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**

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

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ON TRACKS I AND III

Tracks I and III in this proceeding address a number of important procurement issues. In Track I, twenty-three parties proposed a settlement agreement that resolved most, but not all, of the Track I issues ("Track I Settlement Agreement"). In opening briefs, most parties whole-heartedly support the Track I Settlement Agreement. In addition to the Track I Settlement Agreement, there are several other Track I proposals. Calpine Corporation ("Calpine") proposes that the California Public utilities Commission ("Commission") order an intermediate term solicitation for existing resources that do not have long-term contracts. This proposal, which would directly benefit Calpine, has little support in this proceeding, is unnecessary, and should be rejected. Women's Energy Matters ("WEM") proposes shutting down all nuclear facilities in California, even though WEM offers no evidence as to potential impacts on reliability and customer costs of its proposal. This proposal should also be rejected.

Track III addresses a number of specific procurement and policy issues, including the Investor-Owned Utilities' ("IOUs") greenhouse gas ("GHG") procurement plans, Energy Division Staff's proposal regarding contracting with Once-Through Cooling ("OTC") units, further revisions to the Request for Offer ("RFO") process, and a partial Procurement Rulebook developed by Energy Division Staff. In its opening brief, Pacific Gas and Electric Company

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(“PG&E”) addressed the Track III proposals that it has advanced in this proceeding. In this reply brief, PG&E addresses the proposals made by other parties in this proceeding, as well as some concerns that were raised regarding PG&E’s proposals. A summary of recommendations for Tracks I and III is included in PG&E’s opening brief.

I. TRACK I

In their opening briefs, several parties discuss Track I issues. The settling parties filing briefs all support adoption of the Track I Settlement Agreement. PG&E urges the Commission to adopt the Track I Settlement Agreement, and to set additional procedural schedules consistent with the recommendations set forth in it.

Several parties also discuss the range of assumptions to be used in a further analysis. The Green Power Institute (“GPI”), for example, argues that a broader spectrum of possible renewable portfolios should be considered in the additional need analysis. The Track I decision in this proceeding should not attempt to mandate which studies should be carried out; it should direct the parties to work in cooperation with the California Independent System Operator (“CAISO”) to “develop a workable list that could be developed into final runs conducted in December.”[1]

With respect to Track I issues not resolved by the Track I Settlement Agreement, Calpine continues to argue that the Commission should order the IOUs to hold an intermediate term (3 to 5 years) RFO to obtain power from existing resources. Calpine suggests that, in the absence of the contracts that might result from such an RFO, some of Calpine’s units might shut down. However, Calpine continues its adamant refusal to provide any Calpine-specific information to support its claim. And while the CAISO voices some support for Calpine’s proposal, it does not present any evidence to suggest that the RFO is necessary for the continued performance of

[1] CAISO Opening Brief, p. 3.

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Calpine's units, either. Therefore, there is no justification for the Commission to order the intermediate-term RFO for existing units that Calpine is suggesting.

Neither WEM nor Jan Reid offers any substantive support for their proposals to immediately shut down, or consider whether to shut down, the nuclear power generation facilities in the state. Mr. Reid points to WEM as offering the justification, and WEM offers nothing to suggest that the benefits of a shutdown of these facilities, if any, would outweigh the burdens that would be placed on the electric grid by doing so.

A. The Commission Should Adopt The Track I Settlement Without Modification.

In their opening briefs, a wide range of parties continue to voice their support for the 23-party Track I Settlement Agreement, which addresses most of the Track I issues, including the key issue of system need. Five parties not signatories to the Track I Settlement Agreement filed briefs: AES Southland, LLC ("AES Southland"); the Independent Energy Producers Association ("IEP"); the Large-Scale Solar Association ("LSA"); Jan Reid; and WEM. One of these parties, LSA, is supportive of the Track I Settlement Agreement.[2] Another, Mr. Reid, voices conditional support for the Settlement.[3] While WEM states that it rejects the Settlement, WEM agrees with one of the key components of the Settlement, that "this proceeding was inconclusive as to 'renewables integration' and the process must continue. . . ."[4]

Only AES Southland takes issue with any specific provision of the Settlement. Even AES Southland's objections are relatively muted. AES Southland recommends a limited, conditional finding of need: "the Commission should authorize SCE to procure a minimum 'no regrets' amount of generation up to 2,000 MW in the Western sub-area of the LA Basin LCA in

[2] LSA Opening Brief, pp. 3-6.

[3] Reid Opening Brief, pp. 2-3.

[4] WEM Opening Brief, p. 19.

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this [Long-Term Procurement Plan ("LTPP")] cycle as an interim measure should a final determination [on need] not be made by the end of 2012."[5] The Settlement Agreement, by contrast, urges the Commission to make a conclusive need determination by the end of 2012, but does not recommend any interim, "no regrets" conditional finding of need at this time.

Thus, the only party contesting any provision of the Track I Settlement Agreement is AES Southland. In its opening brief, Southern California Edison Company ("SCE") responds to AES Southland's recommendations. For all the reasons presented in support of the Track I Settlement Agreement generally, as well as those that SCE presents in specific response to AES Southland's recommendation,[6] AES Southland's recommendation should be rejected. In all other aspects, the 23-party Track I Settlement Agreement is unopposed. The Commission should adopt the Track I Settlement Agreement.

B. The Decision On Track I Should Not Attempt To Dictate The "Final Runs" To Be Conducted By The CAISO And Parties In The Follow-Up Needs Analysis Contemplated By The Track I Settlement Agreement.

The Track I Settlement Agreement recommends that the parties, in collaboration with the CAISO, should be directed to continue the work undertaken in this proceeding to refine and understand the future need for new renewable integration resources, with the goal of reaching a definitive determination of need by December 31, 2012.[7] In their briefs, several parties discuss the possible nature of that continuing work. GPI, as an example, makes several very specific recommendations for assumptions and scenarios to be used in that continuing analysis.[8]

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[5] AES Southland Opening Brief, p. 3.

[6] SCE Opening Brief, pp. 41-43.

[7] Track I Settlement Agreement, pp. 5-6.

[8] *See, generally*, GPI Opening Brief.

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No particular record has been established in Track I to allow the Commission to make such a detailed determination of the exact content of the continued work contemplated by the Track I Settlement Agreement. Therefore, no such detailed determination should be made. PG&E recommends that the Commission adopt a schedule, consistent with the one presented by the CAISO, for the parties to work together to develop the "final set of runs [to be conducted] between December and March 31st" of 2012.[9]

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

In its opening brief, Calpine continues to support its proposal that the Commission order an intermediate term solicitation for capacity from existing resources that do not currently have contracts. The Commission should reject Calpine's proposal.

In its brief, Calpine notes that for existing, uncontracted resources, the market opportunities are resource adequacy, energy, and ancillary services.[10] Calpine concedes that "some generation resources may be able to cobble together an adequate revenue stream from some combination of these mechanisms . . . ."[11] Nonetheless, Calpine continues to argue that the Commission should order an intermediate term solicitation for capacity from these resources to provide better assurance that these resources will be able to recover their going forward costs.[12]

As The Utility Reform Network ("TURN") points out, Calpine refuses to provide any information about the actual costs of operating the existing generating units in question.[13] In light of Calpine's concession that some resources may be able to obtain an adequate revenue

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[9] *See*, PG&E Opening Brief, pp. 11-12, citing Transcript ("Tr."), p. 365 (CAISO, Rothleder).

[10] Calpine Opening Brief, p. 4.

[11] *Id.*

[12] *Id.*, p. 9.

[13] TURN Opening Brief, p. 3.

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stream from available sources, Calpine's unwillingness to make available financial information for the units at issue, and the fact that there are several regulatory safeguards at both the state and federal levels to ensure that a needed resource that might otherwise shut down for economic reasons will not do so,[14] Calpine's proposal should be rejected.

