

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

Application of Pacific Gas and Electric
Company (U 39-E) for Approval of 2008
Long-Term Request for Offer Results and for
Adoption of Cost Recovery and Ratemaking
Mechanisms.

Application 09-09-021
(Filed September 30, 2009)

**PACIFIC GAS AND ELECTRIC COMPANY'S (U 39-E)
PETITION FOR MODIFICATION OF DECISION 10-07-045**

**(PUBLIC VERSION OF DECLARATION OF MARINO MONARDI
IN SUPPORT OF PACIFIC GAS AND ELECTRIC COMPANY'S
PETITION FOR MODIFICATION OF DECISION 10-07-045 ATTACHED)**

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Date: August 23, 2010

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Pacific Gas and Electric Company ("PG&E") files this petition for modification of Decision ("D.") 10-07-045 (the "LTRFO Decision") as a result of changed circumstances that support modifying the decision to provide for the approval of the Oakley Generating Station ("Oakley Project"). As the Commission is aware, the Oakley Project was one of the winning proposals in PG&E's 2008 Long-Term Request For Offers ("LTRFO") and can provide a unique combination of attributes to serve the energy needs of Northern California. In particular, the Oakley Project represents the latest evolution of cost-effective resources specifically designed to facilitate the integration of renewable resources. The Oakley Project has an extremely low heat rate and excellent operating flexibility. Given California's aggressive Renewable Portfolio Standard ("RPS"), the Oakley Project is exactly the kind of resource needed in PG&E's service area to integrate renewables, while also will providing one of the best heat rates and lowest emissions in California.

During the Commissioners' comments on the LTRFO Decision, several Commissioners expressed support for the Oakley Project and indicated that, if the date for the Oakley Project had

been later, the project may have been approved. PG&E and Contra Costa Generating Station, LLC (“Contra Costa LLC”), the developer of the Oakley Project, took these comments to heart and re-negotiated the Oakley Purchase and Sale Agreement (“PSA”) to extend the guaranteed commercial availability date from June 1, 2014 to June 1, 2016. Given this change in circumstances, and the substantial benefits of the Oakley Project for California ratepayers, PG&E requests that the Commission modify the LTRFO Decision.

I. FACTUAL BACKGROUND AND CHANGED CIRCUMSTANCES

The Oakley Project and Mirant Marsh Landing Project were two of the three winning proposals in PG&E’s 2008 LTRFO.¹ These projects were discussed at length at the Commission’s July 29th meeting, at which the LTRFO Decision was adopted. During their oral comments, several Commissioners recognized the high value of the Oakley Project. For example, Commission President Peevey referred to the Oakley Project as “exceptional” and possessing “attributes that would provide benefits for California ratepayers.” Commissioner Ryan noted that “[t]he Oakley Project would deploy state-of-the-art technologies and could provide needed operational flexibility that’s exactly what we need for renewable integration.” Despite the recognized benefits of the Oakley Project, the Commission ultimately decided not to approve the Oakley PSA.

However, during the Commissioners’ discussion of the 2008 LTRFO application, several Commissioners indicated they could potentially support the Oakley Project if the contract was modified to allow for an availability date later than June 1, 2014. Commission President Peevey remarked that the Oakley Project may have been approved with a later availability date and Commissioner Bohn remarked “[w]hat I would have liked to have seen, for example, is to have

¹ The third winning offer was the Mariposa Generation Station, which was approved by the Commission in D.09-10-017.

the opportunity to consider approving the Oakley Project, with its newer technology and superior flexibility but with a later date for construction and operation so as to better match the needs of PG&E and its ratepayers with the estimated turn in the economy and increase in demand.”

Commissioner Bohn re-iterated this point in his written concurrence to the LTRFO Decision.

PG&E and Contra Costa LLC responded the Commissioners’ comments and immediately began to negotiate a modification to the PSA to extend the guaranteed commercial availability date from June 1, 2014 to June 1, 2016. As a result of these discussions, PG&E and Contra Costa LLC have agreed to an amendment to the PSA (“Amendment”), which is attached as Exhibit A to the confidential version of the *Declaration of Marino Monardi in Support of PG&E’s Petition to Modify*. The Amendment changes the guaranteed commercial availability date for the Oakley Project from June 1, 2014 to June 1, 2016. This allows for the development of this beneficial project and ensures that it will not “fall off the face of California,” consistent with the Commissioners’ comments at the July 29th Commission meeting.²

Under Commission Rule 16.4(b), a Commission decision can be modified when there are changed facts or circumstances. Here, the modification of the Oakley Project guaranteed commercial availability date in the Amendment constitutes a significant change in circumstances.

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² The Amendment includes on additional contractual change resulting from the extension of the guaranteed commercial availability. The additional change is described in paragraph 4 of the confidential version of the Monardi Declaration.

II. REQUEST FOR MODIFICATION

PG&E requests that, given the extension of the PSA guaranteed commercial availability date, the Commission approve the Oakley Project PSA and the Amendment. Pursuant to Commission Rule 16.4(b), Appendix A to this motion includes specific wording to carry out the requested modifications to the decision.

