Docket:	**R. 10-05-006**
Exhibit No.:	
Commissioner:	**Michael R. Peevey**
ALJ:	**Peter V. Allen**
Witnesses:	**Rory Cox** **Kenneth Kloc** **Linda Sheehan**

PACIFIC ENVIRONMENT

Prepared Track III Testimony of Pacific Environment

Rulemaking No. 10-05-006
Long-Term Procurement Planning Track III Testimony
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EXECUTIVE SUMMARY

- **SECTION I – PROCUREMENT RULES RELATED TO COMPLIANCE WITH CALIFORNIA'S ONCE-THROUGH COOLING POLICY**

In this section, Pacific Environment addresses Energy Division Staff's proposed limits on utility contracts with once-through cooling ("OTC") units. We generally support Staff's proposed policy but recommend that it be clarified to indicate that OTC units' compliance will be determined by reference to the State Water Resources Control Board's established OTC policy. Finally, we recommend that the Commission deny SCE's proposal regarding adoption of a new generation auction mechanism.

- **SECTION II – REFINEMENTS TO THE BIDDING PROCESS**

In this section, Pacific Environment makes recommendations for improving the utilities' bid evaluation process. Specifically, we make recommendations for how the utilities' bid evaluations should incorporate environmental justice considerations, adhere to the Commission's need determinations, comply with the Energy Action Plan II's loading order, and better assess project viability. Finally, we highlight our concerns about allowing Utility Owned Generation ("UOG") to bid in Request for Offers ("RFO"), and recommend that the Commission deny PG&E's request allow all types of UOG offers to be submitted and considered in RFOs.

- **SECTION III – PROCUREMENT OVERSIGHT RULES**

In this section, Pacific Environment first recommends that the Commission not treat Staff's proposed Procurement Oversight Rules as an enforceable set of rules that supersede the Commission decisions on which they are based. Second, Pacific Environment indicates its general support for Staff's rules increasing Commission oversight over the procurement process, and offers recommendations for strengthening the roles of the Procurement Review Group, Independent Evaluator, and Cost Allocation Mechanism Group.

- **SECTION IV – GREENHOUSE GAS PRODUCTS, PROCESSES, AND RISK MANAGEMENT STRATEGIES**

In this section, Pacific Environment first recommends that the Commission not rush to reach a final decision on the utilities' greenhouse gas-related procurement plans. Instead, we recommend that the Commission issue an interim decision on the plans in this proceeding and then near the end of 2012, having the benefit of market experience, issue a final decision on the plans. Second, we recommend that the Commission reject the utilities' proposal to automatically pass all costs of allowance/offset procurement on to the ratepayers, and suggest a means for ensuring that cost recovery is aligned with AB 32's overarching goal of reducing greenhouse gas emissions.

I. PROCUREMENT RULES RELATED TO COMPLIANCE WITH CALIFORNIA'S ONCE-THROUGH COOLING POLICY

A. Energy Division's Proposal Regarding Limits on Contracts with Once-through Cooling Units

Q. Are you familiar with Energy Division Staff's Proposal on once-through cooling in Appendix A of Administrative Law Judge's ("ALJ") Allen's June 13, 2011 ruling?

A. Yes.

Q. Does it raise any concerns?

A. Yes. Initially, as discussed in detail in the next section, Pacific Environment generally supports Staff's Proposal to strictly limit the utilities' ability to contract with once-through cooling ("OTC") units.[1] However, I am concerned that subsection "a" of the Staff's proposal does not specifically refer to California's governing OTC policy in determining OTC units' compliance with the federal Clean Water Act.

Q. Please elaborate.

A. Currently, the governing standard for determining OTC units' compliance with section 316(b) of the federal Clean Water Act is *California's Statewide Water Quality Control Policy on the Use of Coastal and Estuarine Waters for Power Plant Cooling* ("Statewide OTC Policy"), which became effective October 1, 2010.[2] There is presently no federal regulation implementing section 316(b) for existing power plants analogous to California's rule. However, the U.S. Environmental Protection Agency ("EPA") is conducting a rulemaking that, when final, will implement section 316(b) of the Clean Water Act. In the event that EPA's final rule is less stringent than California's Statewide

[1] Administrative Law Judge's ("ALJ") June 13, 2011 Ruling, at Appendix A.
[2] Available at http://www.swrcb.ca.gov/water_issues/programs/ocean/cwa316/docs/policy100110.pdf.

Policy, California's rule will be controlling.[3] Alternatively, the federal rule will govern if it is stricter than California's policy. Accordingly, the Staff Proposal should clearly indicate that the Board will apply which ever is stricter of California's Statewide OTC Policy and the forthcoming federal rule.

Q. Are you familiar with California's Statewide OTC Policy?

A. Yes. After years of deliberation and stakeholder input, the Board implemented its policy regarding OTC units. Among other things, the Statewide OTC Policy establishes technology-based standards in order to implement federal Clean Water Act section 316(b) and reduce the harmful effects associated with cooling water intake structures on marine and estuarine life.[4] It also sets facility-by-facility "compliance deadlines" for each OTC unit in the state specifying when the unit must either significantly reduce its impacts on aquatic life using technological controls or shutdown.[5]

Q. Please describe your recommendation for revising Staff's Proposal.

A. As currently drafted, subsection "a" of the Staff Proposal includes an exception that allows the utilities to contract with facilities beyond the compliance date identified in the Statewide OTC Plan if the Board determines that the facility is in compliance with the federal Clean Water Act.[6] As discussed above, subsection "a" problematically makes no mention of California's Statewide OTC policy.

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[3] *See* 33 U.S.C. § 1370; *see also* State Water Resources Control Board, *Draft Staff Report on Amendment to the Policy on the Use of Coastal and Estuarine Waters for Power Plant Cooling* (as Amended June 23, 2011), at p. 4 ("Because the [OTC] Policy is more stringent than the proposed USEPA rule, it will remain in effect when the proposed USEPA rule is promulgated. The proposed USEPA rule explicitly states that it is within the States' authority to implement requirements that are more stringent than the federal requirements.").

[4] Statewide OTC Policy, at pp. 4-6.

[5] Statewide OTC Policy, at Table 1, pp. 12-14.

[6] ALJ June 13, 2011 Ruling, at Appendix A (Staff Proposal allows utilities to contract with facilities using OTC technology if the facility is "found by the Water Resources Control Board to be fully in compliance with Section 316(b) of the Clean Water Act.").

Condition "a" should be revised as follows (new language is italicized):

"A facility is found by the Water Resources Control Board to be fully in compliance with *California's Statewide Water Quality Control Policy on the Use of Coastal and Estuarine Waters for Power Plant Cooling (effective October 1, 2010) and* Section 316(b) of the Clean Water Act . . . ."

B. The Utilities' Opposition to Staff's Proposal

Q. Please specifically describe your understanding of the limits Staff's Proposal places on the utilities' ability to contract with OTC units.

A. Staff's Proposal would limit the utilities' contracting with OTC units to one year or less.[7] Further, the Staff Proposal would prohibit contracts that would result in operation of an OTC unit beyond the compliance date specified in the Statewide Policy, unless: (1) the Water Board finds that the unit is in compliance with Clean Water Act section 316(b);[8] or (2) the contract is for the purpose of repowering OTC units and does not result in the operation of the OTC system beyond the compliance date; or (3) the OTC unit chooses to comply with the Statewide Policy via "Track 2" (which requires adopting technological controls that reduce water intake by 93%).[9]

Q. Do you generally support Staff's proposed limits on OTC contracting?

A. Yes. I believe that Staff's Proposal imposes reasonable limits on contracting with OTC units that will effectively discourage the utilities' continued over-reliance on aging OTC units, in accordance with the Statewide OTC Policy to phase these units out. Staff's Proposal will help further California's established OTC policy by preventing the utilities

[7] ALJ's June 10, 2011 Ruling, at Appendix A.
[8] *See* supra at Section I.A, pp. 1-3 (describing Pacific Environment's recommendation regarding this exception).
[9] *Id.*

from entering contracts that exceed the Statewide Policy's phase out deadlines, except under very narrow circumstances. Still, recognizing that there will be some need for contracts with OTC units between now and the phase out deadlines, the Staff Proposal allows utilities to contract with OTC units for one year or less. Thus, the Staff Proposal strikes a fair balance between ensuring compliance with California's environmental policies and providing for OTC contracts with limited duration prior to the phase out deadlines.

