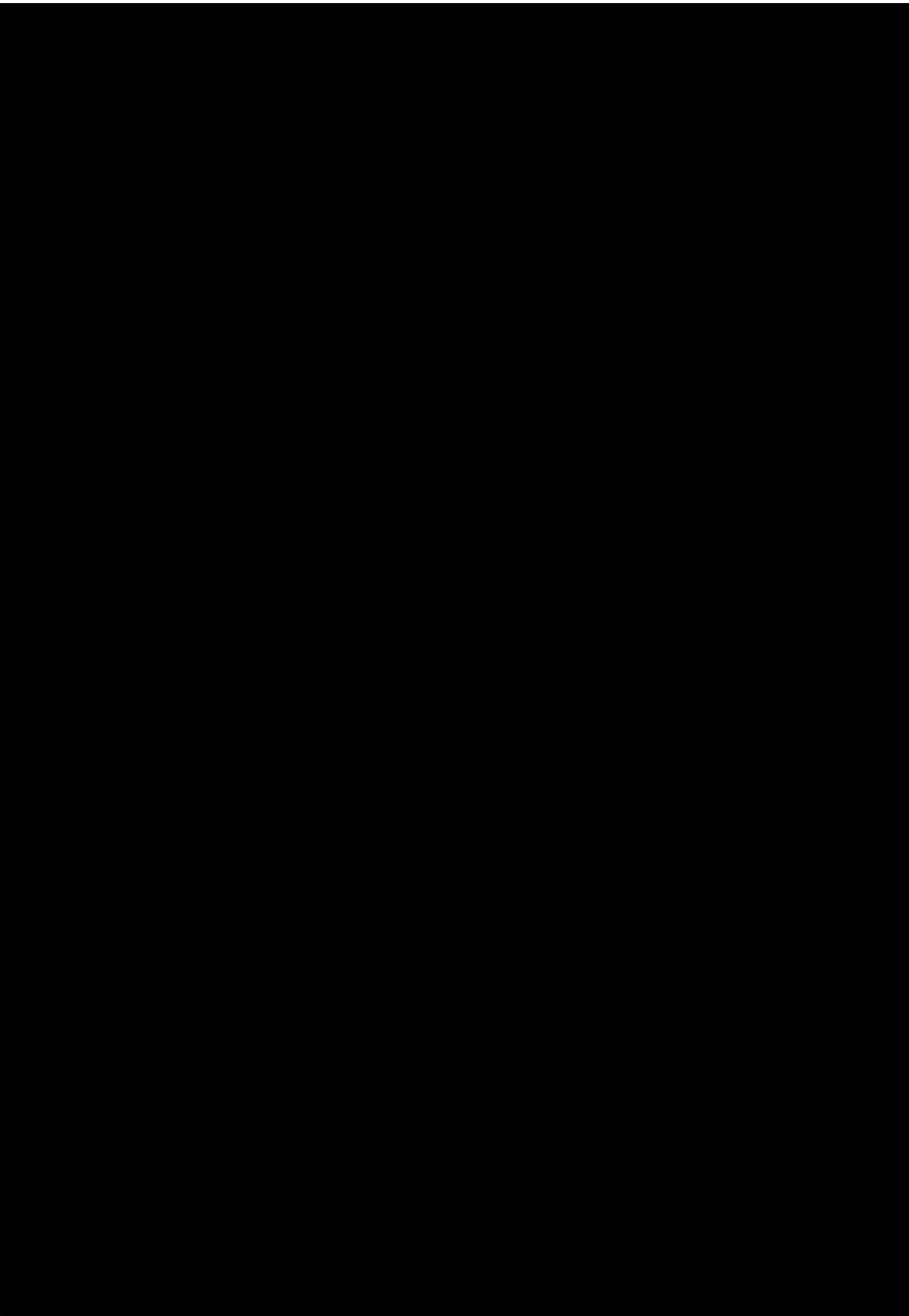


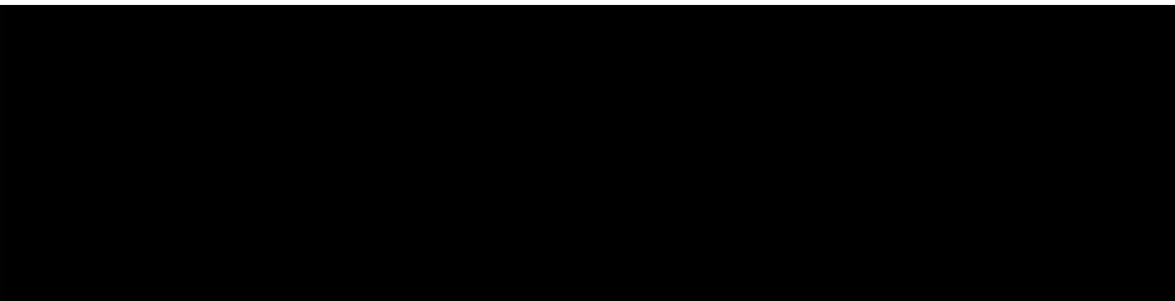
**Contract Provisions**

Key provisions of the final executed Agreement between Dry Creek and SCE that are generally specific to this Agreement or important to the overall Agreement are summarized below.









## **F. Issues Addressed in this report**

This report addresses Merrimack Energy's assessment regarding the following matters identified in the IE Report template developed by the CPUC's Energy Division for the CHP RFO with input of the IOUs:

- The role of the IE in general, and the IE's oversight activities with respect to the CHP RFO;
- Adequacy of the IOU's outreach and the robustness of the solicitation;
- Fairness of the IOU's bidding and selection process (addressing both the design and implementation of the solicitation process);
- Treatment of affiliate bids; including whether the guidelines enunciated by the FERC applicable to affiliate transactions in a competitive bidding context have been followed;
- Whether the bids selected were the best overall offers received by the IOU;
- Did the contract reflect a product not directly solicited? If so, does the contract represent a superior alternative to other bids received?
- Is the contract a reasonable way of achieving the need identified in the RFO?
- Based on your assessment, does the contract merit Commission approval?
- Do you have any recommendations to improve the process with respect to future RFOs?

## **II. The Role of the Independent Evaluator**

### **A. Requirement for an Independent Evaluator**

Section 4.2.5.7 of the CHP Settlement Agreement requires that an IOU conducting a CHP RFO use an Independent Evaluator.

The role of IEs in California IOU procurement processes has evolved over the years. In 2004, the CPUC initially required the use of an IE by IOUs in resource solicitations where there is an affiliated offeror (or offerors) or where the utility proposed to build a

project under a turnkey contract that would ultimately be owned by the utility.<sup>28</sup> The CPUC generally endorsed the guidelines issued by FERC for independent evaluation where an affiliate of the purchaser is a bidder in a competitive solicitation, but stated that the role of the IE would not be to make binding decisions on behalf of the utilities or administer the entire process.<sup>29</sup> Instead, the IE would be consulted by the IOU, along with the Procurement Review Group (“PRG”) on the design, administration, and evaluation aspects of the Request for Proposals (“RFP”) and issue a report on his/her findings. The CPUC decision indicated that IEs must be independent and free of conflicts of interest, have technical expertise and experience in the evaluation of power products, and be familiar with industry contracts and practices. From a process standpoint, the IOU could contract directly with the IE in consultation with its PRG, but the IE would coordinate with the Energy Division.

In 2006, the CPUC required each IOU to retain an IE regarding all RFPs issued pursuant to the RPS, regardless of whether there would be any utility-owned or affiliate-owned projects under consideration.<sup>30</sup> This was extended to any long-term contract for new generation.<sup>31</sup> In addition, the CPUC directed the IE for each RFP to provide reports on the entire bid, solicitation, evaluation and selection process. In 2007, the use of an IE was required for any competitive solicitation seeking products for a term of more than three months.<sup>32</sup> Moreover, the process for retaining IEs was substantially modified, with IOUs developing a pool of qualified IEs, subject to feedback and any recommendations from the IOU’s PRG and the Energy Division, an interview process for IE candidates, and final approval of IEs by the Energy Division.<sup>33</sup> In 2008, the CPUC changed the minimum term requirement from three months to two years, and reiterated that an IE must be utilized whenever an affiliate or utility bidder participates in the RFO, regardless of contract duration.<sup>34</sup>

Beginning with the *Edgar* case in 1991, the FERC has required that a seller of wholesale electric power making a sale to an affiliated regulated utility for resale at market-based rates must demonstrate that the rates and other terms and conditions of the power sales contract are not unduly preferential to the affiliate.<sup>35</sup> Where evidence of head-to-head competition with non-affiliates is presented, FERC required assurance that:

- 1) The solicitation or negotiation was designed and implemented without undue preference for the affiliate,

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<sup>28</sup> D.04-12-048 (December 16, 2004).

<sup>29</sup> Decision 04-12-048 at 129-37. The FERC guidelines are set forth in Ameren Energy Generating Company, 108 FERC ¶ 61,081 (June 29, 2004).

<sup>30</sup> Decision 06-05-039 (May 25, 2006).

<sup>31</sup> Decision 06-07-029 (July 21, 2006).

<sup>32</sup> Decision 07-12-052 (December 21, 2007) at 140.

<sup>33</sup> *Id.* at 136-140.

<sup>34</sup> Decision 08-11-008 (November 10, 2008) at 26-27, 40. In 2009, the CPUC required that bilateral RPS contracts should be reviewed according to the same processes and standards as contracts that come through a solicitation, including review by a utility’s PRG and its IE, including a report filed by the IE. Decision 09-06-050 (June 18, 2009).

<sup>35</sup> *Boston Edison Electric Co. Re: Edgar Electric Energy Co.*, 55 FERC ¶ 61,382 (1991) (“*Edgar*”).

- 2) The analysis of the bids or responses did not favor the affiliate, particularly with respect to evaluation of non-price factors, and
- 3) The affiliate was selected based on some reasonable combination of price and non-price factors.<sup>36</sup>

In subsequent cases involving affiliated sellers who obtained contracts resulting from a purchasing utility's competitive procurement process, FERC has enunciated four guidelines in evaluating whether an affiliate has received undue preference during any stage of the solicitation process.

- a. "Transparency: the competitive solicitation process should be open and fair.
- b. Definition: the product or products sought through the competitive solicitation should be precisely defined.
- c. Evaluation: evaluation criteria should be standardized and applied equally to all bids and bidders.
- d. Oversight: an independent third party should design the solicitation, administer bidding, and evaluate bids prior to the company's selection."<sup>37</sup>

Since the 2013 CHP RFO involved participation by SCE affiliates as potential sellers, these guidelines, including oversight by an independent third party (i.e., the IE), were applicable to the conduct of the solicitation.<sup>38</sup> However, no affiliates of SCE were selected for contract execution in this solicitation and, therefore, affiliate issues were not present in the final selections for this solicitation.

## **B. Role of the IE**

In compliance with the Settlement Agreement and applicable CPUC and FERC requirements and guidelines, SCE retained Merrimack Energy to serve as IE for SCE's second CHP RFO, as it had for the company's first CHP RFO.<sup>39</sup> Merrimack Energy was retained to provide an independent evaluation of SCE's RFO design, bid evaluation methodology and selection process, participate in meetings of SCE's PRG and/or CAM groups, as applicable, review the solicitation results, and report on the entire process to the pertinent regulatory authorities. The objective of the role of the IE is to ensure that the solicitation process is undertaken in a fair, consistent, unbiased and objective manner and that the best resources are selected and acquired consistent with the solicitation requirements and criteria.

This role includes the following;

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<sup>36</sup> *Edgar*, 55 FERC ¶ 61,382 at 62,128.

<sup>37</sup> *Allegheny Electric Supply Company, LLC*, 108 FERC ¶ 61,082 (2004). *See also San Diego Gas & Electric Company*, 135 FERC ¶ 61,257 (2011).

<sup>39</sup> Merrimack Energy was retained by SCE out of a pool of Independent Evaluators previously approved by SCE and the Energy Division consistent with the process set forth by the CPUC in Decision 07-12-052 (pp. 136-142).

- Reviewing and commenting on the draft RFO solicitation documents and on the IOU's design of the bid evaluation and selection process and criteria;
- Participating in internal IOU meetings, meetings of its Procurement Review Group or CAM, as applicable, and Offeror conferences;
- Monitoring questions received from prospective Offerors and reviewing the IOU's responses to ensure that all participants have access to the same information and that the responses are reasonable;
- Consulting with the IOU on the design, administration, evaluation, selection, and contract negotiation aspects of the competitive procurement solicitation process to ensure that the IOU's actions are fair and reasonable and no affiliate has been given an undue advantage over non-affiliates in the solicitation;
- Monitoring contract negotiations, especially negotiations with affiliates;
- Assessing whether the IOU's final selections were fair and reasonable and not unduly influenced by its affiliate relationships or other issues;
- Reporting on the outcome of the RFO in IE reports for inclusion in any Advice Letter filings to the CPUC and, if applicable, for inclusion in any application to the FERC.

With regard to the role of the IE, our objective is to ensure that the process is undertaken in a fair and equitable manner and that the results of the offer evaluation and selection are accurate, reasonable, fair and consistent. The role generally involves a detailed review and assessment of the evaluation process and the results of the quantitative and qualitative analysis.

### **C. Description of the IE's Oversight Activities With Respect to the CHP RFO and the NAER Dry Creek PPA**

#### **Preparation for Launch**

Following its engagement in July 2013, Merrimack Energy was provided with the opportunity to comment on draft Participant Instructions, an offer template, and other solicitation documents. Merrimack Energy provided comments on a variety of matters, including conformance with the objectives of the Settlement Agreement, reasonableness of the schedule, consistency with prior Commission decisions, and internal consistency based on an "issues list" prepared by the IE. A number of matters were discussed with the CHP RFO project team lead and other team members prior to launch of the RFO.

SCE invited Merrimack Energy to the first CHP RFO team meeting in August and all subsequent CHP RFO team meetings.

In early September, SCE's CHP RFO project team provided an overview of the planned RFO to SCE's Energy Procurement Risk Management Committee ("epRMC") and provided the same overview to SCE's CAM the following day. The IE participated by telephone. SCE identified its current CHP and GHG targets and procurement results to date prior to CHP RFO 2, provided a high level overview of the RFO, including the proposed schedule, discussed the short list process, and provided a detailed discussion of the quantitative valuation process and cost and benefit components. Based on input from Energy Division, SCE incorporated several changes to the RFO instructions, including a statement that any New CHP Facility must meet the Fundamental Use Test under PURPA consistent with the Commission's guidance in Resolution E-4554, and that SCE would optimize and award contracts that help to satisfy the MW and GHG goals under the Settlement Agreement. SCE received authorization from the epRMC to launch the RFO. SCE posted the RFO Instructions and other documents on its website on September 12, 2014.

### **Offerors Conference**

Merrimack Energy attended the Offerors Conference Call held by SCE on October 3, 2013. Prior to the conference, Merrimack Energy reviewed and had the opportunity to comment on SCE's draft presentation.

