Jaclyn:

In response to your request, below is a legal analysis of the scope of Senate Bill ("SB") 836 (Padilla), specifically with regard to whether utility-owned generation ("UOG") that was constructed before 2003 should be included in the information that the Commission provides to the Legislature.

SB 836 was enacted to ensure that the Legislature and the public are aware of the costs being incurred by California's Investor-Owned Utilities ("IOUs") to meet the statutory Renewables Portfolio Standard ("RPS") goals that were first enacted in 2002, as subsequently amended. *See* SB 836, Sections 1(a)-(c), (g). The Legislature found that to meet the RPS goals, the 'electrical corporations have entered into hundreds of contracts with independent producers of eligible renewable resources and also built utility-owned generation." *Id.*, Section 1(d). The Legislature recognized that the costs associated with those contracts and UOG resources (*i.e.,* the post-2002 contracts and UOG resources procured to meet the RPS requirements) had been submitted to the Commission for review and that the costs of these resources were subsequently passed through to customers. *Id.*, Sections 1(e)-(f).]

In order to provide transparency regarding the costs incurred to meet the RPS requirements, SB 836 enacted Public Utilities Code Section 911, which provides for the reporting of two separate types of RPS-related costs. First, the Commission is required to report aggregated power purchase contract costs organized by the year a procurement transaction was approved by the Commission. *See* Section 911(a)(1). Second, "[f]or each utility-owned renewable generation project, the commission shall release the costs forecast by the electrical corporation at the time of initial approval and the actual recorded costs for each kilowatthour of production during the preceding calendar year." *Id.*, (a)(2). Based on the overall purpose of the SB 836, the costs the Legislature was addressing are procurement costs incurred to meet the RPS procurement targets. This would not include costs, such as costs for PG&E's small hydro units, that were incurred decades before the RPS statutes or requirements were enacted and that were not built to meet the RPS statutes.

More specifically, Section 911(a)(2) requires the use of "costs forecast by the electrical corporation at the time of initial approval . . .." All of PG&E's RPS-eligible hydro resources were approved and built decades ago, in some cases as early as 1898 (*i.e.*, the Phoenix Powerhouse). Indeed, the most recent RPS-eligible UOG hydro resource was built in 1986 (*i.e*, the Newcastle Power House), and the vast majority of the RPS-eligible resources were built between 1900-1940. Trying to establish initial cost forecasts for small hydro projects built more than a hundred years ago will be difficult and was certainly not the kind of cost information that the Legislature was concerned about. Instead, what SB 836 appears to be addressing is UOG projects that have been proposed and approved since 2002 in response to the RPS requirements. These post-2002 costs would reflect the costs to customers of compliance with the RPS statutes. Costs associated with hydro projects that were built 100 years ago in some cases for very

different purposes would not address the fundamental issue that the Legislature appears to be concerned with, which is the cost that will be required to meet the RPS targets.

The same reasoning applies to PPAs executed before 2002. Many of the pre-2002 RPS-eligible PPAs are Qualifying Facilities ("QF") contracts that were executed in the 1980's to comply with federal law. These PPAs were not entered into for purposes of complying with the RPS statutes and do not address the Legislature's concerns regarding RPS-related costs.