BEFORE THE
PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Integrate and Refine Procurement Policies and Consider Long-Term Procurement Plans	R.10-05-006

OPENING BRIEF OF PACIFIC GAS AND ELECTRIC COMPANY (U 39 E) ON TRACKS I AND III

CHARLES R. MIDDLEKAUFF
MARK R. HUFFMAN

Pacific Gas and Electric Company
P. O. Box 7442
San Francisco, CA 94120-7442
Telephone: (415) 973-6971
Facsimile: (415) 973-5520
E-Mail: CRMd@pge.com

Attorneys for
PACIFIC GAS AND ELECTRIC COMPANY

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SUMMARY OF RECOMMENDATIONS

Pursuant to Commission Rule of Practice and Procedure ("Rule") 13.11, PG&E provides the following summary of its recommendations in Tracks I and III of this proceeding. PG&E recommends that the Commission:

- **Track I:** Adopt without modification the *Settlement Agreement Between and Among Pacific Gas and Electric Company (U 39 E), Southern California Edison Company (U338-E), San Diego Gas and Electric Company (U-902-E), the Division of Ratepayer Advocates, The Utility Reform Network, Green Power Institute, California Large Energy Consumers Association, the California Independent System Operator, the California Wind Energy Association, the California Cogeneration Council, the Sierra Club, Pacific Environment, Communities for a Better Environment, Cogeneration Association of California, Energy Producers and Users Coalition, Calpine Corporation, Jack Ellis, GenOn California North LLC, the Center for Energy Efficiency and Renewable Technologies, the Natural Resource Defense Council, NRG Energy, Inc., the Vote Solar Initiative, and the Western Power Trading Forum* filed on August 3, 2011 ("Track I Settlement Agreement").

- **Track I:** Consistent with the Track I Settlement Agreement, determine that the record in this proceeding does not conclusively demonstrate whether or not there is need to add capacity for renewable integration purposes through the year 2020.

- **Track I:** Consistent with the Track I Settlement Agreement, direct that the parties, in collaboration with the California Independent System Operator ("CAISO"), continue the work undertaken thus far in this proceeding to refine and understand the future need for new renewable integration resources, either as an extension of the current Long-Term Procurement Plan ("LTPP") cycle or as part of the next LTPP, with the goal of reaching a definitive determination of need by December 31, 2012.

- **Track I:** Consistent with the Track I Settlement Agreement, determine that there is no need to authorize procurement authority relating to local capacity requirements for PG&E's service area at this time.

- **Track III:** Reject the proposal attached to the *Administrative Law Judge's Ruling Addressing Motion for Reconsideration, Motion Regarding Track I Schedule, and Rules Track III Issues*, issued June 13, 2011 ("June 13th Ruling"), that arbitrarily and unnecessarily limits contracting with existing Once-Through Cooling ("OTC") units.

- **Track III:** Allow all types of Utility-Owned Generation ("UOG") offers in Request for Offers ("RFOs"), not just Purchase and Sale Agreements ("PSAs") and Engineering, Procurement and Construction ("EPC") contracts.

- **Track III:** Eliminate the prohibition in Decision ("D.") 07-12-052 on the Investor-Owned Utilities' ("IOUs") ability to recoup from ratepayers bid development costs for losing UOG offers, to the extent such costs are reasonable and prudent.

- **Track III:** Approve without modification PG&E's Greenhouse Gas Products, Processes and Risk Management Strategies included in Chapter 3 of Exhibit 107-C.

- **Track III:** Reject the Proposed Procurement Oversight Rules developed by Energy Division Staff attached as Appendix B to the June 13th Ruling, or, alternatively, determine that the Procurement Oversight Rules are not enforceable rules and establish a stakeholder process to revise and refine the Procurement Oversight Rules so that they are consistent with Commission decisions.

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OPENING BRIEF OF PACIFIC GAS AND ELECTRIC COMPANY (U 39 E) ON TRACKS I AND III

I. INTRODUCTION AND PROCEDURAL BACKGROUND

The 2010 Long-Term Procurement Plan ("LTPP") proceeding was initiated by an Order Instituting Rulemaking ("OIR") to "continue the Commission's efforts to ensure a reliable and cost-effective electricity supply in California through integration and refinement of a comprehensive set of procurement policies, practices and procedures underlying long-term procurement plans, and to provide the appropriate forum [] to consider the Commission's electric resource procurement policies and programs and how to implement them."[1] In the OIR, the Commission established three tracks to separately address various issues. Track I considers Commission jurisdictional needs for new resources to meet system or local resource adequacy and authorization of Investor-Owned Utility ("IOU") procurement to meet that need, including issues related to long-term renewables planning and need for replacement generation infrastructure to eliminate reliance on power plants using once through cooling ("OTC").[2] Track II considers the development and approval of individual IOU "bundled" procurement plans. Track III considers a number of policy issues related to procurement plans, as outlined by the

[1] *Assigned Commissioner and Administrative Law Judge's Joint Scoping Memo and Ruling*, issued December 3, 2010, at p. 2.

[2] OIR at p. 9.

Administrative Law Judge's ("ALJ") March 10, 2011 Ruling and subsequent rulings.[3]

A. Track I

The December 3, 2010 *Administrative Law Judge's Joint Scoping Memo and Ruling*, as well as subsequent rulings[4], described the Track I analysis required to be carried out by the IOUs, in conjunction with the California Independent System Operator ("CAISO"). The IOUs and the CAISO developed and analyzed system resource plans using four scenarios described in the Commission's rulings to fulfill the standardized planning assumptions established by the Commission (the "CPUC-Required Scenarios"). The IOUs also developed three additional scenarios and a sensitivity analysis ("IOU Common Scenarios"). In response to the requirements set forth in the series of ALJ Rulings, the IOUs and the CAISO, in conjunction with Energy and Environmental Economics, Inc. ("E3"), a consultant to the IOUs, also calculated the performance evaluation metrics associated with all of these scenarios.

On July 1, 2011, Pacific Gas and Electric Company ("PG&E"), Southern California Edison Company ("SCE"), and San Diego Gas & Electric Company ("SDG&E") (collectively the "Joint IOUs") provided Track I Joint Testimony which included final modeling analysis and results of the IOU Common Scenarios as well as the performance evaluation metrics for the CPUC-Required Scenarios. Each IOU also provided utility specific Track I testimony with further recommendations, including recommendations relating to Local Capacity Requirements ("LCR") in their respective service areas.

On August 3, 2011, twenty-three parties,[5] including the Joint IOUs, the Division of

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[3] *See, e.g.*, ALJ Rulings issued on May 31, 2011 and June 10, 2011.

[4] *See ALJ's Ruling Modifying System Track I Schedule and Setting Prehearing Conference*, issued February 10, 2011, and Attachments.

[5] PG&E, SCE, SDG&E, the Division of Ratepayer Advocates, The Utility Reform Network, Green Power Institute, California Large Energy Consumers Association, the California Independent System Operator, the California Wind Energy Association, the California Cogeneration Council, the Sierra Club, Pacific Environment, Communities for a Better Environment, Cogeneration Association of California,

Ratepayer Advocates ("DRA"), The Utility Reform Network ("TURN"), and the CAISO (collectively, the "Settling Parties"), submitted a Track I Settlement Agreement for the Commission's approval, which proposed a resolution to Track I of the LTPP proceeding.[6] The Track I Settlement Agreement left only two Track I issues unresolved as among the Settling Parties. The Settlement Agreement did not address SDG&E's request for LCR procurement authority or proposals regarding contracting with existing resources.

In the Track I Settlement Agreement, the Settling Parties recommended that the Commission further examine the system resource need and the integration of intermittent renewable resources into the CAISO grid, either in the next LTPP cycle or in an extension of the current LTPP cycle. The Settling Parties also recommended that a final Commission assessment of need or a decision should be issued no later than December 31, 2012, and that no authorizations for procurement authority relating to LCR for SCE's and PG&E's service areas are needed at this time. The Settling Parties also requested that the schedule for testimony, hearings, and briefing of the issues addressed in the Track I Settlement Agreement should be suspended pending Commission review of the settlement.

On August 4, 2011, ALJ Allen issued a ruling which maintained the previously adopted schedule for both intervenor testimony and hearings. Intervenor testimony was thus filed on August 4, 2011, which primarily focused on non-settled issues. Reply testimony was provided at the hearings which commenced on August 11.

