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.	Rulemaking 10-05-006 (Filed May 6, 2010)

COMMENTS OF SAN DIEGO GAS & ELECTRIC COMPANY (U 902 E) ON PROPOSED DECISION ON SYSTEM TRACK I AND RULES TRACK III OF THE LONG-TERM PROCUREMENT PLAN PROCEEDING AND APPROVING SETTLEMENT

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I. INTRODUCTION AND SUMMARY

Pursuant to Rule 14.3 of the Rules of Practice and Procedure of the California Public Utilities Commission (the "Commission"), San Diego Gas & Electric Company ("SDG&E") hereby submits these comments concerning the proposed *Decision on System Track I and Rules Track III of the Long-Term Procurement Plan Proceeding and Approving Settlement*, issued February 21, 2012 in the above-captioned docket (the "Proposed Decision" or "PD").

The Proposed Decision addresses issues in Tracks I and III of the long-term procurement plan ("LTPP") proceeding. It adopts a proposed settlement agreement related to system resource need developed by a majority of the parties in System Track I (the "Settlement Agreement" or "SA"). The Settlement Agreement resolves all Track I issues except: (1) SDG&E's pending request for a need determination for new resources to meet Local Capacity Requirements ("LCR"); and (2) the possibility of need to procure currently uncontracted existing resources.[1/] The PD notes that the issue of SDG&E's local capacity requirement ("LCR") need was originally a Track I issue, but was moved to Application 11-05-023 and is not addressed in the Decision.[2/] The PD also addresses several Rules Track III issues, including, *inter alia*, (i) procurement rules related to once-through-cooling ("OTC") generation facilities; (ii) refinements to the process for evaluating utility-owned generation ("UOG") bids and competing independent power producer ("IPP") bids; (iii) procurement by investor-owned utilities ("IOUs") of greenhouse gas ("GHG")-related products; and (iv) general procurement oversight rules.

1/ *See* Settlement Agreement attached to *Motion of PG&E, et al. for Expedited Suspension of Track 1 Schedule and for Approval of Settlement Agreement* ("Motion"), filed August 3, 2011 in R.10-05-006.

2/ PD, p. 1.

As is discussed in more detail below, SDG&E supports approval of the Settlement Agreement, but recommends certain modifications to the PD designed to clarify the Commission's determination in Track I regarding system need and SDG&E's LCR need. In addition, SDG&E proposes revisions to the PD's proposed rules related to (i) UOG; (ii) procurement of GHG products; (iii) OTC generation facilities; and (iv) PRG meeting summaries.

II.
SYSTEM TRACK I ISSUES

A. The PD Should be Modified to Clarify the Commission's Determination in Track I Regarding System Need and SDG&E's LCR Need

The Settlement Agreement resolves a central issue in System Track I – whether the Commission should direct the IOUs to obtain additional generation resources in order to meet system resource adequacy requirements ("RAR").[3/] The SA reflects the consensus position of the signatories that, at this time, the Commission should not authorize the IOUs to procure additional resources to meet system RAR inasmuch as "[t]he resource planning analyses presented in this proceeding do not conclusively demonstrate whether or not there is need to add capacity for renewable integration purposes through the year 2020 . . ."[4/] The SA articulates the parties' "general agreement that further analysis is needed before any renewable integration resource need determination is made,"[5/] as well as parties' recommendation that the Commission "in collaboration with the CAISO, continue the work undertaken thus far in this proceeding to refine and understand the future need for new renewable integration resources, either as an extension of the current LTPP cycle or as part of the next LTPP" and issue a final Commission assessment of need by December 31, 2012.[6/]

The PD concludes that the Settlement Agreement is reasonable in light of the whole record and approves it without modification.[7/] SDG&E strongly supports the PD's conclusion, but is concerned that the PD's discussion of the Settlement Agreement may create confusion

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[3/] The Commission explained the distinction between "local" RA and "system" RAR in D.06-06-064:

> Under System RAR, each LSE is required to procure the capacity resources including reserves needed to serve its aggregate system load but is not required to account for local transmission constraints that could prevent the procured capacity from being available to the CAISO to serve load where the LSE's retail customers are located. Thus, under the current program, LSEs could be resource-adequate on an aggregate or system basis but transmission-constrained local load pockets could still be resource-deficient. It is this problem that Local RAR is intended to resolve. D.06-06-064, *mimeo*, p. 5.

[4/] Settlement Agreement, p. 5.

[5/] *Id.*

[6/] *Id.* at pp. 5-6.

