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)

OPENING COMMENTS OF GENON CALIFORNIA NORTH, LLC ON PROPOSED DECISION ON SYSTEM TRACK 1 AND RULES TRACK III OF THE LONG-TERM PROCUREMENT PLAN PROCEEDING AND APPROVING SETTLEMENT

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I. INTRODUCTION

Pursuant to Rule 14.3 of the Rules of Practice and Procedure of the California Public Utilities Commission ("Commission"), GenOn California North, LLC ("GenOn") submits these opening comments on the proposed decision of Administrative Law Judge Allen titled "Decision on System Track I and Rules Track III of the Long-Term Procurement Plan Proceeding and Approving Settlement" ("Proposed Decision").

GenOn focuses its comments on two topics: (1) the Proposed Decision's approval of the Settlement Agreement addressing Track I issues that was entered into by a majority of the parties in this proceeding, including GenOn ("Settlement Agreement");[1] and (2) the Proposed Decision's new restrictions on utilities' ability to procure power from generating units utilizing once-though cooling technology ("OTC").

First, while GenOn fully supports approval of the Settlement Agreement, the Proposed Decision misinterprets the Settlement Agreement and thereby fails to recognize that the Commission must act quickly to consider further analysis of the need for new generation by 2020, as contemplated by the Settlement Agreement. The Proposed Decision should be modified to conform to language in the Settlement Agreement, which clearly states that the current record does not conclusively demonstrate whether or not there is a need to add new generating capacity by 2020, and that further analysis is needed before a need determination is made. As

[1] *See* Motion for Expedited Suspension of Track I Schedule, and for Approval of Settlement Agreement, August 3, 2011, Attachment (Settlement Agreement).

recommended by the settling parties, the Proposed Decision also should be modified to adopt a schedule for considering further analysis of the need for generation in 2020, and for adopting a need determination by the end of this year. As explained below, a Commission decision by the end of 2012 is critical to ensure that any new capacity that may be needed to meet reliability needs in 2020 can be constructed and placed into operation in time to meet those needs.

Second, on the topic of restrictions on procurement involving OTC units, the Proposed Decision creates unnecessary risk that cost-effective, flexible capacity that is fully compliant with the "Statewide Policy on the Use of Coastal and Estuarine Waters for Power Plant Cooling" ("OTC Policy"), as adopted and implemented by the California State Water Resources Control Board ("SWRCB"), and needed to ensure reliable local and system operations will not be contracted, or will be contracted at a higher cost and under burdensome terms that provide no added benefit. To preserve flexibility in contracting with OTC units, the Commission should modify the Proposed Decision to: (1) eliminate the requirement for Tier 3 advice letter approval of procurement contracts with OTC units that have a term of less than five years; (2) eliminate conditions that are more stringent than requirements imposed by the SWRCB; (3) eliminate or clarify the mandate requiring utility request for offer ("RFO") evaluations to consider a facility's use of OTC; and (4) eliminate restrictions on utilities' ability to contract with OTC units that have achieved compliance with the OTC Policy.

These recommendations are discussed in further detail in Section II below.

II. COMMENTS AND RECOMMENDED CHANGES TO THE PROPOSED DECISION

A. The Proposed Decision should be modified to reflect the Settlement Agreement's conclusion that further analysis must be considered before deciding whether new generating capacity is needed in 2020.

While GenOn fully supports adoption of the Settlement Agreement, GenOn is very concerned that the Proposed Decision draws the wrong conclusion from the Settlement Agreement. As GenOn pointed out in its opening brief filed on September 16, 2011, the Settlement Agreement recognizes that "there is general agreement that ***further analysis is***

needed before any renewable integration resource need determination is made."[2] This is a central tenet of the Settlement Agreement – that the current record is inconclusive and further analysis is needed to build a complete record that supports a need determination by the Commission. On that basis, the Settlement Agreement recommends that the Commission continue considering the extent to which new resources are needed for renewable integration, either in an extension of this Long Term Procurement Planning ("LTPP") cycle or in the next LTPP cycle.[3] The Settlement Agreement also conveys a sense of urgency in completing that task, because the further analysis must be completed as soon as possible to ensure that any required new capacity can be built in time to be operational in 2020. To that end, the Settlement Agreement urges the Commission conduct the additional analysis and issue a final need determination ". . . ***no later than December 31, 2012***".[4]

1. The Proposed Decision errs by concluding that the record shows no need for new generation.

Instead of focusing on the need for additional analysis as reflected in the Settlement Agreement, the Proposed Decision erroneously attempts to justify a decision with a determination of no need for additional generation. In doing so, the Proposed Decision misinterprets both the Settlement Agreement and the record to conclude that there is no need for new generation by 2020.