Energy Producers and Users Coalition, Calpine Corporation, Jack Ellis, GenOn California North LLC, the Center for Energy Efficiency and Renewable Technologies, the Natural Resource Defense Council, NRG Energy, Inc., the Vote Solar Initiative, and the Western Power Trading Forum.

[6] The Track I Settlement Agreement is attached to the August 3, 2011, *Motion for Expedited Suspension of Track I Schedule, and For Approval of Settlement Agreement* that was jointly filed with the Commission by the Settling Parties.

B. Track III

PG&E filed Track III testimony on July 1, 2011 which addressed the issues identified in the *Administrative Law Judge's Ruling Denying Motion for Reconsideration and Motion Regarding Track I Schedule and Addressing Rules Track III Issues*, issued June 13, 2011 ("June 13th Ruling"). In particular, the issues addressed by PG&E in its testimony included: (1) proposed procurement rules related to Once-Through Cooling ("OTC") facilities; (2) refinements to the bid evaluation criteria in competitive solicitations and Requests for Offers ("RFOs"); (3) Greenhouse Gas ("GHG") products, processes, and risk management strategies; and (4) draft procurement oversight rules proposed by the Energy Division. On August 4, 2011, intervenors filed Track III testimony addressing these issues. Reply testimony was provided at the hearings which commenced on August 11.

C. Tracks I and III Hearings

Hearings took place for both Tracks I and III between August 11-19, 2011, and on August 30, 2011. Hearings consisted primarily of cross-examination of the non-settled Track I issues, and Track III issues. There also was limited cross-examination of the Settling Parties by the non-settling parties.

D. Outline of the Remainder Of PG&E's Opening Brief.

The remainder of this opening brief is divided into three parts. In Section II, PG&E provides an overview of the key elements of Track I and the Track I Settlement Agreement. In Section III, PG&E describes the key elements of Track III and disputed issues, and in Section IV, PG&E provides its recommendations for a Commission decision for Tracks I and III.

II. TRACK I

The purpose of Track I is to identify Commission-jurisdictional needs for new resources to meet system or local resource adequacy and to consider authorization of IOU procurement to

meet that need, including issues related to long-term renewables planning and need for replacement generation infrastructure to eliminate reliance on power plants using OTC.[7] In carrying out this investigation, the Commission anticipated that in addition to maintaining an adequate reserve margin, system requirements to: (1) integrate renewables; (2) support OTC policy implementation; (3) maintain local reliability; and (4) meet GHG goals will be primary drivers for any need for new resources identified in this proceeding.[8]

In addition to these questions, other parties raised Track I issues. PG&E responded to several of these proposals. Calpine Corporation ("Calpine") recommended that "the IOUs be directed to hold intermediate term (3-5 years) resource solicitations for flexible capacity from existing resources."[9] Jan Reid proposed that the Commission "open an OII into the feasibility of shutting down the SONGS and Diablo Canyon facilities."[10] Women's Energy Matters ("WEM") went further, proposing "directly here for utilities to close California's nuclear power plants, San Onofre and Diablo, and quit purchasing power from other nuclear plants, i.e. Palo Verde in Arizona."[11]

With respect to system need, consistent with the Track I Settlement Agreement in this proceeding, the Commission should determine that further analysis is necessary before it can make a conclusive need determination. Either as an extension of this LTPP cycle or in the next LTPP, the Commission should direct interested parties, and request the CAISO, to continue their analysis. The Commission should target a conclusive need determination by the end of 2012.

Turning to local resource adequacy, consistent with the Track I Settlement Agreement,

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[7] OIR at p. 9.

[8] *Id.*, p. 12.

[9] Exhibit ("Ex.") 601 at p. 3, lines 19-20 (Calpine, Barmack).

[10] Ex. 1302 at p. 9, lines 8-9 (Reid).

[11] Ex. 802 at p. 7 (WEM, George).

the Commission should conclude that it does not need to authorize procurement authority relating to LCR for PG&E at this time.

The Commission should reject Calpine's proposal that the IOUs be required to hold an intermediate solicitation for capacity from existing resources that do not currently have contracts.

Finally, the Commission should reject Mr. Reid's proposal to open a new proceeding to consider the shut down of nuclear facilities in the state, and WEM's proposal to immediately shut down the state's nuclear facilities. The record in this proceeding is completely inadequate to allow the Commission to evaluate what the effects would be of immediately shutting down these generators. Neither Mr. Reid nor WEM have provided a threshold showing that there are potential benefits from shutting down the state's nuclear facilities in the immediate future that would justify opening up a new proceeding to evaluate that question in more detail.

A. The Track I Settlement Agreement Should Be Approved.

From PG&E's perspective, the key features of the Track I Settlement Agreement are:

- Its conclusion that the resource planning analyses presented in this proceeding do not conclusively demonstrate whether or not there is need to add capacity for renewable integration purposes through the year 2020.[12]

- Its recommendation that the Commission should, in collaboration with the CAISO, continue the work undertaken thus far in this proceeding to refine and understand the future need for new renewable integration resources, either as an extension of the current LTPP cycle or as part of the next LTPP, with the goal of reaching a definitive determination of need by December 31, 2012.[13]

- Its recommendation that the Commission does not need to authorize procurement authority relating to local capacity requirements for PG&E's service area at this time.[14]

PG&E urges the Commission to adopt the Track I Settlement Agreement in its entirety.

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[12] Track I Settlement Agreement at p. 5.

[13] *Id.*, at pp. 5-6.

[14] *Id.*, at p. 7.

1. The Commission Should Find That The Record In This Proceeding Does Not Conclusively Demonstrate Whether Or Not There Is Need To Add Capacity For Renewable Integration Purposes.

The Settling Parties concluded that the resource planning analyses presented in this proceeding do not conclusively demonstrate whether or not there is need to add capacity for renewable integration purposes through the year 2020.[15] This conclusion is fully supported by the Track I record. With respect to renewables integration, the IOUs have established that the analysis of the issue that has been presented in this proceeding "should be viewed as an initial effort to understand the complex problems of accommodating the significant increase in renewable energy expected over the next decade. There are a number of key areas where further analysis is necessary. . .."[16] While some scenarios evaluated by the IOUs showed no need, others showed substantial need.[17]

a. The Increasing Levels Of Renewable Integration Introduce New, Complex Challenges Into Resource Planning.

Ensuring that the CAISO system remains reliable as increasing levels of renewable generation are incorporated into it raises new, complex challenges. Traditionally, the focus of long-term resource planning was how rapidly demand would grow on the system, and how to meet that growth using the loading order adopted by the Commission in the Energy Action Plan. On the resource side, it was generally understood that resources that were added to the system had sufficient "operational flexibility" and could be ramped up and down by the CAISO, as necessary, to meet daily variations in load. Within this framework, the primary focus was having an adequate planning reserve margin ("PRM") to ensure that the operating resources could be expected to meet the peak demand on the system with a high degree of confidence. The PRM

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[15] *Id.*, at p. 5.

[16] Ex. 106, at p. 1-3, lines 16 -19 (SCE, Stern; PG&E, Frazier-Hampton; SDG&E, Anderson).

[17] *Id.*, at p. 3-3, table 3-1 (SCE, Mao; PG&E, Alvarez; SDG&E, Anderson).

for a system was the difference between the reliability value of the generating facilities available on a planning basis to meet load served on the system, and the peak load that could be expected on the system.[18]

However, the system operating needs have changed with the increasing amount of resources whose generation is non-dispatchable, such as Combined Heat and Power, or "intermittent," such as wind and solar generation. As a result of these changing conditions, a more complex process is evolving to determine the level of generation that can be expected from these resources over a wider number of hours than the traditional system peak. In particular, the system needs to be more flexible than it is today, and any resource need assessment should account for the flexibility requirements to integrate planned intermittent and non-dispatchable resources.[19]

The availability of sufficient generation resources with operational flexibility to follow the changes in "net demand" imposed on the system by the difference between load and intermittent generation may be a constraining variable from a planning perspective. Moreover, under certain conditions and at certain times, generation from renewable resources will exceed the load on the system. Ensuring that the system can reliably handle such a potential imbalance might very well be a constraining factor in ensuring the reliability of the system. Evaluating operating requirements in the face of significant intermittent renewable generation makes long-term resource planning considerably more complex than checking whether the reserve margin equals or exceeds the required PRM.[20]

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[18] Ex. 105 at p. 2, line 24 – p. 3, line 9 (PG&E, Alvarez).