While the CAISO voices generalized support for Calpine's proposal,[15] the CAISO provides no reason why it believes that Calpine's proposed RFO is necessary to keep existing uncontracted generation units online. The Commission should not order an interim RFO for existing, uncontracted generation resources.

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

In his opening brief, Mr. Reid continues to urge the Commission to open a proceeding to evaluate whether to shut down the state's nuclear generation facilities.[16] However, the only justification Mr. Reid offers for opening such a proceeding is his conclusion that "WEM is certainly correct concerning the risks associated with continued operation of California's nuclear power plants."[17] However, WEM has not presented any thought-out rationale for its recommendation to close the state's nuclear power plants. For example, WEM offers the occurrence of a recent widespread power outage as a justification for closing the nuclear power plants, without making any reasoned linkage whatsoever between the outage and any risk associated with nuclear power.[18]

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[14] PG&E Opening Brief, pp. 13-14.

[15] CAISO Opening Brief, pp. 6-8.

[16] Reid Opening Brief, pp. 8-10.

[17] *Id.*, p. 9.

[18] WEM Opening Brief, p. 13.

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In short, neither Mr. Reid nor WEM have presented any persuasive reasons to open a new proceeding to evaluate the shut down of California's nuclear facilities. Therefore, their proposals to do so should be rejected.

II. TRACK III

A. The Energy Division's OTC Proposal Should Be Rejected.

Virtually all of the parties in this proceeding oppose Energy Division Staff's proposal to limit contracting with OTC units to contracts with a term of one year or less. As the Division of Ratepayer Advocates ("DRA") concludes, this proposal will not result in any identifiable benefits (*i.e.*, early closure of the OTC facilities), but will result in increased customer costs.[19] Only two parties supported Staff's OTC proposal – Pacific Environment and Communities for a Better Environment ("CBE").[20] Pacific Environment concedes that Staff's OTC proposal will increase customer costs, but argues that these increased costs are "balanced" against the hope that limiting contract terms will result in early closure of the existing OTC facilities.[21] Pacific Environment also claims that contracting limits will "deter" the utilities from seeking an extension of the OTC facilities' shutdown dates. There are several flaws with Pacific Environment's arguments.

First, Pacific Environment overstates the State Water Resources Control Board's ("SWRCB") direction regarding the shutdown of OTC facilities. Contrary to Pacific Environment's claim that the SWRCB wants to close these facilities "as soon as possible," in fact, the SWRCB has acknowledged the important reliability and energy benefits associated with these facilities and thus adopted a phased approach that was intended to set realistic deadlines for

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[19] DRA Opening Brief, pp. 26-27.

[20] Pacific Environment Opening Brief, pp. 30-34; CBE Opening Brief, pp. 4-5.

[21] Pacific Environment Opening Brief, p. 31.

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retiring or repowering the existing OTC facilities.[22] If Pacific Environment believed the SWRCB deadlines should have been earlier, this is an issue that it should have raised at the SWRCB, not in this proceeding. Pacific Environment is essentially trying to relitigate in this proceeding the deadlines created by the SWRCB, arguing that the Commission should use contractual limitations to force the earlier closure of these facilities.

Second, Pacific Environment fails to provide any evidence that the contracting limits in the Staff's OTC proposal would actually result in the early closure of any OTC facility. There are a number of other load-serving entities, such as Direct Access ("DA") and Community Choice Aggregation ("CCA") providers, that would not be bound by the limitations in the Staff's OTC proposal and who could contract with these resources for the energy and Resource Adequacy ("RA") value. Moreover, to the extent the utilities need energy and RA capacity, they would likely be required to contract with the OTC facilities, albeit at a higher price. In short, Pacific Environment fails to demonstrate that the Staff's OTC proposal, which Pacific Environment mistakenly refers to as a "relatively minor restriction," will in fact result in an early closure of any OTC facility.

Third, Pacific Environment incorrectly asserts that the Staff's OTC proposal will "deter" the utilities from asking for an extension of the shutdown deadline for the OTC facilities.[23] The deadlines to shutdown OTC facilities apply to the facility owners, not the utilities. Thus, any request for an extension will come from the OTC facility owners. There is no utility conduct to "deter" and Pacific Environment's argument on this point is misplaced.

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[22] *Statewide Water Quality Control Policy on the Use of Coastal and Estuarine Waters for Power Plants Cooling*, issued by the SWRCB on October 1, 2010, p. 3, Item J and pp. 4-7.

[23] Pacific Environment Opening Brief, p. 31.

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Finally, Pacific Environment takes issue with PG&E's statement that it considers OTC issues in its RFO evaluation process, and asserts that the environmental criteria used in PG&E's most recent intermediate RFO was not sufficient. To support its argument, Pacific Environment relies solely on statements from the Commission in its decision on PG&E's 2008 Long-Term RFO ("LTRFO").[24] Pacific Environment ignores the fact that since the 2008 LTRFO, PG&E has modified its environmental weighting to address the Commission's concerns.[25] In discovery, PG&E provided Pacific Environment with detailed information regarding its most recent RFO environmental weighting.[26] Pacific Environment conveniently ignores this information and instead prefers to "live in the past" by relying on decisions regarding RFOs that were conducted more than three years ago. Pacific Environment does not raise any specific concerns about PG&E's most recent RFO environmental criteria, nor does it explain why these criteria does not adequately address concerns about consideration of OTC issues in the RFO process. In short, PG&E's current environmental criteria sufficiently address OTC policy issues and there is no need to adopt the Staff's OTC proposal given that this proposal will likely not result in any change in continued operation of the OTC facilities until the SWRCB deadline, but will result in increased customer costs.

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

In its Track III testimony, PG&E submitted a detailed proposal for GHG-related procurement that included GHG-related products, processes, and PG&E's procurement strategy ("GHG Procurement Plan").[27] No party objected to the specific elements of PG&E's GHG-Procurement Plan. The only party that appeared to review PG&E's proposal in detail was DRA,

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[24] Pacific Environment Opening Brief, pp. 32-33.

[25] Ex. 109, p. 2, lines 20-27 (PG&E, Monardi).

[26] *Id.*

[27] Ex. 107-C, Chapter 3 (PG&E, Brandt).

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which concluded that "PG&E's [GHG-related procurement] strategy balances the flexibility to react to short-term allowance needs and price fluctuations with the risks of long term over-procurement."[28] DRA supported the proposed standards included in PG&E's GHG Procurement Plan. DRA and several other parties did raise generic concerns regarding the IOUs' proposals to procure GHG-related products, issues regarding timing, and concerns regarding PG&E's redactions. These issues and concerns are addressed below.

1. The Commission Should Address PG&E's GHG Procurement Plan By The End of 2011.

DRA, GPI, and Pacific Environment assert that as a result of the California Air Resource Board's ("CARB") delay in the first Cap-and-Trade compliance date, the Commission does not need to act on the IOUs' GHG proposals by the end of 2011.[29] CBE asserts that CARB's rules are not yet final, and thus approval of the IOUs' GHG procurement plans is premature.[30] As PG&E explained in its opening brief, adequate time is needed to implement the IOUs' GHG procurement plans and market opportunities may exist in early 2012 that would be beneficial to customers.[31] The IOUs' GHG procurement plans were filed in July, have been the subject of discovery and cross-examination at hearing, and have now been the subject of thorough briefing. There is no reason to delay a decision given the thorough record that has been developed. If modifications to the IOU's GHG procurement plans are needed to reflect future CARB action, these modifications can be made through advice letter filings rather than delaying approval of the GHG procurement plans. This is consistent with the Commission's approach to the IOUs

[28] DRA Opening Brief, p. 20.

[29] DRA Opening Brief, pp. 13-14; GPI Opening Brief, pp. 21-22; Pacific Environment Opening Brief, pp. 28-29.

[30] CBE Opening Brief, p. 5.

[31] PG&E Opening Brief, p. 27; *see also* Ex. 109, p. 15, line 23 to p. 16, line 9 (PG&E, Brandt).

