**Public Version**

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

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| Order Instituting Rulemaking to Integrate and Refine Procurement Policies and Consider Long-Term Procurement Plans. | Rulemaking 10-05-006 (Filed May 6, 2010) |

# REPLY BRIEF OF CALIFORNIANS FOR RENEWABLE ENERGY, INC. (CARE)

Robert M. Sarvey
501 W. Grantline Rd
Tracy, Ca. 95375
Phone: (209) 835-7162
E-mail: sarveybob@aol.com

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## I. Introduction

In accordance with the directive provided by Administrative Law Judge ("ALJ") Peter Allen and Rule 13.11 of the Rules of Practice and Procedure of the California Public Utilities Commission ("Commission"), CAlifornians for Renewable Energy, Inc. (CARE) hereby submits its reply brief.

## II. PROPOSALS TO PROHIBIT UOG OFFERS IN RFOS OR SIGNIFICANTLY MODIFY THE RFO EVALUATION PROCESS SHOULD BE IMPLEMENTED.

PG&E on page 18 of its opening brief states that, *"Proposals to prohibit UOG offers In RFOs or significantly modify the RFO evaluation process should be rejected."* Prior experience with PG&E's RFO's provide ample evidence that UOG offers and significant modifications to the RFO process are sorely needed to protect the competitive market and ratepayer interests. SCE's opening brief states, "*Utility-Owned Generation and Power Purchase Agreements Are Not Comparable During a Bid Evaluation Process."*[1] As SCE testified, "UOG projects should be proposed only when competitive processes cannot deliver the products that the utility needs to serve its customers in a cost-effective manner. In such instances, however, utility-owned projects should be proposed to the Commission via more traditional methods, such as an application for a certificate of public convenience and necessity (CPCN)." Of the twenty plus parties in this proceeding PG&E is the only party that believes that UOG offers should compete in the

[1] SCE Opening Brief Page 21

competitive solicitations. Utility owned generation should only be approved under extraordinary circumstances where competitive solicitations have failed.[2]

**CARE would recommend going one step further and completely eliminating the PG&E from the selection process.** After obtaining PG&E's input on its portfolio needs project selection should be conducted by the energy division in cooperation with the Procurement Review Group and the independent evaluator guided by the need created by LCR, retiring OTC units and other State priorities.

The temptation for PG&E to manipulate the RFO is just too great as their very profits are tied to the outcome of the selection process. A major reason to remove the PG&E from the selection process is to prevent over procurement. In D. 7-12-052 the Commission authorized PG&E to procure 800-1200 MW plus 312 MW to replace failed projects from the prior LTPP for a total of 1,112-1,512 MW. In spite of this limitation PG&E signed contracts for 1,742 MW despite the fact that the proceeding determined that PG&E's need had fallen since the need determination in D. 7-12-052.[3] This put the Commission in an awkward position pitting investor's expectations against ratepayer interests. There is only one way to prevent PG&E from signing contracts for too many MW, remove PG&E from the selection process.

Other examples from PG&E's 2008 LTRFO point to solid reasons for removing PG&E from the selection process. In the 2008 LTRFO PG&E considered the proposed RFO project's impacts on the projects that PG&E was trying to permit both inside and outside the LTRFO. More specifically when considering projects in the Tracy area PG&E factored into its selection process what impacts those projects would have on the permitting of the Tesla Project.[4] The

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[2] Disclaimer: CARE is not implying in any way that we support any state approved pricing for wholesale electricity for purposes of resale outside of or in avoidance of the requirements of the FPA or PURPA. This reply brief is applicable to facilities over 80 MW only. The Federal Power Act ["FPA"], 16 U.S.C. §791, et seq., and its follow-up act, the Public Utility Regulatory Policies Act ["PURPA"], 16 U.S.C. §824, et seq., were each adopted by Congress under the Commerce Clause of the United States Constitution, and expressly preempted state authority in that field to the extent (a) provided therein or (b) state law conflicts therewith, under the Supremacy Clause of the United States Constitution. PURPA was an amendment to FPA, and by definition the term "small" power production facility means one with a "production capacity of no more than 80 megawatts ["MW"]. See *American Paper Institute, Inc. v. American Electric Power Service Corp.*, 461 U.S. 402, 420 (1983). FERC has issues orders which subdivide the small power production facilities into (a) those with a production capacity of 20MW or less, and (b) those with production capacity in excess of 20MW, but no more than 80MW.