[19] *Id.*, at p. 3, lines 10-18.

[20] *Id.*, at p. 3, lines 19-29.

b. Additional Refinement Of The Analysis Conducted By The CAISO And The IOUs Is Necessary.

The analysis that has been presented in this proceeding by both the CAISO and the IOUs represents a further evolution of long-term resource planning in the face of increased levels of intermittent and non-dispatchable generation.[21] However, PG&E believes that the current forecast errors being used to estimate load following requirements may be inadequate to represent the intermittency of wind and solar generation, to the extent the current methodology does not capture day-ahead or beyond the hour-ahead forecast uncertainty.[22] Also, there have been improvements in wind forecast error accuracy, and the solar forecast errors were derived without much solar forecast experience.[23] All of these factors could have a significant impact on determining whether there are sufficient resources to meet integration needs.

These potentially critical elements have not been incorporated into the current modeling methodology. However, the IOUs developed a scenario which considers the impact of day-ahead forecast errors on integration. Including the day-ahead forecast errors results in an incremental need for upward operational flexibility of approximately 2,200 MW compared with scenarios that do not include day-ahead forecast uncertainty. PG&E believes that these results provide a broader array of possible future outcomes and better understanding of the range of forecast uncertainty that needs to be considered for operating the system and of renewable resources' integration need. Coordination with the CAISO to further advance this analysis will enhance the Commission's decision-making with respect to integrating renewables.[24]

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[21] *Id.*, at p. 3, lines 30-33.

[22] *Id.*, at p. 4, lines 8-12.

[23] *Id.*, at p. 8, lines 11-14.

[24] *Id.*, at p. 5, lines 8-19.

PG&E has other concerns with the analysis to date, which suggest that it cannot yet be considered conclusive. For example, PG&E believes that the current analysis may not fully capture system needs during periods of negative pricing or dump energy. The current models do not show any periods with negative energy prices or dump energy. The modeling needs to be modified to consider more realistic assumptions regarding periods of negative pricing and dump energy.[25]

In addition, the actions of other balancing authorities should be considered in the analysis, such as integrating resources located outside of California, or responding to the variability of flows across the interconnections due to new wind and solar additions within California. For example, the Bonneville Power Administration ("BPA") is currently being forced to curtail wind resources to balance hydro generation and low loads, even without the increases planned for sale to California and California's own additions, which reduce the state's ability to accommodate BPA's surplus generation.[26]

Further, some simplifications were made in the current analysis to speed up the production simulations. These simplifications resulted in violations to out-of-state coal start-ups and cycling. To the extent possible, simulations should more accurately reflect these constraints.[27]

Other parties have also raised questions and concerns about the current analytic approach being used to determine operating needs to integrate future additional intermittent and non-dispatchable resources, and the results of prior integration studies.

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[25] *Id.*, at p. 6, lines 21-29.

[26] *Id.*, at p. 6 line 29 to p. 7, line 2.

[27] *Id.*, at p. 7, lines 3-12.

In short, while the Track I analysis performed by the CAISO and the Joint IOUs is a starting point, it is not conclusive and will require further refinement and modifications. As a consequence, the results produced in Track I of this proceeding should not be the basis for Commission action regarding a determination of resources needed for the integration of intermittent and non-dispatchable resources. Instead, further analysis will be required before the Commission can more definitively determine the need for resources in CAISO's system to manage the increased operating flexibility requirements.

Therefore, consistent with the Track I Settlement Agreement, the Commission should find in its Track I decision that the record in this proceeding does not conclusively demonstrate whether or not there is need to add capacity for renewable integration purpose through the year 2020.

2. The Commission Should, In Collaboration With The CAISO, Continue To Refine And Understand The Future Need For New Renewable Integration Resources.

The Settling Parties concluded that the analyses presented in this proceeding do not conclusively demonstrate whether or not there is need to add capacity for renewable integration purposes through the year 2020.[28] That does not mean, however, that the question of whether there is need is unimportant or that there is no urgency to answer this question. To the contrary, the Settling Parties believe that that the Commission should move forward quickly to examine this question. Therefore, the Settling Parties urge the Commission, either as an extension of the current LTPP cycle or as part of the next LTPP, to work with the CAISO to continue to investigate this question. The recommended goal is to reach a definitive determination of need by December 31, 2012.[29]

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[28] Track I Settlement Agreement at p. 5.

[29] *Id.*, at pp. 5-7.

During hearings, CAISO witness Rothleder described how he envisioned the process associated with the continuing analysis, stating:

> We'd like to have a[n] open and transparent process around and give everybody an opportunity to identify what specific sensitivities they are interested in. And we would like to use a set of experts to triage those lists into something that is – we believe is a relevant list, that then we would perform some quick sensitivities to further whittle that list down to what we would do the final runs on in December.
>
> So again, between September and December we're going through and giving an opportunity saying, what should be done, whittling that down through a triage effort using experts and then doing some sensitivities, providing some of those sensitivities back, and then whittling it down further to the final set of runs between December and March 31st.[30]

PG&E recognizes that the Settling Parties cannot, through a settlement, bind the Commission to any particular course of action. PG&E recommends, consistent with the 23 party recommendation contained in the Track I Settlement Agreement, that in the Track I decision the Commission direct the CAISO and the parties, either as an extension of this LTPP cycle or as part of the next LTPP, to continue the analysis under the process and timeline described in the Settlement, and elaborated upon by Mr. Rothleder during hearings.

3. There is No Need To Authorize Procurement Authority Relating To Local Capacity Requirements For PG&E's Service Area At This Time.

The Settling Parties agree that the Commission does not need to authorize procurement authority relating to LCR for PG&E's service area at this time.[31] This conclusion is supported by the record. PG&E witness Vijayraghaven concludes, based on his and the CAISO's analysis, that "available local area capacity is enough to meet the projected capacity requirement in 2020

[30] Transcript ("Tr.") at p. 364, line 12 – p. 365, line 2 (CAISO, Rothleder).

[31] Track I Settlement Agreement, at p. 7.

during peak hour demand."[32] Mr. Vijayraghaven goes on to caution, however, that "[h]aving satisfied local capacity requirements does not necessarily satisfy systemwide system resource need that may be identified for reliability or renewable integration."[33]

Based on the Track I Settlement Agreement, which is fully supported by the record, the Commission should find in its Track I decision that there is no need to authorize procurement authority relating to LCR for PG&E's service area at this time.

B. Calpine's Proposal For An Intermediate Term Solicitation For Capacity From Existing Resources That Do Not Currently Have Contracts Should Be Rejected.

Calpine recommends that the Commission direct the IOUs to procure additional capacity from existing resources through intermediate term (3-5 years) solicitations.[34] The Commission should reject Calpine's recommendation. At a minimum, it is premature for several reasons. First, resource need has not been determined. Second, many parties in this proceeding agree that the analysis conducted to date is inconclusive as to the need to integrate renewables, and that further analysis is needed before any renewable integration resource need determination is made. Third, it is unknown whether existing units such as Calpine's will retire for economic reasons if such capacity remains uncontracted for several years.[35]

During cross-examination, Calpine witness Barmack acknowledged that there are significant regulatory limitations on Calpine's ability to retire a power plant. As Dr. Barmack acknowledged, under the Commission's General Order ("GO") 167, Calpine is obligated to maintain its generating units in California in readiness for service unless the Commission, after

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[32] Ex. 105 at p. 13, lines 1-2 (PG&E, Vijayraghaven).

[33] *Id.*, at p. 13, lines 2-4.

[34] Ex. 601 at p. 3, lines 19-21 (Calpine, Barmack).

[35] Ex. 108 at p. 3, lines 9-15 (PG&E, Alvarez).

consultation with the CAISO, affirmatively declares that the units are unneeded during a specified period of time.[36] Moreover, under GO 167, Calpine is obligated to notify the Commission and the CAISO in writing at least 90 day in advance of any planned change in the long term status of any Calpine unit in California.[37] Under the CAISO's tariff, the CAISO has the authority to issue a "risk of retirement" designation to keep a resource in operation that is otherwise at risk of retirement during the current "resource adequacy" year if the CAISO believes the resource will be needed for reliability by the end of the following calendar year.[38] Thus, a number of regulatory protections are in place to assure that Calpine's units, if needed for reliability in California, will remain on-line and operational. The solicitation Calpine recommends is simply not necessary for this purpose.