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bundled plans, which allows an IOU to modify its bundled plan through the advice letter process between LTPP cycles.[32]

DRA also proposes that the IOUs provide supplemental information related to GHG contracting issues and evaluation of GHG contractual risks in the procurement process.[33] PG&E does not oppose addressing these issues and notes that IEP filed a motion on September 23, 2011 requesting that the Commission address similar GHG-related issues in a subsequent phase of Track III. However, the issues raised by DRA and IEP do not impact PG&E's GHG Procurement Plan, and thus there is no reason to delay Commission action on PG&E's GHG Procurement Plan.

Finally, Pacific Environment includes a vague proposal that the Commission should issue an "interim" decision on the IOUs' GHG procurement plans, and delay a final decision until the end of 2012.[34] The import of, or need for, this proposal is unclear. Pacific Environment fails to explain how an "interim" decision is different than a "final" decision. Moreover, the Commission can, at any time, revise or modify the authority it has given the IOUs for procurement. Thus, it is unclear why the Commission cannot simply issue a decision in Track III of this proceeding and, if events occur which require the decision to be modified, subsequently do so.

2. The Scope Of PG&E's GHG Procurement Plan Should Not Be Expanded.

The *Administrative Law Judge's Ruling Denying Motion for Reconsideration and Motion Regarding Track I Schedule and Addressing Rules for Track III Issues, issued June 10,*

[32] D.07-12-052, p. 196, n. 232 (discussing revisions to bundled procurement plans through advice letter process).

[33] DRA Opening Brief, pp. 14-16.

[34] Pacific Environment Opening Brief, pp. 29-30.

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2011 ("June 10th Ruling") indicated that "procurement of greenhouse gas related products" would be addressed in Track III and that the IOUs' testimony should include a GHG management framework that would "govern the utility's proposed upfront achievable standards for greenhouse gas allowance and offset procurement."[35] PG&E's GHG Procurement Plan squarely addresses these issues, including a detailed evaluation of PG&E's GHG risks and the strategy and framework for addressing these risks through the procurement of offsets and allowances. Several parties, however, want to significantly expand the scope of Track III. For example, DRA argues that the IOUs should have performed a detailed analysis of how to reduce GHG emissions, including through additional preferred resource procurement.[36] Pacific Environment maintains that the IOUs should develop an emissions reduction strategy as a part of their GHG procurement plans.[37] The issues raised by DRA and Pacific Environment were addressed in Track II with regard to consideration of GHG emissions in the procurement process, and Track I with regard to overall GHG emissions resulting from the IOUs' portfolios.[38] In contrast, Track III is more narrowly focused on a GHG management framework and procurement of allowances and offsets. Because the issues raised by DRA and Pacific Environment have been or will be addressed in Tracks I and II, their concerns about the scope of PG&E's GHG Procurement Plan are misplaced.

Pacific Environment also asserts that reducing GHG emissions is "far less risky" because the market for compliance instruments may be "speculative and volatile."[39] Pacific Environment

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[35] June 10th Ruling, pp. 6-7.

[36] DRA Opening Brief, p. 16.

[37] Pacific Environment Opening Brief, pp. 20-23.

[38] *See Reply Brief of PG&E On Track II Bundled Procurement Plans*, filed June 30, 2011, pp. 4-5 (describing how GHG issues were addressed in Tracks I and II).

[39] Pacific Environment Opening Brief, p. 21.

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fails to provide any evidence or study to support this conclusion, nor did Pacific Environment prepare an analysis comparing forward projections of GHG compliance instrument prices and the costs of GHG emissions reductions to support its assertions. Moreover, Pacific Environment ignores the fact that all GHG-related procurement transactions will be reported to the Commission in the Quarterly Compliance Report ("QCR") and annual Energy Resource Recovery Account ("ERRA") forecast and compliance proceedings.[40] Thus, if allowance or offset costs become volatile or significantly increase, the Commission will have this information and will be able to consider what actions the IOUs should take in response, including potential GHG emission reduction measures.

3. Pacific Environment's Cost Recovery Proposals Should Be Rejected.

Pacific Environment argues that because GHG compliance markets are evolving and may be volatile, IOU shareholders should bear some of the costs associated with GHG-related procurement.[41] This argument is baseless. First, similar to all of its procurement activities, PG&E is procuring GHG-related products on behalf of its customers and has proposed a plan to most efficiently manage its customers' GHG-related obligations and costs.[42] Because these costs are incurred as a part of PG&E's overall procurement obligations on behalf of its customers, customers should be responsible for these costs. PG&E does not make a profit from GHG procurement, nor do shareholders receive any benefit from GHG procurement.

Second, the fact that GHG-related compliance product markets may be volatile does not justify passing through costs to IOU shareholders. Electricity and gas markets, even when

[40] Ex. 107, p. 3-20 (PG&E, Brandt).

[41] Pacific Environment Opening Brief, pp. 23-24.

[42] Ex. 109, p. 16, lines 10-24 (PG&E, Brandt).

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mature, can be volatile and the fact that a market is volatile does not justify passing through costs to shareholders.

Third, Pacific Environment's proposal is inconsistent with Public Utilities Code section 454.5, also referred to as Assembly Bill 57 or "AB 57." Under California law, once the Commission approves an IOU's procurement plan, costs that are incurred consistent with the approved procurement plan are fully recoverable from customers without an after-the-fact reasonableness review.[43] Pacific Environment's proposal would effectively result in PG&E only recovering a portion of the costs that it incurred under its Commission-approved GHG Procurement Plan. This is clearly contrary to California statutory requirements.

Pacific Environment also mistakenly argues that Public Utilities Code section 454.5(c) permits sharing of the risks and benefits in the procurement process between customers and shareholders.[44] The provision cited by Pacific Environment concerns proposals for incentive mechanisms under which procurement costs and benefits would be allocated to shareholders and customers. PG&E has not proposed an incentive mechanism for its GHG Procurement Plan. Instead, all of the costs and benefits are passed directly through to customers. Pacific Environment is notably silent as to the alleged "benefits" PG&E's shareholders will receive from the procurement of GHG-related products. Given that PG&E has not proposed an incentive mechanism, Pacific Environment's reliance on Section 454.5(c) is misplaced.

Finally, Pacific Environment asserts that the IOUs should only be allowed to recover costs associated with allowances after the allowance has been "used."[45] This proposal is contrary to how ERRA works. For ERRA, PG&E forecasts a year ahead the costs that it expects

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[43] Pub. Util. Code § 454.5(d).

[44] Pacific Environment Opening Brief, p. 24.

[45] *Id.*

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to incur in the next year and then sets rates based on these costs. Actual costs are recovered through a balancing account. There is no reason to treat GHG-related procurement costs any different than all of the other costs included in ERRA, which are forecasted and recovered as they are incurred.

4. Pacific Environment's Proposals For Unnecessary And Burdensome Filing And Oversight Requirements Should Be Rejected.

Pacific Environment's opening brief includes a number of proposals for additional layers of regulatory filings and oversight regarding the IOUs' GHG procurement plans that are simply unnecessary. For example, Pacific Environment proposes that the IOUs be required to file advice letters for approval of all offset transactions.[46] With respect to PG&E's GHG Procurement Plan, PG&E has proposed filing advice letters for offset transactions with a vintage more than four years in the future.[47] However, for other, shorter offset transactions an advice letter filing should not be required.[48] PG&E's proposal is consistent with the Commission's general policy that short- and medium-term procurement transactions do not require a separate advice letter for each transaction.[49] There is no reason to treat offset transactions any different than other short- and medium-term procurement transactions. Moreover, as Pacific Environment is well aware from evidence presented in Track II of this proceeding, the advice letter process is time consuming, typically taking six months or more.[50] Delay in approving short- and medium-term offset transactions may result in higher customer costs or sellers being unwilling to enter into transactions altogether.[51] Thus, Pacific Environment's proposal should be rejected.

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[46] Pacific Environment Opening Brief, p. 25.