[3] D. 10-07-045 Finding of Fact 10, 11, 12 "10. The CEC's 2009 IEPR subsequently found the 2007 California Energy Demand forecasted need determination to be "markedly" higher. 11. No party in this proceeding disputes that the CEC's 2009 IEPR forecast of peak demand for the PG&E planning area in 2015 is less than in the 2007 CEC forecast relied upon in D.07-12-052. 12. Given reporting errors and changes in demand in its service territory, PG&E only needs to procure 950 - 1000 of its previously approved MW allotment."

[4] A.09-09-021 Exhibit 37 (c) LongTermRFO-Solicitation 2008-II_EXH_PGE_20100406-Exh037 –Conf line 66

evidence of this is contained in A. 09-09-021 Exhibit 37(c) (RFO 08 Final Environmental/ Permitting and Land Scores). For the Tracy Area several project evaluations were influenced by PG&E's pursuit of the Tesla Project. We do not know if better offers were rejected due to the Tesla considerations as the process was less than transparent as acknowledged by the decision D. 10-7-045, *"PG&E does not provide a clear explanation why 15 projects with higher G-scores than the worse project on the short list were excluded from further consideration."*[5] *"PG&E made decisions for which it provided little or no explanation or rationale. For example, PG&E states that after the initial G-score rankings were established for the offers, "exceptional project-specific information" was considered that allowed an offer to be given a reduced rank or even eliminated from consideration. Though it gives an example of how exceptional project-specific information could be used, PG&E provides no information or guidance as to what, if any, "exceptional project-specific information" was actually considered and where. PG&E's lack of clarity can also be seen where projects were moved to the shortlist."*[6]

When evaluating projects in the Antioch area in the 2008 LTRFO PG&E factored into its evaluation the impacts those projects would have on the permitting of the Gateway Project. Mirant had a proposed project at the Marsh Landing site which as proposed in the AFC would have had a nominal electrical output of 930 MWs generated from four power blocks: two Siemens Flex Plant 10 (FP10) combined-cycle units; and two Siemens 500F combustion turbine units operating in simple-cycle mode.[7] PG&E explicitly factored into its evaluation the impact of the combined cycle portion of the project on the PG&E Gateway Project and the Oakley Project.[8] The Oakley, Gateway and Marsh Landing Projects were all located within 1 mile of

[redacted]

[5] D. 10-07-045 Page 18
[6] D. 07-12-045 Page 19
[7] Exhibit 37 (c) Long Term RFO-Solicitation 2008-II_EXH_PGE_20100406-Exh037 Line 39
[8] A. 09-09-021 Exhibit 37 (c) LongTermRFO-Solicitation 2008-II_EXH_PGE_20100406-Exh037 –Conf line 39

[redacted]

each other. Ultimately PG&E contracted with Mirant for a 719 MW combustion turbine project. Mirant then amended its AFC to construct a 719 MW combustion turbine project and abandoned the fast start combined cycle project which would have lowered greenhouse gases and been a much more efficient unit. Evaluation of the impacts of RFO projects on PG&E's existing and planned developments should not be a consideration as it prejudices bids submitted by other merchant generators and in this case led to a less efficient product with higher Greenhouse Gas emissions.

## III. RFO DESIGN

If the commission believes that the utilities should continue to offer UOG projects in competitive solicitations CARE recommends several modifications to the current evaluation process.