Finally, Calpine's recommendation is premature because Calpine jumps to the conclusion that only new conventional resources will be added to meet the flexibility needs, when there may be lower cost alternatives that could provide additional flexible capacity at a fraction of the cost of new conventional resource costs.[39]

In sum, no persuasive justification has been offered for the intermediate term solicitation from existing resources that Calpine would like to see. Regulatory protections exist to ensure that Calpine's units will remain in the California markets to the extent they are needed for reliability purposes. Therefore, the Track I decision should reject Calpine's proposal.

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[36] Tr. at p. 845, lines 14-23 (Calpine, Barmack); *see also*, GO 167 at p. 52.

[37] GO 167 at p. 52.

[38] Tr. at p. 847, lines 7-17 (Calpine, Barmack); *see also*, CAISO Tariff § 43.2.6.

[39] Ex. 108 at p. 3, lines 15-19 (PG&E, Alvarez).

C. The Proposals Related To California's Nuclear Generation Facilities Should Be Rejected.

WEM recommends closing Diablo Canyon Power Plant ("DCPP") and San Onofre Nuclear Generating Station ("SONGS"), and stopping purchases from other nuclear power plants.[40] Mr. Reid recommends that the Commission open an OII into the feasibility of shutting down the DCPP and SONGS facilities.[41] Both of these proposals should be rejected. WEM recommends the immediate shutdown of DCPP and SONGS, and stopping purchases from other nuclear plants, without considering the impacts of such actions on system reliability, the environment, or customer costs. The consequences of an immediate shutdown would require a separate analysis from what the Commission has identified as within the scope of the LTPP.[42]

The magnitude of the generation provided by these nuclear plants and the multiple functions that they provide to the grid would require that the need assessment prepared for this proceeding start from scratch. Further, different types of analysis will be necessary to investigate the reliability impact of an immediate shutdown of all nuclear generation in the state.[43]

For example, to address grid impacts, the CAISO will need to investigate impacts on the electric transmission system, as well as system-wide generation and local reliability impacts. The time and effort required for these analyses, and their results, will affect not only this proceeding, but also other decisions that the Commission, CAISO, and other bodies will need to make in other forums regarding electric transmission and generation, and other matters affecting the electric industry in the state.[44]

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[40] Ex. 802 at p. 7 (WEM, George).

[41] Ex. 1302 at p. 9, lines 8-9 (Reid).

[42] Ex. 108 at p. 1, lines 19-25 (PG&E, Frazier-Hampton).

[43] *Id.*, at p. 1, lines 26-30.

[44] *Id.*, at p. 1, line 30 – p. 2, line 3.

As a final point, there is already an ongoing proceeding at the Commission relating to DCPP, PG&E's January 29, 2010 application to recover the costs of preserving the option to operate DCPP after the expiration of its existing operating licenses in 2024 and 2025 for Units 1 and 2.[45] It would not make sense to open another proceeding to evaluate the merits of Diablo Canyon's continued operation. Thus, the current record in this proceeding does not support WEM's shut-down proposal, nor does it support Mr. Reid's proposal for a new proceeding. Therefore, the Commission should reject these proposals.

III. TRACK III

A. The Energy Division's OTC Contracting Proposal Should Not Be Adopted.

The Commission identified procurement rules related to OTC facilities as one of the issues to be addressed in Track III.[46] Administrative Law Judge ("ALJ") Allen attached to his June 13th Ruling an Energy Division proposal that would limit the IOUs' ability to contract with OTC facilities for periods greater than one year except in certain narrowly defined circumstances ("OTC Proposal").[47] There was no analysis supporting the OTC Proposal, nor was there any attempt to determine if this proposal would result in increased customer costs. The OTC Proposal was overwhelmingly opposed by parties in this proceeding representing a wide spectrum of interests, including PG&E, SCE, SDG&E, the California Large Energy Consumers Association ("CLECA"), DRA, GenOn, the Independent Energy Producers Association ("IEP") and the Western Power Trading Forum ("WPTF"). In fact, only two parties, Pacific Environment and Jan Reid, submitted testimony supporting the OTC Proposal. As explained in more detail below, the OTC Proposal would likely increase customer costs with no discernable

[45] Application No. 10-01-022.

[46] June 13th Ruling at p. 6.

[47] *Id.*, Appendix A.

benefits and thus should be rejected. Moreover, Pacific Environment and Mr. Reid fail to provide any reasoned basis for the Commission to adopt the OTC Proposal.

The California State Water Resources Control Board ("SWRCB") has approved a policy designed to phase out OTC facilities in California, including the phase out of all Northern California OTC units by December 31, 2017.[48] While many of these OTC units are aging and coming close to the end of their useful lives, they continue to provide needed local transmission reliability support and will continue to need to be available until suitable replacement capacity is built.[49] PG&E fully supports the SWRCB policy for natural-gas fired OTC units and believes that timely retrofitting or retirement of these units is consistent with California's and the Commission's environmental goals.[50] However, during the OTC transition period (*i.e.,* the period until December 31, 2017), PG&E will likely need to continue to contract with existing OTC units to the extent these units provide needed energy and capacity at a reasonable cost to customers.[51] Short-term OTC contracts (*i.e.*, contracts that are a year or less) are likely to be higher cost than contracts that are several years in duration.[52] The OTC Proposal would unnecessarily limit all three IOUs' contracting authority to contracts with OTC facilities that are one year or less in duration, increasing customer costs, and would provide no corresponding customer benefits.

Pacific Environment supports the OTC Proposal based on its misunderstanding of the IOUs' contracting practices. Pacific Environment asserts that the OTC Proposal is necessary to prevent the IOUs from contracting with OTC units after the OTC transition period ends in

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[48] Ex. 107 at p. 1-1, lines 12-17 (PG&E, Monardi).

[49] *Id.*, lines 20-23.

[50] *Id.*, at p. 1-2, lines 24-26.

[51] *Id.*, at p. 1-3, lines 3-18.

[52] Ex. 109 at p. 1, lines 21-25 (PG&E, Monardi).

December 2017. However, PG&E has never stated that it intends to contract with OTC units after the OTC transition period ends.[53] Rather, PG&E has opposed the OTC Proposal because it unnecessarily limits the duration of contracting during the OTC transition period. Pacific Environment also mistakenly asserts that PG&E does not adequately consider environmental factors, such as water usage by OTC units, in its RFO evaluation process. As PG&E explained in both its initial and reply testimony, as well as in discovery responses to Pacific Environment, environmental factors, including the OTC status of a bidder, are given "sizeable weight" in RFOs where existing OTC units compete.[54] Thus, Pacific Environment's concerns are unfounded.

Mr. Reid asserts that the OTC Proposal is necessary to further California's environmental and water goals. Mr. Reid's argument is based on the same misunderstanding that undermines Pacific Environment's claims. The IOUs are not asking for authority to contract with OTC units after the end of the OTC transition period, nor have they opposed SWRCB's policies for natural gas fired OTC units. Instead, the IOUs are simply asserting that they should be able to contract with OTC units during the transition period for periods greater than a year. DRA summed up the issue best when it noted that the OTC Proposal "has failed to identify how the IOUs and ratepayers will benefit from this restriction" and "imposes restrictions on the IOUs without advancing the OTC compliance targets."[55]

B. The Commission's RFO Rules Related To UOG and PPA Offer Evaluation.

1. Proposals To Prohibit UOG Offers In RFOs Or Significantly Modify The RFO Evaluation Process Should Be Rejected.

In D.07-12-052, the Commission allowed Purchase and Sale Agreements ("PSA") and Engineering, Procurement and Construction ("EPC") proposals for UOG facilities to be bid in to

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[53] *Id.* at p. 1, lines 15-25.

[54] Ex. 107 at p. 1-3, lines 11-18 (PG&E, Monardi); Ex. 109 at p. 2, lines 20-27 (PG&E, Monardi).