[47] Ex. 107, p. 3-21, line 3-10 (PG&E, Brandt).

[48] Ex. 109, p. 17, lines 20-30 (PG&E, Brandt).

[49] D.07-12-052, p. 172.

[50] Ex. 103, p. VI-4 (PG&E, Everidge).

[51] *Id.*

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Pacific Environment also proposes that the IOUs be required "to submit their compliance strategies to an Independent Evaluator [("IE")]" for an extensive and exhaustive review by the IE.[52] Pacific Environment misunderstands the role of an IE. An IE provides oversight of the procurement process to ensure that it is fair and transparent.[53] An IE is not intended to review and adjust the IOU's procurement strategy; that is the responsibility of the Commission when it reviews the IOU's procurement plans under AB 57. As will be explained in more detail in Section II.C.4 of this brief, Pacific Environment essentially wants the Commission to delegate or abdicate its responsibilities under AB 57 to an IE. This is clearly not appropriate and Pacific Environment's proposal for IE review and approval of the IOU's GHG procurement plans should be rejected.

5. Sierra Club's Assertion That CEQA Review Is Required Is Flawed.

Sierra Club's assertion that California Environmental Quality Act ("CEQA")[54] review is required before the IOUs' can procure offsets is factually and legally flawed.[55] As an initial matter, CARB conducted an extensive environmental review of the Cap-and-Trade program in compliance with CEQA. CARB's Functional Equivalent Document ("FED") was approved by the Board on August 24, 2011.[56] Included in this review was a separate and detailed analysis of each offset protocol under consideration for use in the Cap-and-Trade program.[57] For each protocol, CARB determined whether there would be significant environmental impacts and whether there is any potential for mitigation, consistent with CEQA. Apparently dissatisfied

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[52] Pacific Environment Opening Brief, pp. 27-28.

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

[54] CEQA is codified in Public Resources Code § 21000 *et seq*.

[55] Sierra Club Opening Brief, p. 2.

[56] *See* http://www.arb.ca.gov/cc/scopingplan/final_res_scoping_plan_08242011.pdf. *See also* http://www.arb.ca.gov/cc/scopingplan/document/final_supplement_to_sp_fed.pdf.

[57] *See* http://www.arb.ca.gov/regact/2010/capandtrade10/capv5appo.pdf.

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with the results of CARB's CEQA review, Sierra Club now asks the Commission to perform a duplicative CEQA review regarding offsets. Sierra Club's proposal should be rejected.

First, the Commission is neither required nor authorized to conduct a separate or supplemental environmental review in connection with its consideration of whether to authorize the IOUs to purchase offsets using protocols that were already evaluated pursuant to CEQA by CARB. To the contrary, the Commission is required to rely on CARB's approved FED unless and until it is overturned in court. The Commission itself has ruled in multiple decisions that when one California agency conducts an environmental review of a "project" as defined in CEQA, the Commission's related approvals do not trigger additional environmental review. For example, in PG&E's 2008 LTRFO proceeding, the Commission "agree[d] with PG&E that CEQA Guidelines, the applicable case law, and our past practices make clear that review by the Commission of these proposed contracts, which will be (or have been) environmentally evaluated by the CEC and other agencies, does not trigger CEQA for this application."[58] Similarly, in PG&E's 2004 LTRFO, the Commission stated that "the projects at issue in this proceeding are exempt from CEQA review by this Commission. Under both Pub. Res. Code § 25500 and Pub. Util. Code § 1002(b), the California Energy Commission ("CEC") will undertake any necessary environmental review of the projects."[59]

Second, if Sierra Club disagrees with CARB's CEQA analysis concerning offsets, the appropriate venue to address this issue is judicial review of CARB's determination, not in this proceeding. The arguments in Sierra Club's opening brief are telling. For example, Sierra Club argues that CARB's decision to allow offsets despite potential local impacts is a "bare

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[58] D.10-07-045, p. 21.

[59] D.06-11-048, p. 32.

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conclusion [that] does not pass legal muster."[60] If Sierra Club believes that CARB's CEQA determination is legally deficient, the appropriate venue for challenging these determinations is through judicial review, not asking the Commission to perform a duplicative CEQA analysis.

Finally, Sierra Club argues that the delay caused by a duplicative CEQA review is acceptable because the IOUs can "comply with AB32 through the purchase of allowances alone."[61] As PG&E explains in detail in the next section, prohibiting the IOUs from procuring offsets will increase customer costs and is anti-competitive. Given that CARB has already performed a CEQA review and that delaying the authority to procure offsets will harm customers, there is no reason to adopt Sierra Club's proposal.

6. Sierra Club's Proposal To Prohibit The IOUs From Procuring Offsets Should Be Rejected.

CARB has approved two types of compliance instruments for the Cap-and-Trade program – allowances and offsets.[62] Either of these compliance instruments can be used to satisfy PG&E's Cap-and-Trade obligations, subject to the 8% offset limit adopted by CARB. Despite the fact that the use of offsets has been approved by CARB for compliance purposes, Sierra Club proposes for the first time in its opening brief that the IOUs be precluded from procuring offsets.[63] Sierra Club acknowledges that procuring offsets will likely reduce overall IOU customer costs.[64] However, as with many of its other proposals, Sierra Club seems unconcerned about IOU customer costs, and instead argues that because offsets lower the cost of

[60] Sierra Club Opening Brief, p. 18.

[61] *Id.*, p. 19.

[62] Ex. 107-C, p. 3-3 (PG&E, Brandy) (describing allowances and offsets).

[63] Sierra Club elected not to submit any testimony advocating this position, so the IOUs were unable to conduct discovery or cross-examination of a Sierra Club witness. Instead, Sierra Club waited until its opening brief to raise its novel and flawed proposal.

[64] Sierra Club Opening Brief, p. 11.

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Cap-and-Trade compliance, they undermine "the incentive to pursue emission reduction projects at the IOUs' capped sources."[65] This argument should be rejected for several reasons.

First, Sierra Club is making its arguments in the wrong venue. If Sierra Club believes that offsets defeat or undermine the intent of AB 32 and the Cap-and-Trade program, the appropriate place to address this issue is at CARB, not in this proceeding. CARB has expressly allowed the use of offsets up to 8% of an entity's annual compliance obligation. If Sierra Club believes that 8% is too high, or that offsets should be precluded completely, it should make these arguments to CARB. In this proceeding, the Commission is reviewing the IOUs' GHG procurement plans. These plans include all compliance instruments permitted under CARB's rules. There is no reason for the Commission to single out a specific type of compliance instrument and preclude the IOUs from procuring this instrument, if the compliance instrument has been thoroughly reviewed and considered by CARB.

Second, Sierra Club's proposal will directly increase customer costs. Offsets were included as a Cap-and-Trade compliance instrument because they can mitigate compliance cost impacts.[66] Precluding the IOUs from using offsets will only result in increased customer costs. In addition, if the IOUs are unable to procure offsets, the only compliance instrument available is allowances, and the IOUs may be subject to substantial swings in allowance prices without the ability to mitigate these price swings by purchasing offsets. Notably, DRA supports the IOUs' ability to procure offsets up to the amount established by CARB, concluding that "[a]n IOUs' offset procurement authority should not be constrained any more than the limit imposed by [CARB] regulation in current form."[67]

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[65] *Id.*

[66] Tr., p. 754, lines 22-28 (PG&E, Brandt).

[67] DRA Opening Brief, p. 23.

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Third, Sierra Club's proposal is anti-competitive for the IOUs. If other load-serving entities ("LSEs") that are subject to the Cap-and-Trade obligations are able to procure offsets, but the IOUs are precluded from doing so, the IOUs are at a competitive disadvantage vis-à-vis other LSEs.