### **SCE CHP RFO Team Meetings; Oversight of Valuation Methodology**

Merrimack Energy attended the great majority of CHP RFO team meetings over the course of the RFO. During these meetings, outstanding issues and tasks were discussed. In addition, the IE reviewed SCE's quantitative methodology for valuing RA capacity benefits, energy, and other matters. For the most part, SCE's quantitative evaluation was similar to that used in the evaluation of final offers in the first RFO, which Merrimack Energy, as IE, had previously reviewed. One significant difference was a greater focus on GHG reductions under the Settlement Agreement and, specifically, the use of an evaluation metric, \$/annual GHG reduction, in addition to \$/MW.<sup>40</sup>

### **The Indicative Offer Stage: Review of Evaluation and Short List Selection Methodology**

SCE utilized a two-step bid and evaluation process, similar to what SCE used in the first CHP RFO and in other types of competitive solicitations. The first step in the process involves submission by bidders of indicative price offers in the offer template, an offer structure letter describing pertinent details of the offer, and a markup of the pertinent contractual documents, the CHP PPA for baseload CHP proposals, and the UPF Documents for dispatchable and hybrid proposals. SCE then reviews the indicative offers based on specified evaluation criteria and makes decisions to short list offers.

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<sup>40</sup> SCE's evaluation methodology and evaluation metrics are described in Section IV.B of this report.

At this stage of the process, the IE reviewed SCE’s capacity forecast, electric energy and natural gas forecasts, and other aspects of SCE’s quantitative valuation and held several discussions with SCE project team members to review questions and comments of the IE regarding offer evaluation at each step in the process. Based on Merrimack Energy’s review of the methodology in the first CHP RFO, the IE asked SCE to review its collateral benefit adder methodology and how it would apply it in this RFO. After review, SCE indicated that it could not improve upon the methodology previously developed and planned to use it for final selection but not for evaluation of indicative bids (credit support is often negotiated for UPF proposals.). Merrimack Energy was satisfied with this approach. Otherwise, the evaluation methodology used for the indicative offers was fundamentally the same used for Track 2 of SCE’s first CHP RFO and for evaluation of final offers in Track 1 of SCE’s first CHP RFO.

### **Receipt of Indicative Offers**

Indicative offers were received on November 7, 2013. The IE was present at SCE’s offices for receipt of offers (which were submitted by flash drives and by electronic mail for the Offer Structure Letters only). Copies of the flash drives were provided to the IE for downloading onto the IE’s computer. The IE and SCE checked to see that they had the same documents. A summary of the indicative offers is in Tables A-C in the Confidential Appendix to this report.

### **Indicative Offer Stage: Evaluation and Selection of Short List**

In preparation for reviewing SCE’s evaluation of indicative offers, Merrimack Energy updated a model it developed in SCE’s first CHP RFO—a simplified version of SCE’s model to evaluate CHP offers—to check SCE’s evaluation of the economics of CHP offers and the capacity costs and benefits of UPF offers, using the same input assumptions as those used by SCE. Merrimack Energy used this model to check SCE’s quantitative evaluation for material errors.

In addition, Merrimack Energy reviewed how SCE was evaluating the natural gas costs associated with project proposals. For purposes of the indicative offer evaluation, SCE evaluated natural gas costs based on location rather than based on the Offeror’s proposal. For example, if a bidder proposed pricing at SoCalGas City-gate, but the project’s access was to the Kern River pipeline, SCE’s estimate of costs for Kern River pipeline delivery was used [REDACTED]. This approach, while not considered preferable by the IE, was acceptable for purposes of shortlisting.<sup>41</sup> For final offers, natural gas costs were based on the Offeror’s contract provisions (which might be negotiated with SCE).

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[REDACTED]

Aside from the quantitative evaluation, the IE inquired whether particular offers submitted (a) satisfied requirements in the Participant Instructions and the Settlement Agreement and/or (b) would result in countable MWs toward meeting SCE's MW targets under the Settlement Agreement. Merrimack Energy raised questions regarding the following matters:

- Projects with delivery start dates earlier than that specified in the Participant Instructions;
- Whether proposed New CHP Facilities would satisfy the Fundamental Use Test under PURPA;
- Whether certain CHP proposals included a credible thermal host;
- Whether SCE was properly calculating PURPA operating, efficiency, and fundamental use ratios in accordance with FERC standards, which was relevant to whether bids satisfied Settlement Agreement eligibility requirements;
- Whether SCE was properly calculating in certain instances GHG reductions pursuant to the GHG accounting provisions of the Settlement Agreement.

In response to the IE's input, SCE sought additional information and clarifications from bidders. Several issues raised by Merrimack Energy, including calculation of PURPA ratios and calculation of GHG reductions in accordance with the Settlement Agreement, were not resolved until after shortlisting. However, they did not affect (or would not have affected) any shortlisting decisions.

Based on its evaluation, SCE's project team presented its proposed shortlist to the epRMC on December 18, 2013 and consulted with CAM on the same day. The IE participated in these meetings. [REDACTED]

### **Contract Negotiations**

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[REDACTED]

Following notification of Offerors that they were selected for the short list, contract negotiations commenced. Since there were a substantial number of short listed parties and multiple negotiations were being conducted at the same time, the IE established priorities as to which negotiations would be monitored. Since IE monitoring was required for all negotiations with affiliates [REDACTED], monitoring these negotiations was the highest priority. The IE's second priority was to monitor contract negotiations with counterparties that appeared to present especially sensitive or difficult issues [REDACTED]

In the course of discussions with SCE, it became apparent to SCE personnel and Merrimack Energy that it will be extremely difficult for SCE to meet the GHG reduction targets in the Settlement Agreement. Merrimack Energy suggested to SCE that it pursue proactively with bidders in its CHP RFO and with counterparties under existing contracts potential plant modifications such as fuel conversions or changes in operations, such as conversion to a dispatchable facility (UPF), that could result in substantial GHG reductions under the Settlement Agreement. SCE initiated calls with all shortlisted Offerors to discuss their proposal in more detail prior to conducting contract negotiations. Also, at the beginning of contract negotiations, SCE's contract managers indicated to the shortlisted parties that SCE was interested in proposals that would result in countable GHG reductions under the Settlement Agreement and inquired in general terms whether plant operations could be modified to result in GHG reductions.<sup>44</sup>

Merrimack Energy also suggested that SCE's contract managers specifically highlight to shortlisted parties that (a) bidders must provide binding offers by the specified deadline, (b) bidders are responsible for obtaining the necessary corporate approvals prior to the deadline, and (c) bidders should inform SCE of internal approval processes that would take additional time prior to the deadline so that both parties could work to the earlier deadline so there would be enough time for the bidder to obtain the necessary approvals to make a binding offer. Merrimack Energy made this suggestion because in the first CHP RFO there were several counterparties that did not finish negotiations on time or that finished negotiations but did not obtain corporate approvals to make binding bids. SCE's contract managers did highlight the requirement that final offers be both binding and submitted on a timely basis. No counterparty's final offer was rejected for failure to provide a binding offer, as had occurred in the first CHP RFO.

[REDACTED]

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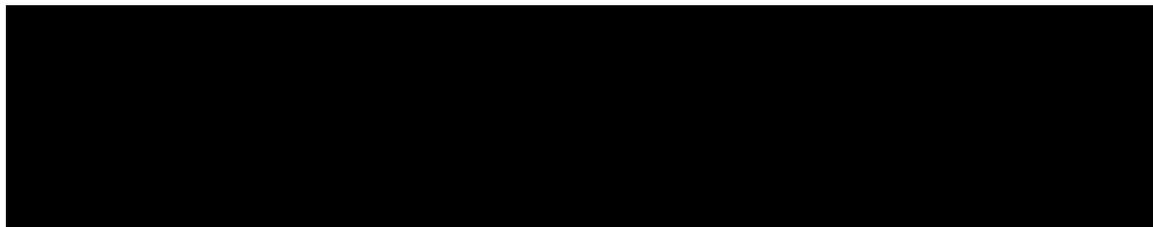
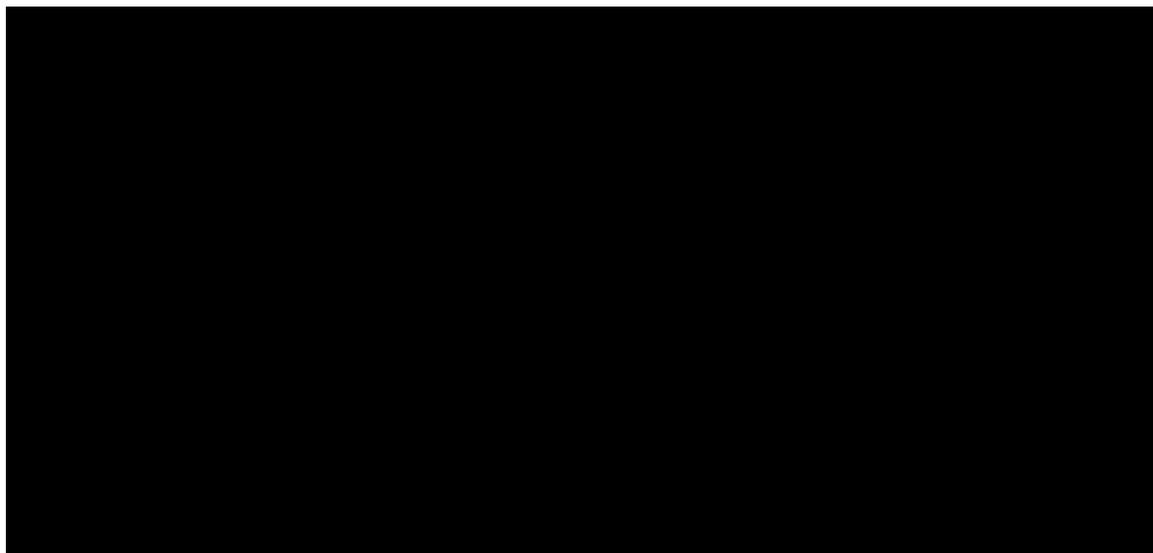
[REDACTED]

## Final Valuation and Selection Methodology; Bid Selection

As indicated previously, the final bid evaluation methodology was substantially the same as that used in the first CHP RFO, with updated capacity and energy price forecasts. The key difference was a greater emphasis by SCE on obtaining relatively cost-effective GHG reductions than in the first CHP RFO.

Merrimack Energy reviewed SCE's evaluation of offers with respect to:

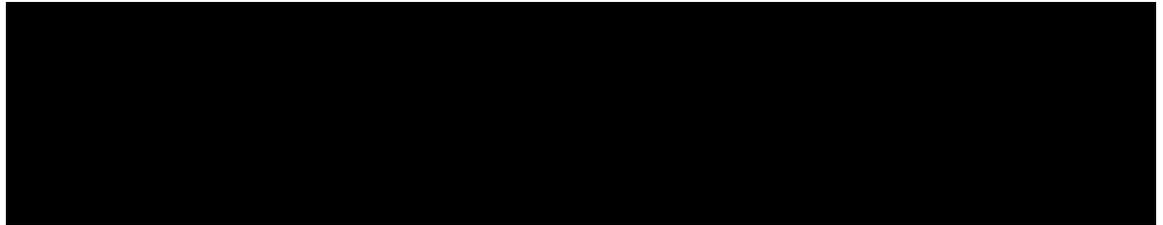
- Assuring that the contractual pricing provisions relating to natural gas were properly treated in the quantitative evaluation;
- Reviewing the economic evaluation for reasonableness;
- Reviewing SCE's GHG accounting calculations for compliance with the Settlement Agreement and reasonableness.



If the threshold is not reached, the facility does not have a compliance obligation under the GHG cap and trade program.<sup>45</sup> Biomass facilities in California, on the whole, don't have a GHG compliance obligation, as long as they limit their use of fossil fuels and otherwise comply with the CARB regulations.<sup>46</sup>

<sup>45</sup> CARB Rules §§ 95812, 95852.2. <http://www.arb.ca.gov/cc/capandtrade/ctlinkqc.pdf>.

<sup>46</sup> See "Biomass Conversion," September 17, 2013, pp. 3-4, <http://www.calrecycle.ca.gov/Actions/Documents/77/20132013/935/Biomass%20Conversion%20Final.pdf>.

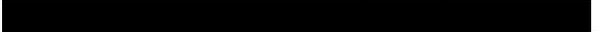


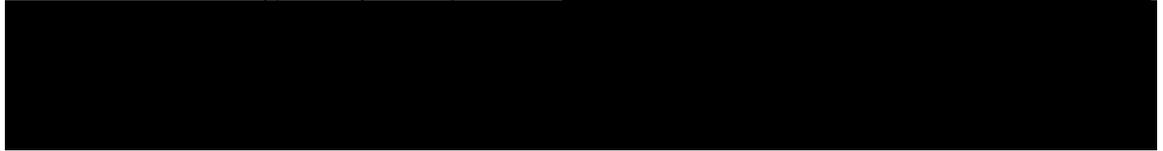
The IE was also actively involved in discussions with SCE during the development of the optimization methodology to assess the portfolio of shortlisted projects relative to both CHP MW and GHG reduction value. The IE provided several comments during the evolution of the methodology and also suggested other portfolios to consider in the evaluation besides the initial draws suggested by SCE. The IE's focus was to attempt to control for one of the variables (e.g. CHP MW) to assess the value of GHG reduction for portfolios with the same or very similar CHP MW. For example, if three different portfolios have very similar CHP MW but different GHG emission reductions and NPV costs, this would allow for an assessment of the Net Present Value ("NPV") costs to achieve a MT of GHG emission reduction for that portfolio.

SCE reviewed with the IE the company's proposed selections. The IE attended a CAM meeting on March 26, 2014 by telephone. 



### **Extension of the Schedule and Final Selection**

Following the CAM meeting, SCE notified the bidders that had submitted final offers that the schedule for notifying winning bidders was being extended for two weeks. Offerors were allowed to submit refreshed capacity price offers or notify SCE that its original final binding offer was still valid, although only one bidder submitted a refreshed price offer with a very small price reduction. The IE attended the epRMC meeting on April 8, 2014 and a CAM meeting on April 10, 2014. 



### **III. Adequacy of Outreach to Prospective Bidders and Robustness of the Solicitation**

This section of the report focuses on the outreach activities of SCE, the clarity of the solicitation materials to ensure that the information required by the utility to conduct its evaluation was provided by bidders, and the robustness of the response of Offerors with respect to the RFO.

#### **A. Adequacy of Outreach**

At the outset, it is important to note that the Settlement Agreement, and the requirement that the California IOUs conduct RFOs pursuant to the Settlement Agreement, received substantial publicity through the participation of four trade associations that were parties to the Settlement and the extended regulatory process, especially before the CPUC. In addition, there has been an extensive regulatory process at the CPUC over an extended period of time addressing issues pertaining to the Settlement Agreement, including several RFOs issued and implemented pursuant to the Settlement Agreement by the major California IOUs. SCE's outreach activities can be viewed in that larger context.