[55] Ex. 405 at p. 20, lines 2-7 (DRA, Rogers).

all-source RFOs.[56] In making this determination, the Commission noted that parties had commented on "recent RFOs in which robust mechanisms for comparing PSA and PPA bids were developed and implemented, and the processes were deemed fairly and successfully administered by the PRGs, IEs, and this Commission" and, based on these comments, was "sufficiently convinced by these arguments" to allow PSA and EPC bids in certain circumstances to participate in RFOs.[57] After D.07-12-052 was issued, PG&E conducted its 2008 Long-Term RFO ("LTRFO") that allowed both PPA and PSA bids. As with previous LTRFOs, none of the losing bidders in the 2008 LTRFO asserted that the evaluation process was unfair or disadvantaged PPAs as compared to PSAs.

One of the Track III issues identified in the June 13th Ruling was "refinements to the bid evaluation process, particular[ly] weighing competing bids between utility-owned generation and power purchase agreements."[58] In response to this issue, PG&E provided detailed testimony explaining its evaluation methodology in RFOs and describing how this methodology allows for the fair and reasonable evaluation of both UOG and PPA offers.[59] What is notable about PG&E's evaluation methodology is that it is not simply theoretical. While some parties assert in theory that UOG and PPA offers cannot be compared, the reality is that PG&E has successfully done so in two LTRFOs. In both the 2004 and 2008 LTRFOs, PG&E compared UOG and PPA offers and selected both UOG and PPAs as winning bids. After reviewing extensive applications and the reports of an Independent Evaluator ("IE"), the Commission determined that both of these LTRFOs were open, competitive and fair.[60]

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[56] D.07-12-052 at p. 206.

[57] *Id.*

[58] June 13th Ruling at p. 6.

[59] Ex. 107 at pp. 2-2 to 2-11 (PG&E, Strauss).

[60] D.06-11-048 at p. 7 (concerning 2004 LTRFO); D.09-10-017, Finding of Fact 2 (concerning 2008 LTRFO); D.10-07-045, Findings of Fact 2-8 (concerning 2008 LTRFO, and clarifying finding in D.09-

Despite the fact that PG&E has successfully conducted two LTRFOs that compared UOG and PPA offers, some parties assert that UOG offers should be prohibited in RFOs, relying on assertions, conjecture, and theory to support their proposals. For example, WPTF asserts that all UOG offers should be "banned" from RFOs.[61] WPTF's concerns are based on its critique of the various evaluation criteria used by PG&E, such as market valuation, portfolio fit, and project viability.[62] However, all of these criteria were used by PG&E in its 2004 and 2008 LTRFOs, which the IE and the Commission determined were open, fair and competitive. WPTF also ignores PG&E's explanation of its RFO evaluation process. For example, WPTF claims that PG&E does not make "any attempt" to "address the fundamental unfairness of comparing thirty-year (or longer) UOG service lives with ten-year PPAs."[63] WPTF completely ignores PG&E's testimony concerning the use of levelized values to account for the effect of offers with different lengths.[64]

Other parties propose modifications to the RFO evaluation process if UOG offers continue to be allowed in RFOs. For example, DRA expresses concern about the comparison of PPAs and UOG projects with different terms and asserts that utilities should amortize UOG project costs over a period of time consistent with the term of PPA offers so that UOG and PPA offers are treated equally.[65] However, as PG&E explained in its initial and reply testimony, PG&E uses levelized values in the RFO process to account for the effect of offers with different lengths.[66] It is typical in many utility RFOs to get offers, even as between PPA offers, that vary

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10-017).

[61] Ex. 2300 at p. 14 (WPTF, Ackerman).

[62] *Id.* at pp. 8-11.

[63] *Id.* at p. 9, lines 13-14.

[64] Ex. 107 at p. 2-7, lines 3-16 (PG&E, Strauss); Ex. 109 at p. 5, line 25 to p. 6, line 12 (PG&E, Strauss).

[65] Ex. 405 at p. 32 (DRA, Peck).

[66] Ex. 107 at p. 2-7, lines 3-16 (PG&E, Strauss); Ex. 109 at p. 5, line 25 to p. 6, line 12 (PG&E, Strauss).

in length; the use of levelized values is a common method to evaluate these types of varying offers.[67] DRA provides no reason why this standard industry valuation technique cannot be used in RFOs involving UOG and PPA offers.

IEP proposes a series of "adders" to be included with UOG offers.[68] As SDG&E aptly explains, IEP's proposal "is a solution in search of a problem."[69] IEP's proposal does not take into consideration PG&E's actual evaluation methodology, nor does IEP point to any shortcomings in PG&E's evaluation approach.[70] Rather than relying on theory, PG&E has provided a description of a specific evaluation methodology that it has actually used and that resulted in a fair, open and competitive RFO process.

IEP also proposes an overall bid evaluation framework for comparing UOG and PPA bids.[71] IEP's proposal contains a number of fundamental flaws, including a failure to account for diversity in counterparties, technology, location and other criteria considered for RFO offers.[72] IEP's proposal also fails to differentiate between the importance of different criteria, such as market value, viability and environmental characteristics.[73] IEP's uniform evaluation approach does not allow an IOU to weight certain attributes more heavily depending on the need addressed in a particular RFO. For example, if environmental considerations are important in a specific RFO, IEP's proposal would not allow the IOU to more heavily weight environmental factors. This type of "one-size-fit-all" approach to comparing UOG and PPA bids, without the ability to

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[67] Ex. 109 at p. 6, lines 6-9 (PG&E, Strauss).

[68] Ex. 2000 at pp. 34, 39-45, 52-52 (IEP, Monson).

[69] Ex. 315 at p. 6, lines 12-18 (SDG&E, Anderson).

[70] Ex. 109 at p. 9, lines 10-16 (PG&E, Strauss).

[71] Ex. 2000 at pp. 37-48, 52-57 (IEP, Monson).

[72] Ex. 109 at p. 9, line 17 to p. 10, line 2 (PG&E, Strauss); *see also* Ex. 315 at pp. 7-10 (SDG&E, Anderson) (describing numerous flaws in IEP's proposed evaluation methodology).

[73] *Id*, p. 9, line 24 to p. 10, line 3.

modify weighting and criteria for specific RFOs, will not result in the best outcome for customers as the IOUs will be unable to tailor their RFOs to meet specific needs.[74]

Finally, Pacific Environment criticizes PG&E's RFO evaluation process for not appropriately considering environmental factors, citing previous Commission decisions to support its claim.[75] Pacific Environment also proposes certain RFO evaluation criteria to address environmental issues.[76] Pacific Environment's arguments are flawed for several reasons. First, contrary to Pacific Environment's assertions, while the Commission did identify areas that PG&E could have improved its 2008 LTRFO evaluation process with regard to environmental criteria, the Commission concluded "as a whole" that "PG&E conducted a reasonable RFO and evaluation."[77] Second, the environmental justice scoring and weighting procedure proposed by Pacific Environment is based on proposed screening tools, rather than RFO evaluation criteria.[78] As PG&E explained in detail in its reply testimony, these tools were developed to screen proposed generation facilities on a statewide basis and they do not provide the appropriate tools for the comparison of offers or the determination as to how a specific proposed UOG or IPP facility will impact a specific community.[79] These tools cannot be tailored for an RFO evaluation process[80] and do not allow for the consideration of specific RFO offers.[81] Pacific Environment's proposal for uniform environmental justice scoring criteria should be rejected.

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[74] Ex. 313 at p. 20, lines 4-11 (SDG&E, Anderson).

[75] Ex. 505 at p. 11 (Pacific Environment, Cox).

[76] *Id.* at p. 12.

[77] D.10-07-045 at pp. 21; *see also* Ex. 109 at p. 11, line 14 to p. 12, line 6 (PG&E, Strauss) (responding to Pacific Environment's statements concerning Commission decisions).

[78] Ex. 109 at p. 12, line 7 to p. 13, line 33 (PG&E, Strauss).

[79] *Id.*

[80] *Id.* at p. 14, lines 5-19.

[81] *Id.* at p. 13, line 34 to p. 14, line 4.