7. GPI's Concerns About Redactions And Arbitrage Are Unfounded.

GPI questions the redactions in PG&E's GHG Procurement Plan, asserting that PG&E "did not justify the redactions as required by D.06-06-066 . . ."[68] GPI's assertion is simply wrong. When PG&E served its GHG Procurement Plan on July 1, 2011, it included a declaration from Melissa Brandt indentifying all of the redacted material and providing the basis for each redaction. This declaration was provided to the entire service list, including GPI. GPI failed to dispute PG&E's redactions at that time and failed to take any action seeking review of the redactions. Moreover, GPI continues to fail to identify any specific redaction it believes is inappropriate. GPI simply states that PG&E redacted more material than SCE or SDG&E. However, the fact that PG&E redacted more material does not mean that its redactions were inappropriate under D.06-06-066. Instead, the declaration of Melissa Brandt provided in July included a detailed explanation of the basis of each redaction.[69] GPI has failed to question, or even mention, any of the explanations in Ms. Brandt's declaration. The Commission should not order the disclosure of confidential information simply based on the unsupported assertions of a single party that PG&E's GHG Procurement Plan is "over-redacted." DRA concurs that the market sensitive data in the IOUs' GHG procurement plans should be protected.[70]

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[68] GPI Opening Brief, p. 21.

[69] *See also* Ex. 109, p. 15, lines 11-22 (PG&E, Brandt) (explaining generally basis for redactions).

[70] DRA Opening Brief, pp. 24-25.

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GPI also raises generic concerns that the IOUs be prevented from "engaging in arbitrage-for-profit of greenhouse-gas compliance products."[71] PG&E's GHG Procurement Plan does not include arbitrage nor does PG&E intend to procure GHG-related products for a "profit." Instead, PG&E intends to procure GHG-related products solely to meet its CARB compliance obligations.

C. Issues Related To The Proposed Procurement Rulebook, Independent Evaluators, and the Procurement Review Group.

1. PG&E Supports The Commission Contracting With IEs.

A number of parties propose that the Commission contract with IEs, rather than the IOUs.[72] This is certainly not a new proposal. In the 2006 LTPP proceeding, parties also suggested that the Commission contract with IEs, but the Commission rejected this proposal as impractical.[73] PG&E does not oppose the Commission contracting with IEs, as long as the state contracting process does not result in unnecessary delays.[74] Moreover, PG&E does not oppose the Commission selecting the IE for specific RFOs as long as the selection process is timely and ensures that the IE selected has adequate qualifications for a specific RFO.

2. Sierra Club And Pacific Environment Fundamentally Misunderstand The Procurement Review Group ("PRG").

Despite repeated formal and informal explanations as to the role of the PRG, Sierra Club and Pacific Environment have consistently mischaracterized the role, purpose and function of the PRG. For example, Sierra Club refers to the PRG as an "exclusive group" of non-market participants.[75] However, the Commission has clearly stated that the PRG is open to an

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[71] GPI Opening Brief, p. 16.

[72] *See e.g.*, Western Power Trading Forum ("WPTF") Opening Brief, pp. 15-16; Pacific Environment Opening Brief, p. 46; TURN Opening Brief, p. 8; DRA Opening Brief, pp. 27-28.

[73] D.07-12-052, p. 136.

[74] Ex. 109, p. 22 (PG&E, Everidge).

[75] Sierra Club Opening Brief, p. 22.

appropriate number of non-market participants.[76] PG&E has not limited its PRG to an exclusive group. Notably, in informal conversations, PG&E has suggested that Sierra Club and Pacific Environment consider applying to join PG&E's PRG. These groups have expressed no interest in doing so, apparently content to simply criticize the PRG and IOUs from afar rather than taking a more constructive approach and actively participating in the PRG.

Pacific Environment also recommends that at least one member of the PRG have an "environmental background."[77] Non-market participants are entitled to apply to the PRG, including entities that have an "environmental background." To date, however, Sierra Club and Pacific Environment have elected not to apply to be PRG members.

Pacific Environment repeatedly refers to PRG "findings" and "recommendations,"[78] ignoring the fact that the PRG does not make findings or recommendations. PRG members express their opinions and provide advice to the IOUs, but even among PRG members there are often different perspectives and recommendations. The PRG is not a voting body, does not develop a single recommendation, and does not develop findings. Pacific Environment appears to fundamentally misunderstand the role and purpose of the PRG, and the outcome of PRG meetings.

3. Sierra Club's Assertion That The PRG Is Subject To The Bagley-Keene Act Is Mistaken.

Sierra Club incorrectly asserts that the PRG is subject to the Bagley-Keene Open Meeting Act (Government Code §§ 11120-11132).[79] The Bagley-Keene Act generally requires that meetings of "state bodies" be open. Sierra Club argues that the PRG is a "state body" under

[76] D.02-08-071, p. 25.

[77] Pacific Environment Opening Brief, p. 53.

[78] Pacific Environment Opening Brief, pp. 51-52.

[79] Sierra Club Opening Brief, pp. 19-24.

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Government Code section 11121(b) which applies to a "multimember body that exercises any authority of a state body delegated to it by that state body" or Section 11121(c) which defines an "advisory board . . . of a state body . . ." as a "state body."[80] Neither of these definitions of "state body" applies to the PRG.

With regard to Section 11121(b), the Commission has not delegated any of its authority to the PRG. The PRG is an advisory group created to review the details of the IOUs' respective procurement strategies and to provide advice to the IOU.[81] PRG member recommendations are made to the IOUs, not the Commission, and are advisory and non-binding with regard to the IOU.[82] The PRG does not file any report or recommendation with the Commission. Moreover, PRG members are free to advocate their own positions in subsequent Commission proceedings. The Commission has not delegated any of its authority to the PRG. Rather, the Commission itself reviews all IOU long-term procurement plans and procurement transactions through a variety of Commission proceedings, including the LTPP proceeding, Quarterly Compliance Reports and annual ERRA forecast and compliance proceedings.[83] The PRG has no authority to approve or reject any procurement transaction, nor does the PRG have any authority to require the IOUs to conduct certain types of procurement. In short, Section 11121(b) is not applicable because the Commission has not delegated any authority to the PRG.

Similarly, Section 11121(c) is not applicable to the PRG. This statutory section applies to boards or committees that provide advice to a state body. Sierra Club assumes that the PRG provides advice to the Commission.[84] This assumption is simply wrong. The PRG provides

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[80] *Id.*, p. 20.

[81] D.07-12-052, p. 119.

[82] *Id.*

[83] *Id.*, pp. 180-181 (describing Commission proceedings and processes to review IOU procurement).

[84] Sierra Club Opening Brief, p. 20.

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advice to the IOUs, not the Commission. Indeed, there is no PRG report, recommendation, or any type of advice provided to the Commission by the PRG. PRG members consider IOU procurement plans and provide advice to the IOUs. PRG members are later free to support or oppose IOU procurement proposals at the Commission.

Sierra Club's lengthy argument regarding the need for the PRG to comply with the Bagley-Keene Act is premised on its mistaken assumption that Sections 11121(b) or (c) are applicable, which they are not.

4. Pacific Environment's Proposals To Expand The Authority Of IEs And The PRG Should Not Be Adopted.

Pacific Environment proposes that the IE's role be "strengthened" and the Commission give "significant weight" to IE recommendations.[85] Pacific Environment criticizes the Commission for "arriv[ing] at different decisions" than an IE, approving projects that an IE questioned or took issue with, or not giving sufficient weight to an IE's recommendations.[86] These criticisms are truly remarkable. Pacific Environment is essentially criticizing the Commission for exercising its independent judgment and authority in cases where the Commission ultimately disagrees with the conclusions reached by an IE. Although not said this bluntly, what Pacific Environment is effectively requesting is that the Commission delegate or abdicate its decision making authority to an IE, so that whatever recommendation the IE offers is presumptively correct and is ultimately adopted by the Commission.

Pacific Environment makes similar arguments with regard to the PRG.[87] Pacific Environment asserts that PRG "recommendations" should be given significant weight. As explained above, this proposal ignores the fact that the PRG does not make recommendations to

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[85] Pacific Environment Opening Brief, pp. 45, 48-49.