Shortly after receipt of the FERC's order terminating the California IOU's mandatory purchase obligation for QFs above 20 MW in June 2011, a prerequisite for the effectiveness of the Settlement Agreement, SCE notified all of its counterparties to QF contracts that it would hold a meeting for members of the QF community on the CHP Settlement to provide information on how they would be impacted by the Settlement Agreement. The meeting was held on July 22, 2011, and it was made available on WebEx. According to SCE, approximately 20 persons attended in person, with an additional 40-some participants attending by WebEx.

On September 12, 2013, SCE issued to its email distribution list a notice that it was officially launching the 2013 CHP RFO on that day, referenced its website for documents and instructions, and provided instructions for asking questions, with notification that questions of a general nature would be posted on the website. The email distribution list consisted of over 2,500 addressees, which consisted of SCE's standard RAP RFO distribution list supplemented with potential QF counterparties and projects that had contracts with SCE as well as the other California IOUs, and QFs in WECC.

On the launch date, SCE put up a website for the CHP RFO—which was subsequently supplemented—and included all relevant documents on the website. The website, as revised, contains the following documents:

- RFO Participant Instructions;
- Offer template;
- RFO Schedule;
- Pro forma contracts for CHP PPA offers and UPF offers;
- Form for Notice of Intent to Offer;

- Audio recording from the Offeror Conference held on October 3, 2013;
- Link to webpage for the CHP Settlement Agreement;
- Contact information for SCE and the IE.<sup>47</sup>

As noted, SCE held a CHP RFO Offerors Conference on October 3, 2013, which was held by WebEx and by conference call. SCE addressed the basic design of the RFO process, changes from SCE's first CHP RFO (in-state eligibility requirement, single track process, no RA-only bids allowed), and the role of the IE. Also included was a useful "Keys to a Successful Offer," which referenced competitively priced offers, complete offer package, offer optionality, as appropriate, preference for use of the pro forma CHP PPA for CHP offers, use of the pro forma UPF Documents for UPF proposals, and demonstrated signs of viability for new, repowered or expanded projects.

In our opinion, the outreach to prospective bidders was more than adequate.

### **B. Clarity of Solicitation Materials**

It is also our assessment that the solicitation materials, of which the Participant Instructions and the offer template were the most important components, were sufficiently clear to communicate to prospective Offerors what was required by SCE to conduct its evaluation. Generally, prospective Offerors, the great majority of which had participated in SCE's first CHP RFO, had relatively few questions.

One exception was the clarity of the Offer template for Offerors who wished to sell part, but not all of, the electrical output from a project not used by the site host. For the next CHP RFO, the Offer template should be reviewed and possibly modified so that SCE obtains information applicable to the entire facility as well as the specifics of the proposed sale to SCE.

### **C. Robustness of Solicitation**

The relevant market for the solicitation includes over 4,000 MW of QF cogeneration projects that were under contract to the California IOUs prior to the effectiveness of the Settlement Agreement, other existing CHP projects inside California that could produce countable MW and/or GHG reductions under the Settlement Agreement, and proposals for new or repowered CHP projects. Of this market, a number of projects have already signed long-term contracts pursuant to IOU CHP RFOs or bilateral negotiations, while some others had pre-existing long-term contracts that extended beyond the Transition Period. Hence, the potential market for this solicitation was relatively circumscribed.

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<sup>47</sup> [https://www.sce.com/wps/portal/home/procurement/renewable-alternative-power-contract-opportunities/chp/combined-heat-and-power-facilities-request-for-off/!ut/p/b0/04\\_Sj9CPykssy0xPLMnMz0vMAfGjzOINLdwdPTyDDTwNzH0sDTydAoJcLUMsjUODDFU Lsh0VAUt8Xe4!/.](https://www.sce.com/wps/portal/home/procurement/renewable-alternative-power-contract-opportunities/chp/combined-heat-and-power-facilities-request-for-off/!ut/p/b0/04_Sj9CPykssy0xPLMnMz0vMAfGjzOINLdwdPTyDDTwNzH0sDTydAoJcLUMsjUODDFU Lsh0VAUt8Xe4!/)

Given the somewhat limited size of the relevant market, the response to the solicitation was robust. [REDACTED]

[REDACTED] The quantity of offers by project, counterparty and in MW is summarized in the Confidential Appendix.

#### **D. Feedback Sought By SCE Following the Conclusion of the RFO**

SCE did not conduct a survey of participants to obtain feedback, as it had following the conclusion of the 2011 CHP RFO. At this time, SCE is planning an internal “lessons learned” session, although it has not yet been finalized.

### **IV. Appropriateness and Fairness of IOU’s Bidding, Evaluation and Selection Process**

#### **A. Principles for Evaluation of SCE’s Methodology**

This section of the report addresses the principles underlying Merrimack Energy’s review of SCE’s methodology for the CHP RFO solicitation process. Key areas of inquiry by the IE and the underlying principles used by the IE to evaluate the methodology include the following:

- Were the procurement targets, products solicited, and objectives clearly defined in SCE’s CHP RFO Participant Instructions and other solicitation materials?
- Were the bid evaluation and selection process and criteria reasonably transparent such that Offerors would have a reasonable indication as to how they would be evaluated and selected?
- Was SCE’s bid evaluation based on and consistent with the information requested in the RFO to be submitted by Offerors in their proposal documents?
- Did the evaluation methodology reasonably identify the quantitative and qualitative criteria and describe how they would be used to qualify and rank offers?
- Was the bid evaluation and selection methodology a reasonable method to effectuate a solicitation consistent with the terms of the Settlement Agreement?
- Was the quantitative evaluation methodology reasonable and allow for reasonably consistent evaluation of different types of offers, including CHP and UPF offers?

- Did the bid evaluation framework and selection process contain any undue or unreasonable bias that might influence project ranking and selection results to favor affiliate bids?

To address these issues, Merrimack Energy will first describe the bid evaluation methodology and process developed by SCE. This includes the quantitative and qualitative criteria used in the evaluation. Then, we address the strengths and weaknesses of the methodology. In the following sections, we address SCE’s administration of the bid evaluation and selection process.

## **B. Description of SCE’s Evaluation Methodology**

This section of the report provides an overall description of SCE’s bid evaluation methodology and process applicable to its second CHP RFO. The methodology is generally based on least-cost/best-fit (“LCBF”) principles applied in other solicitations but is also designed in the context of valuation of CHP resources and meeting the requirements and objectives of the CHP Settlement. The LCBF analysis evaluates both quantitative and qualitative aspects of each offer to estimate its value to SCE’s customers and its relative value in comparison to other offers.

The principal evaluation is quantitative. For shortlist ranking and final offer evaluation, costs and benefits over time are netted against each other and discounted to yield an NPV cost or benefit for each offer using a 10% discount rate. “Best fit” is determined by the extent that the selected offer or group of offers fills a procurement need or manages a procurement risk.<sup>48</sup> In the context of the CHP RFO, meeting, or contributing to meeting, the Settlement Agreement MW target and CHG emissions reduction target can be viewed as the procurement need.

The primary metric for the quantitative valuation was \$ (NPV) net cost (or net benefit) divided by the number of MW countable in meeting SCE’s MW targets under the Settlement Agreement. The factors going into the numerator in the equation are as follows:

- |                    |  |
|--------------------|--|
| Contract payments: | -Capacity charges (firm or as-available for CHP PPA proposals)<br>-Variable O&M charges<br>-Energy payments based on natural gas forecasted prices (including transportation), contractual heat rate, and expected generation<br>-Other (e.g., start-up costs for UPF proposals) |
| GHG cost:          | -Pursuant to the Settlement Agreement, Offerors can assume GHG compliance costs, elect to pass them on to SCE, or elect a hybrid approach.   |

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<sup>48</sup> Participant Instructions § 4.01.

-Where the Offeror passes these costs through to SCE, SCE assesses a GHG cost to the Offer based on SCE's forecast of GHG prices.

RA benefits: -Each offer is assigned capacity benefits on a monthly basis in a manner consistent with the CPUC's Resource Adequacy accounting rules and based on the amount of firm capacity offered.  
-Dispatchable facilities are treated consistent with CPUC and CAISO rules applicable to dispatchable facilities.  
-Non-dispatchable facilities are treated consistent with CPUC and CAISO rules applicable to non-dispatchable facilities.  
-No capacity value (or benefit) is attributable to offered as-available capacity.

Energy benefits: -SCE calculates the energy benefits of an Offer based on the estimated market value of energy, taking into consideration locational value.  
-For dispatchable projects, SCE calculates the net energy benefits based on the market value of energy when the proposed resource is projected to dispatch, using a production simulation model. Also, SCE may attribute ancillary service value and real-time flexibility value to such projects.

Debt equivalence: -Debt equivalence is an estimated indirect cost based on the premise that utilities executing long-term PPAs may incur a debt-like obligation from a credit rating agency perspective.

Credit/collateral: -A value associated with providing performance assurance, recognizing that for Existing CHP Facilities no performance assurance is required under the Settlement Agreement (this was used in the evaluation of final offers but not for indicative offers).

Transmission cost: -For new, expanded or repowered CHP projects that require new or expanded interconnection capacity, the annual costs to customers associated with system upgrade costs based on the applicable CAISO Phase 1 (or later) Interconnection Study.  
-However, for projects without such studies but for which the Offer provides SCE the right to terminate if system transmission upgrade costs exceed a specified amount, SCE will conduct its assessment of system transmission upgrade costs based on the specified amount.

As part of the quantitative evaluation, SCE developed or applied long-term forecasts of RA capacity, natural gas, electric energy, and GHG costs. In this regard, Section 5.4.1 of the Settlement Agreement allowed SCE to justify not selecting a sufficient amount of CHP MW to meet SCE's MW target if prices were excessive based on "independent or

publicly-available sources.” The quantitative evaluation methodology for final offers included basically the same methodology as that used at the indicative bid/short listing stage. In addition, as noted, SCE developed a portfolio optimization process to assess portfolios of shortlisted projects that minimize the NPV net cost of the portfolio while controlling for CHP MW and GHG targets. The SCE CHP RFO team’s objective in the final stage of the evaluation is to assess the trade-offs between minimizing the NPV net cost of the portfolios and acquiring additional GHG or CHP MW and make a recommendation based on the least cost best fit solution.

As part of the qualitative (non-price) assessment, SCE planned to take into consideration a project’s contribution to meeting the company’s GHG targets in the Settlement Agreement, using the applicable standards set forth in the Settlement Agreement and using a template developed by the CPUC’s Energy Division and the IOUs. This is a different matter than the consideration of GHG compliance costs in the quantitative evaluation, which also took into account the future effect of GHG compliance costs on future energy prices.

Other qualitative considerations, which SCE would take into consideration included aspects of project development progress and viability, applicable primarily to new, expanded or repowered facilities, such as environmental and permitting status, project development experience, site control, and electrical interconnection status. Other qualitative considerations included whether an Offeror was certified as a California woman, minority or disabled veteran business enterprise (“WMDVBE”), Offeror concentration, dispatchability and curtailability, and cost effectiveness of GHG reductions.<sup>49</sup>

In preparation for making final bid selections, SCE calculated (a) \$/MW for each shortlisted project (countable MW under the Settlement Agreement) and (b) \$/MT of GHG (countable under the Settlement Agreement). Regarding GHG, SCE first calculated the amount of GHG in MT/year that the project would qualify for under the Settlement Agreement accounting rules if a PPA with SCE was executed and approved by the Commission. Then, it divided the NPV of net project costs under the proposed contract by the amount of GHG in MT/year. SCE then created “draws” or portfolios of different projects based on different increments of countable MWs and countable GHG reductions. SCE then reviewed the different draws as to which groupings of projects best met the MW and GHG targets under the Settlement Agreement in a cost-effective manner. In addition to the quantitative evaluation, SCE considered additional qualitative factors, such as project location and owner concentration when forming a recommendation.

### **C. Strengths and Weaknesses of SCE’s Evaluation Methodology**

Overall, SCE’s evaluation methodology and selection framework in the 2013 CHP RFO was satisfactory. The addition of the portfolio optimization methodology, while not a

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<sup>49</sup> Participant Instructions §4.03.

perfect solution given the dual constraints, added value in the evaluation process to enhance the information available to assist in the selection of the preferred projects.

The evaluation and selection methodology had the following strengths:

- All reasonable costs and benefits were taken into consideration in the quantitative evaluation;
- The methodology is capable of evaluating effectively different types of resources, operational profiles, contract sizes, and contract terms;
- The forecasts developed by SCE for use in evaluating various costs and benefits were reasonable;
- Input assumptions were applied consistently;
- Much of the methodology used was developed in the prior CHP RFO and from other solicitations;
- Key inputs and assumptions were locked down prior to receipt of offers;
- SCE was open to making modifications, and did make modifications, to address areas of perceived weaknesses in the evaluation framework;
- The approach to making selection decisions focused more on contributions to GHG emissions reduction targets, using the \$/GHG metric, rather than having a more singular focus on the \$/MW evaluation metric, as in the first CHP RFO.

There were, in the IE's opinion, a number of weaknesses in SCE's bid evaluation and selection methodology.

- The formulas SCE initially used for the FERC efficiency standard and fundamental use test under PURPA were incorrect and did not include site host electric power use (as they should have); this was corrected after the issue was raised by the IE; ultimately, this did not impact any of the proposals submitted;
- The Offer template did not specify expected electric output for the entire facility and for the portion of the facility from which capacity and energy sales would be sold to SCE (which is important for both the PURPA standards and GHG calculations, where the Offeror is proposing to sell a portion of the Facility's output not used by the site host); this information was subsequently requested by SCE. Furthermore, it is difficult to determine on the surface whether Offerors are providing accurate information on which to assess GHG reductions or are merely providing their best estimates at a high level;

- The two-step RFO structure has advantages and disadvantages relative to the one-step RPS-style solicitation
  - One weakness is that there is a limited period of time to pursue complex projects/transactions, such as projects involving fuel conversions;
  - Fuel conversions are potentially a major source of GHG reductions, a major goal under the Settlement Agreement.
- The two evaluation metrics utilized--\$/CHP MW and \$/MT annual GHG reduction—in connection with the two RFO targets—CHP MW and GHG reductions (MT)—does not take into consideration the potential additional cost SCE might have to incur to procure additional CHP MW to meet, or come closer to, the 2020 GHG reduction target.
- While the evaluation metric \$/MT GHG annual reduction is a reasonable evaluation metric to compare projects bid against each other in the context of a solicitation pursuant to the Settlement Agreement, it does not provide a metric by which the cost-effectiveness of GHG reductions under the CHP Program can be compared to alternative methods of GHG reductions (such as incremental solar or wind projects). At the margin, this information could be salient for decision-making under a CHP RFO where there are trade-offs between cost to ratepayers and obtaining incremental GHG reductions.