2. PG&E's Proposal For Limited Modifications To The RFO Rules Related To UOG Offers Should Be Adopted.

Although PG&E's RFO evaluation process for comparing UOG and PPA offers has been successful, PG&E has proposed in Track III two modifications to the Commission's existing RFO rules. First, PG&E has proposed expanding RFOs to include all types of UOG offers, not just PSAs and EPCs. The Commission limited UOG offers in RFOs to PSAs and EPCs in D.07-12-052.[82] However, there does not appear to be any basis for excluding other types of UOG offers. Given that PG&E has demonstrated that it is able to fairly compare UOG and PPA offers, there is no reason to unnecessarily restrict the type of UOG offers that may be considered in an RFO.[83]

Second, PG&E proposes that it be entitled to recover all UOG offer development costs, rather than being limited to recovering costs only if a UOG offer is successful.[84] As PG&E explained in its initial testimony, IOUs and Independent Power Producers ("IPPs") have fundamentally different business models.[85] While IPPs can recover offer development costs for a losing PPA proposal through subsequent winning offers, the IOUs cannot include in subsequent UOG proposals the costs for previous failed bids.[86] The IOU should be able to recover its costs for a failed bid from ratepayers. Otherwise, IPPs have an opportunity to recover the costs of their failed bids, but the IOUs have no opportunity to do so. Moreover, because bundled customers benefit from potential UOG development, as SCE explained in its rebuttal

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[82] D.07-12-052 at p. 206.

[83] Ex. 107 at p. 2-14, lines 2-10 (PG&E, Strauss).

[84] *Id.* at p. 2-14, lines 11-20.

[85] *Id.* at p. 2-11, line 20 to p. 2-12, line 7.

[86] Ex. 107 at p. 2-11, line 20 to p. 2-12, line 7 (PG&E, Strauss); *see also* Ex. 505 at p. 22 (Pacific Environment, Cox) (acknowledging that "IPPs may recover lost costs for unsuccessful bids by a winning bid at some point . . .")

testimony, the IOUs should be able to recover from customers the development costs associated with UOG proposals.[87]

C. PG&E's GHG Procurement Plan Should Be Approved.

1. Overview Of PG&E's GHG Compliance Obligations And Proposed GHG Procurement Plan.

In 2006, the California Legislature enacted Assembly Bill ("AB") 32, requiring the reduction in statewide GHG emissions to 1990 levels by 2020. The California Air Resources Board ("CARB") has proposed a number of measures to implement AB 32, including a statewide Cap-and-Trade Program.[88] Cap-and-Trade is intended to establish a market-based price for GHG and, over time, provide market signals for efficient resource utilization and procurement activities to reduce GHG emissions. The CARB Cap-and-Trade regulation covers GHG emissions from 2013 through 2020, broken up into three compliance periods. The first compliance period—for the years 2013 through 2014—is scheduled to commence on January 1, 2013. Covered entities in the first compliance period include operators of any facility that emits at least 25,000 metric tons of carbon dioxide equivalent ("mtCO2e"). Operators are required to obtain and surrender compliance instruments equivalent to the annual GHG emissions for each such facility. Importers of electricity into California are also responsible for obtaining and retiring compliance instruments for GHG emissions deemed to be associated with electricity imports for purposes of compliance with Cap-and-Trade.

There are two types of compliance instruments – allowances and offsets.[89] PG&E will receive an allocation of free allowances which it must then consign to CARB allowance

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[87] Ex. 215 at p. 23, lines 1-16 (SCE, Cushnie).

[88] *See generally* Ex. 107 at pp. 3-1 – 3-2 (PG&E, Brandt) (describing AB 32 and CARB Cap-and-Trade program).

[89] *Id.* at p. 3-3 (describing in detail allowances and offsets).

auctions. Procurement of compliance instruments may take place through any or all of the following: (1) CARB-sanctioned quarterly allowance auctions; (2) Allowance Price Containment Reserve ("APCR"); and (3) allowance or offset procurement via secondary or bilateral markets.[90] CARB currently intends to conduct quarterly allowance auctions starting in August 2012.[91]

PG&E is required by CARB's Cap-and-Trade regulation to surrender compliance instruments for its qualifying UOG, imports, and gas compressor stations (herein collectively described as "physical" obligations).[92] If PG&E fails to comply with CARB's regulations, it could face significant penalties.[93] In addition, PG&E has certain contractual obligations related to third-party generating facilities that are under contract to PG&E.

In order to address its GHG compliance obligations, PG&E has developed a GHG Procurement Plan that includes two new GHG products – GHG Allowances and GHG Offsets.[94] PG&E's Energy Procurement Department will procure these GHG products for all of PG&E's emissions subject to Cap-and-Trade, and transfer requested GHG allowances to PG&E's Gas Transmission and Distribution Department (*i.e.*, for GHG emissions at gas compressor stations) at PG&E's weighted-average cost. PG&E has also proposed two new GHG-related procurement processes, in addition to the procurement processes currently included in PG&E's 2006 Conformed LTPP.[95] These processes would be used to procure the necessary compliance instruments. Finally, PG&E's GHG Procurement Plan includes a detailed strategy that is designed to facilitate PG&E prudently procuring GHG-related products on behalf of PG&E's

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[90] *Id.* at p. 3-4, lines 25-28.

[91] Ex. 109 at p. 16, lines 1-9 (PG&E, Brandt) (describing modified CARB schedule).

[92] Ex. 107 at p. 3-6, lines 19-22 (PG&E, Brandt).

[93] *Id.* at p. 3-7, lines 1-27.

[94] *Id.* at p. 3-9, Table 3-1 (PG&E, Brandt).

[95] *Id.* at p. 3-10

customers.[96] The products, processes and procurement strategy proposed by PG&E would establish the upfront achievable standards for PG&E's procurement activities consistent with Public Utilities Code section 454.5 (*i.e.,* AB 57).

PG&E has also included in its GHG Procurement Plan several regulatory process elements. Specifically, under PG&E's GHG Procurement Plan, the PRG would review PG&E's CARB auction bidding strategy annually and would be consulted before PG&E transacted for any GHG product in the secondary market with a vintage year more than three years in the future beyond the current calendar year.[97] PG&E would also include all GHG-related product transactions in its Quarterly Compliance Report ("QCR") and would provide a separate compliance report to the Energy Division on a quarterly basis with a summary of GHG market conditions and PG&E's GHG-related transactions.[98] PG&E's GHG-related procurement costs would be included in both its Energy Resource Recovery Account ("ERRA") forecast and compliance filings.[99] Transactions for GHG products with vintage years four years or less into the future would be included in PG&E's QCR and the annual ERRA Compliance proceeding, and transactions with vintage years more than four years into the future would be submitted for review through the Commission's advice letter process.[100] For contracts with delivery terms that are greater than two years, PG&E would include an IE in any competitive solicitation and an IE Report in its respective QCR or advice letter filings.[101] Finally, should market conditions, CARB's regulations, or the electric portfolio change to the point of necessitating modifications

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[96] *Id* at pp. 3-11 to 3-19 (describing in detail procurement strategy).

[97] *Id.* at pp. 3-19 to 3-20.

[98] *Id.* at p. 3-20.

[99] *Id.*

[100] *Id.* at p. 3-21.

[101] *Id.*

to the proposal, PG&E would submit an advice letter to the Commission requesting changes to its GHG Procurement Plan.[102]

2. PG&E's GHG Procurement Plan Is Largely Unopposed.

Notably, only a few parties submitted testimony even addressing PG&E's proposed GHG Procurement Plan. The Green Power Institute ("GPI"), Pacific Environment, and DRA asserted that Commission action on PG&E's GHG Procurement Plan is no longer necessary by the end of 2011 given that CARB has delayed the first Cap-and-Trade compliance date to January 1, 2013.[103] However, CARB's first allowance auction will be held in August 2012 and PG&E needs time, after the Commission has made a decision on PG&E's GHG Procurement Plan, to develop the necessary tools and procedures to implement the plan.[104] Thus, PG&E needs a Commission decision on its GHG Procurement Plan well in advance of August 2012. Moreover, PG&E is already seeing activity in GHG markets.[105] There may be opportunities in early 2012 that are beneficial to customers, but that PG&E would be unable to pursue without procurement authority. Given the development of GHG markets, Commission action by the end of 2011 is important so that PG&E can pursue early, cost-effective GHG-related opportunities for its customers.

Pacific Environment proposes that GHG-related procurement costs be shared between shareholders and ratepayers because the Cap-and-Trade Program is uncertain and complex.[106] The fact that the Cap-and-Trade Program is complex and that certain elements are still being

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[102] *Id.*

[103] Ex. 2200 at p. 2 (GPI, Morris); Ex. 505 at pp. 33-34 (Pacific Environment, Cox); Ex. 405 at pp. 38-39 (DRA, Parrillo).