[86] *Id.*, p. 48.

[87] Pacific Environment Opening Brief, p. 52.

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the IOUs or the PRG. Rather, individual PRG members provide their perspective to the IOUs on specific procurement transactions. Pacific Environment's proposal suffers from the same problems that plague its IE proposal; this would effectively result in a delegation or abdication of Commission authority.

D. Proposed Modifications To The RFO Process.

1. UOG Offers Should Not Be Excluded From RFOs.

Western Power Trading Forum ("WPTF") asserts that there are fundamental differences between Power Purchase Agreement ("PPA") and Utility-Owned Generation ("UOG") offers in an RFO and thus, given these differences, PPA and UOG offers cannot be compared.[88] WPTF also claims that there is insufficient evidence of the IOUs' evaluation methodologies to provide transparency.[89] These concerns are unfounded. In its testimony, PG&E provided a detailed description of its RFO evaluation process and explained how UOG and PPA offers are fairly compared.[90] Moreover, after PG&E conducts an RFO for new resources, it submits a voluminous application providing hundreds of pages of detail regarding the actual evaluation process, methodology, and results.[91] In its two recent LTRFOs, PG&E included lengthy reports from an IE that was involved in and reviewed the entire process, and conducted its own, independent evaluation to confirm the results of the LTRFO. Ultimately, based on the extensive record detailing the UOG and PPA evaluation process, the Commission determined in both the 2004 and 2008 LTRFOs that the process was open, competitive and fair.[92] In short, WPTF's claim that UOG and PPA offers cannot be compared is belied by the fact that PG&E has

[88] WPTF Opening Brief, pp. 6-7.

[89] *Id.*

[90] Ex. 107, pp. 2-6 to 2-11 (PG&E, Strauss).

[91] *See e.g.* Application ("A.") 09-09-021.

[92] D.06-11-048, p. 7; D.10-07-045, Findings of Fact 2-8.

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successfully done so twice. Notably, DRA agrees with PG&E that UOG and PPA offers can, and have been, compared in RFOs.[93]

WPTF also claims that because PG&E develops the portfolio fit evaluation criteria, any UOG proposal is likely to have a higher portfolio fit value.[94] This argument has three flaws. First, many UOG offers, such as bids for Purchase and Sale Agreements ("PSAs") and Engineering, Procurement and Construction ("EPC") contracts, are developed by third parties and not PG&E; thus, there is no basis for arguing that these types of UOG proposals have an advantage with regard to portfolio fit because PSA and EPC developers do not have any greater access to PG&E's confidential evaluation methodology. Second, in its LTRFOs, PG&E has clearly described the portfolio fit evaluation metric and thus all RFO participants, including participants offering PPAs and UOG proposals, have equal information regarding PG&E's portfolio needs and the corresponding portfolio fit of a project. Finally, as PG&E explained in its initial testimony, the internal team working on UOG offers is separated from the team evaluating UOG and PPA offers, and thus PG&E's internal UOG team has no greater access to portfolio fit evaluation criteria than do entities that submit PPA offers.[95]

WPTF also criticizes the RFO process for its alleged lack of transparency, asserting that this allows the IOU to "stack the deck."[96] Consistent with the Commission's confidentiality rules, PG&E's RFO is fully transparent to non-market participants who are entitled to receive the confidential versions of all of the filings PG&E makes in support of the RFO results, including detailed evaluation worksheets and data. Transparency does not require that market participants,

[93] DRA Opening Brief, pp. 29-30.

[94] WPTF Opening Brief, pp. 7-8.

[95] Ex. 107, p. 2-13 (PG&E, Strauss).

[96] WPTF Opening Brief, p. 8.

who may and likely will be involved in future RFOs, be given access to PG&E's confidential evaluation data. Moreover, PG&E's LTRFOs have been reviewed in detail by the PRG, IEs and the Commission to ensure that the process is fair and competitive. Other than speculation, WPTF offers no support for its assertion that the IOUs' RFOs are "stacked" in favor of UOG proposals.

IEP claims that the existing RFO process unfairly favors UOG proposals because UOG developers have better access to information.[97] However, IEP ignores the fact that UOG offers are typically prepared by third-party developers, similar to PPA offers. IEP provides no evidence that a developer proposing a PSA or EPC bid for a UOG facility has greater access to information that a PPA developer. Moreover, PG&E has implemented strict information controls to ensure that during the RFO evaluation process, the internal team evaluating UOG bids is separated from the overall RFO evaluation team.[98] These information controls were used in the 2008 LTRFO and no concerns were raised by the PRG, IE or the Commission regarding access to information or the implementation of PG&E's Code of Conduct.[99]

IEP also claims that the RFO evaluation process does not properly consider the risk of uncertainty from UOG project costs.[100] However, IEP's argument minimizes the potential risk associated with PPA offers, including non-performance risk and the potential that a PPA developer may seek to price-terms of the PPA if costs increase, as has happened with a number of conventional and renewable PPAs in recent years.[101] Both UOG and PPA offers create risk, and during the RFO process these risks are actively considered.

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[97] IEP Opening Brief, pp. 18-19.

[98] Ex. 107, p. 2-13 (PG&E, Strauss).

[99] Ex. 109, p. 11, lines 3-12 (PG&E, Strauss).

[100] IEP Opening Brief, pp. 25-28.

[101] Ex. 109, p. 8, line 11 to p. 9, line 9 (PG&E, Strauss) (describing risks for PPA offers); Ex. 107, p. 2-8 (credit risk), p. 2-10 (technology risk) (PG&E, Strauss).

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Pacific Environment advocates excluding UOG offers from RFOs because allowing UOG offers "creates the appearance of a significant conflict of interest . . .."[102] The Commission has previously determined that sufficient procedural safeguards exist to ensure that UOG and PPA offers are treated fairly in an RFO.[103] Given these safeguards, there is no basis for Pacific Environment's assertion that there is a perceived "conflict of interest." Moreover, PG&E has now conducted two LTRFOs that included both PPA and UOG offers and, after these LTRFOs were completed, no developer or losing bidder filed a protest or complaint asserting that the process was unfairly weighted toward UOG offers.

2. PG&E's Evaluation Criteria Addresses Concerns About The Difference In The Life of UOG Projects Compared To The Terms of PPAs.

DRA, IEP and Pacific Environment express concern about the ability to compare UOG and PPA offers in an RFO given the potential difference in term between the life of a UOG project and the term of a PPA.[104] As a preliminary matter, this issue is not unique to UOG projects. Often in RFOs, such as the annual Renewable Portfolio Standard ("RPS") RFOs, PG&E receives PPA offers that have varying durations. In those RFOs, PG&E is able to compare PPAs that have different durations. No party has suggested that all PPA offers must have exactly the same duration. With regard to UOG offers, PG&E submitted testimony explaining how it compares UOG and PPA offers when there are differences in tenor.[105] No party disputed PG&E's approach or identified how PG&E's evaluation methodology favored UOG or PPA offers.

[102] Pacific Environment Opening Brief, p. 42.

[103] D.07-12-052, p. 206.

[104] DRA Opening Brief, p. 32; Pacific Environment Opening Brief, p. 43; IEP Opening Brief, pp. 16-17, 22-24.