[7/] PD, Findings of Fact ("FOF") 2, Ordering Paragraph ("OP") 1.

regarding the substance of the Commission's determination in Track I. While the Settlement Agreement supports adoption of a Commission finding that, given the inconclusive nature of the record evidence, no procurement related to system need *should be authorized* at this time, it preserves the question of whether additional capacity is actually necessary to meet system need for further (near-term) consideration in either the next LTPP cycle or in an extension of the current LTPP cycle.[8/] In its discussion of the SA, however, the PD states that "[t]he record clearly supports a conclusion that no new generation is needed by 2020, and the record does not clearly support a conclusion that new generation is needed even after 2020."[9/] This statement would appear to pre-judge the issue of "whether or not there is need to add capacity [to meet system need]. . .," which is intentionally left open by the Settlement Agreement.[10/]

The PD's statement that "[t]he record clearly supports a conclusion that no new generation is needed by 2020 . . ." is broader than is necessary to support the conclusion that the SA is reasonable in light of the whole record. As noted above, the fundamental question of Track I, and the issue addressed in the SA, is whether the IOUs should be directed to obtain additional generation resources at this time in order to meet system RAR. Approval of the SA's deferral does not require the Commission to reach a final determination regarding whether new generation is needed by 2020; it requires instead that the Commission find that the record of the proceeding includes evidence supporting *both* the claim that need exists for additional system resources and the claim that no such system need exists, and that conducting additional analysis is in the public interest. The record information cited at pages 7-9 and 11 of the PD fully supports the conclusion that for the time being, the Commission need not authorize the IOUs to procure additional resources to meet system RAR, pending further analysis. Certain additional discussion included in the PD, however, creates confusion regarding the scope of the Commission's determination, and should therefore be deleted.

SDG&E recommends, for example, that the following language on appearing page 7 be deleted:

> To the extent that there is no need for additional generation resources by 2020, it is clear that the proposed settlement is reasonable, given that it merely defers authorization of generation procurement. If no new generation is needed, then no immediate procurement of generation is needed. On the other

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8/ Settlement Agreement, pp. 5-6.
9/ PD at pp. 10-11.
10/ *See* Settlement Agreement, p. 5.

> hand, if generation is needed by 2020, then deferring procurement of that generation could potentially be problematic.

In addition, SDG&E recommends that the language at the bottom of page 7 be modified to read:

> There is clear evidence on the record that **immediate procurement of** additional generation is not needed by 2020. But it is also necessary to ensure that the same conclusion is reached after considering the whole record.

It further recommends that footnote 9 be deleted and, additionally, that the discussion on page 9 be modified to read:

> In looking at the whole record, it ~~**would be reasonable to find that there is no need for additional generation by 2020 at this time, and accordingly it**~~ is reasonable to defer authorization to procure additional generation based on system and renewable integration need. The proposed settlement is therefore reasonable in light of the whole record.

Finally, at the bottom of page 10 and the top of page 11, SDG&E recommends deletion of the following sentence:

> The record clearly supports a conclusion that no new generation is needed by 2020, and the record does not clearly support a conclusion that new generation is needed even after 2020.

SDG&E submits that these proposed modifications to the PD's discussion of the Settlement Agreement will prevent confusion concerning the substance of the Commission's determination, and that the discussion, as modified, provides support for the PD's conclusion that the SA is reasonable in light of the whole record.

B. The PD Should be Modified to Clarify that the Commission Reached No Determination in Track I Regarding SDG&E's Local Need

Originally included within the scope of Track I of the instant proceeding was SDG&E's request that the Commission adopt a need determination of 415 MW of new resources to meet local RAR. While the Settlement Agreement resolved issues related to system need, it expressly excluded "SDG&E's pending request for a need determination for new resources to meet its LCR."[11/] In its *Joint Assigned Commissioner's Ruling* dated January 18, 2012, the Commission concluded that the issue of SDG&E's need for new resources to meet local RAR should be considered in the context of Application ("A.") 11-05-023 rather than in the instant proceeding. Accordingly, the PD states that "[a] second System Track I issue, relating to local reliability

[11/] Settlement Agreement, pp. 2, 7, 8.

requirements in the San Diego Gas & Electric service territory, was moved to Application 11-05-023."[12/]

While the PD includes this acknowledgement, SDG&E is concerned that because it provided witness testimony and briefed the issue of its LCR need in the instant proceeding, there may be confusion among parties concerning the relationship between the Track I final decision and the issue of SDG&E's local need within the context of A.11-05-023. Accordingly, SDG&E respectfully requests that the PD be revised to emphasize that the discussion of "need" in the decision relates to solely system need, and not to SDG&E's local need, and that the decision does not prejudge the issue of SDG&E's need for additional capacity to meet local RAR currently before the Commission in A.11-05-023.