Having said this, the IE was satisfied that the evaluation and selection methodology developed by SCE was satisfactory for the 2013 CHP RFO and was not biased in favor of specific types of offers or affiliates. Weaknesses in the methodology did not affect the integrity or the appropriateness of the result. In Part X of this IE Report, recommended improvements for the next CHP RFO are addressed.

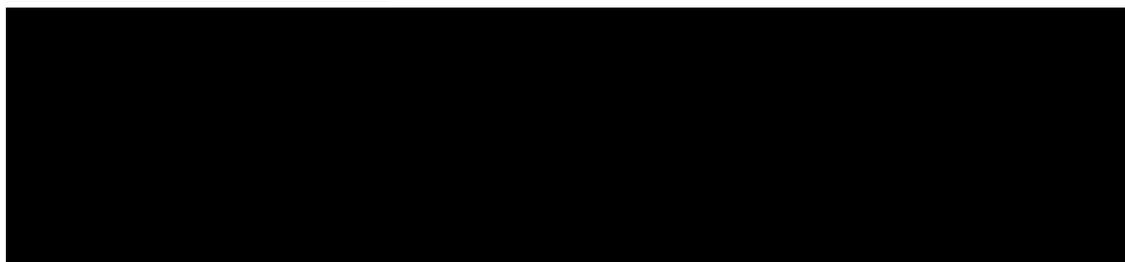
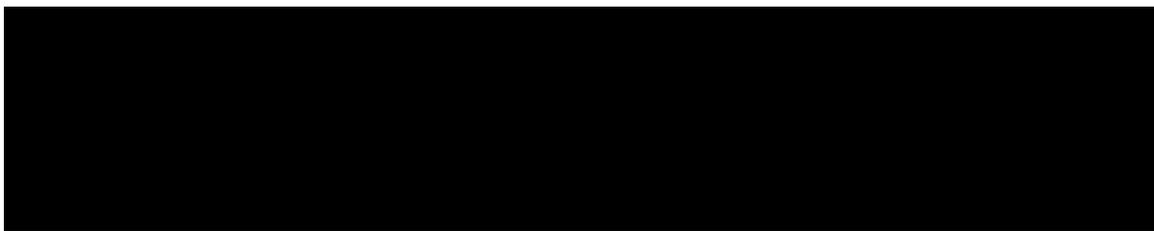
#### **D. Fairness in Administering the RFO Process**

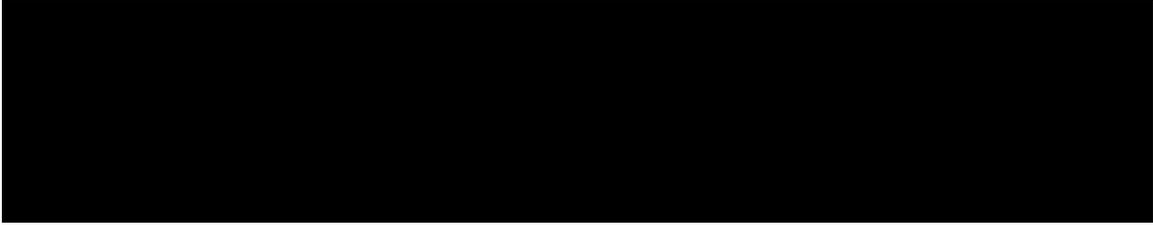
In terms of one-step RFO solicitation processes, fairness in administering the RFO process focuses on the fairness of the application of the evaluation methodology to individual offers. With two-step RFO processes, such as the 2013 CHP RFO, fairness in administering the RFO process should include discussion of the indicative offer stage, contract negotiation stage, as well as the final evaluation and selection process. Below are some questions Merrimack Energy believes are useful in evaluating the administration of this type of solicitation process.

- Were all participants treated comparably regardless of their identity?
- Were participants' questions answered fairly and consistently and the answers made available to all participants?
- Were the quantitative and qualitative evaluation methodologies fairly and consistently applied?

- Were all participants treated fairly in the contract negotiation process?
- Were the requirements in the RFO Participant Instructions and the Settlement Agreement applied in the same manner to all proposals?
- Was there any evidence of bias in favor of particular types of proposals or Offerors?
- Was there equal access to the same information?
- Were the evaluation and selection process conducted thoroughly and thoughtfully?

In the IE's view, all participants were treated fairly in the RFO process and there were substantial improvements from the first CHP RFO. In the first CHP RFO, there were a relatively large number of Offerors that were not eligible to submit final offers because they could not reach final agreement with SCE on contract terms within the allotted timeframe or they did not submit binding offers, in compliance with the Participant Instructions. This time, there was no Offeror that was ineligible to submit a final offer because there was insufficient time to achieve agreement on contract terms with SCE or because there was insufficient time to obtain corporate approvals. This was likely due to greater familiarity with the process and underlying contract issues, as many of the shortlisted Offerors underwent the same process in the first CHP RFO, and SCE's more proactive approach in stressing the importance of the deadlines for final agreement and the need for Offerors to obtain corporate approvals so that they could timely submit binding offers. These factors resulted in a higher success rate (compared to the first CHP RFO) in reaching agreement with counterparties, resulting in a higher percentage of qualifying final offers from those Offerors desiring to submit final offers.



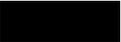


While there are advantages and disadvantages to using the two-step RFO approach (compared to the one step), a matter we address in Part X of this report, it is the IE's view that SCE's decision to use the two-step approach for the 2013 CHP RFO was reasonable. Benefits of using this style of solicitation include:

- Contract issues are resolved before qualifying final offers were submitted; with fewer “unknowns,” the evaluation process is enhanced;
- Timely conclusion of the RFO process is facilitated (contract negotiations don't drag on);
- The process tends to enhance utility negotiation leverage, which can produce less risk (and perhaps cost) for the utility and its customers in final contracts.

Negatives of the two-step approach include:

- The human and monetary resource intensiveness of the process for both the IOU and its counterparties;
- Insufficient time (or at least tight time constraints) to address complex proposals, such as those involving fuel conversions.<sup>53</sup>

The evaluation process generally went relatively smoothly. There were several errors in the evaluation process, although they were generally found and corrected before decisions were reached regarding shortlist or final selection. The IE concurred in the final quantitative evaluation and in the calculation of GHG reductions under the Settlement Agreement   


The IE did not find any bias in favor of any particular proposals or due to ownership. Issues of affiliate preference are addressed in the next section of this report, although affiliate issues did not affect final selection.

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<sup>51</sup> <http://blogs.wsj.com/moneybeat/2014/02/24/arclight-capital-seeks-buyers-for-california-power-plants/>.

<sup>52</sup> In an email to SCE announcing its withdrawal from further consideration in the 2013 CHP RFO, the Offeror notified SCE that they were unable to assume the risks associated with gas purchases and flexible capacity among other issues.

<sup>53</sup> The IE notes that one of the procurement options open to the IOUs under the CHP Settlement Agreement is to conduct bilateral negotiations designed to reach a final agreement. It may be preferable to pursue bilateral negotiations for complex arrangements as opposed to applying the two-step approach preferred by SCE.

One area of weakness was in the validation of information used to assess compliance with the Settlement Agreement regarding PURPA qualification and in calculating GHG reductions under the Settlement Agreement. SCE could be more proactive in obtaining and reviewing information from Offerors that is based on credible design plans and historical data, especially for new CHP projects, fuel conversions, physical changes, and changes in plant operations.

All in all, SCE reasonably and fairly administered the CHP RFO process.

## V. Treatment of Affiliate Bids

### 1. IE Assessment

There are several layers of possible protections in terms of safeguards and methodologies to ensure that affiliate offers are treated on a comparable basis with other offers and contracts are negotiated in a non-preferential manner. First, there is the SCE staff actively involved in the RFO process and the IE overseeing the process. Second, there are institutional safeguards at the SCE level. Finally, there are regulatory oversight protections both at the CPUC and FERC.

The IE was actively involved in the design of the evaluation framework, particularly the quantitative evaluation, to ensure comparable treatment of different types of offers. The IE also oversaw the evaluation of indicative and final offers and the short listing and final selection process to monitor any indication of affiliate preference. The IE also actively monitored all negotiations between SCE and its affiliates to protect against affiliate preference in contract negotiations. The general standard, in our experience, is that the utility should treat an affiliate no more favorably than a non-affiliated party similarly situated.

The Settlement Agreement incorporated the CHP RFO Pro Forma PPA as an exhibit, but also provided that it could be modified on a bilateral basis during negotiations for a particular CHP PPA.<sup>54</sup> The Settlement Agreement also provided that an IOU could use All Source contractual documents with respect to UPF offers, and could enter into hybrid contracts using both the CHP RFO Pro-Forma PPA and All Source pro forma agreements as the basis for the agreements.<sup>55</sup>

[REDACTED] at the time of the RFO

<sup>54</sup> Settlement Agreement §§ 4.2.6.

<sup>55</sup> Settlement Agreement § 4.2.12. Under the Settlement Agreement, Offerors which accepted the CHP RFO Pro Forma PPA without material changes were to be given a preference with respect to other offers as long as the pro forma offer were “competitive” with the other offers. *Id.*

process an affiliate of SCE. ■ The IE did not find any preference toward either ■ in the evaluation of the indicative bids or the decisions to shortlist these counterparties/projects.

Nor was any preference detected in the contract negotiations, ■ when it reached agreement with ■ on a contract that was mutually exclusive with proceeding with a contract with SCE.

Finally, SCE did not exhibit any preference to ■ in the final bid evaluation. ■ did not receive a contract from the CHP RFO process.

## 2. Consistency With FERC Principles

In the 1991 *Edgar* decision, FERC required assurance that a contract entered into by a utility with an affiliate through a competitive procurement process was not the result of undue preference by a showing that:

- The solicitation was designed and implemented without undue preference for the affiliate;
- The analysis of the offers did not favor the affiliate, particularly with respect to evaluation of non-price factors;
- The affiliate was selected based on some reasonable combination of price and non-price factors.<sup>57</sup>

As previously addressed in this report, our assessment is that the CHP RFO was designed and implemented without undue preference to any SCE affiliate. As SCE did not select any affiliate in the RFO process, there are no affiliate preference issues associated with whether the Commission should approve any of the contracts arising out of the RFO process.<sup>58</sup>

## VI. Are the Contracts Selected the Best Overall Offers Received by SCE?

■

<sup>57</sup> See Part II.A of this report.

<sup>58</sup> In any event, in the IE's view, SCE's conduct of the CHP RFO satisfied the four principles identified by FERC in its 2004 *Allegheny* decision: (1) transparency—openness and fairness of the process; (2) product definition—the products sought should be precisely defined; (3) evaluation—evaluation criteria should be clear and applied equally to all participants; and (4) oversight by an independent third party.

Of the [REDACTED] that were shortlisted, final offers were submitted for only [REDACTED]. SCE selected offers from owners of six of these projects. The six contracts satisfy the eligibility requirements for the RFO and the Settlement Agreement and represent the best offers in \$/MW that meet the 394 MW target for the RFO, while also making a significant contribution to meeting SCE's GHG target. Collectively, this group, SCE's [REDACTED], result in 396 countable CHP MW and 104,995 MT in GHG reduction [REDACTED].

SCE selected the first five top-ranked projects in terms of \$/MW premium with a cumulative total of 348 CHP MW. This group, however, only produced approximately 57,000 MT/year of GHG reduction, approximately 2.7% of SCE's GHG reduction target under the Settlement Agreement.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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<sup>61</sup> Section 5.2.4.2 of the Settlement Agreement provides: "Coal-fired, wood waste and renewable QFs in an IOU's portfolio as of July 2010 will not count towards the IOU's MW Targets." [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

In the IE's view, the offers selected were the best offers overall in terms of achieving the procurement target of CHP countable MWs and a reasonable amount of GHG reductions at the lowest cost to ratepayers under the circumstances. [REDACTED]

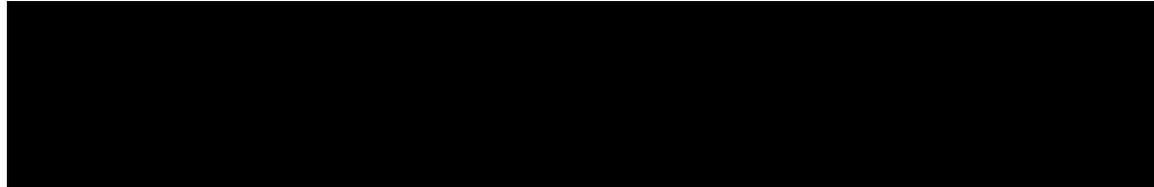
[REDACTED]

**VII. Does the Dry Creek PPA Reflect a Product Solicited and Bid in the RFO? If Not, is the Contract Superior to the Bids Received on Products Solicited in the RFO?**

[REDACTED]

The Dry Creek PPA, and the other PPAs executed by SCE, reflect products solicited by SCE in the 2013 CHP RFO.

### **VIII. Is the Dry Creek PPA a Reasonable Way of Achieving the Need in the RFO?**



The project will contribute to achieving the following CHP Settlement objectives:

- Encourages the development of new, clean and efficient CHP.

The Dry Creek PPA is one of [REDACTED] that provides both CHP MW and GHG emission reductions toward SCE's targets for achieving part of the need identified by SCE for this solicitation.

### **IX. Does the Dry Creek PPA Merit Commission Approval?**

The CPUC has issued Resolutions approving several contracts between the IOU's in California and CHP facilities under the QF/CHP Settlement. The Resolutions have addressed the criteria used by the Energy Division to assess and evaluate the PPAs. The criteria include:

- Consistency with D.10-12-035, which approved the QF/CHP Program Settlement including:
  - Consistency with the Definition of CHP Facility and Qualifying Cogeneration Facility;
  - Consistency with CHP Request for Offers ("RFO");
  - Consistency with MW Counting Rules;
  - Consistency with GHG Accounting Methodology;
  - Consistency with Cost Recovery Requirements.
- Need for Procurement;
- Contract Pricing/Cost Reasonableness;
- Public Safety;
- Project Viability;
  - Technology
  - Bidder Experience
  - Credit and collateral

- Permitting, site control and other site-related matters
- Fuel Status
- Transmission upgrades
- Consistency with Emissions Performance Standard;
- Consistency with D.02-08-071 and D.07-12-052 which require Procurement Review Group (“PRG”) and Cost Allocation Mechanism (“CAM”) Group participation.

In this section of the Report, the IE addresses the relevant criteria identified in the IE Template relative to the contracts as submitted in this Advice Letter filing.

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

The project underlying the PPA which is the subject of this Advice Letter filing is a new CHP facility, with a contract term of 12 year scheduled to be on-line in 2018.