Q. Please describe the utilities' opposition to Staff's Proposed restrictions on contracts with OTC units.

A. For its part, PG&E contends that "OTC units should be allowed to compete in IOU Request for Offers ("RFO") to sell capacity and energy without restriction."[10] PG&E recommends that the Commission adopt a process similar to that used in PG&E's RFOs, whereby PG&E explicitly considers the environmental attributes of all offers. PG&E claims that under its process, OTC units receive the lowest environmental score.[11]

For their part, SDG&E and SCE generally contend that the one year-limit on OTC contracts prior to the compliance deadline is overly burdensome and would have uneconomic consequences for their ratepayers.[12] Further, SCE and SDG&E fault Staff's proposal for not addressing the need for replacement capacity once OTC units are shutdown.[13]

Q. Do you believe that the Commission should adopt PG&E's alternative approach to limiting contracting with OTC units?

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[10] PG&E Procurement Rules Testimony [Public] ("PG&E Track III Test."), at p. 1-3.
[11] PG&E Track III Test., at p. 1-3.
[12] *See* Testimony of SCE on Track III Issues – Rules Track III Policy [Public] ("SCE Track III Rules Test."), at pp. 9-10; Prepared Track III Testimony of SDG&E ("SDG&E Track III Test."), at pp. 17-18.
[13] SCE Track III Rules Test., at pp. 9-11; SDG&E Test., at pp. 17-19.

A. No. The Commission should not adopt PG&E's proposed policy. Initially, using PG&E's RFO process as a model for the Commission's OTC policy is problematic. PG&E's RFO process has not given sufficient weight to environmental concerns in the past[14] and is therefore not reasonably calculated to ensure that the Statewide OTC Policy is met. More fundamentally, Pacific Environment is deeply skeptical that simply giving OTC units slightly lower environmental scores in RFOs based on water use is sufficient to ensure that the Statewide OTC Policy's compliance deadlines are met. To the contrary, rigid and well defined limits on OTC contracts – like the one year limit Staff proposes – are necessary to discourage long-term OTC contracting.

Q. Do you agree with the utilities' criticism that Staff's imposition of the one year-limit is burdensome and that Staff's proposal does not address the need for replacement capacity?

A. No, for three reasons. First, as mentioned above, the Staff Proposal is a reasonable attempt to align long-term procurement planning with California's policy of eliminating OTC units in the state. None of the utilities acknowledge the devastating environmental impacts caused by their continued over-reliance on OTC units. Moreover, Staff's Proposal acknowledges the need for contracts with OTC units while placing only a relatively minor restriction upon the duration of those contracts.

Second, although the utilities lament the possible uneconomic consequences of Staff's Proposal, none of the utilities acknowledge that the Proposal, by ensuring that utilities do not enter into contracts that contravene the Statewide OTC Policy, will protect ratepayers from the stranded costs that would be caused by a contract with an OTC unit operating in contravention of the Statewide Policy.

[14] *See* D.10-07-045 (noting "PG&E's low weighting of environmental leadership").

Third, the utilities greatly overstate the possible need for new capacity to meet reliability requirements due to OTC retirements.[15] A 2008 study prepared by ICF Jones and Stokes for the Board showed that OTC plant retirements could be compensated for solely through transmission upgrades, barring the extraordinarily unlikely event that all OTC and both nuclear units chose to shutdown at the same time.[16] Likewise, the study concluded that these transmission upgrades could be accomplished in a relatively short timeframe: "the vast majority of the transmission upgrades identified in the analysis to compensate for OTC plant retirements are relative [sic] modest, requiring only 1-3 years to construct and place in-service."[17] For these reasons, the Commission should not give any weight to the utilities' unfounded predictions of need for new capacity due to OTC retirements.

C. SCE's Proposal for a New Generation Auction Mechanism

Q. Should the Commission adopt SCE's proposal to create a new generation auction mechanism conducted by the California Independent System Operator ("CAISO")?[18]

A. No. SCE's proposal raises significant concerns related to meeting California's GHG and environmental goals as discussed in the Commission's recent decision related to resource adequacy issues.[19] That decision highlighted significant concerns with proposals similar to SCE's proposal here to create a new auction mechanism. As that decision summarized:

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[15] *See, e.g.,* SCE Track III Rules Test., at pp. 9-11; SDG&E Track III Test., at pp. 17-19.
[16] ICF Jones & Stokes et al., *Electric Grid Reliability Impacts from Regulation of Once-Through Cooling in California* (April 2008), at pp. 2-3, *available at* http://www.swrcb.ca.gov/water_issues/programs/ocean/cwa316/docs/reliability_study.pdf; *see also* Pacific Environment, *How California Can Reduce Power Plant Emissions, Protect the Marine Environment, and Save Money* (November 2009), *available at* http://www.pacificenvironment.org/downloads/PacEnv_GreenOpportunity_final.pdf.
[17] *Id.* at p. 4.
[18] SCE Track III Rules Test., at pp. 4-8.
[19] D.10-06-018, at pp. 53-60.

> While a centralized auction approach may be well-suited to achieving system reliability, it is less clear that this is true for satisfying local reliability across multiple local capacity areas. Moreover, it is not necessarily the most effective way to develop and trade specialized capacity in order to both meet the State's environmental goals of and satisfy the CAISO's operational needs. To the extent that the RA program results in the development of new capacity but fails to bring about investment in specialized resources that will need to be developed in any event, irrespective of RA needs, the result could be unnecessary and costly duplication of capacity investment. Achievement of the least cost objective of the RA program would clearly be jeopardized in such a scenario.[20]

For these same reasons, and the other reasons articulated in the Commission's decision, the Commission should reject SCE's proposal here.

II. REFINEMENTS TO THE BIDDING PROCESS

Q. What are the utilities' proposals regarding bid evaluation?

A. PG&E describes its proposed all-source request for offers ("RFO") bidding criteria in Chapter 2 of its Track III Testimony.[21] Generally, PG&E proposes to consider market valuation, portfolio fit, project viability, and credit.[22] According to PG&E, market valuation includes an assessment of costs, benefits, and risks.[23] Portfolio fit will assess how the project's features match needs in the context of the loading order.[24] A project viability assessment includes an evaluation of "schedules and plans for engineering, procurement, construction, and financing . . . ."[25] Finally, a credit evaluation will assess the third party's ability to perform all obligations if contracted.[26]

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[20] *Id.* at p. 60.
[21] PG&E Track III Test., at pp. 2-1 to 2-14.
[22] *Id.* at p. 2-2.
[23] *Id.* at pp. 2-3 to 2-4.
[24] *Id.*
[25] *Id.* at pp. 2-4 to 2-5.
[26] *Id.*

SCE and SDG&E's Testimony do not offer any proposed bid criteria. They instead focus on whether utility-owned generation ("UOG") and power purchase agreement ("PPA") bids can be meaningfully compared in the RFO process.[27]

Q. Please generally describe the Request for Offer process.

A. The RFO process involves a utility publicly and formally asking for bids to fill approved need.[28] The utility may tailor the process to fit its need subject to certain requirements.[29] The utility must select a winning bid using upfront and transparent criteria,[30] and the winning bid will then go through the appropriate approval process in front of the Commission.[31]

Q. Please describe any Commission decisions regarding RFO procedural requirements that you are aware of.

A. The 2004 LTPP and the 2006 LTPP decisions established requirements for the bidding process. According to these decisions, bidding criteria generally must be upfront, transparent, and consistent with the goals of the RFO,[32] and RFOs must reflect California environmental policy.[33] In addition, a best fit/least cost analysis should adhere to these goals because the utilities must be able to justify winning bid selections.[34] Overall, utilities should always look to improve bidding criteria based on experience,[35]

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[27] SCE Track III Rules Test., at p. 13; SDG&E Track III Test., at pp. 19-21.
[28] *See* D.07-12-052, at p. 150 (describing RFO requirements).
[29] D.07-12-052, at p. 155.
[30] *Id.*
[31] *See* D.07-12-052, at p. 206, 268.
[32] *Id.* at p. 155; D.04-12-048, at pp. 120-127.
[33] D.07-12-052, at p. 8. (stating that LTPPs must reflect California environmental policies).
[34] *See id.* at p. 156-157 (justifying requiring the IOUs to consider environmental policy and viability in determining best fit).
[35] *Id.* at p. 156, n. 194 ("IOUs should be continually improving and refining their bid criteria and bid evaluation processes based on lessons learned in past RFOs, including lessons learned from their RPS solicitations.").

and the Commission has implored the utilities to strive to exceed energy and environmental policies.[36]

Q. Do you have concerns with how the utilities have conducted their RFOs?

A. Yes. Environmental justice considerations, compliance with the Commission's need determinations, the EAP II loading order, and the viability of projects have been either ignored or not given proper weight and consideration in the RFO process. Additionally, procurement rules and oversight have not been specific and strong enough to assure that these factors are considered throughout the bidding process.