### 1. Market Valuation

There are obvious reasons cited by many parties why there can be no fair comparisons of PPA, and PSA's Utility owned generation's market value is based on a 30 year lifetime. All of the PPA's from PG&E's 2008 LTRFO had 10 year lengths. Comparing UOG projects with a 30 year life to a project with a 10 year life creates a lot of assumptions on future costs and revenues which may or may not be accurate and make it virtually impossible to value the projects head to head. Removing utility owned generation from the bid process is the most effective way to eliminate this concern. If the Commission is adverse to removing UOG from the solicitation process standardizing contract durations of PPA's to 30 years to match UOG contracts would be the most effective way to eliminate future valuation disparities and provide revenue certainty to merchant owned generation.

Utility owned projects should not be allowed to come back to the Commission and request additional funding after the selection process. This practice allows UOG projects to underbid merchant projects knowing later they can come back and recoup loses from a low bid that enabled them to win in an RFO. This is unfair to merchant projects whose shareholders are at risk for losses while the utility generation is allowed to put ratepayers at risk for unforeseen costs.

[redacted]

Utilities should be at risk from failed UOG project development costs. Shareholders not ratepayers should absorb these costs to level the playing field between merchant generators and the utilities.

## 2. Portfolio Fit

The Commission in its need determination should specify the interconnection points, ramping requirements and the size of the resources required for the RFO based on LCR analysis, portfolio needs and State priorities rather than leave it up to the utility to choose projects in any location and in any configuration based on parameters unknown to other bidders in the RFO. This provides guidance to project developers and provides the portfolio fit metrics and prevents manipulation of those weightings and arbitrary portfolio fit weightings. By providing these metrics poorly located and designed projects can be eliminated. PG&E in its 2008 LTRFO specified certain parameters in its RFO but then selected projects that did not match the design parameters. PG&E's RFO stated, ***"****In this solicitation, PG&E has a strong preference for operationally flexible, dispatchable resources. In general, PG&E will assess the value of the Offer's operating flexibility versus the Offer's costs. Resources that are capable of being committed to production a high number of times per year and those capable of multiple starts and stops per day are preferred.* ***For example, flexible resources should be capable of being "cycled" on and off at least 300 times per year."***[9] PG&E then selected the Marsh Landing Project that was permitted with only 167 starts per year.[10] PG&E also selected the Oakley Project which limited to less than 300 starts per year. These issues could be eliminated by a required set of project attributes and defined locations prescribed by the Commission in the need determination.

## 3. Project Viability

Project viability issues could largely be eliminated by requiring short listed projects to have environmental permits in advanced stages. For natural gas projects a CEC Preliminary Staff Assessment would be recommended as a good benchmark to examine a project's viability.

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[9] http://www.pge.com/includes/docs/word_xls/b2b/wholesaleelectricsuppliersolicitation/LTRFO040108.doc PG&E Long Term request for Offers April 1, 2008 page 5

[10] http://www.energy.ca.gov/sitingcases/marshlanding/documents/applicant/2009-09-15_Applicants_Amendment_to_the_Application_for_Certification_TN-53293.PDF page 3-11

Other permits such as US EPA PSD and water permits also should be examined closely for short listed projects.

### 4. Environmental Leadership

In the utilities evaluation of offers, environmental leadership should be given greater weight to create a more environmentally friendly procurement package. In PG&E's 2008 LTRFO none of the winners had an environmental leadership score above 2 out of seven. As D. 10-07-045 Stated, *"Though we find that PG&E reasonably conducted the RFO, the weights placed on certain criteria do not fully reflect this Commission's stated priorities. As noted by the IE, "the portfolio fit evaluation element might have too great a weighting in the development of an offer's total evaluation score, particularly because the quantitative market valuation and transmission cost estimates capture key portfolio fit attributes." In contrast, of the eight factors that PG&E weighted to compute its G-score, "environmental leadership" was given 1/25$^{th}$ 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."*[11]

Environmental leadership is an important component as it reflects the States priorities in siting and operation of a power plant. Giving environmental leadership a weighting of only 2.5 % undermines the important direction that the utility has been given by the Commission and the State. Also bidders in the RFO need clear guidelines on what environmental attributes are desirable to allow all bidders and equal opportunity.