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

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DRA and IEP cite D.11-03-036 to support their argument that the difference in tenor between UOG projects and PPAs creates an unlevel playing field in the evaluation process.[106] However, in that decision, the Commission was addressing a comparison of the proposed Manzana Wind Project's energy costs.[107] With regard to the cost of energy from a facility, the Commission determined that it was not appropriate to compare projects with different terms as doing so made projects with longer terms appear cost competitive.[108] In its RFO evaluation process, PG&E does not compare offers based on each offer's energy costs. Instead, PG&E compares UOG and PPA offers based on market values.[109] In its market valuation analysis, PG&E converts the UOG costs "into a series of periodic (typically, monthly) cash flows that mimic the costs occurring with a PPA. Once this is done, PPA offers and UOG offers are evaluated on Market valuation using the same methodology and tools."[110] Thus, IEP's and DRA's reliance on D.11-03-036 is misplaced as the Commission in that decision was addressing a cost comparison approach that is different than PG&E's RFO evaluation methodology. Rather, PG&E uses a market valuation approach that facilitates comparison of any offers with differing tenors, including UOG offers and PPA offers if they have differing tenors.[111]

[106] DRA Opening Brief, p. 32; IEP Opening Brief, p. 23. IEP also references arguments made by TURN in the 2008 LTRFO regarding the difference in tenor between UOG and PPA offers, but candidly acknowledges that the Commission never directly addressed TURN's concerns in D.10-07-045 and never agreed that this was a problem in the evaluation process. *See* IEP Opening Brief, p. 24.

[107] D.11-03-036, p. 27.

[108] *Id*.

[109] Ex. 107, p. 2-3 (PG&E, Strauss).

[110] *Id*., p. 2-7, lines 10-14.

[111] Ex. 109, p. 6, lines 3-12 (PG&E, Strauss).

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3. IEP's Concerns About The Bid Evaluation Process Are Unfounded And Its Proposed Refinements Should Be Rejected.

IEP filed a lengthy opening brief asserting that the RFO bid evaluation process needed significant refinement. Below, PG&E addresses the specific refinements proposed by IEP. However, as a preliminary matter, the "problem" that IEP is trying to address is non-existent. For example, IEP asserts that potential bidders are often confused by the products being requested in RFOs, the IOUs fail to inform developers "of the product the utility wants most", and the IOUs have failed to be transparent about the evaluation process.[112] What is remarkable about IEP's opening brief is its failure to provide even a single specific example of these alleged "problems." Since the IOUs resumed procurement in 2003, they have conducted a number of RFOs for a variety or products, including new generation resources, RA products, and RPS-eligible energy. IEP fails to point to a single example from any of these RFOs that would demonstrate significant developer confusion, a failure to define the product, or any of the other problems alleged by IEP. Conducting RFOs is certainly a learning process and all of the IOUs have likely learned lessons and implemented better processes over the last eight years. The IOUs will likely continue to learn in the future as well. However, with all of the RFOs conducted to date, IEP's failure to provide even a single example is telling.

IEP criticizes the IOUs for not properly considering viability in the RFO process, citing the number of potential failed RPS-eligible projects.[113] Pacific Environment raises similar concerns, but it relies solely on the 2006 LTPP decision that was issued almost four years ago.[114] IEP's and Pacific Environment's concerns are misplaced. With regard to IEP's assertion that the potential failure of RPS-eligible projects demonstrates that viability is not adequately being

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[112] IEP Opening Brief, pp. 2-3.

[113] *Id.*, pp. 6-8.

[114] Pacific Environment Opening Brief, pp. 40-42.

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considered, IEP provides no evidence demonstrating that a different viability screen would have produced different results. The RPS viability screening process has been refined in recent years so that the screens used by the IOUs today are more robust than several years ago. This should address IEP's concerns. Moreover, it is not clear that RPS-eligible project failures could be prevented with a different viability screen. Many projects that initially look viable when a contract is executed later experience permitting, financing, and transmission challenges that were unanticipated by the developer or the IOU. No viability screen will ensure that every PPA selected in an RPS RFO is ultimately developed. With regard to Pacific Environment's viability argument, Pacific Environment's reliance on the 2006 LTPP decision ignores the fact that PG&E's 2008 LTRFO included a rigorous viability evaluation and that PG&E's testimony in this proceeding provided a high level description of its viability review.[115] Indeed, PG&E's viability evaluation considers substantially more factors than the viability evaluation proposed by Pacific Environment.[116] For example, PG&E considers financing, project schedules, and equipment procurement plans, which Pacific Environment fails to even mention in its viability proposal.

IEP also claims that IOU RFOs do not sufficiently describe the product or service requested.[117] However, IEP fails to provide any specific example of this occurring. Most IOU RFOs are extremely clear about the product being requested, whether it is a new generation resource with certain characteristics, RPS-eligible resources, or RA products.

IEP asserts that potential bidders do not have sufficient information concerning the bid evaluation process and parameters.[118] This argument is incorrect. Although IEP relies on

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[115] Ex. 107, p. 2-4, lines 15-22 and p. 2-7, line 26 to p. 208, line 2 (PG&E, Strauss).

[116] Pacific Environment Opening Brief, p. 41 (proposal for viability assessment).

[117] IEP Opening Brief, p. 8.

[118] IEP Opening Brief, pp. 8-13.

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excerpts from D.10-07-045 regarding PG&E's recent 2008 LTRFO, it fails to explain that ultimately the Commission determined the 2008 LTRFO, including the bid evaluation process, was open, competitive and fair.[119] Indeed, no losing bidder in the 2008 LTRFO filed a formal complaint at the Commission alleging the bid evaluation information provided by PG&E was insufficient in the 2008 LTRFO.[120] The Commission should reject on policy grounds IEP's proposal that detailed bid evaluation criteria, including forward energy and capacity price curves, be provided to potential RFO bidders.[121] This type of bid evaluation information is commercially sensitive and providing it to potential bidders would only allow these parties the opportunity to game the bid evaluation process to the detriment of customers.[122]

4. IEP's Proposal To Allow Existing Units To Participate In All RFOs Is Contrary To Commission Precedent.

IEP proposes that existing generation resources be allowed to participate in all IOU RFOs, even if the RFO is seeking new capacity to meet system needs.[123] This is not a new proposal. In the 2006 LTPP proceeding, WPTF raised the exact same issue. The Commission rejected WPTF's proposal, noting that the IOUs need the flexibility to be able to tailor RFOs to specific needs.[124] IEP has not provided any reason that the Commission should change this determination. For example, if an IOU needs new capacity to meet service area needs, existing generation will not address this need and thus should appropriately not be allowed to participate in the RFO.[125]

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[119] D.10-07-045, Findings of Fact 2-8.

[120] Ex. 109, p. 10, lines 17-21 (PG&E, Strauss).

[121] IEP Opening Brief, p. 11.

[122] Ex. 109, p. 10, lines 9-16 (PG&E, Strauss); *see also* SDG&E Opening Brief, pp. 26-27.

[123] IEP Opening Brief, pp. 13-16.

[124] D.07-12-052, p. 148.

[125] Ex. 109, p. 10, lines 22-29 (PG&E, Strauss).

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5. IEP's Proposed Evaluation Framework Should Not Be Adopted.

IEP's opening brief included a proposal for a bid evaluation framework.[126] However, IEP's proposal suffers from a number of flaws. First, IEP's proposed algorithm for selecting a short list takes no account of diversity in counterparty, technology, location, or other criteria. Such considerations are critical in formulating a short list.[127] Second, IEP's framework is that the combination of a linear formula, specific criteria weights, and scoring each criterion on a scale of zero to 100—all together this implies a particular equivalency between a dollar of present value of financial benefit, a "unit" of viability, a "unit" of environmental characteristic, and a "unit" of qualitative characteristics. Such a particular equivalency may or may not make any sense in the context of a particular set of RFO offers.[128] Third, IEP's proposed evaluation methodology attempts to impose uniform requirements for all RFOs rather than recognizing the fact that RFOs may address different needs and seek different products. Having the formula, the criteria weights, and the scoring for each criterion the same for all RFOs—regardless of product sought or need to be filled— is unwise.[129] In addition to these concerns, SDG&E identified in its opening brief a number of critical errors in the analysis underlying IEP's proposal.[130] Given these flaws, IEP's methodology should not be adopted.

6. DRA's Proposals That UOG Offers Be "Tested" By A Competitive RFO, The Commission Specify The Forward Curves And UOG Projects Should Include Pay For Performance Should Be Rejected.