[104] Ex. 109 at p. 16, lines 1-9 (PG&E, Brandt).

[105] Tr. at p. 764, lines 1-10 (PG&E, Brandt).

[106] Ex. 505 at p. 36 (Pacific Environment, Cox).

finalized by CARB does not mean that PG&E's GHG Procurement Plan, if approved by the Commission, is not covered by AB 57 or that PG&E is not entitled to recover all costs incurred consistent with its GHG procurement Plan in rates. PG&E is required to comply with CARB's AB 32 regulations, including Cap-and-Trade. These GHG-related compliance costs are part of PG&E's procurement activities and are incurred on behalf of customers. Thus, these costs should be fully recoverable in rates, as required by California statutory law.[107] SCE and SDG&E also oppose Pacific Environment's proposal.[108]

Pacific Environment also raises a number of process concerns, such as concerns regarding consultation with the PRG and use of an IE.[109] As PG&E explained in rebuttal testimony, PG&E's proposed GHG Procurement Plan includes a requirement for annual review of its GHG procurement strategy with the PRG as well as PRG review of specific transactions.[110] Pacific Environment provides no reasoned basis for more frequent, and ultimately more time-consuming, review by the PRG. Moreover, Pacific Environment misunderstands the role of an IE. An IE is retained to oversee specific procurement activities, not to advise on general GHG procurement strategy.[111] Pacific Environment's proposal would significantly expand the role of the IE.

Pacific Environment also asserts that PG&E should be required to file an advice letter for all offset transactions.[112] PG&E has proposed that it only be required to file advice letters for certain transactions based on the vintage and duration. PG&E's proposal is consistent with the

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[107] Pub. Util. Code § 454.5(d)(3).

[108] Ex. 215 at pp. 6-7 (SCE, Buerkle) (addressing Pacific Environment proposal); Ex. 315 at p. 2, lines 9-16 (SDG&E, Miller) (same).

[109] Ex. 505 at pp. 37-38 (Pacific Environment, Cox).

[110] Ex. 109 at p. 17, lines 5-19 (PG&E, Brandt).

[111] *Id.*

[112] Ex. 505 at p. 37 (Pacific Environment, Cox).

previous Commission decisions regarding electric transactions, in which the Commission has not required review and approval of transactions that are less than five years in duration.[113] There is no reason to treat offsets differently by requiring the Commission to approve all offset transactions, regardless of the vintage or duration. SCE also opposes Pacific Environment's proposed requirement that the IOUs file advice letters for all offset transactions.[114]

DRA recommends that IOU procurement authority be limited to procurement for the subsequent compliance period (*i.e.*, the compliance period following the current compliance period) and that there be lower volume limits for procurement that is further out in time.[115] PG&E does not believe it is prudent to arbitrarily limit transactions to procurement for the subsequent compliance period as there may be opportunities to enter into transactions for later compliance periods that are cost-effective and beneficial for customers. PG&E's proposed GHG Procurement Plan does provide that PG&E will file an advice letter seeking Commission approval of transactions for GHG products with vintage years more than four years into the future.[116] Thus, for transactions that are further out in time (*i.e.*, in later compliance periods), there is an opportunity for the Commission and interested parties to review and comment on these transactions. The advice letter review process provides a procedural safeguard that should address DRA's concerns about transactions that procure GHG-related products for use in later compliance periods.

Finally, GPI raises concerns regarding the redactions in PG&E's GHG Procurement Plan.[117] If GPI had concerns about PG&E's redactions, it should have met and conferred with

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[113] Ex. 109 at p. 17, line 20 to p. 18, line 2 (PG&E, Brandt); *see also* D.07-12-052 at pp. 171-172 (concerning preapproval based on specific contract duration).

[114] Ex. 215 at p. 8 (SCE, Buerkle).

[115] Ex. 405 at p. 42 (DRA, Parillo).

[116] Ex. 109 at p. 19, lines 8-17 (PG&E, Brandt).

[117] Ex. 2000 at p. 2 (GPI, Morris).

PG&E regarding the redactions and, if that process was unsuccessful, could have filed a motion opposing confidential treatment of this material. Notably, GPI failed to pursue these procedural remedies. Moreover, there is no substantive basis for GPI's concerns. The redacted information reveals PG&E's proposed procurement activities, including its bid, price, and volume strategies.[118] The release of this commercially sensitive information could cause harm to PG&E's customers and put PG&E at an unfair business advantage by the disclosure of a GHG procurement strategy to other market participants. In addition, this information regarding PG&E's confidential GHG procurement strategy is similar to the general type of procurement information that is confidential and provided in response to the Energy Division's Monthly Data Request. This information also reveals the net open position for GHG compliance.[119]

D. The Proposed Procurement Oversight Rules Should Not Be Approved.

1. The Proposed Procurement Oversight Rules Should Not Be Enforceable Rules And Should Only Be For Reference.

The June 13th Ruling included proposed Procurement Oversight Rules developed by the Energy Division to address QCR reporting, oversight responsibility and authority of the PRG and IEs, and revisions to certain long-standing, Commission-approved standards of conduct.[120] As a preliminary matter, the Commission needs to determine whether the proposed Procurement Oversight Rules are provided as reference materials or whether they are being adopted as enforceable rules superseding all prior Commission decisions. The Procurement Oversight Rules are an excerpt from the Procurement Rulebook ("Rulebook") that was initially circulated in this proceeding in June 2010 by ALJ Kolakowski.[121] When the Rulebook was initially issued, most

[118] Ex. 109 at p. 15, lines 11-22 (PG&E, Brandt).

[119] *Id.*

[120] June 13th Ruling at pp. 6-7 and Appendix B.

[121] *Id.*, Appendix B at p. 2.

of the parties in this proceeding, including PG&E, proposed using the Rulebook as a reference, rather than as enforceable rules. PG&E's position on this issue has not changed.

First, one of the main reasons identified for developing a Rulebook is the fact that there are currently dozens of Commission decisions issued since 2002 addressing procurement issues, and that sifting through these decisions to find the current procurement rules is difficult and cumbersome, and becomes more difficult with each new decision that is issued. PG&E shares this concern and has itself experienced the difficulty of finding specific procurement rules that may be addressed in numerous decisions dating back eight years or more. However, this concern does not necessitate that the Procurement Oversight Rules become a General Order superseding Commission decisions. Instead, if the Procurement Oversight Rules are a reference manual that is regularly updated, it will accomplish the purpose of providing an easy reference source for determining the Commission's procurement rules, without the pitfalls of needing exact language or risking misstating Commission decisions, as discussed below.

Second, if the Procurement Oversight Rules are a General Order, they need to be more detailed. Commission decisions include findings of fact, conclusions of law and ordering paragraphs, but it is often the text of the decision that thoroughly explains the Commission's intent and the basis for a decision. If the Procurement Oversight Rules supersede Commission decisions so that these decisions are no longer legally binding or effective, the Procurement Oversight Rules will not only need a cursory description of procurement rules, but will also need to provide all of the necessary reasoning, background and explanation that is often included in Commission decisions to understand the procurement rules. The Procurement Oversight Rules lack this kind of detailed discussion.

Third, if the Procurement Oversight Rules become a General Order, timely updating will become critical, which may be a challenge given the Commission's limited resources and time

constraints. As a reference manual, the Procurement Oversight Rules could be updated on a quarterly or semi-annual basis. However, if they are a General Order, the Procurement Oversight Rules will need to be updated as soon as a Commission decision is issued to ensure that Commission jurisdictional entities are aware of and fully informed about new procurement rules or requirements. The Procurement Oversight Rules included in the June 13th Ruling are already out of date. For example, the section addressing IE requirements refers to the submission of a pro forma contract as a part of the "next Long Term Procurement Planning filing."[122] This reference is out of date as PG&E submitted a pro forma contract as a part of its March 2011 Track II filing. Another example concerns the CAM section. The Procurement Oversight Rules discuss D.06-07-029 with regard to the CAM group, but fail to incorporate changes resulting from Senate Bill ("SB") 695 that were addressed in D.11-05-005. These are just two examples of the difficulty of keeping the Procurement Oversight Rules up to date. In addition, more substantive situations will likely arise in the future.