## IV. RATEPAYER COSTS SHOULD BE MINIMIZED

When authorizing projects within the same load pocket PG&E should examine existing generation and contract with it rather than execute an agreement for new generation in the same load pocket when it benefits ratepayers. For example in the 2008 LTRFO PG&E selected the Mariposa Energy Center which consisted of four LM-6000 PC combustion turbines in simple cycle mode. At the same time PG&E contracted with the Los Esteros Project, also located in the

[11] D. 10-07-045 Page 20

Bay Area Load Pocket, to convert four LM-6000 PC turbines into a combined cycle project. It would have been much cheaper to keep the existing Los Esteros Project in its current configuration rather than contract for four brand new LM-6000's in the Bay Are Load Pocket. The ratepayers could have saved a substantial amount of money by keeping the existing Los Esteros Facilities LM-6000PC turbines in simple cycle mode.

## V. ASSET CONCENTRATION ISSUES

Mirant owns 38% of the Bay Area Generation and Calpine owns 41%. PG&E now owns almost all the rest. If either Calpine Mirant or PG&E were to go bankrupt, and all three recently have, this could expose the ratepayers to financial and reliability risks. If Mirant or Calpine or PG&E were to file for bankruptcy the ratepayers face the risk of replacing those contracts with higher priced contracts. This should be consideration for the next round of procurement and the Commission should consider remedies for the risks associated with asset concentration.

## VI. PROJECT DEVELOPMENT TIMING

The Settlement Agreement properly defers the authorization of new Resources until CAISO has completed its analyses on renewable integration. The IOU's and merchant generators insist that a decision on need for the 2020 timeframe requires a need decision by the end of 2012. GenOn and others assert that a needs assessment must be completed by the end of 2012 because it takes seven years to develop a project under the current regulatory structure. GenOn points to the new greenhouse gas regulations at the EPA that will lead to delays in issuance of PSD permits. GenOn lists a timeline for approvals that includes 12 months for EAB review and 24 months for CEC approval.[12] First of all the PSD permit can be processed concurrently with the CEC license which would eliminate 12 months of delay described by GenOn. Secondly the assertion that the CEC process takes 24 months is misleading. Many of the delays at the CEC in the last two years have occurred due to the prioritization of large scale solar projects which had timelines for federal funding which required the CEC to devote significant resources to these large scale solar projects to the detriment of fossil fuel applications.

GenOn points to its Marsh Landing proposal as an example of an AFC taking 24 months to process. What GenOn fails to mention other than in a footnote is that on September 22, 2009 Marsh Landing completely amended its AFC from a 930 MW combined cycle and peaker project

[12] GenOn Opening Brief Page 8

to a 730 MW four unit peaker project.[13] Even with this complete redesign of the project the CEC issued Marsh Landings license on August 31, 2010 which is 11 months after the major amendment to the AFC and at the same time the CEC was drowning in large scale solar projects. Most to the delays incurred at the CEC by developers is due to the developer's project amendments or their inability to properly answer CEC data requests in a timely fashion.

GenOn points to the Oakley Generating Station AFC as an example of a 24 month siting process at the CEC. Once again this application was processed in the midst of the large scale solar generating project glut. GenOn fails to mention that during the CEC process the Oakley Generating Station introduced a completely new air quality section and public health section half way through the process,[14] and amended the emission rates. The Oakley Generating Station developers and did not submit the last data response until February 18, 2011,[15] and they still receive their CEC license on May 23, 2011 two months after the final data request was answered.