Q. Do you have any general recommendations for improving the RFO process?

A. Yes. Pacific Environment generally endorses increasing the transparency of the utilities' bid evaluation processes and reducing conflicts of interest. Indeed, after studying procurement methods across the country, the Analysis Group found that "[t]he more transparent the evaluation procedures and criteria are to market participants, the more likely they will be assured that the evaluation process will be fair and objective."[37] The Analysis Group also recommends that review of the bid evaluation methodology "is particularly important where the utility (directly or indirectly) has a financial interest in the outcome of the results (e.g., either directly, if proposing a competing project, or more indirectly, if it owns another existing plant that may become less valuable depending on facility selection)."[38]

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[36] D.07-12-052, at p. 4.
[37] S. Tierney et. al., Analysis Group, *Competitive Procurement of Retail Electricity Supply: Recent Trends in State Policies and Utility Practices* (July 2008), at p. ix, *available at* http://www.naruc.org/Publications/NARUC%20Competitive%20Procurement%20Final.pdf.
[38] *Id.*

A. Environmental Justice

Q. Has the Commission required that environmental justice be considered in the long-term procurement process?

A. Yes. The 2006 LTPP decision found that the utilities should give greater weight to "disproportionate resource sitings in low income and minority communities, and environmental impacts/benefits . . . ."[39] Further, the utilities are required to consider environmental justice along with other criteria in evaluating bids from an RFO.[40]

Q. Does PG&E have its own policy regarding environmental justice?

A. Yes. According to its corporate environmental justice policy, "PG&E Corporation will conduct its operations in a manner that is consistent with and promotes environmental justice principles."[41] Among other commitments, the PG&E policy says it will: "[c]omply with the letter and spirit of environmental justice laws and regulations in our operations"; "[s]et high standards of environmental performance to minimize environmental impacts from our operations"; "[w]ork diligently to address all environmental justice issues"; "[i]ncorporate environmental justice considerations in the purchase of existing facilities and the planning and development of new facilities"; and "[m]aintain open and responsive communications with all stakeholders . . . ."[42]

Q. Have the utilities failed to consider environmental justice in their bid evaluations the past?

A. Yes. The utilities have failed in the past to adequately make environmental justice assessments; most notably, despite the Commission's admonition in the 2006

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[39] D.07-12-052, at p. 157.
[40] *See id.*
[41] *See* PG&E Corporate Environmental Justice Policy, *available at* http://www.pge.com/myhome/environment/commitment.
[42] *Id.*

LTPP that the utilities failed to adequately consider environmental justice,[43] PG&E failed to adequately analyze environmental issues in its 2008 LTRFO.[44]

Q. Please specifically describe the Commission's finding that there were problems with PG&E's consideration of environmental and environmental justice criteria in PG&E's 2008 LTRFO.

A. In its decision on the 2008 LTRFO, the Commission stated that "PG&E could and should have provided greater transparency in the evaluation process and more accurately reflected the Commission's stated priorities by giving greater weight to environmental factors and enhancing definitions related to environmental scoring."[45] In particular, the commission noted that,

> of the eight factors that PG&E weighted to compute its G-score, 'environmental leadership' was given 1/25th the weight of PG&E's highest weighted factor and the lowest overall weight of all the factors. PG&E's low weighting of environmental leadership may have been exacerbated by PG&E's inclusion of a broad range of ill-defined activities under this heading (which can produce a uniform cluster of scores), and PG&E's 'after the fact' decision to reduce the weight of any scores that clustered together. We therefore, conclude that PG&E's criteria weighing was not balanced so as to best reflect the priorities we established in D.07-12-052.[46]

The Commission also called for more transparency: "PG&E should provide greater details of when and how discretionary decisions where made, and how these decisions effected the scoring and selection processes."[47]

Q. What steps should be taken to properly assess environmental justice in bid evaluations?

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[43] D.07-12-052, at p.157; *see also id*, at Findings 35 & 103.
[44] D.10-07-045, at p. 20.
[45] D.10-07-045, at p. 20.
[46] *Id.*
[47] *Id.* at pp. 19-20.

A. Because of the past failure of utilities such as PG&E to adhere to Commission directives on transparency and giving appropriate weight to environmental criteria in the bidding process, the Commission should develop a standardized environmental justice scoring and weighting procedure and require the utilities to use this procedure to assure that environmental justice criteria are being adequately and consistently incorporated into the bidding process. Furthermore, to ensure transparency, environmental justice evaluations thus carried out should be deemed by the Commission to be public information, including all supporting environmental impact data, criteria weights, and scoring results.

In developing an environmental justice scoring method, the Commission can draw upon cumulative environmental impact evaluation methods that have recently been developed by California environmental agencies. For example, the California Environmental Protection Agency ("Cal/EPA") recently published a cumulative risk framework document as a resource for its boards, departments, and offices.[48] The framework describes methods and criteria for assessing and ranking communities in terms of relative cumulative environmental impact, taking into account a variety of EJ-relevant factors such as community health status and poverty/racial demographics.[49] Another similar methodology was developed for the California Air Resources Board ("ARB").[50] In carrying out its statewide cumulative impact and environmental justice evaluation of AB 32 cap and trade mechanisms, ARB developed a simplified version of

[48] Cal/EPA, *Cumulative Impacts: Building a Scientific Foundation* (December 2010) http://oehha.ca.gov/ej/pdf/CIReport123110.pdf.
[49] *See id.* at pp. 25-32.
[50] Pastor et al., *Air Pollution and Environmental Justice: Integrating Indicators of Cumulative Impact and Socio-Economic Vulnerability into Regulatory Decision-Making* (prepared for ARB, April 2010) http://www.arb.ca.gov/research/apr/past/04-308.pdf.

this methodology that looked mainly at air pollution exposures and income status.[51] In addition, the Commission may also refer to numerous environmental justice scoring procedures that have been published in the environmental health literature, many of which are reviewed in the Cal/EPA framework document.[52]

Although the above cited studies list a wide variety of potential cumulative impact and environmental assessment criteria, the Commission's procedure could be appropriately tailored to meet its specific goals in the procurement process. However, we recommend that any environmental justice scoring method include at least the following criteria: income and race demographics, level of industrialization/urbanization (including goods-movement activities, energy producing activities, and traffic), local air pollution levels, rates of air pollution-related or pollution-exacerbated disease (e.g., asthma and heart disease), and sensitivity factors such as youth and old age.

To provide a simple example, a utility could evaluate procurement from a fossil-fueled power plant based upon values of an appropriate set of environmental justice criteria in the vicinity of the plant. One or more areas of influence could be defined in which to carry out the analysis, with at least one of these zones defined within 1000 feet of a plant, and with the closer zones being given greater scoring weight. For residents living in areas of influence, information on income and race, available from the U.S. Census, could be used to identify the percentage of people of color and the level of wealth/poverty. Air pollution data and the locations of significant mobile and stationary air pollution sources, typically available from state and regional pollution control

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[51] ARB, *Proposed Screening Method for Low-Income Communities Highly Impacted by Air Pollution for AB 32 Assessments*, at pp. 4-5 (April 21, 2010) http://www.arb.ca.gov/cc/ab32publichealth/communitymethod.pdf.

[52] *See* Cal/EPA, *Cumulative Impacts: Building a Scientific Foundation*, at pp. 60-69 (December 2010) (describing various major types of environmental justice scoring procedures used).

agencies, could be used to gauge the level of air pollution burden in the vicinity of the plant. For the community health criteria, the rates of relevant diseases such as asthma and heart disease within the zones of influence may be obtained from county health departments. Additional scoring criteria could be utilized to characterize the significance of pollution generated by the plant itself. In this way, power plants and other energy resources that are stationary sources of pollution could be assigned relative environmental justice scores. Developing a scoring method for resources that are geographically more dispersed would require applying a similar methodology but on a more regional basis.

Q. Do the utilities' bid evaluation criteria adequately address environmental justice?

A. No. The utilities make no mention of using any environmental justice criteria in their bid evaluations. This omission is alarming considering, among other things, that PG&E previously considered environmental justice as a criterion in the 2008 LTRFO.[53] Moreover, the utilities apparently have ignored the Commission's directive that they provide greater weight to considerations of "disproportionate resource sitings in low income and minority communities, and environmental impacts/benefits . . . ."

B. Need Determination and Adherence to the Loading Order

Q. Do you have concerns with the utilities' compliance with the Commission's need determinations and the loading order in carrying out their RFOs?

A. Yes. The utilities have consistently failed to adhere to the Commission's need determinations, requesting more need than was determined by the Commission, as well as continually failing to adhere to the loading order.