The Proposed Decision's approach stems from the conclusion that the reasonableness prong related to approval of settlements requires a finding that no new generation is required by 2020.[5] This is where the Proposed Decision errs. It is entirely reasonable to approve the Settlement Agreement without drawing any final conclusions regarding future need, provided that the Commission's decision provides for consideration of future need in a way that allows for a subsequent decision in time to ensure that reliability needs will be met. Providing for the expedited processing of the additional need analysis with a resulting decision by the end of 2012 would allow the Commission to defer a need determination in this decision without jeopardizing

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2 Settlement Agreement, Section III.B, 5th Bullet Point (emphasis added).
3 *Id.*
4 *Id.* (emphasis added).
5 *See* Proposed Decision, p. 7 ("To the extent that there is no need for additional generation resources by 2020, it is clear that the proposed settlement is reasonable. . . . .").

reliability in 2020 and without coming to an artificial, unsupported conclusion that the record does not show a need for new generation by 2020.

Accordingly, the Proposed Decision should be modified to incorporate as its primary findings the following two key statements from the Settlement Agreement. First, the Settlement Agreement states that, "The resource planning analyses presented in this proceeding do not conclusively demonstrate whether or not there is need to add capacity for renewable integration purposes through the year 2020 . . . ." [6] Second, the Settlement Agreement states, "There is general agreement that further analysis is needed before any renewable integration resource need determination is made."[7]

To conform to these conclusions agreed to by all settling parties, the Proposed Decision must be corrected in several areas. GenOn recommends deleting the following language from page 7 of the Proposed Decision:

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

In addition, GenOn recommends modifying the language at the bottom of page 7 of the Proposed Decision to read as follows (additions are shown in bold and underlined text; deletions are shown in strikethrough text):

> "There is clear evidence on the record that **immediate procurement of** additional generation is not needed. But it is also necessary to ensure that ~~the same~~ **a final** conclusion is reached after considering ~~the whole~~ **a more complete** record."

Consistent with these concerns, GenOn also recommends modifying the language on page 9 of the Proposed Decision as follows:

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[6] Settlement Agreement, Section III.B, 5th Bullet Point.

[7] *Id.* GenOn's recommended Findings of Fact to include these findings are provided in the attached Appendix.

> "In looking at the whole record, it would be reasonable to find that there is no need **to require procurement** for additional generation by 2020 **before the further analysis of need contemplated by the Settlement Agreement is completed**, 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."

At the bottom of page 10 and the top of page 11 of the Proposed Decision, GenOn recommends deleting the following:

> Delete: "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."

2. The Commission should adopt a schedule for (i) considering further analysis of the need for new capacity in 2020, and (ii) adopting a final need determination by the end of this year.

A major source of compromise that led to the Settlement Agreement was the idea that additional needs analyses would be conducted during 2012 and that the Commission would adopt a procedural schedule that would address those analyses by the end of 2012. The Settlement Agreement is explicitly clear on this subject. This compromise allowed parties to forego litigating the need determination based on the record then in existence. Aware that parties cannot tell the Commission what to do, the proposed schedule contained in the Settlement Agreement was styled as a recommendation. However, that recommendation was a crucial element of the Settlement Agreement and should be recognized by the Commission.

The need for an expedited needs analysis arises from the length of time it takes to develop new generation in California. In its testimony and opening brief, GenOn established the timeline for completion of new generation. The process of developing and constructing a new generation project in today's regulatory environment in California can be expected to take between seven and nine years.[8] If new capacity is needed in California by 2020, we already lack sufficient time to develop a new resource according to a nine-year schedule, even if development were to begin today. And if we assume that a new project can be completed in only seven years,

[8] GenOn Opening Brief, pp. 5-9.

which is the best case scenario in today's regulatory environment, it will be necessary to commence RFOs in 2013.[9] Such timing would be necessary to enable: (1) developers to select their technology, prepare proposals for submission in the RFO, contract with equipment vendors, and commence their permitting processes; (2) the procuring utilities to consider offers, negotiate with participants, select winning projects, and obtain Commission approval of the contracts; and (3) winning developers to complete the permitting process, secure financing, and complete construction. Issuance of RFOs in 2013 also presumably would require some lead time after the Commission adopts its need determination, to allow the utilities to prepare RFO protocols and design and structure the RFOs. Given all of these tasks and the time required to complete them, the Commission must evaluate additional analyses addressing possible need for new generation, and adopt a need determination, by year-end 2012 to allow sufficient time to complete any projects that may be needed in 2020.