As a new CHP facility, Dry Creek is required to meet the Federal Energy Regulatory Commission’s Fundamental Use Test under Section 292.205 of the regulations. As previously noted, Jasmin Power III filed a FERC Form 556 application seeking Commission certification of its cogeneration facility on November 1, 2013 for an approximately 94 MW net capacity (two LM6000 combustion turbine generating units) natural gas-fueled topping-cycle cogeneration QF. Jasmin Power identified the thermal host as F&B Natural Resources Corporation. FERC granted Jasmin Power’s request for certification of its facility as a QF and also certified that the facility is used fundamentally for industrial, commercial or institutional purposes and is not intended fundamentally for sale to an electric utility even though it does not come within the Commission’s “safe harbor” that at least 50 percent of the total energy output of the new cogeneration facility is used for industrial, commercial, residential or institutional purposes.

While the percentage of total annual energy output expected to be sold for industrial, commercial, residential or institutional purposes and not sold to the utility was estimated at 44.1 percent in the FERC Form 556, the revised data provided by Dry Creek in response to SCE’s information request for more accurate data from the facility illustrates a percentage of 56.5 percent, higher than the FERC “safe harbor”.

With regard to GHG emission reduction credits, according to Section 7.3.1.1 of the settlement Term Sheet, a new efficient CHP facility as compared to the Double Benchmark will count as a GHG credit toward the contracting IOU’s GHG Emission Reduction Target regardless of where the CHP facility is located. Measurement is based on the Double Benchmark in place at the time of PPA execution compared to the anticipated operations reflected in the PPA. SCE estimates (and the IE confirms) that the total GHG emission reductions proposed for the Dry Creek facility is 47,989 MT.



## **B. Need for Procurement**

In its April 10, 2014 CAM presentation, SCE indicated that it had executed agreements with eligible CHP projects for 616 MW of generation which would count toward meeting its CHP MW target of 1,402 MW, leaving a net open position of 786 MW. The execution of the six contracts from this solicitation will provide an additional 396 CHP MW toward the procurement target. If the Agreements are approved, SCE's open MW position will be reduced to 390 MW. Also, in the same presentation SCE illustrated that it had procured .24 MMT of GHG reductions toward its target of 2.15 MMT, leaving a net open position of 1.91 MMT. The two contracts from this solicitation, including the contract with Dry Creek, will provide an additional 104,995 MT of GHG reductions, leaving a net open position of approximately 1.805 MMT.

## **C. Cost Reasonableness**

The pricing agreed to by the parties is contained in the PPA which is the subject of this Advice Letter filing. Pricing for the Dry Creek project has essentially remained the same over the course of the RFO process, although the contract start date has been pushed back approximately 18 months, resulting in improved project value. [REDACTED]

## **D. Project Viability**

The Dry Creek Unit 1-B project is a new CHP facility, that is part of a two unit project which includes joint facilities for the two generating units. The project is proposing to use the GE LM600 combustion turbine technology which is commercially proven in a large number of applications throughout the industry. [REDACTED]

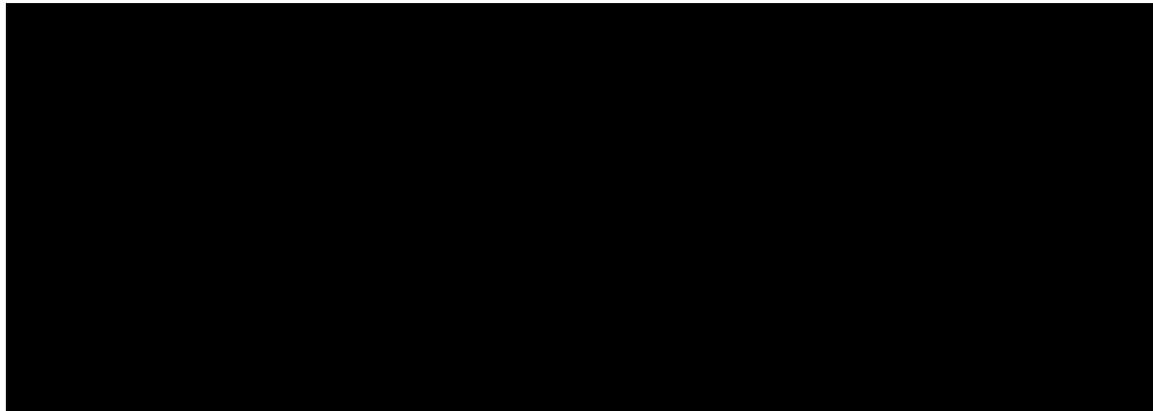


## **X. Recommendations for Future Improvements**

The IE has several recommendations for improvements in SCE's next CHP RFO and its procurement process under the CHP Program in general. These recommendations pertain to: (1) prospects for obtaining relatively cost-effective GHG reduction contributions and the relationship to the SCE's procurement process; (2) use of additional evaluation metrics; and (3) greater focus on validation in the solicitation process.

### **A. GHG Reductions and SCE's Procurement Process**

At this time, SCE has indicated that it has 0.24 MMT of approved GHG reductions pursuant to the CHP Settlement Agreement.<sup>65</sup> If the contracts entered into as a result of the 2013 CHP RFO are approved by the Commission, the amount of GHG reductions will increase to approximately 0.355 MMT.



A number of the projects that offer substantial GHG reductions may require substantial design and planning work by the project sponsors, negotiations of contract terms by both parties, and review by SCE to determine project viability and to verify the level of GHG reductions under the terms of the Settlement Agreement. Use of SCE's two-step solicitation process (where there is a limited time for shortlisted parties to negotiate modifications to pro forma contracts) is not always conducive to project sponsors and the utility performing their responsibilities at a high level. On the other hand, SCE was able to complete negotiations within a two-step RFO process for complex transactions that

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<sup>65</sup> SCE CHP RFO 2: Final Selection presentation, March 26, 2014. Slightly less than 50% of this amount was obtained through agreements with Sycamore Cogeneration Company entered into as a result of SCE's 2011 CHP RFO. The remainder was apparently obtained through other agreements executed by SCE.

contribute GHG reductions under the Settlement Agreement [REDACTED]

Looking ahead, SCE should develop and implement a strategy as to how it can optimize its prospects for GHG reductions at an acceptable cost to ratepayers. This should include the following:

- Identifying prospects for substantial GHG reductions and developing a strategy for pursuing and vetting reasonably cost-effective and viable prospects;
- Continued use of bilateral negotiations for more complex projects that may have substantial GHG reduction prospects, with or without conditions involving competitiveness with the results of the next CHP RFO;
- Use of a one-step process for the next CHP RFO, where there would be more time for negotiations and review of more complex projects, or use of the two-step process with potential modifications to better address more complex projects.

Merrimack Energy has had a number of discussions with SCE regarding pursuit of GHG reduction opportunities, and SCE's response has been positive. SCE did attempt to assess potential GHG emission reductions through more flexible project operations during the initial contacts with Offerors in this CHP 2 process. [REDACTED]

## **B. Evaluation Metrics**

The two evaluation metrics used by SCE in this RFO—NPV net \$ cost/CHP MW and NPV net \$ cost/MT annual GHG reductions (under the Settlement Agreement)—are appropriate, in the IE's view, for comparing qualifying CHP offers against each other in a CHP RFO. However, Merrimack Energy suggests that SCE utilize two additional metrics in its evaluation of offers in the next CHP RFO.

SCE's evaluation framework does not include consideration, at least explicitly, of the potential need for SCE to procure additional CHP MWs because of a shortfall in approved GHG reductions relative to the GHG reduction target. The evaluation framework would be improved, in Merrimack Energy's opinion, if this risk was more explicitly considered in the evaluation. One way to do so is by using an additional evaluation metric that would measure the efficiency by which contributions to the GHG reduction target are satisfied relative to the CHP MW target. This could be done by a measure with annual GHG reductions in the numerator and CHP MW in the denominator.

A “GHG rich” offer would score better with this evaluation metric than one with little or no GHG reduction contribution.

One other possibility is to employ a measure of the cost-effectiveness of GHG reductions that can be used to compare on an “apples to apples” basis a CHP project to other potential vehicles for GHG reductions, such as new solar or wind projects. This may be of more relevance in a Long Term Procurement Planning proceeding in which GHG reduction targets may be reviewed than in an individual solicitation. However, the evaluation metric—usually, \$/MT--should be a fair comparison. In the numerator, costs or net costs should be treated in the same manner. In the denominator, GHG reductions or GHG emissions should also be comparable, including the period of duration (e.g., year). One issue to be considered is how to treat projects that have very different lives—a new project compared to a project that has been in operation for over 30 years.

### **C. Validation in the Evaluation Process**

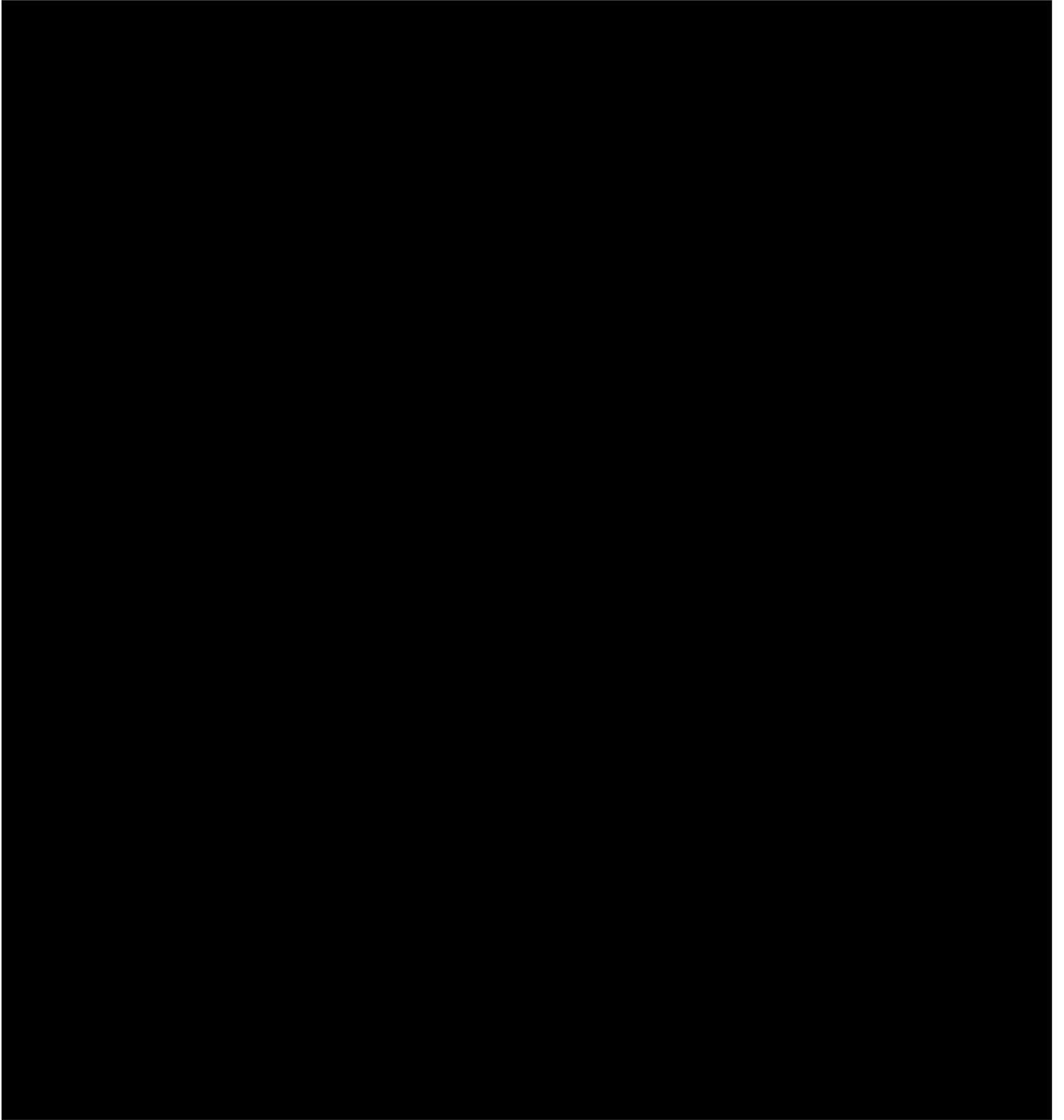
While significant improvements were made from the 2011 CHP RFO in terms of validating the information associated with demonstrating eligibility (e.g., compliance with PURPA) and the amount of GHG reductions (e.g., expected thermal output and electric power sales for new CHP facilities), there is room for further improvement in the next CHP RFO. There should be less reliance on Offeror representations that are not supported by actual data or engineering design information. As demonstrated by this RFO, information provided by the Offeror may be reasonable for the indicative bid stage but more detailed due diligence may be needed for certain projects to ensure Offerors are providing more than gross estimates for thermal, fuel and electric use in the facility (expected as well as historical). Offerors should be required to provide detailed backup to support the inputs (fuel usage, thermal output, and electrical output) that are used to estimate GHG emission reductions in the final evaluation stage, especially for new projects with no operating history and other projects for which GHG accounting will be other than neutral.