Q. Please describe the role of need determinations in RFOs.

[53] D.10-07-045, at p. 20.

A. The utilities propose need assessments for their system reliability and for bundled customer service.[54] These assessments are litigated and the Commission ultimately makes a finding of the utilities' need. The utilities then issue RFOs to fill the Commission's need determination.[55]

Q. Are you aware of any problems with the utilities' treatment of need determinations in RFOs?

A. Yes. In its 2008 LTRFO, PG&E disregarded the 2006 LTTP's need determination of 800-1200 MW. Specifically, PG&E requested approval of more MW of new generation than the Commission had approved.[56] As Commissioner Dian M. Grueneich noted in a concurrence to the PG&E 2008 LTRFO decision, "over-procurement contradicts the policy of procuring preferred resources from the loading order adopted by the Commission. If PG&E over-procures fossil generation, the cost-effectiveness of preferred resource programs diminishes."[57]

Q. Has the Commission required the utilities to adhere to the loading order when filling need?

A. Yes. The 2004 and 2006 LTPP made procurement of preferred resources a priority.[58] In the 2006 LTPP, the Commission also commented that "while it is apparent that IOU staff labored to comply with the Scoping Memo, their efforts resulted in plans that do not fully reflect our goals in regards to preferred resources and a commitment to

[54] D.07-12-052, at p. 100.
[55] *See* D.07-12-052, at p. 148.
[56] D.10-07-045, at pp.13-14, 33.
[57] D.10-07-045, Concurrence Of Commissioner Dian M. Grueneich at July 29, 2010 Business Meeting, Agenda ID# 3258, Item 44, at p. 4.
[58] D.07-12-052, at pp. 4-5.

the EAP loading order."[59] This failure to fill need with preferred resources was a problem in the 2004 LTPP as well.[60]

Q. Do the utilities' bid evaluation criteria adequately address compliance with the loading order and the Commission's need determinations?

A. No. For example, PG&E's Testimony suggests that its portfolio fit criteria incorporates loading order considerations and is therefore sufficient to ensure compliance with the loading order.[61] However, PG&E offers only the following sentence in support: "[portfolio] fit means how well an offer's features match PG&E's portfolio needs within the context of California's Energy Action Plan II Loading Order."[62] Its testimony does not specifically describe how the loading order will be considered in all solicitations. Given that the Commission has faulted the utilities in previous LTTPs for failing to give preference to renewable resources, the Commission should require the utilities to lay out specific, step-by-step guidelines to follow for prioritizing preferred resource bids in RFOs.

Q. What steps should be taken to properly assess need and loading order?

A. Resource need and loading order assessments for any bid should start with an assessment of the all the resources that the utilities have procured on the demand and supply side, and all other load reductions that have occurred on the grid, including increased distributed generation and storage since the last assessment of need. This analysis would help ensure that the utilities are not procuring to meet a need that has already been filled by other resources.

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[59] D.07-12-052, at p. 7.
[60] D.07-12-052, at p. 7 (citing the 2004 LTPP decision); D.04-12-048, at p. 87.
[61] PG&E Track III Test., at p. 2-4.
[62] PG&E Track III Test., at p. 2-4.

In addition, the demand forecast should be updated to reflect the most recent forecast. While the LTPP will determine unmet need, this should be periodically supplemented with updated load forecasts and other information.

Moreover, the utilities should consider the specific need and the type of product that can meet that need. For example, if there is local need to meet a peak demand for only a couple of hours a year, then resources high on the loading order, such as targeted energy efficiency or automated demand response, should be given priority. Once an RFO commences, bids for resources higher in the loading order should have priority over bids lower in the order.

C. Project Viability

Q. Has the Commission addressed the importance of considering the viability of offers in RFOs?

A. Yes. The 2006 LTPP listed project viability as a major concern and directed the utilities to "be more proactive in determining project viability among the offers submitted into RFOs."[63]

Q. Are you aware of problems with how project viability has been handled by the utilities in their RFOs?

A. Yes. The Commission held that project viability was not properly assessed in PG&E's 2004 LTRFO.[64] Of the seven projects approved, only one had received a construction permit at the time of the 2006 LTPP decision.[65] The 2006 LTPP implored

[63] D.07-12-052, at p. 158.
[64] D.07-12-052, at p. 71.
[65] D.07-12-052, at p. 157.

the utilities to use "greater scrutiny" in assessing viability in light of the failures of the 2004 LTRFO.[66]

Q. Does PG&E's proposed bid evaluation criteria adequately address viability?

A. No. There is not enough detail regarding PG&E's proposed assessment of project viability. PG&E does not describe how it will assess the project's technology, or how it will factor in the experience of the bidding party. Additionally, there is no methodology for comparing bids once all the viability factors are measured.

By way of comparison, the Commission provides a Project Viability Calculator for the utilities to use in comparing RPS bids.[67] The viability calculator places numerical values on factors such as project development experience and ownership; if the bidder has completed two projects with similar technology, the ranking for project development experience would be a 10.[68] The calculator then it adds up the values in various categories to assess overall viability.[69] PG&E does not offer any similar approach which assesses these factors together, thus it will be unclear how it reaches a determination that one bid is more viable than another.

Q. Can you point to other jurisdictions that are more effectively assessing project viability?

A. Yes, a review of Texas's RPS bid assessment practices by Lawrence Berkeley National Laboratory demonstrates a more effective approach to assessing project

[66] D.07-12-052, at p. 157.
[67] Commission Website, Project Viability Calculator, *available at* http://www.cpuc.ca.gov/PUC/energy/Renewables/procurement.htm.
[68] *Id.*
[69] *Id.*

viability.[70] In Texas, contract terms "strongly penalize" project delays, operational problems, and failure to meet construction milestones.[71] Given these penalties, bidders have a major incentive to fully and adequately assess project viability.[72] Thus, projects are only selected if developers can demonstrate the business and technical expertise to deliver on-time and within the contract requirements.[73]

The report found that "[u]nlike competitive bidding situations in . . . California under its system-benefits charge policy, there is little incentive in Texas for developers to propose projects that do not have high probability of completion."[74]

Q. What steps should be taken to properly assess viability?

A. In order to ensure adequate assessment of project viability, bids should first have to meet certain benchmark criteria before going through any comparison methodology. The Commission's viability calculator for RPS projects hits on key viability issues, but uses them as factors rather than minimal requirements.[75] For example, the calculator will take scores for criteria such as technical feasibility and project development and come up with an overall score.[76] The danger in this approach is that a project with no real chance of being completed and serviceable could be approved despite very low technology and experience scores. There are certain minimal standards that bids should meet in order to assure viability. The bid must 1) demonstrate land control, 2) have support showing the use of the specific technology suggested is technically and economically feasible and

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[70] O. Langniss & R. Wiser, *The Renewables Portfolio Standard in Texas: An Early Assessment*, 31 Energy Policy 527 (2003), *available at* http://porter.appstate.edu/ncwind/www/reports/texas%20rps%20energy%20policy%20final.pdf.
[71] *Id.* at pp. 530-31.
[72] *Id.* at p. 530.
[73] *Id.* at p. 531.
[74] *Id.* at p. 530.
[75] Commission Website, Project Viability Calculator, *available at* http://www.cpuc.ca.gov/PUC/energy/Renewables/procurement.htm.
[76] *Id.*

stating the project is economically feasible, 3) have a permitting plan, and 4) have interconnection feasibility studies completed. Bids that meet these requirements may then be weighed side by side using a methodology akin to the project viability calculator.[77]

In other words, certain indicators should not just be assessed as one weighted factor within a viability determination, but should create a presumption that a project is unviable and a project should only be considered viable when the criteria above is met. Additionally, and as discussed above, a penalty and reward mechanism similar to the one used in Texas is also necessary because it provides incentive to select the more viable bids.

The Commission should also give the PRG, IE, and the CAM group the proper scope and authority to assure these considerations are in play during the bidding process. The details of this proposal are in the sections dedicated to the IE, PRG and CAM group.[78]

D. Utility Owned Generation

Q. Are there any other concerns with the utilities' proposed bidding protocols?

A. Yes. PG&E's current proposals would weaken oversight over the bidding process by allowing all UOGs in the RFO process.[79]

Q. Why is allowing UOGs in the RFO process problematic?

A. Utility build bids were prohibited from competitive RFOs in the last LTPP because the Commission had "insufficient experience . . . regarding how the different qualitative and quantitative attributes associated with straight Utility build bids and IPP

[77] *Id.*
[78] *See* Section III infra.
[79] PG&E Track III Test., at p. 2-14.