DRA proposes that all UOG offers be "tested" through an RFO process.[131] This proposal is unclear. First, DRA ignores the fact that many of the UOG projects approved by the

[126] IEP Opening Brief, pp. 28-33.

[127] Ex. 109, p. 9, lines 22-24 (PG&E, Strauss).

[128] *Id.*, lines 24-30.

[129] *Id.*, p. 10, lines 1-2.

[130] SDG&E Opening Brief, pp. 27-29.

[131] DRA Opening Brief, pp. 30-32.

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Commission for PG&E's service area have in fact gone through a competitive process. For example, the Oakley, Humboldt and Colusa generating stations all were winning offers in an RFO process.[132] Second, there are unique circumstances related to specific UOG projects that necessitate development outside of an RFO process. For example, the Gateway Generating Station was the result of a settlement of claims related to the 2000-2001 energy crisis. PG&E's Fuel Cell program was limited to UOG as a result requirements by the California State Universities that only the IOUs install and operate the fuel cells at issue.[133] For PG&E's photovoltaic ("PV") program, there are separate programs for UOG and PPA proposals, and the UOG portion of the program involves competitive solicitations for UOG projects.[134] Rather than adopting a "hard and fast" rule that all UOG proposals must go through a competitive solicitation, the Commission should consider this issue on a case-by-case basis to determine if a competitive solicitation is possible and appropriate.

DRA also recommends that the Commission establish "clear" pay for performance standards for UOG projects.[135] However, DRA fails to provide any specific "pay for performance" standards. The Commission should not adopt DRA's proposal given the lack of specificity. To the extent DRA believes a pay for performance standard should be established for a specific UOG project, it can propose a standard in the proceeding in which the project is being reviewed.

Finally, DRA recommends that the Commission develop inputs, assumptions and forward curves to be used in evaluating UOG projects through a stakeholder process.[136] This kind of

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[132] Ex. 109, p. 4, lines 6-27 (PG&E, Strauss).

[133] Ex. 109, p. 5, lines 1-24 (PG&E, Strauss).

[134] *Id*.

[135] DRA Opening Brief, p. 33.

[136] *Id*.

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process would be time-consuming and unnecessary. For new resource RFOs that would include UOG proposals, the IOUs are required to review the evaluation criteria and assumptions with the PRG and the IE.[137] A public stakeholder process would likely be time-consuming and would add little additional value over the PRG/IE review process already in place.

7. UOG Project Development Costs Should Be Recovered In Rates.

WPTF, DRA, IEP and Pacific Environment assert that project development costs for UOG projects not approved by the Commission should not be recovered in rates.[138] These parties essentially argue that a developer cannot recover costs associated with a failed PPA offer, and thus UOG development costs should be treated in the same manner. This argument ignores the fundamental difference between the Independent Power Producer ("IPP") and IOU business models.[139] If an IPP incurs costs developing a failed bid, it can recover those costs in subsequent, successful bids. However, if an IOU is precluded from recovering UOG development costs associated with projects that are not approved by the Commission, it has no other way to recover these costs. The IOU cannot, as the IPP can, include these costs in future UOG proposals. Thus, the suggestion that IOUs bear all development costs for unapproved UOG bids should be rejected. Instead, the Commission should modify its determination in D.07-12-052 and allow the IOU to recover all development costs.[140]

8. TURN's And DRA's UOG Cost Recovery Proposals Are Contrary To Commission Precedent.

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[137] D.07-12-052, pp. 149-150.

[138] WPTF Opening Brief, pp. 11-12; DRA Opening Brief, p. 34; Pacific Environment Opening Brief, p. 44; IEP Opening Brief, pp. 20-22.

[139] Ex. 109, p. 6, lines 13-18 (PG&E, Strauss); Ex. 107 at pp, 2-11 to 2-12 (PG&E, Strauss).

[140] Ex. 107, p. 2-14, lines 11-20 (PG&E, Strauss).

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TURN proposes that certain UOG "cost parameters" should be binding on the IOU and not subject to subsequent adjustment or additional cost recovery.[141] DRA makes a similar proposal.[142] The Commission considered and rejected a similar proposal in the 2006 LTPP proceeding, finding that a "one-size-fits-all" approach to UOG cost recovery is not desirable.[143] Instead, the Commission has adopted a number of UOG project specific cost recovery proposals, including proposals that have resulted from settlements entered into by TURN and DRA.[144] The Commission should not attempt to pre-judge, at this point, the appropriate cost recovery mechanism for a specific UOG project, nor should it mandate that certain "critical cost parameters" cannot be modified if the circumstances mandate such as result.

9. Proposals Regarding Environmental Issues In The RFO Process.

Pacific Environment argues that the IOUs should be required to consider "environmental justice" in the RFO evaluation process.[145] CBE supports Pacific Environment's recommendations.[146] Pacific Environment's assertion that the IOUs do not adequately consider environmental justice is based solely on selective quotes from D.10-07-045 concerning PG&E's 2008 LTRFO. However, Pacific Environment ignores the fact that although the Commission expressed some concern regarding PG&E's environmental scoring in the 2008 LTRFO, it concluded "as a whole" that PG&E "conducted a reasonable RFO and evaluation."[147] Pacific

[141] TURN Opening Brief, pp. 7-8.

[142] DRA Opening Brief, p. 33.

[143] D.07-12-052, p. 221; *see also* Ex. 109, p. 7, lines 1-22 (PG&E, Strauss).

[144] *See e.g.*, D.06-06-035 (approving cost recovery settlement proposed by a number of parties including TURN for the Gateway facility); D.06-11-048 (approving cost recovery proposals for the Humboldt Generating Station and the Colusa Generating Station).

[145] Pacific Environment Opening Brief, pp. 36-38.

[146] CBE Opening Brief, p. 3.

[147] D.10-07-045, pp. 20-21.

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Environment also ignores the fact that in more recent RFOs, PG&E has given sizeable weight to environmental issues.[148] In short, Pacific Environment is proposing a solution for a problem that does not exist at least with regard to PG&E.

In its opening brief, Pacific Environment proposes specific environmental justice criteria and weighting and scoring procedures.[149] However, the criteria proposed by Pacific Environment are based on studies and methodologies that are wholly inapplicable for RFOs.[150] Pacific Environment is proposing to use screening tools that were not designed or intended to be used in an RFO evaluation process. Moreover, Pacific Environment's proposal does not take into account the need to tailor an RFO to specific needs and that, given these needs, environmental factors and considerations may be different for different RFOs.

Pacific Environment also claims that the IOUs have "historically not followed the loading order" and thus the Commission should "require the utilities to explicitly evaluate compliance with the loading order in their bid evaluation process."[151] This proposal is, at best, unclear. The IOUs typically develop RFOs to meet specific needs, such as Local RA or the need for a quick start resource. Certain preferred resources may be able to meet the identified need, other resources may not be able to do so. Pacific Environment's proposal that the loading order be "evaluated" in the RFO process is unclear as to exactly what the IOU should do in the context of a specific RFO. As PG&E stated in its testimony, it conducts RFOs to procure demand-side and supply-side resources and, in the process of evaluating portfolio fits, expressly considers the

[148] Ex. 109, p. 2, lines 20-27 (PG&E, Monardi) and p. 14, lines 20-30 (PG&E, Strauss).

[149] Pacific Environment Opening Brief, p. 37.

[150] Ex. 109, p. 12, line 7 to p. 14, line 19 (PG&E, Strauss).

[151] Pacific Environment Opening Brief, pp. 38-39.

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loading order.[152] It is unclear what additional evaluation Pacific Environment wants PG&E and the other IOUs to perform.

III. CONCLUSION

Based on the record in this proceeding and the arguments in PG&E's opening and reply briefs, PG&E respectfully requests that the Commission adopt the recommendations included in its opening brief for Tracks I and III of this proceeding.

Respectfully submitted,

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[152] Ex. 107, p. 2-4, lines 7-8 (PG&E, Strauss).

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