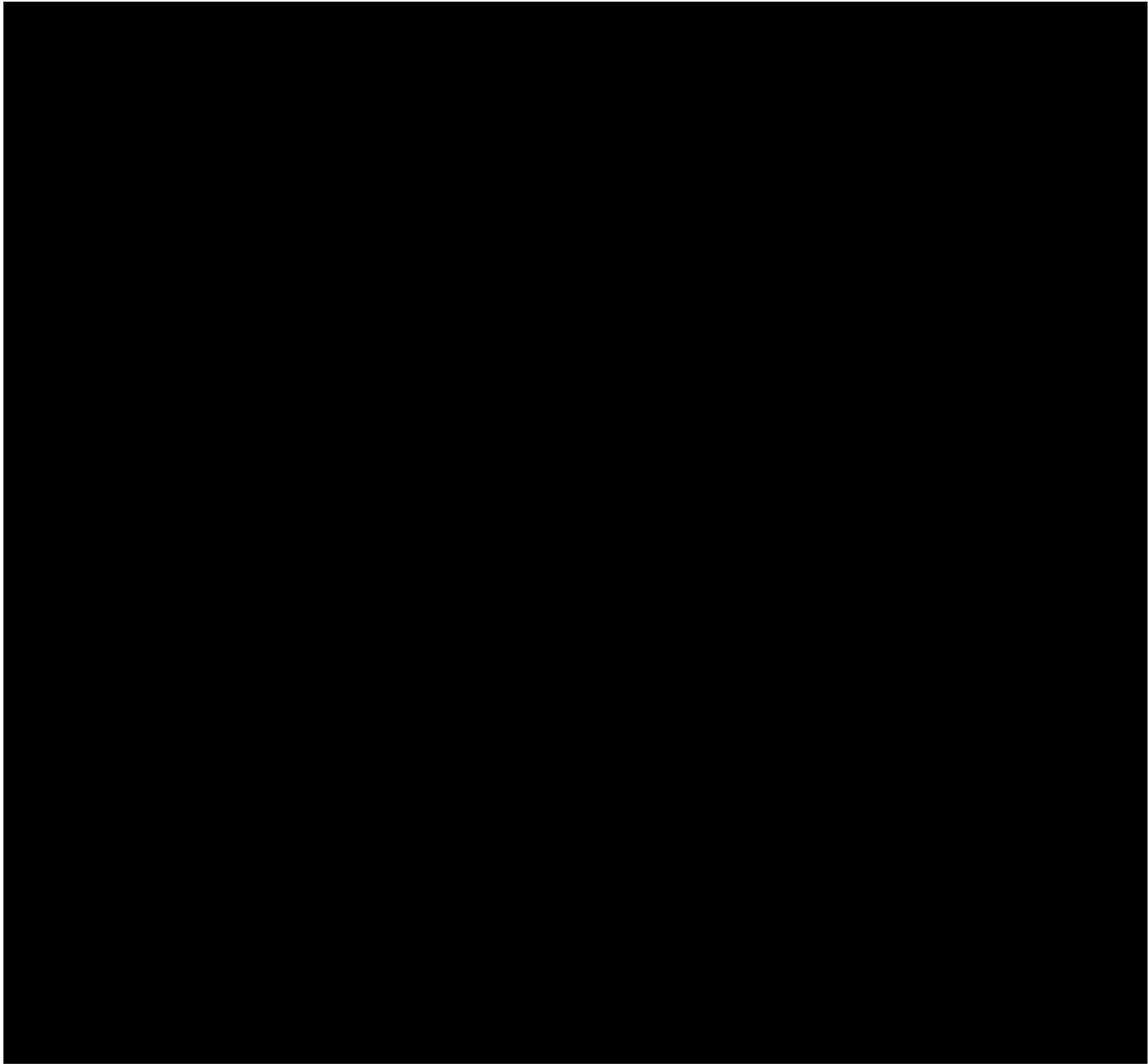
## **XI. Conclusions**

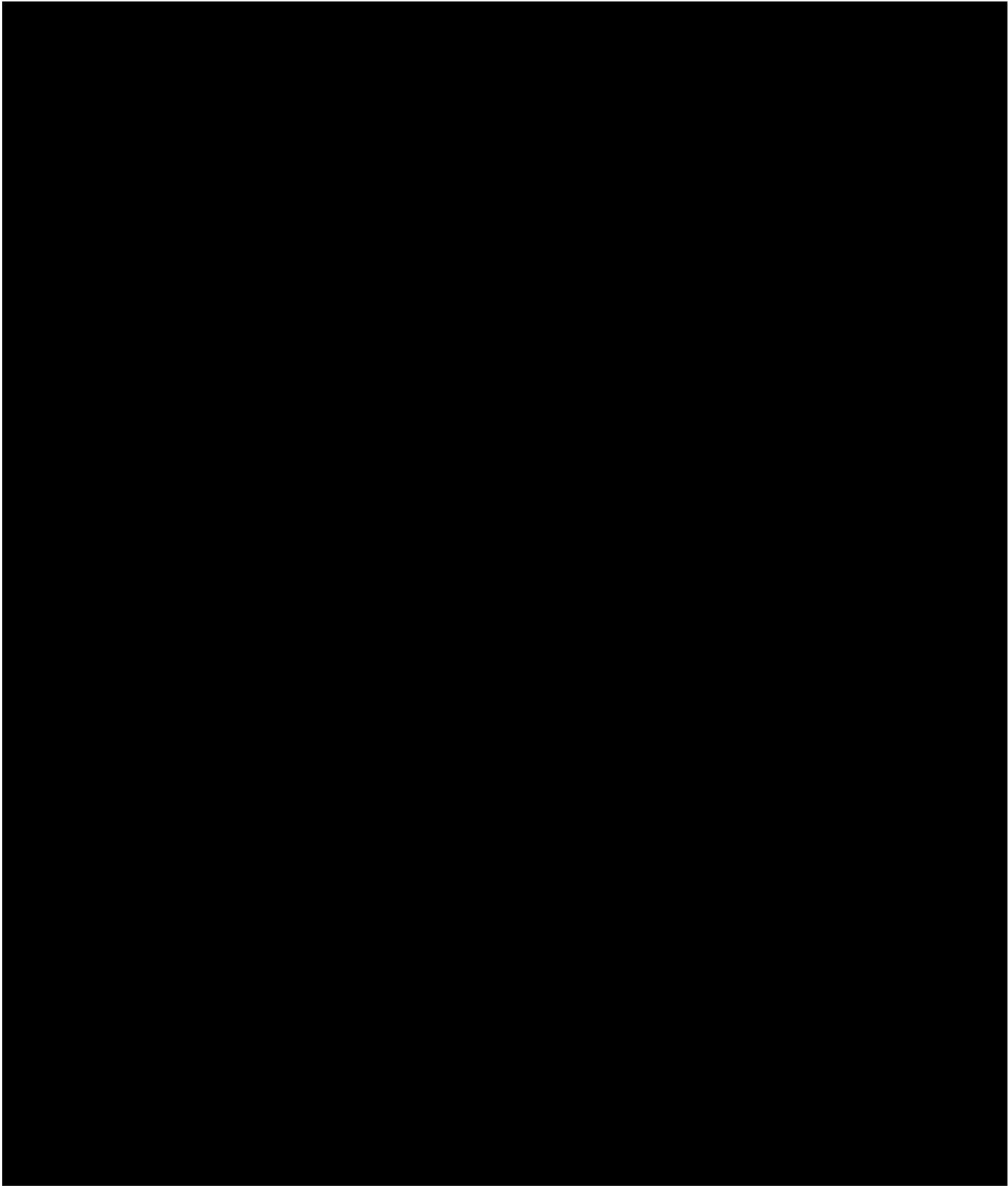
In the IE’s opinion, SCE’s 2013 CHP RFO was conducted reasonably and in accord with the requirements set forth in the CHP Settlement Agreement. Taken as a whole, SCE’s evaluation framework and implementation of it was fair and provided for fair and consistent comparisons between different types of projects and different types of counterparties. Moreover, SCE did not provide preferential treatment to any affiliate that participated in the RFO. There were a number of improvements in the process from the 2011 CHP RFO, including the manner in which the contract negotiation process was conducted and the higher success rate in reaching agreement with counterparties, resulting in a higher percentage of qualifying final offers from those Offerors desiring to

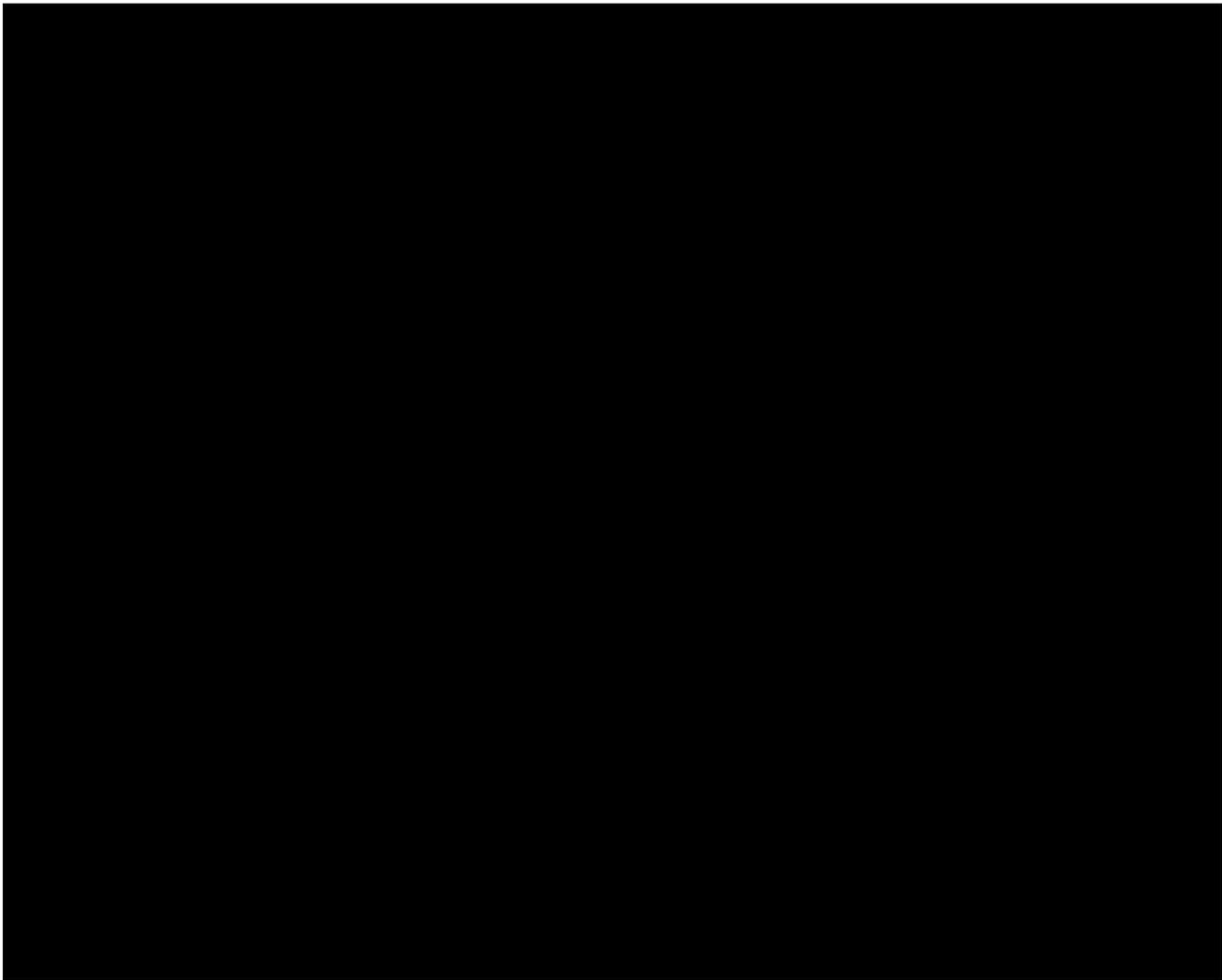
submit final offers. In the IE's opinion, SCE acted reasonably in selecting the six offers for contract award and execution totaling 396 MW. Although [REDACTED] of the projects selected by SCE as part of the portfolio optimization assessment, the project is only among two of the six projects selected that provides GHG emission reductions. In addition, the project is a new CHP project with a 12 year contract term. Because there is a limited amount of GHG emission reductions resulting from the projects selected in this solicitation [REDACTED] and the project is a new CHP project consistent with the objectives of the CHP Settlement, [REDACTED] in the IE's opinion, it is reasonable for the Commission to approve the contract with NAER.