Developers who fear this long development timeline should pursue their permits now rather than wait until the last minute and then whine about the regulatory process. GenOn has an application filed for the Willow Pass Generating Station that was filed June 2008 but GenOn has not aggressively pursued the application and nothing is happening with the application.[16] While the regulatory process may take a long time most delays can be eliminated if due diligence is exercised by project developers.

## VII. THE COMMISSION MUST ENFORCE THE NEED DETERMINATION

PG&E must be limited to the amount authorized by the need established in the LTPP proceeding. In the 2008 LTRRFO PG&E successfully acquired more MW than the amount authorized by D. 07-12-052. The commission fully recognized that PG&E was attempting to acquire more MW than authorized by D. 07-12-052 by proposing additional megawatts as DWR novations in A. 09-10-022 and A. 09-12-034. Conclusion of Law number 7 in D. 10-07-045 opines:

> *"As a general rule, to support decisional consistency and discourage the parsing of projects into different applications as a means to circumvent our rulings, to the*

[13] Applicant's Amendment to the Application for Certification, (PDF file, 588 pages, 28.1 mb, Please Note Size) Posted: September 22, 2009

[14] Supplemental Filing - Air Quality and public Health, Revised April 7, 2010. Posted: July 12, 2010. (PDF File, 301 pages, 5.2 megabytes).

[15] Transmission Line Reconductoring Analysis (Response to Data Request 74). Posted: February 18, 2011. (PDF File, 316 pages, 42.3 mb)

[16] http://www.energy.ca.gov/sitingcases/willowpass/documents/index.html

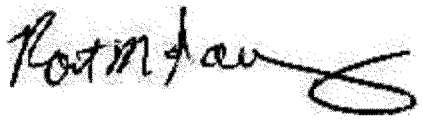
> *extent that procurement is allowed outside of the proceeding to approve the agreements that are within the utility's previously authorized procurement authority, any approved MW should be counted against the authorized procurement. Consistent with this general rule, absent a specific exemption providing for a deviation from the previously authorized procurement authority, Commission approved projects that allow utilities to procure new generation during the time-frame covered by their LTPPs should count toward the authorization granted in the LTPP."*[17]

Despite the fact that the Commission recognized that PG&E was attempting to acquire more megawatts than authorized by D.07-12-052 as modified by D. 10-07-045 the Commission failed to admonish PG&E and in fact rewarded their behavior by approving the PSA for the Oakley Generating Station in D. 10-12-050 exceeding their authorized procurement. Procurement must be based on established need in the LTPP proceeding. Authorizing additional MW above the established need for a utility owned project harms the competitive market that the Commission is working to establish.

## VIII. ONCE-THROUGH COOLING ISSUES

All plants utilizing one through cooling were required to submit plans for compliance to the SWRCB by April 1, 2011. These plans should be incorporated into the record of the proceeding to determine the intentions of the project owners and provide guidance to determining whether new resources may or not be needed to replace the once through cooling units. This would be a good first step before any determination of need to replace these units is considered.

Respectfully submitted,



Robert M. Sarvey
501 W. Grantline Rd
Tracy, Ca. 95375
Phone: (209) 835-7162
E-mail: sarveybob@aol.com

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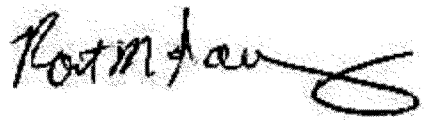
## Verification

I am an officer of the Intervening Corporation herein, and am authorized to make this verification on its behalf. The statements in the foregoing document are true of my own knowledge, except matters, which are therein stated on information and belief, and as to those matters I believe them to be true.

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

Executed on this 3rd day of October 2011, at Tracy, California.



Robert M. Sarvey - Treasurer (CARE)
CAlifornians for Renewable Energy, Inc.
501 W. Grantline Rd
Tracy, Ca. 95375
Phone: (209) 835-7162
E-mail: sarveybob@aol.com