III.
RULES TRACK III

A. The PD Should be Revised to Modify the Proposed Rules Regarding Utility-Owned Generation

In establishing rules for UOG, the Commission has adopted a "competitive market first" approach,[13/] requiring that UOG be sought through competitive solicitation, but recognizing that unique circumstances could exist to justify UOG outside of a competitive RFO.[14/] In D.07-12-052, the Commission established four circumstances in which an IOU could seek approval of UOG outside of a competitive solicitation: (1) the proposed UOG is necessary to mitigate market power by a private owner; (2) the proposed UOG is a preferred resource; (3) the proposed UOG is a unique opportunity;[15/] or (4) the proposed UOG is necessary to ensure system reliability.[16/] As the PD notes, the record of the instant proceeding reflects the existence of diverging views on the efficacy of the current rules and the comparability of UOG and PPAs.[17/] Given the absence of clear support in the record for modification of the current rules related to UOG, SDG&E concurs in the PD's conclusion that wholesale revision of the current rules is not warranted.[18/] While it supports the notion that "refinements" to the rules may be appropriate, it is concerned

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[12/] PD, p. 1.
[13/] D.07-12-052, *mimeo*, pp. 201, 209.
[14/] *Id.* at p. 210.
[15/] *Id.* at p. 212. The decision provides an example of a "unique opportunity" – *i.e.*, an attractively priced resource that results from a settlement or bankruptcy proceeding – but notes the fluid nature of category definitions, observing that the needs highlighted in the categories could change "[a]s our procurement experience grows and processes evolve." *Id.* at p. 210, note 239.
[16/] *Id.* at pp, 210-213, as amended by D.08-11-008, *mimeo*, pp. 20-23. D.07-12-052 originally identified five categories. One of these, the "Expansion of Existing Facilities" category, was deleted in D.08-11-008.
[17/] PD, pp. 27-29.
[18/] *See id.* at p. 29.

that certain changes proposed in the PD exceed the bounds of mere "refinement" and will result in significant, negative ratepayer impacts that were neither examined nor quantified during the proceeding.[19/]

First, the PD concludes that UOG projects should not compete directly with PPAs in utility request-for-offer ("RFO") solicitations. It directs that "utilities should continue to use RFOs for non-UOG procurement . . . but UOG procurement will be done through the certificate of public convenience and necessity (CPCN) process."[20/] While SDG&E does not object to the concept of separate processes for evaluation of UOG and PPAs, it notes the paucity of evidence in the record concerning the impacts related to this specific modification proposed in the PD; no testimony or other evidence was presented regarding the suitability of the CPCN process in instances where the proposed UOG is already constructed.

It is clear under Public Utilities Code § 1001 and Commission General Order ("G.O.") 131-D that the CPCN process is intended to be applied in cases of IOU construction of new "line, plant or system" rather than to an IOU's acquisition of a fully-constructed facility.[21/] Section 1001, for example, provides that "[n]o . . . electrical corporation . . . shall begin the construction of a . . . line, plant, or system, or of any extension thereof, without having first obtained from the commission a certificate that the present or future public convenience and necessity require or will require such construction." Similarly, G.O. 131-D states:

> No electric public utility shall begin construction in this state of any new electric generating plant having in aggregate a net capacity available at the busbar in excess of 50 megawatts (MW), or of the modification, alteration, or addition to an existing electric generating plant that results in a 50 MW or more net increase in the electric generating capacity available at the busbar of the existing plant . . without this Commission's having first found that said facilities are necessary to promote the safety, health, comfort, and convenience of the public, and that they are required by the public convenience and necessity.[22/]

Under § 1003, a CPCN applicant must provide (i) preliminary engineering and design information on the project; (ii) a project implementation plan showing how the project would be contracted for and constructed; (iii) cost estimate and cost analysis comparing the project with any feasible alternative sources of power; (iv) and a design and construction management and cost control plan, which includes a construction progress information system. G.O. 131-D

[19/] *See id.*
[20/] *Id.* at p. 30.
[21/] All statutory references herein are to the Public Utilities Code unless otherwise noted.
[22/] G.O. 131-D, p. 2.

requires CPCN applicants to make this detailed showing, including the filing of a Proponent's Environmental Assessment ("PEA") at least 12 months before the date of a required CPUC decision on the application (resolution of the CPCN request may take significantly longer than 12 months). In addition, the CPCN process often includes evaluation of the project under the California Environmental Quality Act ("CEQA"), a complex and time-consuming undertaking.

Plainly, while it may be appropriate to require a CPCN for UOG in circumstances where the IOU intends to construct a new generation facility, applying the CPCN requirement categorically to *all* instances of UOG cannot be justified. Neither § 1001, *et seq.* nor G.O. 161-D contemplate application of the CPCN requirement to IOU acquisition of a fully-constructed plant, and the processes outlined therein are inapposite to a circumstance where no new construction is to be undertaken. No evidence regarding how the IOUs might comply with the myriad requirements described above in instances where no new construction was intended was entered into the evidentiary record; nor was there any evaluation of the benefit to the ratepayers, if any, of imposing this requirement. In short, there is inadequate support in the record of the proceeding for this proposal in the PD. Accordingly, the PD should be modified to eliminate the requirement that all UOG procurement occur via the CPCN process. The PD should instead direct the IOUs to seek approval of UOG using the application process and note that the IOUs remain subject to the requirements of § 1001, *et seq.* and G.O. 131-D, which set forth the criteria for determining when a CPCN is required.