Finally, as SDG&E explains, the Rulebook was initially contemplated to include only existing rules.[123] The procurement Oversight Rules that have now been proposed include both existing and new rules. With regard to the new rules, there is no evidentiary record to support these proposals, nor has there been an opportunity to develop a better understanding of the proposed changes and the basis for these changes through a workshop process.

Notably, other parties share PG&E's concern and oppose use of the Procurement Oversight Rules as enforceable rules.[124] Indeed, this is one of the few areas in this proceeding that the parties appear to be unified in their opposition to a specific proposal. Given the number

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[122] *Id.* at p. 12.

[123] Ex. 313 at p. 25, lines 11-20 (SDG&E, Eekhout).

[124] *See e.g.* Ex. 313 at p. 25 (SDG&E, Eekhout); Ex. 211 at p. 21 (SCE, Dagli); Ex. 1302 at p. 12 (Reid); Ex. 505 at p. 23 (Pacific Environment, Cox).

of errors and inconsistencies in the Procurement Oversight Rules described in Section III.D.2 below, PG&E believes that the Commission should simply reject these proposed rules at this time. If the Commission elects to adopt the proposed Procurement Oversight Rules for reference, then the inconsistencies and errors identified below need to be corrected before the rules are adopted.

2. The Proposed Procurement Oversight Rules Need To Be Modified.

Whether the Procurement Oversight Rules are simply reference material, or enforceable rules, there are certain portions of the proposed rules that are incorrect and need to be modified. First, with regard to IEs, the Procurement Oversight Rules will need to be revised depending on the outcome of certain issues being addressed in Track II of this proceeding, such as clarification as to when an IE is required and IE conflict of interest standards.[125] The Procurement Oversight Rules also need to be clarified regarding the timing of IE submissions to the Energy Division and as a part of an IOU's application.[126] Finally, PG&E has proposed modifications to language concerning the re-evaluation period for IEs.[127]

Second, with regard to the PRG, PG&E proposed several changes to clarify persons or entities that can act as PRG participants.[128] The Procurement Oversight Rules also include new requirements that the IOUs consult the PRG quarterly on hedging transactions and provide certain information related to Congestion Revenue Rights ("CRRs"). As PG&E explained in its Track III opening testimony, these new requirements are unnecessary and burdensome and thus should not be adopted.[129] Finally, the Procurement Oversight Rules include new requirements

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[125] Ex. 107 at pp. 4-3 to 4-5 (PG&E, Everidge).

[126] *Id.* at pp. 4-4 to 4-5.

[127] *Id.* at p. 4-5, lines 14-23.

[128] *Id.* at p. 4-6, lines 2-14.

[129] *Id.* at p. 4-6, line 16 to p. 4-7, line 27.

regarding the timing for providing summaries of PRG meetings. In Track II, PG&E proposed a more flexible approach that would require PRG meeting summaries to be provided 48 hours in advance of the next PRG meeting.[130] This is sufficient time for PRG members to review the summaries in advance of the meeting, but also allows the flexibility for the development of meeting summaries if PRG meetings are close in time or involve more complicated summaries that require sufficient time to prepare.

Third, the Cost Allocation Mechanism ("CAM") Group rules included in the Procurement Oversight Rules need to be updated to reflect changes resulting from SB 695 and D.11-05-005 that addresses cost allocation issues.[131]

Fourth, the Procurement Oversight Rules included significant and substantive changes to Standard of Conduct No. 4 ("SOC 4") that was first adopted by the Commission in 2002.[132] There is no justification for the proposed changes, which transform SOC 4 from a least-cost dispatch standard to a contract administration standard.[133] Given the lack of reasoning for changing this well-established Standard of Conduct, this aspect of the Procurement Oversight Rules should be rejected.

Finally, the Procurement Oversight Rules propose that QCR audits be made public.[134] PG&E recommends that if this proposal is adopted, the Staff report include both the audit findings and the IOU response to those findings in a single document.[135]

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[130] *Id.* at p. 4-8, lines 10-17.

[131] *Id.* at p. 4-8, lines 19-22.

[132] *Id.* at pp. 4-8 to 4-9.

[133] *Id.*

[134] *Id.* at p. 4-10, lines 8-20.

[135] *Id.*

3. Additional Rules Proposed By Pacific Environment Should Be Rejected.

In its testimony concerning the Procurement Oversight Rules, Pacific Environment proposed several new rules that need to be addressed. First, Pacific Environment asserts that the Commission should give greater weight to PRG recommendations and that the IOUs should have the burden to rebut PRG recommendations.[136] This proposal is based on a fundamental misunderstanding of the role of the PRG. The PRG was established to consult and review the details of IOU procurement and to offer assessments and recommendations to each IOU.[137] The PRG was not created to provide independent recommendations to the PRG. Moreover, Pacific Environment mistakenly assumes there is a single "PRG recommendation." Often PRG members have differing views concerning specific IOU procurement proposals and there is no single "PRG recommendation." The PRG does not vote, nor does the PRG develop a single recommendation. Rather, PRG members provide feedback and advice and then may pursue their own positions in subsequent Commission proceedings on a procurement proposal. In addition to specific procurement proposals, PG&E demonstrates its procurement requirements through various filings to the Commission – not the PRG - in Quarterly Compliance Filings, annual ERRA Compliance Proceedings, and through various other monthly, quarterly, and annual reports provided to the Energy Division. PRG members routinely intervene in formal proceedings where the IOUs may be seeking authorization for something inconsistent with a PRG recommendation.[138]

Second, Pacific Environment recommends that IEs have the authority to consider the loading order and overall need to ensure that the IOUs' procurement decisions adhere to

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[136] Ex. 505 at p. 26 (Pacific Environment, Cox).

[137] D.02-08-071 at pp. 24-25; *see also* Ex. 215 at p. 25, lines 5-21 (SCE, Dagli); Ex. 315 at p. 14, lines 1-10 (SDG&E, Eekhout).

[138] Ex. 109 at p. 20, line 18 to p. 21, line 2 (PG&E, Everidge).

Commission policy.[139] Similar to its proposals for the PRG, Pacific Environment misunderstands the role of an IE. IEs are retained to ensure that a specific procurement process is conducted in a fair and equitable manner. IEs are not retained to ensure adherence to Commission policy or decide whether a specific transaction is appropriate; that is the role of the Commission. Because Pacific Environment's proposal would significantly expand the role and authority of IEs, it should be rejected.

IV. CONCLUSION

For the foregoing reasons, PG&E respectfully requests that the Commission:

- Adopt without modification the Track I Settlement Agreement;
- Determine that the record in this proceeding does not conclusively demonstrate whether or not there is need to add capacity for renewable integration purposes through the year 2020;
- Direct that the parties, in collaboration with the CAISO, continue the work undertaken thus far in this proceeding to refine and understand the future need for new renewable integration resources, either as an extension of the current LTPP cycle or as part of the next LTPP, with the goal of reaching a definitive determination of need by December 31, 2012;
- Determine that there is no need to authorize procurement authority relating to local capacity requirements for PG&E's service area at this time;
- Reject the OTC Proposal made by Energy Division Staff;
- Allow all types of UOG offers in RFOs;
- Eliminate the prohibition in D.07-12-052 on the IOUs' ability to recoup from ratepayers bid development costs for losing UOG offers, to the extent such costs are reasonable and prudent;
- Approve without modification PG&E's GHG Products, Processes and Risk Management Strategies included in Chapter 3 of Exhibit 107-C; and,
- Reject the Proposed Procurement Oversight Rules developed by Energy Division Staff attached as Appendix B to the June 13th Ruling, or, alternatively, determine that the Procurement Oversight Rules are not enforceable rules and establish a

[139] Ex. 505 at p. 32 (Pacific Environment, Cox).

stakeholder process to revise and refine the Procurement Oversight Rules so that they are consistent with Commission decisions.

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Respectfully submitted,

CHARLES R. MIDDLEKAUFF
MARK R. HUFFMAN

By: */s/ Charles R. Middlekauff*
CHARLES R. MIDDLEKAUFF

Pacific Gas and Electric Company
P. O. Box 7442
San Francisco, CA 94120-7442
Telephone: (415) 973-6971
Facsimile: (415) 973-5520
E-mail: CRMd@pge.com

Attorneys for
PACIFIC GAS AND ELECTRIC COMPANY