To implement the Settlement Agreement's recommendation for a subsequent decision by year-end 2012, the Commission should revise the Proposed Decision to include a directive opening a new phase of this LTPP proceeding.[10] In that new phase, the Commission will consider additional needs analysis conducted by the California Independent System Operator ("CAISO") and allow parties the opportunity to test the conclusions of such additional analysis. If the analysis shows need for new capacity, the Commission can issue a decision by year-end 2012 authorizing the procurement of such capacity. Issuing a need determination by the end of 2012, with RFOs to follow soon in 2013, would allow sufficient time for the processes outlined about to be completed to bring new projects into operation to meet the need in 2020. Absent an affirmative directive in the Commission's decision embracing the concept of a subsequent decision that includes a need determination by year-end 2012, the Commission is ignoring a major factor in reaching a settlement. More importantly, by delaying the needs analysis beyond 2012, the Commission creates a risk that sufficient capacity will not be available in 2020.

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[9] GenOn's Opening Brief explains that a seven year timeline for new construction is the minimum amount of time required to develop a new project. The process could take significantly longer if there is active opposition in the environmental permitting process or in the Commission's application proceeding for approval of the long-term power purchase agreement.

[10] GenOn recommends that the Commission open a new phase in the existing rulemaking instead of opening a new proceeding because it seems more likely that a decision by year-end 2012 would result from a new phase of the existing rulemaking.

B. The Commission should modify the Proposed Decision to preserve flexibility in procurement with OTC units so that reliability needs can be met at a reasonable cost.

The treatment of OTC units under Commission procurement policies is a Track III topic that was brought forward for consideration with Track I system procurement issues. Although the Proposed Decision correctly declines to adopt staff's proposed ban on contracting with OTC units for more than one year at a time, the Proposed Decision imposes new restrictions on OTC procurement that undermine the goal of ensuring reliability at the least cost. To remedy these problems, the Proposed Decision should be modified as described below.

1. The Commission should eliminate the requirement for Tier 3 advice letter approval of OTC contracts that are less than five years.

If adopted, the Proposed Decision would require utilities to submit all procurement contracts with OTC units for Commission approval. Under today's bundled procurement authority, utilities are not required to submit procurement contracts for approval if they are less than five years in duration.[11] The Proposed Decision would create a new rule applicable only to OTC units by requiring Tier 3 advice letter approval for procurement contracts with OTC units that have a term less than five years. GenOn strongly opposes this new requirement.

First, applying an advice letter process to short-term contracts with OTC units would severely undermine utilities' ability to execute such contracts and could increase costs to ratepayers. A Tier 3 advice letter routinely takes at least six months to process, and, as some renewable developers are aware, can take years to process. Injecting the delay and uncertainty associated with a Tier 3 advice letter filing increases risk to the contracting parties that their transaction will not be timely approved, or potentially could be rejected. Added delay, risk and uncertainty generally tend to increase costs, and could cause the costs associated with OTC procurement to increase. Ultimately, applying Tier 3 advice letter requirements to competitively-priced OTC facilities would make it more difficult for utilities to contract with OTC units on a short-term basis. If OTC units are needed for reliability (which likely will be the case for a number of OTC units), then the utilities could be forced to contract with the OTC units

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[11] Decision 07-12-052, pp. 171-172.

earlier than they otherwise would have (to allow sufficient time for the contract approval process), and on a longer term basis than they otherwise would have (to justify the extra time involved in the contract approval process and ensure that needs are met in future years). In this respect the Proposed Decision could have the effect of pushing utilities into longer-term contracts with OTC units if they anticipate needing the units in future years, because the approval process constrains their ability to execute short-term deals for immediate delivery. The restriction also could increase costs by pushing utilities to contract with higher priced non-OTC resources that can be procured on a shorter term and more immediate basis.