The second significant and problematic change to the UOG rules proposed in the PD is the requirement that before an IOU can seek approval of UOG from the Commission, it must hold an RFO, determine (based upon unspecified criteria) that the RFO had failed, submit a Tier 3 advice letter setting forth the reasons why the RFO should be considered "failed," and only after Commission issuance of a Resolution confirming that the RFO had failed, submit an application for approval of the UOG. The proposed "RFO failure" requirement is unreasonably burdensome and is not supported by the record. The delay inherent in the PD's proposed procedure – caused by the addition of several layers of administrative process – would effectively prevent the IOUs from pursuing any UOG opportunity, regardless of the potential benefit to ratepayers. This problem is compounded by the fact that the PD creates regulatory uncertainty regarding the UOG approval process inasmuch as it provides only "general guidance" rather than clear criteria for determining whether an RFO has "failed."

While it is clear that the "RFO failure" requirement, which would impose a major obstacle to future UOG, would benefit independent power producers, the Commission's obligation is to protect the public interest rather than specific market participants. There is *no* evidence in the record that the "RFO failure" requirement would serve the public interest, nor is there any evaluation of the potential harm to ratepayers. Indeed, the lack of an evidentiary record on the issue of requiring a "failed" RFO in order to seek approval of UOG is readily acknowledged in the PD.[23/] It is plain that the record of the proceeding does not support adoption of the "RFO failure" proposal. Accordingly, the PD should be modified to delete it and to adopt a construct for determining when the IOUs may pursue UOG that is supportable and consistent with Commission precedent. Specifically, the PD should be revised to instead require that the IOUs demonstrate that the proposed UOG fits within one of the four categories for UOG outside of a competitive solicitation established in D.07-12-052. Thus, under the resulting construct, IOUs would be prohibited from including UOG in competitive RFOs and could seek approval of UOG only if the proposed UOG: (1) is necessary to mitigate market power by a private owner; (2) is a preferred resource; (3) is a unique opportunity; or (4) is necessary to ensure system reliability.[24/] This approach places reasonable constraints on IOU reliance on UOG, is consistent with Commission precedent and is in keeping with the PD's stated goal of avoiding wholesale changes to the current rules related to UOG.[25/]

B. The PD Should be Revised to Modify the Proposed Rules Regarding Greenhouse Gas Products

1. IOU Procurement of Offset Forwards Should Be Permitted

Offsets are generated by projects approved by the California Air Resources Board ("ARB") that generally involve upfront costs to develop the project and will generate a stream of future GHG reductions. The ability to sell the future stream of GHG benefits (*i.e.*, offset forwards) can improve offset project developers' efforts to obtain financing for their projects. The PD prohibits IOU procurement of offset forwards, finding that "the risk inherent in offsets, the additional risk of purchasing other derivative products, and the limited amount of offsets that can be used for compliance," justify the prohibition.[26/] This conclusion that offset forwards present unacceptable risk is factually erroneous given the ratepayer protections established in the

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[23/] *See* PD, p. 37.
[24/] *See* D.07-12-052, *mimeo*, pp. 210-213, as amended by D.08-11-008, *mimeo*, pp. 20-23.
[25/] *See* PD, p. 29.
[26/] *Id*. at p. 50.

PD, such as the requirement that sellers assume the risk of offset invalidation.[27/] Similarly, the limit on the use of offsets is not relevant since offsets are explicitly limited by ARB and also in the PD.[28/] Accordingly, the PD should be revised to permit the IOUs to purchase offset forwards through an RFO process.

2. IOU Offset Limits Should be Set on a Per Compliance Period Basis

The PD proposes that offset limits be set on an annual basis.[29/] The GHG regulations established by ARB, however, allow for offsets to total 8% of an IOU's obligation over the compliance period.[30/] The PD makes clear the intent "to make sure that the utilities' procurement of offsets is consistent with CARB's approach."[31/] Accordingly, the PD's discussion of offset limits should be modified to delete the word "annual" since the 8 percent offset limit applies to the compliance period, not to a single year.[32/]

3. The PD Should be Modified to Revise the Compliance Period Procurement Limits

The PD establishes that IOU procurement limits for each compliance period are to be based on the GHG forecasts to be filed with the IOUs' respective bundled plans submitted in conformance with the final decision.[33/] If the procurement limits are set once, however, and are never revisited, the maximum procurement limit for 2014 could be less than the IOU's compliance obligation.[34/] It would plainly be highly problematic to have an IOU's maximum procurement limit set lower than its compliance obligation. Accordingly, the PD should be modified to permit the IOUs to update their forecasts as necessary, based on data such as more recent load forecasts, changes in resources, new hydro conditions, plant outages and/or actual data for prior months. Revisions to the tables included in the IOU's bundled plan setting forth the GHG forecast and associated procurement limits would be submitted for approval via a Tier 2 advice letter, and would be reported to the IOU's PRG and reported in the quarterly compliance report ("QCR").