[Independent Power Producer] bids that are identified in D.04-12-048 (performance risk, credit risk, 0-year versus life-of-asset price terms and operational flexibility) will be reconciled in order to perform meaningful, apples-to-apples comparisons of Utility build and IPP bids."[80]

Q. Do the utilities agree with each other about how UOGs should be treated in the RFO process?

A. No. Currently the utilities are split on whether these comparisons can meaningfully be made. PG&E wants all UOGs to be allowed in the RFO process,[81] while, SCE thinks that UOGs cannot be compared to PPAs and should not be in the RFO process.[82] SDG&E falls in the middle, stating that the current practice of allowing UOGs that are not utility build bids into RFOs does not need to be changed, but it offers guidelines on the standards which should be met if changes are made.[83]

Even if PG&E's methodology provides a meaningful way to compare utility build bids and IPP bids, allowing utility build bids into the RFO process at the very least creates the appearance of significant conflict of interest that would hamper the fair and transparent bidding process. For example, there could be issues with the values associated with UOG bid criteria because the utility is acting as bidder and bid selector. The 2006 LTPP allowed other UOG bids into the RFO process because the Commission was satisfied with the PRG, IE and ED oversight in place.[84] However, this oversight has been in sufficient in light of conflict of interest issues.[85]

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[80] D.07-12-052, at p. 207.
[81] PG&E Track III Test., at p. 2-14
[82] SCE Track III Rules Test., at pp. 13-17.
[83] SDG&E Track III Test., at pp. 19-21
[84] D.07-12-052, at p. 206
[85] *See* Section III below.

Additionally, allowing utility build bids provide significant environmental concerns. UOGs generally have longer contracts and there is a greater commitment because of utility ownership. It is impossible to accurately forecast need 20-30 years into the future and these commitments lock in current assumptions that could be well above actual need. As an overarching environmental concern, because of the conflict of interest issues discussed above, there are not enough safeguards currently in place to assure a UOG will not be chosen over a worthy renewable project.

Q. Do other aspects of the utilities' proposals concern you?

A. Yes. PG&E also recommends that the utilities be able to recover costs associated with losing UOG bids and that bidding parties should not be subject to penalties or rewards.[86]

Q. Why is allowing PG&E to recover costs from losing bids a concern?

A. Allowing utilities to recover costs from losing bids gives them an unfair advantage. While IPPs may recover lost costs for unsuccessful bids by winning a bid at some point, the utilities would not have to win any bid to recover costs under PG&E's proposal. Moreover, allowing cost recovery from losing bids would force ratepayers to subsidize UOG bids with no penalty/reward mechanism in place to assure those bids are competitive and viable. Accordingly, PG&E's request should be denied.

III. PROCUREMENT OVERSIGHT RULES

A. General Comments on Procurement Policy

Q. Do you have any general recommendations for improving the Commission's procurement policies?

[86] PG&E Track III Test., at p. 2-14.

A. Yes. There are fundamental criteria that should be used for evaluating procurement policy. As a study prepared by Analysis Group for The National Association of Regulatory Utility Commissioners recommends:

> Where regulators have committed to relying upon competitive procurement approaches as a means to help identify the 'best' resources needed to meet the needs of the utility's customers, the process should have and be viewed as being: Fair and objective; Encouraging of a robust competitive response and creative proposals from market participants; Based on appropriate and relevant evaluation of price and non-price factors; Efficient and timely in offer selection; Positively supported by regulatory actions that reinforce the commission's commitment to the other criteria.[87]

B. Comments on Treatment of Procurement Rulebook as Enforceable Set of Rules

Q. Do you have any comments regarding Energy Division Staff's ("Staff") proposal that the Commission adopt the procurement oversight rules in Attachment 1 to ALJ Allen's June 13, 2011 Ruling as a set of enforceable rules?[88]

A. Yes. Pacific Environment continues to recommend that any compendium of procurement rules by Staff should not be treated as a binding set of rules, but rather should act as a reference guide.[89] Thus, Pacific Environment opposes Staff's recommendation that the Commission adopt the rules in Attachment 1 as enforceable.

Q. Please summarize the basis for your opposition.

A. First, Pacific Environment continues to believe that adopting a wholesale set of draft procurement rules based on numerous Commission decisions without more extensive review is misguided.[90] The rules in Staff's proposal were developed over many years, in many proceedings, and typically involve extensive factual records. An adoption

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[87] S. Tierney, et. al., Analysis Group, *Competitive Procurement of Retail Electricity Supply: Recent Trends in State Policies and Utility Practices* (July 2008), at p. 7, *available at* http://www.naruc.org/Publications/NARUC%20Competitive%20Procurement%20Final.pdf.
[88] ALJ Allen's June 13, 2011 Ruling, at Appendix B, pp. 2-3.
[89] *See generally* Pacific Environment's Comments on Draft Rulebook (June 21, 2010).
[90] *Id.* at pp. 4-5.

of Attachment 1 as an enforceable set of rules could have the impact of obscuring this factual context and creating unnecessary confusion related to the interpretation of ambiguous terms. Further, Pacific Environment remains concerned that adopting enforceable rules in this manner would run afoul of the procedural rights afforded to interested parties when the Commission amends or repeals a prior decision.[91]

Second, Pacific Environment believes that an enforceable set of procurement rules must contain rules that codify Commission decisions related to prioritizing the procurement of preferred resources, including distributed generation, energy efficiency, energy storage, and other types of renewable energy consistent with the Energy Action Plan II's loading order.[92]

C. Procurement Review Group

Q. What comments do you have regarding Staff's proposed Procurement Review Group rules?

A. Staff's proposed rules regarding the Procurement Review Group ("PRG") are a step in the right direction, but additional safeguards should be put in place. Providing confidential meeting summaries to the PRG within 14 days, and providing information on a web-based calendar will help strengthen Commission oversight. Additionally, allowing the public to view the non-confidential information listed in Staff's proposal[93] will help ensure that the PRG is an effective public protection measure and will allow the public to comment on the bidding process.

Q. Do you have any recommendations for strengthening PRG oversight further?

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[91] *See* Pub. Util. Code, §§ 1708, 1708.5.
[92] Pacific Environment's Comments on Draft Rulebook (June 21, 2010), at p. 2.
[93] ALJ's June 10, 2011 Ruling, at p. 17. ("[D]ate, meeting time and duration of the meeting; the individuals participating in the meeting and organization represented by the individual; and a list of nonconfidential items discussed.").

A. Yes. Pacific Environment continues to believe that the scope of PRG review should include the utilities compliance with environmental justice concerns, the loading order, the Commission's need determinations, and project viability. Moreover, PRG recommendations should carry greater weight. Finally, Pacific Environment recommends that more PRG members be required to have environmental backgrounds.

Q. Please elaborate on the additional steps that you believe should be taken to assure a strong and effective PRG?

A. In addition to Staff's proposals, there are several other ways to improve PRG oversight and assure utility compliance with Commission and Public Utilities Code mandates. First, the Commission should clearly define the scope of PRG review to include adherence to the loading order, environmental justice, need determinations, and project viability considerations. The PRG was established to protect consumers from any "anti-competitive conduct between utilities and their affiliates."[94] When considering "anti-competitive conduct," the PRG currently reviews, and should continue reviewing, procurement activities such as RFO development, bid evaluation and ranking, gas supply plans, hedging strategy, Consumer Risk Tolerance (CRT) triggers, nuclear fuel plans, congestion revenue rights, new technologies, and procurement portfolio position and transactions.[95] In order to perform these evaluations substantively and ensure the utilities' compliance with procurement rules and requirements,[96] the PRG must be able to review adherence to the loading order, environmental justice mandates, need determinations, and project viability considerations. Pacific Environment's Testimony of

[94] *See* D.04-12-048, at pp. 124, 129; D.04-01-050, at 195; ; D.03-12-062, at pp. 44-45;
[95] D.07-12-052, pp. 119-120.
[96] Pub. Util. Code, § 454.5(d)(1); Pub. Util. Code, § 453; Pub. Util. Code, § 701.1(c); Pub. Util. Code, § 454.5(b)(2); D.07-12-052, p. 1; *see* Energy Action Plan II, at p. 2. (authority requiring consideration of environmental justice, loading order, best fit/least cost, need, and viability).

bid evaluation criteria in Section II above provides a detailed discussion of how each of these issues could be evaluated.

The second way to improve PRG oversight is to give greater weight to PRG recommendations. Even with substantive and meaningful PRG review, if PRG recommendations are discretionary then there is no assurance that procurement requirements are being met. TURN expressed concern in its 2010 LTPP Track II opening brief that the utilities often do not follow their PRG recommendations.[97] In order to lend the proper weight to PRG opinions and have meaningful procurement review, utilities should have the burden of rebutting a PRG recommendation if the utilities seek approval that is inconsistent with the recommendation.