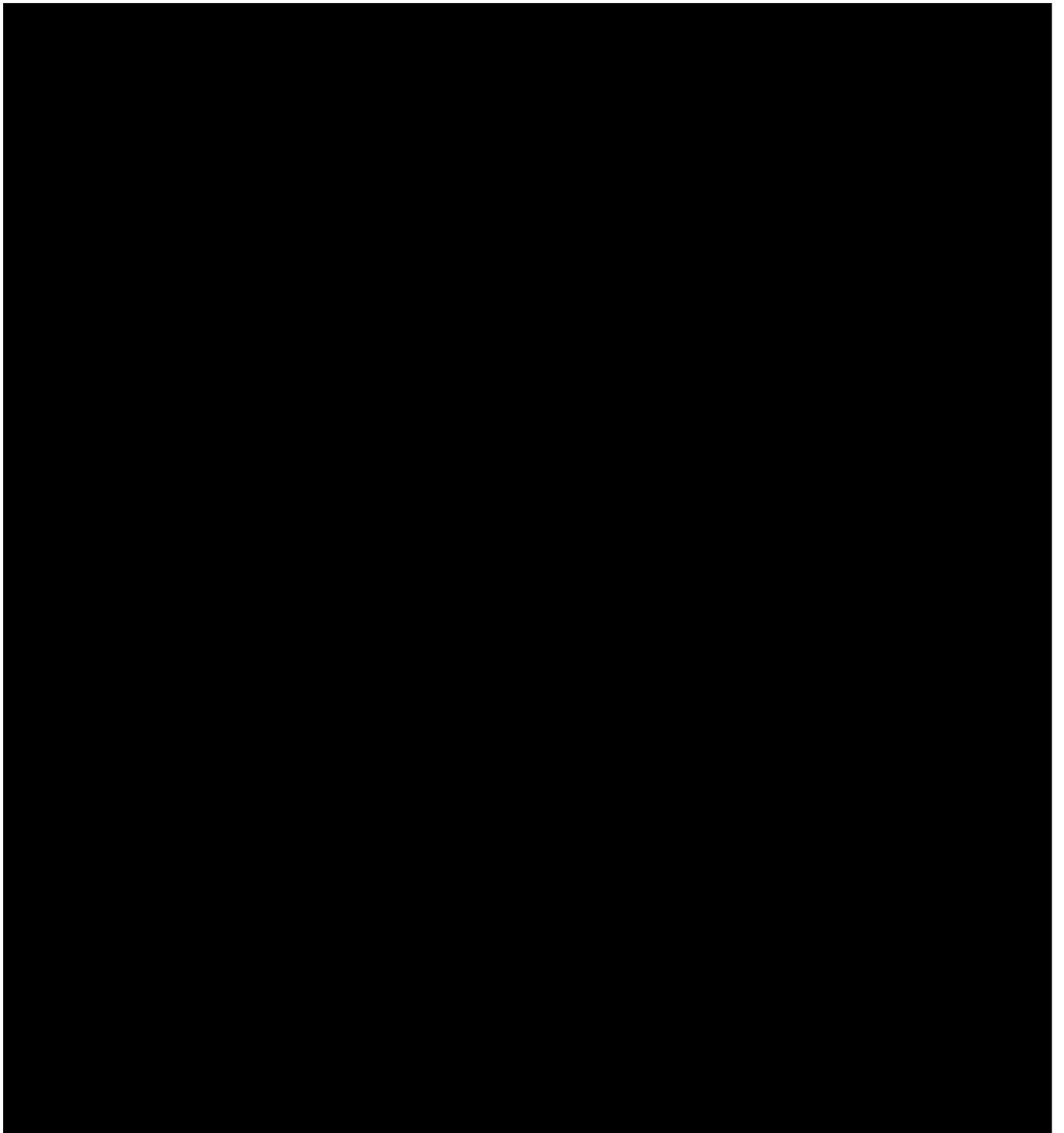
**CONFIDENTIAL APPENDIX**

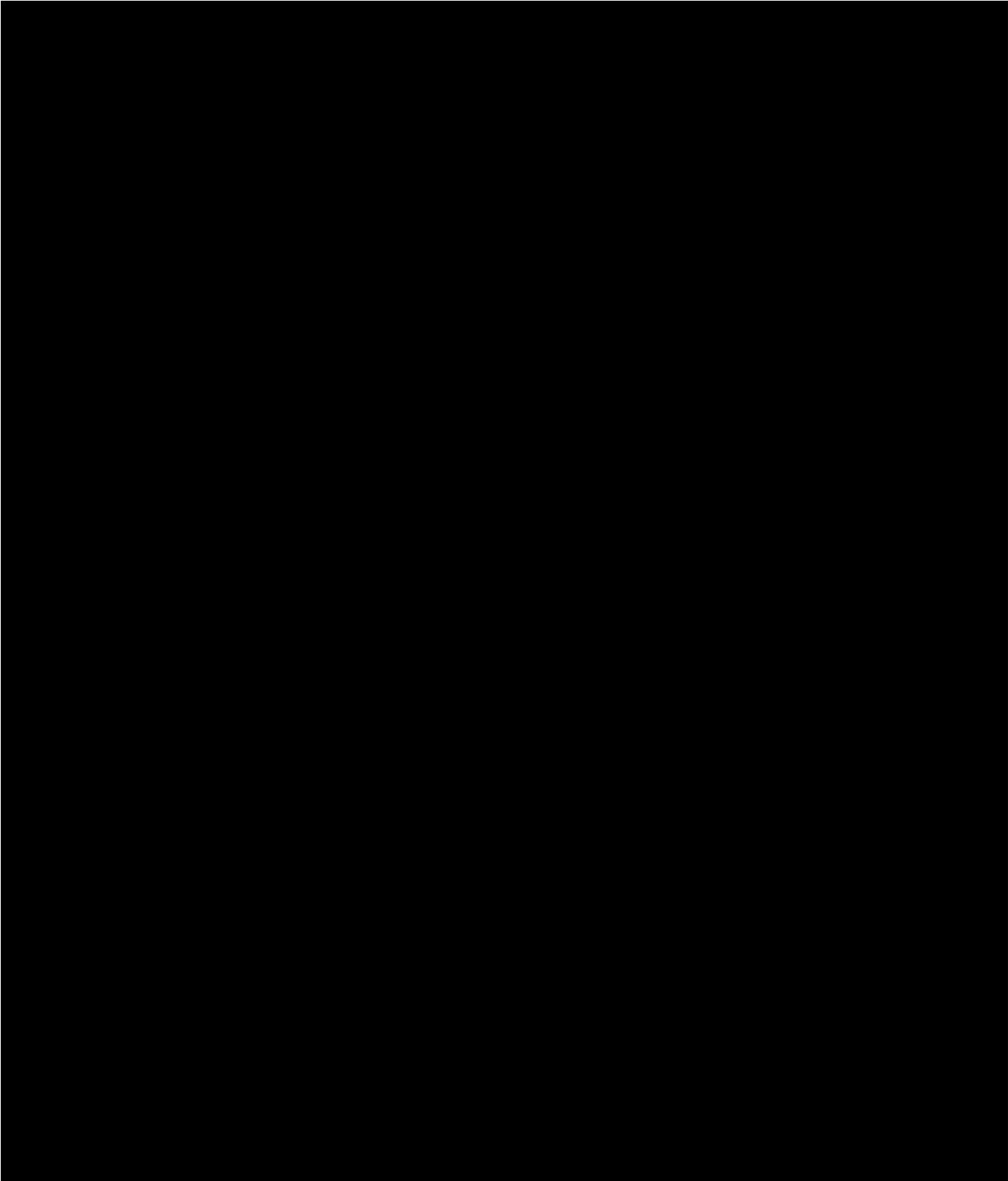


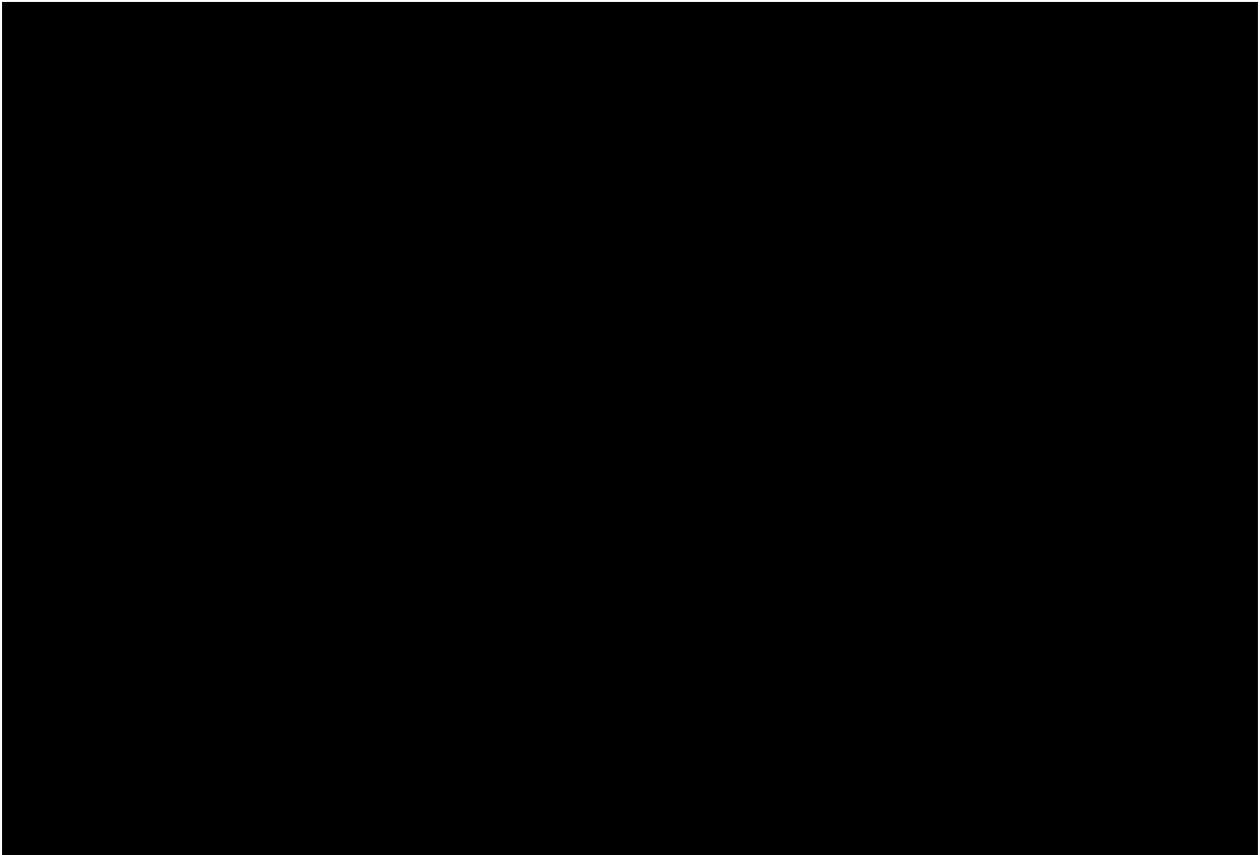












**CONFIDENTIAL Appendix G-2**

**Independent Evaluator Report**

**Confidential Protected Materials – Public Disclosure Prohibited**

**PUBLIC Appendix H**  
**Confidentiality Declaration**

**DECLARATION OF BENNY WU REGARDING THE CONFIDENTIALITY OF  
CERTAIN DATA**

I, Benny Wu, declare and state:

1. I am an Energy Contract/Trading Specialist at Southern California Edison Company (“SCE”). I was the project manager of SCE’s 2013 Combined Heat and Power Request for Offers. As such, I have reviewed this Advice Letter seeking the California Public Utilities Commission’s (“Commission’s” or “CPUC’s”) approval of the agreement between SCE and Native American Energy Resources, LLC (“NAER”) for the purchase of firm and as-available capacity and energy from NAER’s Dry Creek Unit 1-B project (the “Agreement”). I make this declaration in accordance with Commission Decisions (“D.”) 06-06-066 and D.08-04-023, issued in Rulemaking 05-06-040. I have personal knowledge of the facts and representations herein and, if called upon to testify, could and would do so, except for those facts expressly stated to be based upon information and belief, and as to those matters, I believe them to be true.

2. Listed below are the data in this Advice Letter for which SCE is seeking confidential protection and the categories of the Matrix of Allowed Confidential Treatment Investor Owned Utility Data (“Matrix”) appended to D.06-06-066 to which these data correspond.

<b>Data</b>	<b>Page</b>	<b>Matrix Category</b>	<b>Period of Confidentiality</b>
Offer Evaluation Methodology, Consistency with Commission Decisions and Rules, and Project Development Status	Confidential Appendix A	VII.B Contracts and power purchase agreements between utilities and non-affiliated third parties (except RPS)  VIII.B Specific quantitative analysis involved in the	Contracts confidential for three years, or until one year following expiration, whichever comes first.  Specific quantitative analysis involved in the scoring and evaluation of participating bids

		scoring and evaluation of participating bids. <sup>1</sup>	confidential for three years after winning bidders selected.
Agreement	Confidential Appendix B	VII.B Contracts and power purchase agreements between utilities and non-affiliated third parties (except RPS)	Contracts confidential for three years, or until one year following expiration, whichever comes first.
Agreement Summary	Confidential Appendix C	VII.B Contracts and power purchase agreements between utilities and non-affiliated third parties (except RPS)	Contracts confidential for three years, or until one year following expiration, whichever comes first.
Comparison of Agreement with SCE's CHP <i>Pro Forma</i> Power Purchase Agreement	Confidential Appendix D	VII.B Contracts and power purchase agreements between utilities and non-affiliated third parties (except RPS)	Contracts confidential for three years, or until one year following expiration, whichever comes first.
Independent Evaluator Report	Confidential Appendix F-2	VII.B Contracts and power purchase agreements between utilities and non-affiliated third parties (except RPS)  VIII.B Specific quantitative analysis involved in the scoring and evaluation of participating bids.	Contracts confidential for three years, or until one year following expiration, whichever comes first.  Specific quantitative analysis involved in the scoring and evaluation of participating bids confidential for three years after winning bidders selected.

3. SCE is complying with the limitations on confidentiality specified in the Matrix and that pertain to the data listed in the table above.

4. In addition, Confidential Appendix E, Emissions Performance Standard Compliance Workpaper is protected pursuant to D.91-05-007. The data contained therein is

<sup>1</sup> The Commission also concluded that project-specific project viability information should remain confidential in D.09-06-018.

operating efficiency information. D.91-05-007, Ordering Paragraph 3, states, "SDG&E, PG&E, and Edison shall not permit any person who is not charged with monitoring power producer operating efficiencies to gain access to power producers' operating data. SDG&E, PG&E and Edison shall not permit any employee of any utility affiliate to gain access to power producers' operating data."<sup>2</sup> The projected generation useful thermal output is also protected under Public Utilities Code Section 454.5(g) and General Order 66-C because its disclosure would place SCE at an unfair competitive disadvantage in its procurement efforts on behalf of its customers by giving market participants insight into the facility's operation, which could influence their contracting or market bidding strategies.

5. I am informed and believe and thereon allege that the data in the table above and in Confidential Appendix E cannot be aggregated, redacted, summarized, masked or otherwise protected in a manner that would allow partial disclosure of the data while still protecting confidential information.

6. I am informed and believe and thereon allege that the data in the table in paragraph 2 above and Confidential Appendix E has never been made publicly available.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on June 13, 2014 at Rosemead, California.

  
\_\_\_\_\_  
Benny Wu

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<sup>2</sup> See also Conclusion of Law 8, stating "The utilities should assure that their employees who have access to power procurers' operating data do not disclose that information to any party who is not charged with monitoring power producers' operating efficiencies or to any employee of a utility affiliate engaged in unregulated power production."

**PUBLIC Appendix I**  
**Proposed Non-Disclosure Agreement**

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

Advice 3061-E

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Docket No. R.13-12-010  
A.08-11-001

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**[MODEL] NONDISCLOSURE AGREEMENT  
REGARDING MARKET PROTECTED MATERIALS**

1. Scope. This Nondisclosure Agreement Regarding Protected Materials (“Nondisclosure Agreement”) shall govern access to and the use of Protected Materials, produced by, or on behalf of, a Disclosing Party (as defined in Paragraph 2 below) in this proceeding.

2. Definitions

In addition to the terms defined and capitalized in other sections of this Nondisclosure Agreement, the following terms are defined for the purposes of this Nondisclosure Agreement:

A. For purposes of this Nondisclosure Agreement, the term “Protected Materials” means: (i) trade secret, market sensitive, or other confidential and/or proprietary information as determined by the Disclosing Party in accordance with the provisions of Decision (“D.”) 06-06-066 and subsequent decisions, General Order 66-C, Public Utilities Code section 454.5(g), or any other right of confidentiality provided by law; or (ii) any other materials that are made subject to this Nondisclosure Agreement by the Assigned Administrative Law Judge (“Assigned ALJ”), Law and Motion Administrative Law Judge (“Law and Motion ALJ”), Assigned Commissioner, the California Public Utilities Commission (“Commission”), or any court or other body having appropriate authority. Protected Materials also include memoranda,

handwritten notes, spreadsheets, computer files and reports, and any other form of information (including information in electronic form) that copies, discloses, incorporates, includes or compiles other Protected Materials or from which such materials may be derived (except that any derivative materials must be separately shown to be confidential). Protected Materials do not include: (i) any information or document contained in the public files of the Commission or any other state or federal agency, or in any state or federal court; or (ii) any information that is public knowledge, or which becomes public knowledge, other than through disclosure in violation of this Nondisclosure Agreement or any other nondisclosure agreement or protective order.

B. The term “redacted” refers to situations in which Protected Materials in a document, whether the document is in paper or electronic form, have been covered, blocked out, or removed.

C. The “Disclosing Party” is \_\_\_\_\_ [Insert entity name].

D. The “Requesting Party” is \_\_\_\_\_ [Insert entity name].

E. The term “Party” refers to the Requesting Party or the Disclosing Party and the term “Parties” refers to both the Requesting Party and the Disclosing Party.

F. The term “Market Participant” refers to a Requesting Party that is:

- 1) A person or entity, or an employee of an entity, that engages in the wholesale purchase, sale or marketing of energy or capacity, or the bidding on or purchasing of power plants, or bidding on utility procurement solicitations, or consulting on such matters, subject to the limitations in 3) below.
- 2) A trade association or similar organization, or an employee of such organization,
  - a) whose primary focus in proceedings at the Commission is to advocate for persons/entities that purchase, sell or market energy or capacity at wholesale; bid on, own, or

purchase power plants; or bid on utility procurement solicitations; or

- b) a majority of whose members purchase, sell or market energy or capacity at wholesale; bid on, own, or purchase power plants; or bid on utility procurement solicitations; or
  - c) formed for the purpose of obtaining Protected Materials; or
  - d) controlled or primarily funded by a person or entity whose primary purpose is to purchase, sell or market energy or capacity at wholesale; bid on, own, or purchase power plants; or bid on utility procurement solicitations.
- 3) A person or entity that meets the criteria of 1) above is not a Market Participant for purpose of access to Protected Materials unless the person/entity seeking access to Protected Materials has the potential to materially affect the price paid or received for electricity if in possession of such information. An entity will be considered not to have such potential if:
- a) the person or entity's participation in the California electricity market is *de minimis* in nature. In the resource adequacy proceeding (R.05-12-013) it was determined in D.06-06-064 § 3.3.2 that the resource adequacy requirement should be rounded to the nearest megawatt (MW), and load serving entities (LSEs) with local resource adequacy requirements less than 1 MW are not required to make a showing. Therefore, a *de minimis* amount of energy would be less than 1 MW of capacity per year, and/or an equivalent of energy; and/or
  - b) the person or entity has no ability to dictate the price of electricity it purchases or sells because such price is set by a process over which the person or entity has no control, *i.e.*, where the prices for power put to the grid are completely overseen by the Commission, such as subject to a standard offer contract or tariff price. A person or entity that currently has no ability to dictate the price of electricity it purchases or sells under this section, but that will have such ability within one year

because its contract is expiring or other circumstances are changing, does not meet this exception; and/or

- c) the person or entity is a cogenerator that consumes all the power it generates in its own industrial and commercial processes, if it can establish a legitimate need for Protected Materials.