[27/] *See id.* at p. 42.
[28/] *See id.* at p. 41.
[29/] *Id* at. pp. 41-42.
[30/] SDG&E/Miller, Exh. 313, pp. 4-5, 7.
[31/] PD, p. 41.
[32/] For example, if SDG&E obtained 1% of its 2013 compliance obligation from offsets, it could obtain 15% of its 2014 compliance obligation from offsets as long as for the entire 2013-2014 compliance period, the total offsets used for compliance were no more than 8% of its total obligation.
[33/] PD, pp. 54-55.
[34/] This could occur, for example, if there were a situation similar to 2000-2001 with a combination of hot weather, low hydro conditions, and a nuclear plant outage.

In addition, the PD should be revised to increase the maximum procurement limit for 2013-2014 vintage allowances in 2014 from 110% to 120%. This modification recognizes that 2013-2014 allowances can be used for 2015-2017 compliance. In lieu of a 10% minimum purchase of 2015-2017 vintage allowances, the 2013-2014 procurement limit should be increased by 10%. As a practical matter, the 2015-2017 vintage allowance minimum procurement limit is too high given that ARB is only auctioning 10% of 2015-2017 allowances in 2012-2014. As written, the PD would have a pro-rata share of auctioned allowances be the minimum procurement limit. The procurement minimum limit should be less than a pro-rata share since the compliance period will not have begun.

Taking account the ability to use 2013-2014 vintage allowances in 2015-2017 and the limited amount of 2015-2017 vintage allowances available prior to that compliance period, there should be no minimum on procurement of 2015-2017 allowances prior to 2015. Or, alternatively "excess" 2012-2014 vintage allowances (*i.e.*, those above the ARB 2013-2014 compliance obligations) should be applied to the 2015-2017 minimums. As the PD recognizes, 2013-2014 vintage allowances can be used in the 2015-2017 period and therefore could apply toward the 2015-2017 minimum for 2013 and 2014.[35/]

4. The PD Should be Modified to Distinguish Between Current versus Future Compliance Period Instruments

The PD fails to adequately distinguish between current period compliance instruments and future period compliance instruments. For example, the PD requires the utilities to acquire allowances and offsets for the current period from brokers through an RFO process, stating "the procurement of greenhouse gas instruments follows a process similar to the procurement of generation resources."[36/] However, after auctions and exchanges are in place, the trading of GHG products will be more akin to the trading of electricity than procurement of generation resources, which is usually accomplished through PPAs due to the complexities of financing, long term pricing, uncertainty regarding project completion and so forth. With PPAs, there are limited buyers, the terms are customized and the terms/tenors are generally long term. Electricity trading, on the other hand involves many purchasers and the terms/tenors are pre-defined. GHG products will more closely resemble the latter after auctions begin.

[35/] PD, p. 54.
[36/] *Id.* at p. 51.

Auctions and exchanges will provide clear benchmark prices that are expected to change on a daily basis. Bilateral transactions in markets that change daily are not compatible with an RFO process. On the other hand, forward market transactions are likely to be less liquid and transparent, so that an RFO process is appropriate for future compliance periods. Accordingly, the PD should be modified to restrict the RFO process to forward market transactions outside the current compliance period after auctions begin. In accordance with this modification, brokers dealing in current period GHG compliance instruments should be treated in a manner similar to exchanges, with approval by the Commission being sought through the advice letter process. Once approved, the utilities could deal with brokers in much the same way they deal with brokers in the electric commodity market.

The PD's lack of flexibility for the sale of allowances is unworkable for current compliance periods. The advice letter process is time-consuming and a poor fit with markets that can exhibit daily volatility. The requirement that sales be approved through the advice letter process will deprive the IOUs of the ability to provide liquidity in case of temporary price spikes. For example, in summer 2015, as the accounts for 2013-2014 are trued-up, the wait time for advice letter approval could lead to speculation on price. Sales should also be allowed in the case where a procurement limit maximum is violated because the actual GHG emitted was less than forecast. Thus, the PD should be modified to permit the IOUs to lay out in their bundled plans circumstances in which it would sell allowances. Once approved, it would allow the utilities to sell compliance instruments if specific parameters are met.