Finally, requiring a member with an environmental background would assure compliance with Code requirements regarding environmental concerns. The Staff proposal defines eligible PRG members as:

> 1) members from the Energy Division, who will be ex officio members of the PRG; 2) members from the Division of Ratepayer Advocates, who will be ex officio members of the PRG and 3) a limited number of members, who are non-market participants as defined in the Protective Order11.[98]

PG&E suggests that the definition of "non-market participants" be defined by Commission decisions rather than Protective Order 11.[99] By either definition a "non-market participant" does not explicitly include parties addressing environmental concerns. Pacific Environment recommends that to effectively ensure that environmental

[97] Opening Brief Of The Utility Reform Network On Renewable Procurement And Gas Supply Plan (Public) in R.10-05-006, at p. 7 ("TURN can attest to many occasions where SCE has executed transactions despite the strident (and even unified) opposition of TURN, DRA and other participants.")
[98] ALJ's June 13, 2011 Ruling, at Appendix B, p. 12.
[99] PG&E Track III Test., at p. 4-6.

and environmental justice concerns are addressed, the Commission should require an additional PRG member category of non-market environmental expert participants.

Q. Do the utilities propose any changes to or criticisms of Staff's proposed PRG?

A. Yes, the utilities propose revisions and criticize Staff's important proposals to strengthen Commission oversight and transparency. PG&E proposes that confidential meeting summaries be provided 48 hours before the next scheduled PRG meeting as opposed to within 14 days of the meeting,[100] and SDG&E argues that the 14 day requirement unnecessary and burdensome.[101]

PG&E proposes to clarify the requirement for redistributing corrected PRG meeting materials when errors are discovered in the materials.[102]

PG&E and SDG&E take issue with Staff's proposal requiring that PRG meetings are held when material barriers to hedging arise. PG&E recommends that it should not be required to submit an expedited application after PRG meetings when material barriers to hedging arise.[103] Similarly, SDG&E is generally opposed to PRG meetings when material barriers to hedging arise.[104]

PG&E and SCE also object to the proposed required information for Congestion Revenue Rights ("CRR") procurement.[105]

SCE proposes that PRG meeting should not occur after RFOs for RPS procurement or when the utility is not seeking Commission pre-approval.[106] SCE also

[100] PG&E Track III Test., at p. 4-8
[101] SDG&E Track III Test., at p. 31-32.
[102] PG&E Track III Test., at p. 4-8.
[103] PG&E Track III Test., at pp. 4-6 to 4-7.
[104] SDG&E Track III Test., at pp. 30-31.
[105] PG&E Track III Test., at pp. 4-7; SCE Track III Testimony, at pp. 29.
[106] SCE Track III Rules Test., at p. 27-28.

recommends that PRG members should not be required to give the utilities written comments.[107]

Q. Do you believe the utilities' concerns and proposed changes are well founded?

A. No. The utilities' concerns are not well founded and their proposed changes to Staff's proposals should be rejected.

Q. Let's take each proposed utility change separately. Why should the Commission reject the utilities' proposals to provide confidential meeting summaries 48 hours before the next scheduled PRG meeting or to have no timeline at all?

A. This proposal risks eroding communication between the PRG and the utilities. PG&E gives no good reason why it cannot comply with the 14 day deadline and the effectiveness of the PRG without justification for this erosion. There is no guarantee that 48 hours is sufficient time to review a meeting summary before the next meeting commences. The material may require extensive review and PG&E does not indicate whether the 48 hours includes weekends and holidays.

SDG&E argues that the 14 day deadline is unnecessary because SD&E has a process in place which provides the same information, and that the 14 day deadline is arbitrary and burdensome.[108] But, if SDG&E is already providing the same information in a "timely fashion," then the deadline is neither arbitrary nor burdensome.

Q. Do you have concerns with PG&E's recommendation that the utilities should only be required to circulate corrected PRG meeting materials when there are substantive errors in PRG materials?

[107] SCE Track III Rules Test., at p. 27.
[108] SDG&E Track III Test., at pp. 31-32.

A. Yes. This proposal risks eroding communication between the PRG and the utilities if "non-substantive" is not clearly defined. If PG&E is recommending that "non-substantive" errors should not require redistributing corrected PRG materials, then "non-substantive" requires clarification.[109] In response to Pacific Environment's data request, PG&E states that the intent of its proposal is to exempt typographical errors and other non-material mistakes from the redistribution requirement.[110] Pacific Environment does not oppose excluding typographical errors from the requirement. However, any definition of substantive/non-substantive error must be defined to specifically exclude only minor and typographical errors and should include examples of what types of errors would qualify as substantive/non-substantive.

Q. Why should the Commission reject the utilities' proposal for not requiring PRG meetings when material barriers to hedging arise or to not require an expedited application after these meetings?

A. SDG&E's argument against holding PRG meetings when material barriers to hedging arise should be rejected because it allows the utilities to make potentially impactful procurement decisions without the appropriate oversight. SDG&E claims its quarterly meeting with its PRG is sufficient to address hedging issues,[111] but this is merely an after-the-fact review which does not offer the same level of oversight as Staff's proposal.

PG&E's argument for rejecting Staff's proposal for increased oversight of hedging also should be rejected. PG&E's proposal risks delaying review of hedging

[109] PG&E Track III Test., at p. 4-8.
[110] Attachment 1 (PG&E Response to Pacific Environment's Third Set of Data Requests, Question No. 9 (served on July 21, 2011)).
[111] SDG&E Track III Test., at p. 30.

changes. PG&E argues that the requirement of filing an expedited application within 15 days is unreasonable because changes to hedging have to go through a T3 advice letter anyway,[112] but if time is an issue as PG&E states,[113] then the expedited application would be a favorable approval process.

Q. Do you have any concerns with the utilities' proposed changes to Staff's proposals for Congestion Revenue Rights ("CRR") information?

A. Yes. The utilities' proposals to not include reporting impacts of CRR procurement on TeVaR calculations, and reporting the expected value of CRR to ratepayers, are concerning because they limit the information the PRG has to make reasoned assessments on CRR procurement. PG&E argues that the impacts of CRR procurement on TeVaR are "not material."[114] However, PG&E does not provide any examples or information to support this statement.[115]

Additionally, PG&E and SCE argue that calculating the expected value of CRRs to ratepayers is too burdensome and has little value.[116] But, Staff's proposal allows for estimates and the methodology behind those estimates if the calculations are not practical.[117]

Q. Why should the Commission reject SCE's recommendation that PRG meetings not occur after RFOs for RPS procurement or when the utility is not seeking Commission pre-approval?

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[112] PG&E Track III Test., at pp. 4-6 to 4-7.
[113] *Id.*
[114] PG&E Track III Test., at p. 4-7.
[115] *Id.*
[116] PG&E Track III Test., at p. 4-7; SCE Track III Procurement Policy Testimony at p. 29.
[117] ALJ's June 13, 2011 Ruling, at p. 16.

A. SCE's proposal erodes Commission oversight of the procurement process. All utility procurement decisions must adhere to the Commission's procurement rules, thus the PRG is a necessary check on the utilities' RPS procurement efforts. SCE's concern that PRG review may delay its RPS RFO process by "several months"[118] is not a compelling justification, and the other utilities do not make similar requests.

D. Independent Evaluator Oversight

A. Do you have any recommendations regarding Staff's proposed rules regarding Independent Evaluator oversight?

Q. Yes. As recommended in Pacific Environment's Track II Testimony and briefing,[119] we continue to believe that Energy Division, not the utilities, should be primarily responsible for selecting qualified IEs. To the greatest extent possible, it is essential that the Commission take steps to eliminate real and perceived conflicts of interest and to ensure truly independent oversight. Indeed, after analyzing procurement policies across the nation, the Analysis Group found that a key safeguard to guard against improper self-dealing is the "[u]se of an independent monitor [i.e., independent evaluator] throughout all phases of the process."[120]

The Commission considered transferring IE contracting authority to the Commission in D.07-12-052 and, although it declined at that time to do so, committed to exploring ways to transfer contracting authority.[121] Pacific Environment believes that the Commission should not delay this transfer of contracting authority any longer. Maintaining independence in IE selection is essential because "decisions about who

[118] SCE Track III Test., at p. 28.
[119] Pacific Environment's Track II Opening Brief [public redacted] (June 17, 2011), at p. 25.
[120] S. Tierney, et. al., Analysis Group, *Competitive Procurement of Retail Electricity Supply: Recent Trends in State Policies and Utility Practices* (July 2008), at p. viii, *available at* http://www.naruc.org/Publications/NARUC%20Competitive%20Procurement%20Final.pdf.
[121] D.07-12-052, at p. 136.

selects the [IE], and to whom the [IE] reports may affect their independence and their ability to fulfill their duties in effective ways."[122] Moreover, it is feasible to have Energy Division contract with IEs, as evidenced by the fact that other states have commission staff select the independent evaluator or monitor.[123]

Q. Do you have any other recommendations regarding IEs?

A. Yes. As detailed in Pacific Environment's Track II Opening Brief, we continue to believe that IEs should have the authority to consider the loading order and overall need in all the projects they oversee.[124] Such authority would help assure that the utilities' procurement decisions adhere to the Public Utilities Code's mandate to ensure just rates and a fair and competitive procurement process.