G. The term “Non-Market Participant” refers to a Requesting Party that does not meet the definition of Market Participant. The California Independent System Operator is deemed a Non-Market Participant for purposes of this Nondisclosure Agreement.

H. “Reviewing Representatives” are limited to person(s) designated in accordance with Paragraph 5 who meet the following criteria:

- 1) Reviewing Representatives may not currently be engaged in:
  - (a) a transaction for the purchase, sale, or marketing at wholesale of electrical energy or capacity or natural gas (or the direct supervision of any employee(s) engagement in such a transaction);
  - (b) the bidding on or purchasing of power plants (or the direct supervision of any employee(s) engagement in such a transaction); or (c) knowingly providing electricity or gas marketing consulting or advisory services to others in connection with a transaction for the purchase, sale, or marketing at wholesale of electrical energy or capacity or natural gas or the bidding on or purchasing of power plants (or the direct supervision of any employee(s) engagement in such a transaction or consulting).
- 2) Reviewing Representatives may not be an employee of a Market Participant. If the Market Participant or Non-Market Participant chooses to retain outside attorneys, consultants, or experts in the same law firm or consulting firm to provide advice in connection with marketing activities, then the attorney, consultant, or expert serving as a Reviewing Representative must be separated by an ethics wall consistent with the ethics wall requirements in D.11-07-028, as that decision may be subsequently modified or changed by the Commission, from those in the firm who are involved in wholesale commercial dealings.

- 3) Reviewing Representatives shall use Protected Materials only for the purpose of participating in the Commission proceeding in which they received the information.
- 4) Reviewing Representatives are permitted to participate in regulatory proceedings on behalf of Market Participants and Non-Market Participants.
- 5) All Reviewing Representatives are required to execute the Nondisclosure Certificate attached to this Nondisclosure Agreement and are bound by the terms of this Nondisclosure Agreement.

I. The term “Authorized Reviewers” refers to: (1) a Requesting Party that is a Non-Market Participant that has executed a Nondisclosure Agreement; or (2) a Reviewing Representative of a Requesting Party if the Requesting Party has executed a Nondisclosure Agreement and the Reviewing Representative has executed a Nondisclosure Certificate. A Requesting Party that is a Market Participant is not an Authorized Reviewer but it may designate a Reviewing Representative in accordance with Paragraph 5.

J. The term “Nondisclosure Certificate” refers to the Nondisclosure Certificate attached as Appendix A.

3. Designation, Filing and Service of Protected Materials.

When filing or providing in discovery any documents or items containing Protected Materials, a Party shall physically mark such documents (or in the case of non-documentary materials such as computer diskettes, on each item) as “ PROTECTED MATERIALS SUBJECT TO NONDISCLOSURE AGREEMENT,” or with words of similar import as long as one or more of the terms, “Protected Materials” or “Nondisclosure Agreement” is included in the designation to indicate that the materials in question are Protected Materials. All materials so designated shall be treated as Protected Materials unless and until: (a) the designation is withdrawn pursuant to Paragraph 13 hereof; (b) an Assigned ALJ, Law and Motion ALJ, Assigned Commissioner, or the Commission makes a determination that: (i) the document does not contain Protected Materials or

does not warrant confidential treatment or (ii) denies a motion to file the document under seal; or (c) the document or information becomes public knowledge, other than through disclosure in violation of this Nondisclosure Agreement or any other nondisclosure agreement or protective order.

All documents containing Protected Materials that are tendered for filing with the Commission shall be placed in sealed envelopes or otherwise appropriately protected and shall be tendered with a motion to file the document under seal pursuant to Rule 11.4 of the Commission's Rules of Practice and Procedure. All documents containing Protected Materials that are served on parties in a proceeding shall be placed in sealed envelopes or otherwise appropriately protected and shall be endorsed to the effect that they are served under seal pursuant to this Nondisclosure Agreement. Such documents shall only be served upon Authorized Reviewers and persons employed by or working on behalf of the Commission. Service upon Authorized Reviewers and persons employed by or working on behalf of the Commission may either be: (a) by electronic mail in accordance with the procedures adopted in this proceeding; (b) by facsimile; or (c) by overnight mail or messenger service. Whenever service of a document containing Protected Materials is made by overnight mail or messenger service, the Assigned ALJ shall be served with such document by the same means and at the same time.

4. Redaction of Documents. Whenever a Party files, serves, or provides in discovery a document that includes Protected Materials (including but not limited to briefs, testimony, exhibits, and responses to data requests), such Party shall also prepare a redacted version of such document. The redacted version shall enable persons familiar with this proceeding to determine with reasonable certainty the nature of the data that has been redacted and where the redactions occurred. The redacted version of a document to be filed shall be served on all persons on the

service list, and the redacted version of a discovery document shall be served on all persons entitled thereto.

5. Designation of Reviewing Representatives. The Requesting Party shall provide written notice identifying its proposed Reviewing Representative(s) to the Disclosing Party before the Disclosing Party provides any Protected Materials to the Requesting Party's Authorized Reviewers. The written notice shall include the information identified in this paragraph. If the Requesting Party decides to designate any additional Reviewing Representative(s) after the Requesting Party receives Protected Materials, the Requesting Party shall identify the additional proposed Reviewing Representative(s) to the Disclosing Party before the Requesting Party provides Protected Materials to the additional Reviewing Representative(s). Within five (5) business days after receiving written notice of the identity of any Reviewing Representative, the Disclosing Party may provide the Requesting Party with a written objection to a specific Reviewing Representative stating the grounds for the objection. Any dispute concerning whether an identified person or entity is an appropriate Reviewing Representative shall be resolved through the dispute resolution procedures in Paragraph 10 of this Nondisclosure Agreement. If a Disclosing Party objects to a specific Reviewing Representative within five (5) business days after the Reviewing Representative is identified, the Requesting Party shall not provide any Protected Materials to the disputed Reviewing Representative until the Parties are able to resolve the dispute consistent with the dispute resolution procedures in Paragraph 10. Failure by the Disclosing Party to object within five (5) business days does not waive the Disclosing Party's right to later object to the Reviewing Representative, even if Protected Materials has already been disclosed. However, further disclosure of Protected Materials would be stayed until the parties are able to resolve the dispute consistent with the dispute resolution procedures in Paragraph 10.

Reviewing Representative(s) have a duty to disclose to the Disclosing Party any potential conflict that puts the Reviewing Representative in violation of D.06-12-030, as modified by subsequent decisions of the Commission. A resume or curriculum vitae is reasonable disclosure of such potential conflicts, and should be the default evidence provided in most cases.

6. Nondisclosure Certificates. A Reviewing Representative shall not inspect, participate in discussions regarding, or otherwise be granted access to, Protected Materials unless and until he or she has first completed and executed a Nondisclosure Certificate, attached hereto as Appendix A, and delivered the signed Nondisclosure Certificate to the Disclosing Party. The Disclosing Party shall retain the executed Nondisclosure Certificates pertaining to the Protected Materials it has disclosed and shall promptly provide copies of the Nondisclosure Certificates to Commission Staff upon request.

7. Access to Protected Materials and Use of Protected Materials. Subject to the terms of this Nondisclosure Agreement, Authorized Reviewers shall be entitled to access any Protected Materials and may make copies of Protected Materials, but such copies become Protected Materials. Authorized Reviewers may make notes of Protected Materials, which shall be treated as Protected Materials if such notes disclose any Protected Materials. Protected Materials obtained by a Party in this proceeding may also be requested by that Party in a subsequent Commission proceeding, subject to the terms of any nondisclosure agreement or protective order governing that subsequent proceeding, without constituting a violation of this Nondisclosure Agreement.

8. Maintaining Confidentiality of Protected Materials. Each Authorized Reviewer shall treat Protected Materials as confidential in accordance with this Nondisclosure Agreement and the Nondisclosure Certificate. Protected Materials shall not be used except as necessary for participation in this proceeding, and shall not be disclosed in any manner to any person except: (i)

Authorized Reviewers; (ii) an Authorized Reviewer's employees and administrative personnel, such as clerks, secretaries, and word processors, to the extent necessary to assist the Authorized Reviewer, provided that they shall first ensure that such personnel are familiar with the terms of this Nondisclosure Agreement and have signed a Nondisclosure Certificate; and (iii) persons employed by or working on behalf of the Commission. Authorized Reviewers shall adopt suitable measures to maintain the confidentiality of Protected Materials they have obtained pursuant to this Nondisclosure Agreement, and shall treat such Protected Materials in the same manner as they treat their own most highly confidential information.

Reviewing Representatives shall be liable for any unauthorized disclosure or use by themselves and/or their employees, paralegal, or administrative staff. In the event any Requesting Party and/or its Reviewing Representative is requested or required by applicable laws or regulations, or in the course of administrative or judicial proceedings (in response to oral questions, interrogatories, requests for information or documents, subpoena, civil investigative demand or similar process) to disclose any of Protected Materials, the Requesting Party shall immediately inform the Disclosing Party of the request, and the Disclosing Party may, at its sole discretion and cost, direct any challenge or defense against the disclosure requirement, and the Requesting Party and its Reviewing Representative shall cooperate in good faith with such Party either to oppose the disclosure of the Protected Materials consistent with applicable law, or to obtain confidential treatment of the Protected Materials by the person or entity who wishes to receive them prior to any such disclosure. If there are multiple requests for substantially similar Protected Materials in the same case or proceeding where a Requesting Party and/or Reviewing Representative has been ordered to produce certain specific Protected Materials, the Requesting Party and/or Reviewing Representative may, upon request for substantially similar materials by

another person or entity, respond in a manner consistent with that order to those substantially similar requests.

9. Return or Destruction of Protected Materials. Protected Materials shall remain available to an Authorized Reviewer until an order terminating this proceeding becomes no longer subject to judicial review. If requested to do so in writing after that date, the Authorized Reviewer shall, within fifteen days after such request, return the Protected Materials to the Disclosing Party that produced such Protected Materials, or shall destroy the materials, except that copies of filings, official transcripts and exhibits in this proceeding that contain Protected Materials, and notes of Protected Materials may be retained, if such Protected Materials are maintained in accordance with Paragraph 8. Within such time period each Authorized Reviewer, if requested to do so, shall also submit to the Disclosing Party an affidavit stating that, to the best of its knowledge, all Protected Materials have been returned or have been destroyed, or will be maintained in accordance with Paragraph 8. To the extent Protected Materials are not returned or destroyed, such Protected Materials shall remain subject to this Nondisclosure Agreement.

In the event that a Reviewing Representative to whom Protected Materials are disclosed ceases to be engaged to provide services in this proceeding, then access to such materials by that person shall be terminated and the Reviewing Representative shall immediately return or destroy all Protected Materials, or provide a declaration stating that all Protected Materials and all notes of Protected Materials will be maintained in accordance with Paragraph 8. Even if a Reviewing Representative is no longer engaged in this proceeding, every such person shall continue to be bound by the provisions of this Nondisclosure Agreement and the Nondisclosure Certificate.

10. Dispute Resolution. All disputes that arise under this Nondisclosure Agreement, including but not limited to alleged violations of this Nondisclosure Agreement and disputes concerning whether materials were properly designated as Protected Materials, shall first be

addressed by the Parties through a meet and confer process in an attempt to resolve such disputes. If the meet and confer process is unsuccessful, either Party may present the dispute for resolution to the Assigned ALJ or the Law and Motion ALJ.

11. Other Objections to Use or Disclosure. Nothing in this Nondisclosure Agreement shall be construed as limiting the right of a Party to object to the use or disclosure of Protected Materials on any legal ground, including relevance or privilege.

12. Remedies. Any violation of this Nondisclosure Agreement shall constitute a violation of an order of the Commission. Notwithstanding the foregoing, the Parties reserve their rights to pursue any legal or equitable remedies that may be available in the event of an actual or anticipated disclosure of Protected Materials.

13. Withdrawal of Designation. A Disclosing Party may agree at any time to remove the “Protected Materials” designation from any materials of such Party if, in its opinion, confidentiality protection is no longer required. In such a case, the Disclosing Party will notify all Requesting Parties that the Disclosing Party has agreed to withdraw its designation of Protected Materials for specific documents or material.

1. Modification. This Nondisclosure Agreement shall remain in effect unless and until it is modified or terminated by written agreement of the parties or by order of the Commission or Assigned ALJ. The Parties agree that modifications to this Nondisclosure Agreement may become necessary, and they further agree to work cooperatively to devise and implement such modifications in as timely a manner as possible. Each Party governed by this Nondisclosure Agreement has the right to seek modifications in it as appropriate from the Assigned ALJ or the Commission.

15. Interpretation. Headings are for convenience only and may not be used to restrict the scope of this Nondisclosure Agreement.

**REQUESTING PARTY**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Representing: \_\_\_\_\_

Date: \_\_\_\_\_

**DISCLOSING PARTY**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Representing: \_\_\_\_\_

Date: \_\_\_\_\_

**APPENDIX A TO MODEL NONDISCLOSURE AGREEMENT**

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

Advice 3061-E

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Docket No. R.13-12-010  
A.08-11-001

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**NONDISCLOSURE CERTIFICATE**

I hereby certify my understanding that access to Protected Materials is provided to me pursuant to the terms and restrictions of the Nondisclosure Agreement between [REQUESTING PARTY] and [DISCLOSING PARTY] in this proceeding, that I have been given a copy of and have read the Nondisclosure Agreement, and that I agree to be bound by it. I understand that the contents of the Protected Materials, any notes or other memoranda, or any other form of information that copies or discloses Protected Materials shall not be disclosed to anyone other than in accordance with that Nondisclosure Agreement. I acknowledge that a violation of this certificate constitutes a violation of an order of California Public Utilities Commission.

Signed: \_\_\_\_\_

Name \_\_\_\_\_

Title: \_\_\_\_\_

Organization: \_\_\_\_\_

Dated: \_\_\_\_\_