Respectfully submitted,

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By: _____ /s/
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Appendix A
Proposed Changes to D.10-07-045

Decision Reference	Proposed Change ¹
p. 2 (Section 1)	Additionally, at this time, we deny <u>approve</u> the Oakley Project.
p. 3 (Section 2.1)	(3) a purchase and sale agreement (PSA) and the amendment to the <u>purchase and sale agreement (collectively “PSA”)</u> with Contra Costa Generating Station LLC (Contra Costa LLC) for the Contra Cost Generating Station in Oakley, California (Oakley Project), a new natural gas-fired combined cycle facility that is expected to produce 586 MW of generation at July peak conditions <u>with a guaranteed commercial availability date of June 1, 2016</u> beginning June 4, 2014 ;
p. 33 (Section 3.4.8)	Add the following to the end of the last paragraph: <u>In addition, as a result of the modification of the Oakley Project PSA guaranteed commercial availability date from June 2014 to June 2016, as described in the Petition to Modify filed by PG&E on August 23, 2010, we will also approve the additional MWs resulting from the PSA for the Oakley Project.</u>
p. 37 (Section 3.5.4)	The Oakley Project has a guaranteed commercial availability date of June 2014 <u>2016</u> .
p. 39 (Section 3.5.6)	Though we <u>We do not find CARE’s dispute regarding the heat rate of the Oakley Project persuasive, combining the need determination, the outstanding concerns raised by both TURN and CARE, and instead determine that it is appropriate, at this time, to deny</u> <u>approve</u> the Oakley Project. Combined, the approved projects allow PG&E to procure a total of 719 <u>1,305</u> MW of new capacity.
pp. 40-41 (Section 3.5.6) (footnotes omitted)	Though we deny the Oakley Project at this time, we understand that developing and building a power plant in California is a long process, fraught with pitfalls. Given this risk and the fact that we believe this plant has numerous beneficial attributes, PG&E may resubmit the Oakley Project, via application, for Commission consideration under the specific conditions below. All of these conditions are contingent on PG&E being able to demonstrate that the Oakley Project has received the necessary permits as evidence that future delays or obstacles for this project are minimized. Prior to the next PG&E LTREFO the conditions under which PG&E may resubmit the Oakley Project are, if,:

¹ Strikethroughs indicate proposed deletions and underlining indicates proposed additions.

Decision Reference	Proposed Change ¹
	<p>1) Another, approved project or projects fail, creating an open need such that the total capacity of all projects approved in this decision, other decisions approving capacity that the Commission determines should be counted towards PG&E authorized procurement, and the total net capacity difference do not sum to greater than the midpoint of the total range, currently 1128 MW;</p> <p>2) If PG&E is able to retire an OTC plant (other than Contra Costa 6 & 7) of comparable size, at least 3 years ahead of schedule, or</p> <p>3) If the final results from the CAISO Renewable Integration Study demonstrates that, even with the projects approved by the Commission, there are significant negative reliability risks from integrating a 33% Renewable Portfolio Standard.</p> <p>These criteria are consistent with the Commission’s stated environmental and procurement objectives, and our goal of maintaining high levels of reliability for ratepayers.</p>
p. 41 (Section 3.5.6)	<p>In that we have only allowed PG&E to procure 719 MW in this proceeding but previously determined that PG&E should be allowed to procure 950 – 1000 MW of new generation, PG&E has authority to procure between 231 – 281 MW in new generation pursuant to its current LTPP. However, except as noted previously in this section, PG&E shall not procure new generation in excess of the total 950 – 1000 MW we have identified as appropriate while under its current LTPP.</p>
Finding of Fact (“FOF”) 12	<p>Add the following to the end of FOF 12: <u>In addition, as a result of the modification of the Oakley Project PSA guaranteed commercial availability date from June 2014 to June 2016, as described in the Petition to Modify filed by PG&E on August 23, 2010, we will also approve the additional MWs resulting from the PSA for the Oakley Project.</u></p>
FOF 18	<p>The Oakley Project is not needed at this time. The PSA for the Oakley Project is reasonable and in the best interests of PG&E’s customers</p>

Decision Reference	Proposed Change ¹
	and thus, should be approved by the Commission.
Conclusions of Law (“COL”) 4	Add the following to the end of COL 4: <u>In addition, as a result of the modification of the Oakley Project PSA guaranteed commercial availability date from June 2014 to June 2016, as described in the Petition to Modify filed by PG&E on August 23, 2010, we will also approve the additional MWs resulting from the PSA for the Oakley Project.</u>
COL 9	Following approval of the Marsh Landing, Contra Costa 6 & 7, and Midway Sunset PPAs, PG&E’s remaining procurement need under D.07 12 052 (as revised by subsequent decisions) is between 231 – 281 MW.
COL 10	Add the following to the end of COL 10: <u>In addition, PG&E shall be authorized to recover costs incurred pursuant to the Oakley Project PSA pursuant to the terms of the Partial Settlement and to recover any stranded costs associated with the PSA pursuant to the terms of the Partial Settlement.</u>
COL 13	The Oakley Project is not needed at this time. <u>The PSA for the Oakley Project is reasonable and in the best interests of PG&E’s customers and thus, should be approved by the Commission.</u>
COL 14	PG&E may resubmit this project, via application for Commission consideration if any of the conditions detailed in Section 3.5.6 above are met.
Ordering Paragraph (“OP”) 3	The Oakley Project is denied at this time. <u>The PSA for the Oakley Project, including the amendment presented in PG&E’s Petition to Modify filed on August 23, 2010, is approved.</u>
OP 4	Pacific Gas and Electric Company may resubmit this project, via application, for Commission consideration if any of the conditions detailed in Section 3.5.6 above are met.