E. Cost Allocation Mechanism Group

Q. What is your understanding of the Cost Allocation Mechanism ("CAM") Group?

A. Each utility is required to develop and convene an advisory CAM group for which the utilities recover costs from bundled and unbundled customers using the D.06-07-027 CAM or its successor.

Q. Is CAM similar to the PRG?

A. Yes, "[t]he CAM group will operate identical to the PRG, except that it will only review and consult on procurement activities for which costs may be recovered using the CAM."[125] Also, the current PRG participants will be participants of the CAM group. Furthermore, the CAM group participants will have the same access to the same types

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[122] *Id.* at p. 22.
[123] *See, e.g.*, Public Utility Commission of Oregon, Order No. 06-446, at p. 6, *available at* http://apps.puc.state.or.us/orders/2006ords/06-446.pdf; Utah Administrative Code, R746-420-1, Requests for Approval of a Solicitation Process, *available at* http://www.rules.utah.gov/publicat/code/r746/r746-420.htm#T1.
[124] Pacific Environment's Track II Opening Brief [Public Redacted] (June 17, 2011), at pp. 23-24.
[125] ALJ's June 13, 2011 Ruling, at p. 16.

and quality of information as do PRG participants. Essentially, the PRG and the CAM group serve identical functions.

Q. Should CAM and the PRG have similar procedural safeguards?

A. Yes, since the two operate in identical fashion any procedural safeguards the Commission decides to strengthen in regards to the PRG should also be applied to the CAM group.

IV. GREENHOUSE GAS PRODUCTS, PROCESSES, AND RISK MANAGEMENT STRATEGIES

Q. Please describe the GHG-related procurement issues that Administrative Law Judge Allen's June 13, 2011 Ruling requires the utilities to analyze.

A. The June 13 Ruling requires the utilities to provide testimony on their proposed GHG management framework (including evaluation of greenhouse gas risks associated with utility-owned generation, bilateral contracts, and spot market purchases), and to explain how such greenhouse gas management framework would govern the utilities proposed upfront achievable standards for greenhouse gas allowance and offset procurement.[126]

Q. The utilities maintain that it is imperative that the Commission issue a final decision on their GHG procurement plans by the end of 2011.[127] Do you agree with the utilities?

A. No. The utilities likely overstate the urgency of approving their GHG procurement plans by the end of 2011. The Cap-and-Trade Program is currently in a state of flux. The California Air Resources Board ("ARB") is currently reviewing its

[126] ALJ's June 13, 2011 Ruling, at p. 7.
[127] *See* PG&E Track III Test., at p. 3-22.

earlier program proposal and examining alternatives to the Cap-and-Trade program.[128] In addition, even if the Cap-and-Trade program is implemented, ARB has proposed delaying the utilities' compliance obligations under the Cap-and-Trade program until January 2013.[129] Hence, 2012 will effectively become a test phase for the program,[130] and according to ARB Staff "will result in fewer allowances being allocated in the first compliance period."[131] It is not yet certain which other aspects of the program will begin in the test phase, if at all.[132] The details of the proposed Cap-and-Trade program are rapidly developing, as evidenced by the numerous proposed changes to the program by ARB Staff, the utilities, and stakeholders to date.[133]

Q. What is your recommendation regarding the timing of a Commission decision on the utilities' GHG-related plans?

A. Due to the developing nature of the AB 32 rulemaking and the delay of the utilities' compliance obligations, Pacific Environment recommends that the Commission issue an interim decision on the utilities' proposed GHG plans in this proceeding. Then,

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[128] ARB Cap-and-Trade Rulemaking, *Notice of Public Availability of Modified Text and Availability of Additional Documents* (July 25, 2011), *available at* http://www.arb.ca.gov/regact/2010/capandtrade10/candt15daynot2.pdf.

[129] Chairman Mary Nichols Testimony Before Senate Select Committee on Environment, Economy & Climate Change (June 29, 2011) ("Nichols Testimony"), *available at* http://www.arb.ca.gov/cc/testimony/testimony.pdf.

[130] *See* Environmental Leader, *California ARB Delays Cap-and-Trade Start* (July 1, 2011) *available at* http://www.environmentalleader.com/2011/07/01/california-arb-delays-cap-and-trade-start/.

[131] *ARB Staff Proposal for Allocating Allowances to the Electric Sector* (July 27, 2011) in *Rulemaking to Consider the Adoption of a Proposed California Cap on Greenhouse Gas Emissions and Market-based Compliance Mechanisms Regulation* ("Cap-and-Trade Rulemaking") ("Specifically, the total amount of allowances apportioned to the [utility] sector will decrease by 97.7 MMT, the amount of allowances scheduled to be allocated in 2012"), *available at* http://www.arb.ca.gov/regact/2010/capandtrade10/candtappa2.pdf.

[132] *See id.*

[133] ARB, *Notice of Public Availability of Modified Text and Availability of Additional Documents* (July 25, 2011), *available at* http://www.arb.ca.gov/regact/2010/capandtrade10/candt15daynot2.pdf; *see also* Inside Cal/EPA, *Utilities, Others Press ARB For Multiple Cap & Trade Rule Changes*, Vol. 22, No. 29 (July 22, 2011).

near the end of 2012, having the benefit of market experience, the Commission should issue a final decision on the plans.

Q. Can you describe the GHG-related products, processes, and strategies the utilities propose for Commission approval?

A. The utilities request approval of two GHG compliance products: First, a "GHG allowance" product defined as a "compliance instrument accepted by CARB providing the right to emit one mtCO2e to satisfy obligations under the Cap-and-Trade regulation."[134] Second, a "GHG offset" product defined as a "compliance instrument representing a verified emission reduction that is accepted by CARB in lieu of a GHG Allowance to satisfy obligations under the Cap-and-Trade regulation."[135] The utilities propose to procure these products from ARB-held auctions and other secondary markets.[136]

Q. How do the utilities plan to recover the costs related to procuring these GHG products?

A. The utilities propose to record costs for GHG products in their Energy Resource Recovery Account for recovery in rates.[137] In other words, PG&E and SDG&E propose to pass all the costs related to allowances that are procured pursuant to the upfront standards proposed in their GHG procurement plans onto the ratepayers.[138] Similarly, SCE requests recovery of recorded GHG products consistent with the Commission's

[134] *See* PG&E Track III Test., at p. 3-9; Testimony of SCE on Track III Issues – GHG Procurement Plan [Public] ("SCE GHG Procurement Plan"), at pp. 6-7 (SCE calls its products GHG Hedging Products, which include both allowances and offsets); SDG&E Track III Test., at pp. 6-7.
[135] *Id.*
[136] PG&E Track III Test., at p. 3-4; SCE GHG Procurement Plan, at p. 6; SDG&E Track III Test., at pp. 8-12.
[137] PG&E Track III Test., at p. 3-20; SDG&E Track III Test., at pp. 16-17; SCE GHG Procurement Plan, at pp. 20-21.
[138] *See* PG&E Track III Test., at p. 3-20; SDG&E Track III Test., at pp. 5-6.

current approach for recorded fuel and purchased power costs.[139] SCE's plan also passes all GHG product procurement costs onto ratepayers.

Q. Do you believe that the utilities' plan to automatically pass all of the costs of allowances onto ratepayers is reasonable?

A. No. Given the novelty, uncertainty, and complexity of the proposed Cap-and-Trade program, the ratepayers should not bear all of the risks associated with the carbon market.

Q. Do you believe that the Commission can and should strike an equitable balance between procuring GHG related products and reducing GHG emissions?

A. Yes. The Commission should adopt a recovery mechanism that encourages GHG product procurement practices that are aligned with AB 32's overall goal of reducing GHG emissions.

Q. Please explain how the Commission might establish a cost recovery program that incentivizes emissions reductions and discourages over-reliance on purchasing and banking allowances.