C. The PD Should be Modified to Eliminate the Advice Letter Requirement for OTC Contracts with a Term of Less than Two Years

In May, 2010, the State Water Resources Control Board (the "SWRCB") adopted its statewide *Water Quality Control Policy on the Use of Coastal and Estuarine Waters for Power Plant Cooling*, which applies to power plants located along the California coast that rely on "once-through cooling" technology (the "OTC Policy").[37/] The OTC Policy implements § 316(b) of the federal Clean Water Act, which seeks to minimize the adverse environmental impacts of cooling water intake structures. In adopting the new regulations, the SWRCB made clear that the OTC Policy is intended, *inter alia*, to protect State's coastal and estuarine waters, "while also ensuring that the electrical power needs essential for the welfare of the citizens of the

[37/] *See* Resolution No. 2010-0020. The Policy was approved by the Office of Administrative Law on September 27, 2010, and became fully effective on October 1, 2010.

State are met."[38/] The SWRCB observed further that it "recognizes that it is necessary to develop replacement infrastructure to maintain electric reliability in order to implement this Policy."[39/] Thus, implementation of the OTC policy requires a balancing of the environmental policies of the State and the need to ensure system reliability.

The PD adopts rules related to IOU contracting with generating facilities subject to the OTC Policy. These rules would permit the IOUs to sign PPAs with OTC plants, but prohibits OTC purchases beyond the applicable SWRCB compliance deadline.[40/] IOUs would be required to submit OTC PPAs for approval via a Tier 3 advice letter for contracts of less than five years, or via an application for contracts with a duration of five years or more. To the extent such a PPA terminates one year or less prior to the applicable SWRCB compliance deadline, the advice letter or application must specifically show how the agreement (i) helps facilitate compliance with the OTC policy; and (ii) does not prolong OTC operations.[41/]

As a threshold matter, SDG&E notes that it is not IOU contracting, but the lack of alternate, replacement generation resources that will cause OTC to be retained past the deadline in the OTC Policy. Failure to approve new capacity sited in constrained areas in a timely manner will result in OTC facilities being retained beyond the dates in the OTC Policy due to reliability concerns. Moreover, attempting to exactly match the timing of the new capacity coming online relative to the OTC retirement may risk the OTC retirement extension and therefore duplicate ratepayer costs. Nevertheless, SDG&E does not oppose the proposal to limit the IOUs' ability to enter into PPAs that would require operation of an OTC facility beyond the compliance date. Nor does SDG&E oppose the proposal to require Tier 3 advice letter filings for OTC PPAs of more than 2 years and up to 5 years of duration. It is concerned, however, that imposing an advice letter filing requirement for OTC PPAs with a term of 2 years or less will result in harm to ratepayers and will undermine system reliability.

IOUs must have the flexibility to enter into OTC PPAs with a term of 2 years or less in order to respond expeditiously to various circumstances, including those set forth below. Imposition of a Tier 3 advice letter filing for these PPAs would significantly interfere with the IOUs' ability to respond as necessary to protect system reliability and comply with Commission RA requirements in situations such as:

[38/] *Id.* at ¶ 10.
[39/] *Id.*
[40/] PD, Ordering Paragraph 3.
[41/] *Id.*

- **Outage replacement/unit substitution**: Throughout the RA compliance year, RA units routinely go offline, either through planned maintenance, or through forced outage. Under existing RA counting rules, LSEs are required to replace any RA resource on scheduled outage lasting longer than two weeks. Similarly, to avoid costly penalties associated with Standard Capacity Product ("SCP") requirements, LSEs seek to replace or substitute RA units on forced or unplanned outages with uncontracted, non-RA resources. In both cases, the volume of MWs replaced can be large (making larger resources the likely contracting parties) and the duration of replacement short. Time is generally of the essence in replacing the capacity, particularly in the case of avoiding SCP penalties for forced outages. Given these factors, imposition of a Tier 3 advice letter on OTC PPAs with a term of 2 years or less would effectively remove these units (which could be a material portion of what is available at any given time) from the list of potential outage replacement resources, possibly exposing ratepayers to increased procurement costs and potential penalties.
- **Monthly True for Load Migration**: In D.10-12-038, the Commission adopted a local RA reallocation process to account for intra-year load migration.[42/] The Local RA reallocation process includes two intra-year adjustment cycles: one in the first quarter of the year to apply for filings in the second quarter in the year, and one in the second quarter of the year to apply for filings in the third and fourth quarters of the year. According to the 2012 RA filing guide released by the Energy Division, LSEs file adjusted load migration forecasts, receive incremental Local RA adjustments, and have a maximum of 45 days to procure incremental Local RA in order to meet adjusted Local RA obligations. In light of the 45-day turn-around time, a Tier 3 advice letter applied to OTC PPAs with a term of 2 years or less would prevent LSEs from using OTC units to satisfy revised, intra-year local RA requirements.
- **General RA compliance**: The Commission adopts RA obligations at the end of June each year. The Energy Division finalizes those obligations and releases them to LSEs near the end of July each year. LSEs are obligated to make

[42/] D.10-12-038, *mimeo*, Appendix A.

compliance filings demonstrating year-ahead RA procurement typically by the end of October each year. Thus, LSEs generally have a maximum of 90 days from the time they are notified of their final RA requirements, to the time they must make a filing demonstrating compliance with those requirements. This relatively narrow procurement and contracting window is ill-suited for a Tier 3 advice letter process.

Thus, imposition of the proposed Tier 3 advice letter requirement for transactions 2 years or shorter could force an IOU to commit to a resource before it has certainty that the resource is needed, rather than risk failure to comply with Commission system reliability requirements. More often than not, securing additional capacity before the need is set would result in higher ratepayer costs. In order to preserve the IOUs' ability to respond in a timely manner to exigent circumstances such as those detailed above, SDG&E recommends that the PD be modified to eliminate the Tier 3 advice letter requirement for contracts 2 years or less that do not require operation of an OTC facility beyond the OTC Policy compliance date. It recommends further that the IOUs be required to review the terms of such PPA with its PRG prior to commitment. This approach will strike the appropriate balance between promoting the State's environmental policies and ensuring system reliability and ratepayer protection.

D. The PD Should be Modified to Clarify that the Meeting Summary Rule Applies to Regularly Scheduled PRG Meetings

The PD adopts the rule that summaries of PRG meetings must be distributed on the earlier of (i) 14 days after the PRG meeting; or (ii) 48 hours before the next PRG meeting.[43/] SDG&E does not object to this requirement, but requests that the PD be modified to clarify that the rule applies only to regularly scheduled PRG meetings. In other words, meeting summaries must be distributed on the earlier of (i) 14 days after the **previous regularly scheduled** PRG meeting or (ii) 48 hours before the next **regularly scheduled** PRG meeting.

As a practical matter, the usefulness of the summary is as a tool to allow PRG members to prepare for additional discussion of similar topics at the next PRG meeting where such topics will be discussed. In a circumstance where an IOU calls a special PRG meeting in between regulatory scheduled meetings to discuss a specific topic, it is obligated to provide the PRG with sufficient information to prepare for discussion of that topic. It makes little sense to impose a

[43/] PD, p. 62.

requirement that the IOU also provide summaries of all topics from the previous meeting when such topics will not be addressed at the special PRG meeting.

IV.
CONCLUSION

For the reasons set forth above, the Commission should approve the PD with the modifications described herein and set forth in Attachment A.

Respectfully submitted this 12th day of March, 2012.

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ATTACHMENT A

Proposed Findings of Fact, Conclusions of Law and Ordering Paragraphs

***Proposed Findings of Fact*:**

3. The System Track I issue of the need for new capacity to meet local reliability requirements in the San Diego Gas & Electric service territory was moved to Application 11-05-023. This decision does not prejudge the determination in A.11-05-023 of SDG&E's need for new capacity to meet local resource adequacy requirements.

11. ~~UOG may be necessary if suitable independently-owned generation is not available~~ **Under current Commission rules, there are four circumstances in which an IOU may seek approval of UOG outside of a competitive solicitation: (1) the proposed UOG is necessary to mitigate market power by a private owner; (2) the proposed UOG is a preferred resource; (3) the proposed UOG is a unique opportunity; or (4) the proposed UOG is necessary to ensure system reliability.**

***Proposed Conclusions of Law*:**

7. UOG should be considered ~~only after an RFO for independent generation has failed~~ **if the proposed UOG: (1) is necessary to mitigate market power by a private owner; (2) is a preferred resource; (3) is a unique opportunity; or (4) is necessary to ensure system reliability**.

8. The utilities should be allowed to procure certain greenhouse gas compliance instruments at this time, specifically allowances, allowance forwards and futures, ~~and~~ offsets**, and offset forwards**.

***Proposed Ordering Paragraphs*:**

3. a. Pacific Gas and Electric Company, Southern California Edison

Company, and San Diego Gas & Electric Company are authorized to sign power purchase agreements with power plants using once-through cooling, but those agreements may not commit to purchases beyond the applicable State Water Resources Control Board compliance deadline, and those agreements must be submitted to the Commission for approval via a Tier 3 advice letter for contracts ~~of less than five years~~ **of more than two years and up to five years of duration**, or via an application for contracts with a duration of five years or more. In addition, the applicable request for offers or other solicitation evaluation must take into consideration the plant's use of once-through cooling. **Contracts with a term of two years or less that do not commit to purchases beyond the applicable State Water Resources Control Board compliance deadline do not require Commission approval, but the terms of such contracts must be reviewed with the utility's Procurement Review Group prior to execution of the contract.**