A. GHG cost recovery policy should allow utilities rate recovery for investments in technology or other types of resources that reduce GHG emissions. The utilities should only be allowed to recover costs for reductions that are just and reasonable and result in real GHG reductions. In addition, when recovering costs from the ratepayers for procurement of allowances, the utilities should only receive cost recovery for allowances that are actually used, at the time they are used. Thus, rate recovery should be linked with GHG goals in order to protect the ratepayers and achieve the GHG reduction goals set forth by AB 32. The formula for determining the rate recovery for investments in

[139] SCE GHG Procurement Plan, at p. 20.

technology that reduce emissions would need to provide a financial incentive for the reduction.

Q. Please describe the Commission oversight of GHG-product procurement that the utilities' testimony proposes.

A. The utilities propose very little oversight. Generally, the utilities propose reporting all GHG-related product transactions in their Quarterly Procurement Compliance Report and annual ERRA Compliance proceeding.[140]

Q. Given the novelty, uncertainty, and complexity of the proposed Cap-and-Trade program, do you believe that these oversight procedures are sufficiently protective of the ratepayers?

A. No. The Commission should strengthen the oversight procedures. For example, it would be prudent for the utilities to consult with their PRG and IE regarding bidding strategies at multiple points during 2012 and 2013 as market experience is gained. Likewise, the utilities should at least be required to file advice letters for offset transactions because, as SCE admits,[141] offsets are inherently more risky and less valuable than allowances.

Q. Are there concerns with the utilities being able to bank allowances?

A. Yes, under the proposed regulation allowances can be banked for use in later compliance periods.[142] When utilities procure more allowances than needed to maintain compliance with AB 32 and bank them, the ratepayers would bear the costs for the excess allowances even if those allowances are never redeemed.

[140] PG&E Track III Test., at p. 3-21; SCE GHG Procurement Plan, at pp. 20-21.
[141] SCE GHG Procurement Plan, at p. 6.
[142] PG&E Track III Test., at p. 3-3.

Q. Do you have a recommendation for protecting ratepayers from the risks associated with banking?

A. The utilities should not be allowed to recover costs for the procurement of banked allowances until the time when the allowances are used for compliance.

WITNESS QUALIFICATIONS

QUALIFICATIONS AND PREPARED TESTIMONY OF LINDA SHEEHAN

Q. Please introduce yourself.

A. My name is Linda Sheehan

Q. Who are you testifying on behalf of?

A. I am submitting testimony on behalf of Pacific Environment.

Q. Which sections of Pacific Environment's testimony are you sponsoring?

A. I am sponsoring Sections I.A-B on Staff's proposal to limit OTC contracts.

Q. Please describe your background and qualifications.

A. I am the Executive Director of the California Coastkeeper Alliance ("Coastkeeper"). Coastkeeper coordinates, supports, and enhances the work of the local California Waterkeeper programs to provide a statewide voice for safeguarding California's waters, and its world-renowned coast and ocean, for the benefit of all Californians and for California's future.

Coastkeeper is concerned with the ongoing destruction of marine life as a result of power plants using "once-through cooling" technology. We were instrumental in advocating for the passage of the State Water Resources Control Board's *Statewide Water Quality Control Policy on the Use of Coastal and Estuarine Waters for Power Plant Cooling*, which became effective on October 1, 2010. Our parent organization, Riverkeeper, was instrumental in passing section 316(b) of the Clean Water Act, which is intended to reduce the harmful effects associated with cooling water intake structures on marine and estuarine life.

I will hold this position until August 17, 2011, when I will leave Coastkeeper to found a new organization called Earth Law Center.

I have over 20 years of environmental law and policy experience, and have been Executive Director of the California Coastkeeper Alliance for nearly 7 years. I have achieved notable success in protecting the health of coastal waters by advancing legislation and policies to reduce polluted runoff, curtail sewage spills, increase coastal water quality monitoring, heighten enforcement of water laws, and make state water data readily available to all. I assisted in drafting the language of the SWRCB's once through cooling policy. I hold a B.S. in chemical engineering from the Massachusetts Institute of Technology; an M.P.P. from the University of California, Berkeley's Goldman School of Public Policy, where I was a Berkeley Policy Fellow; and a J.D. from the University of California's Boalt Hall School of Law.

Q. Please briefly describe the data, information, and reports on which you base your testimony.

A. My testimony is based on my review of publicly available sources. These sources largely consist of both state and federal regulations on once through cooling power plants, as well as reports produced by public agencies or consultants hired by public agencies.

QUALIFICATIONS AND PREPARED TESTIMONY OF RORY COX

Q. Please introduce yourself.

A. My name is Rory Cox.

Q. Who are you testifying on behalf of?

A. I am submitting testimony of behalf of Pacific Environment.

Q. Which sections of Pacific Environment's testimony are you sponsoring?

A. I am sponsoring Sections I.C, II.B-D, III, and IV.

Q. Please briefly describe your background and qualifications.

A. I am a Senior Energy Consultant for Pacific Environment. I have led a West Coast-wide effort to stop the development of Liquefied Natural Gas ("LNG") import terminals proposed for Mexico, California, and Oregon. I have written extensive comments regarding the need for LNG regulation and current trends in California's natural gas market to several California agencies, including the Public Utilities Commission, the State Lands Commission, and the California Air Resources Board. My comments played a direct role in the rejection of an application for the Cabrillo Port LNG terminal, to be located near Oxnard. I have authored a report on LNG entitled *Collision Course: How Imported Liquefied Natural Gas Will Undermine Clean Energy in California*, and edited a report entitled *Green Opportunity: How California Can Reduce Power Plant Emissions, Protect the Marine Environment, and Save Money.*

Q. Please briefly describe the data, information, and reports on which you base your testimony.

A. My testimony is based on my review of publicly available sources. These sources largely consist of prior Commission decisions, rulings, and policy manuals, as well as reports produced by CAISO and state environmental and energy agencies, such as the California Energy Commission.

QUALIFICATIONS AND PREPARED TESTIMONY OF KENNETH KLOC

Q. Please introduce yourself.

A. My name is Kenneth Kloc

Q. Who are you testifying on behalf of?

A. I am submitting testimony on behalf of Pacific Environment.

Q. Which section of Pacific Environment's testimony are you sponsoring?

A. I sponsoring Section II.A regarding considering environmental justice in the RFO process.

Q. Please describe your background and qualifications.

A. I am an environmental health scientist working for the Environmental Law and Justice Clinic at Golden Gate University. I provide environmental science support for legal cases and assistance to community groups involved in environmental health advocacy. I have 20 years of experience evaluating a broad range of pollution issues and environmental risks, and have worked as a health risk assessment specialist with engineering firms such as Jacobs Engineering Group and Dames & Moore (now URS). I am a member of the Cumulative Impacts and Precautionary Approaches Work Group, which provides advice to the California Environmental Protection Agency regarding cumulative environmental impact assessment and policy. I hold a B.S. in chemistry from the State University of New York, a Ph.D. in chemistry from University of California, and a Master of Pubic Health degree, also from University of California.

Q. Please briefly describe the data, information, and reports on which you base your testimony.

A. My testimony is based on my review of publicly available sources. These sources consist of reports and testimony published via the Commission's website and other reports produced by California public agencies.

ATTACHMENT 1

PACIFIC GAS AND ELECTRIC COMPANY
Long-Term Procurement Plan 2010 OIR-Track III
Rulemaking 10-05-006
Data Response

PG&E Data Request No.:	PE_003-09		
PG&E File Name:	LTPP 2010 OIR TIII_DR_PE_003-Q09		
Request Date:	July 7, 2011	Requester DR No.:	003
Date Sent:	July 21, 2011	Requesting Party:	Pacific Environment
PG&E Witness:	Kelly Everidge	Requester:	Deborah Behles

QUESTION 9

Energy Division proposes that the utilities send corrected Procurement Review Group ("PRG") meeting materials when an error in PRG materials is identified.[1] On page 4-8 of PG&E's Track III Testimony, PG&E "recommends that 'error' be defined and a word added to state 'non-substantitive error.'" Please explain the basis for this change.

ANSWER 9

PG&E is recommending that the Energy Division define the scope of what would constitute an error or state that non-materials errors would not require a formal re-distribution of materials to PRG members. For example, there may be a typographical error that constitutes no substantive change to the meaning, intent, or analysis of the procurement activities (presented to the PRG). To re-issue the materials based on this type of error would create confusion on what to review, especially when the error does not constitute a change to the focus of the procurement activity. Often times, clarification of meeting materials are discussed with PRG members during the meeting and corrections reflected in the meeting summaries.

1 Appendix "B" to ALJ Allen's June 10, 2011 Ruling, at p. 4.