8.c. PG&E, SCE, and SDG&E contracts with facilities utilizing once-through cooling may extend beyond the State Water Resources Control Board once-through cooling compliance date, but only if such contracts: 1) Allow for utility purchase or receipt of power generated by a unit using once-through cooling only up to the State Water Resources Control Board once-through cooling policy compliance date in effect on the date the contract is signed. The contract shall not allow PG&E, SCE, and SDG&E to continue to purchase or receive power generated using once-through cooling beyond that date even if the State Water Resources Control Board extends the compliance date; 2) Protect utility ratepayers against stranded costs; 3) Protect ratepayers against the risk of future unspecified cost increases resulting from increases in the cost of the generation unit compliance with the State Water Resources Control Board once-

through cooling policy. For a utility to recover such cost increases from ratepayers, it must obtain approval from the Commission; 4) Are consistent with a need authorization from the System Track of the Long-Term Procurement Plan proceeding; and 5) ~~Are consistent with other procurement rules, including this decision's requirement to~~ file either a Tier 3 Advice Letter (for contracts with a duration of less than 5 years) or an application (for contracts with a duration of more than 5 years).

6. Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company's utility-owned generation shall be procured only ~~after a corresponding utility request for offers has failed~~ **if (1) the proposed UOG is necessary to mitigate market power by a private owner; (2) the proposed UOG is a preferred resource; (3) the proposed UOG is a unique opportunity; or (4) the proposed UOG is necessary to ensure system reliability. Approval of procurement of such utility-owned generation shall be sought through an application filing.**

8.a. Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), and San Diego Gas & Electric Company (SDG&E) are authorized to procure greenhouse gas allowances, allowance futures and forwards, ~~and~~ offsets**, and offset forwards** within the following limits:

Compliance Period Procurement Limits

Year in Which GHG Compliance Instruments Are Procured	2013-2014 Min	2013-2014 Max	2015-2017 Min	2015-2017 Max
2012	10%	60%	0%	10%
2013	30%	90%	0~~5~~%	20%
2014	100%*	12~~1~~0%	~~1~~0%	40%

2015	20%	60%
2016	TBD	TBD
2017	TBD	TBD

*** - 100 percent of forecasted 2013-2014 GHG emissions. It is recognized there may be a true-up in 2015 that would alter the level of GHG emissions at 100 percent and the utility would acquire added allowances if necessary to be in compliance.**

8.c. PG&E, SCE, and SDG&E may purchase no more than 8% of their ~~annual~~ compliance **period** requirement in the form of offsets.

8.f. PG&E, SCE, and SDG&E may procure allowances **and offsets** via forward contracts, and should apply their standard procurement credit and collateral requirements to these transactions, and may also impose additional credit and collateral requirements as appropriate.

8.g. If PG&E, SCE, and SDG&E wish to procure any authorized compliance instruments **before the first auction or whose term is outside of the current compliance period** via bilateral transactions (including brokers), PG&E, SCE, and SDG&E must utilize a competitive request for offer process, consult with their procurement review group, apply their approved procurement credit and collateral requirements, and apply the applicable affiliate transaction rules.

8.h. PG&E, SCE, and SDG&E may procure greenhouse gas compliance instruments on Commission-approved exchanges. **PG&E, SCE, and SDG&E may also procure current period greenhouse gas compliance instruments with Commission-approved brokers.** Prior to purchasing greenhouse gas compliance instruments on an exchange **or from a broker**, PG&E, SCE, and SDG&E must submit a Tier 2 advice letter detailing:

1) what exchange **or broker** they are seeking to use;

2) the liquidity and transparency of the exchange **or broker quotes**, specifically for California greenhouse gas compliance instruments, including an explanation of how the Commission can be assured that the price of products procured on the exchange **or from a broker** are reasonable; and 3) the regulatory authority or authorities the exchange **or broker** is subject to.

8.i. PG&E, SCE, and SDG&E may resell greenhouse gas compliance instruments, but only with prior Commission approval **of the types of circumstances under which a sale would occur** via a Tier 2 advice letter, and after consultation with their procurement review group. Any utility advice letter seeking approval to resell greenhouse gas compliance instruments should clearly set forth **the circumstances under which it would** ~~why it is~~ seek~~ing~~ to resell greenhouse gas compliance instruments, and why the sale **under those circumstances** is in the best interest of ratepayers.

9. When Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), and San Diego Gas & Electric Company (SDG&E) update their long term procurement plans in conformance with this decision, they should provide an estimated forecast of the amount of greenhouse gas compliance instruments (in metric tons carbon dioxide equivalents) that correspond with these minimum and maximum procurement levels, based upon their current expected range of emissions compliance obligations. **The forecast contained in each long term procurement plan may be updated as necessary by filing a Tier 2 advice letter modifying the forecast**. In addition, **all updates to the forecast and** all greenhouse gas compliance instrument transactions should be reported at each quarterly procurement review group meetings and quarterly compliance reports of PG&E, SCE, and SDG&E.

14. Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company procurement review group meeting summaries shall be distributed on the earlier of a) 14 days after the **previous regularly-scheduled** procurement review group meeting, or b) 48 hours before the next **regularly-scheduled** procurement review group meeting.