Second, the added burden of a Tier 3 advice letter process also would make it more difficult for utilities to execute contracts that span an applicable OTC Policy compliance date and provide for retrofits that bring an OTC unit into compliance, thereby allowing the unit to remain available as an important local reliability resource. If there are opportunities to execute this type of procurement contract for a term of less than five years, the Commission should facilitate those opportunities rather than imposing an added contract approval process that does not apply to other non-OTC procurement contracts. GenOn's Pittsburg Generating Station is one example of a retrofit that potentially could be accomplished under a procurement contract of less than five years. Today Units 5 and 6 of the Pittsburg Generating Station operate as OTC units and face compliance deadlines under the OTC Policy. GenOn has the ability to convert Units 5 and 6 so that they utilize the closed cycle cooling system that is currently dedicated to Unit 7. This could be accomplished with a relatively small investment that would enable Units 5 and 6 to comply with the OTC Policy by their deadlines and remain available as a cost-effective source of local capacity in the Greater Bay Area Local Reliability Area for as long as they are needed. The Commission should allow utilities flexibility to negotiate a procurement contract that provides the revenue stream to support this type of conversion in time to meet the applicable OTC Policy compliance date, and to continue purchasing from the compliant units (which in this case no longer would utilize OTC) after the conversion is complete.

Third, there is no compelling justification for subjecting contracts with OTC facilities to discriminatory treatment as compared with other non-OTC facilities. On page 24, the Proposed Decision articulates a desire to support the SWRCB policy of moving away from OTC as the basis for applying the Tier 3 advice letter requirement. But this statement ignores the SWRCB's

interim compliance requirements for OTC units and explicit deadlines for implementation of its OTC Policy. The Proposed Decision appears to reflect the position that the SWRCB's carefully structured OTC Policy is inadequate to achieve its intended purpose, and that this Commission must impose additional restrictions on OTC units to force compliance with California's environmental policies relating to OTC. This is misguided and overlooks the Commission's important responsibility to ensure that reliability needs can be met at a reasonable cost. Instead of focusing on enforcement of the OTC Policy, the Proposed Decision should be modified to focus on ensuring that OTC units that comply with the OTC Policy (either because they have not yet reached their compliance deadline or because they have demonstrated compliance to the SWRCB's satisfaction) can be procured at a reasonable cost for as long as they are needed to ensure reliability.

This is key because there is a significant amount of capacity at risk of retirement by virtue of the SWRCB's OTC Policy. Indeed, it is fair to say that the SWRCB's OTC Policy has created an electric reliability issue that the Commission and the CAISO now must address. Instead of exacerbating that reliability issue by making it more difficult and more costly to contract with OTC units before their applicable OTC Policy compliance deadline and once they achieve compliance, the Commission should maximize the opportunity provided by the OTC Policy to continue relying on OTC units that are needed for reliability purposes. This would help ensure that reliability is not jeopardized as some OTC units retire by their OTC Policy compliance deadline, and others implement measures to come into compliance. To retain flexibility to rely on OTC units as and when necessary, the Commission should eliminate the Tier 3 advice letter requirement proposed by the Proposed Decision and allow utilities to contract with OTC facilities that have not yet reached their compliance deadline, and with compliant OTC units, for less than five years without prior Commission approval.

2. The Commission should eliminate the Proposed Decision's conditions that are more stringent than requirements imposed by the SWRCB.

On page 25, the Proposed Decision outlines a number of conditions that would apply to a procurement contract with an OTC unit if the contract extends beyond the applicable OTC Policy compliance date. Such contracts could be very helpful in ensuring that California meets its

demand for electricity as the OTC Policy's compliance deadlines force facilities to comply or retire. Given the importance of preserving system and local reliability, and the challenges presented by the SWRCB's OTC Policy, the Commission should apply as much flexibility as possible to ensure the OTC Policy does not adversely impact reliability. Yet the Proposed Decision's conditions would achieve the opposite.

For example, condition number 1 on page 25 of the Proposed Decision prohibits utilities from purchasing from an OTC facility that has not reduced its flow consistent with SWRCB standards after an initial compliance deadline even if the SWRCB extends the deadline. The Proposed Decision provides no compelling reason to impose a separate OTC compliance deadline more stringent than that imposed by the SWRCB, which is the subject-matter expert on OTC. Instead of making the OTC Policy more stringent than the SWRCB would require, the Commission should embrace the idea that it may be necessary to extend an OTC deadline and allow contracts to reflect that possibility. In this regard, the Proposed Decision is inexplicably at odds with the SWRCB's own pronouncements on this topic. The SWRCB, as the agency responsible for the marine life impacted by OTC, has recognized that it may be necessary to extend the deadline for implementing measures that reduce such impacts in light of the possible detrimental impacts on electric system reliability. Yet the Proposed Decision simply waves off such potential risks without justification. In this environment of uncertainty, it is preferable to preserve flexibility. Accordingly, the Commission should modify the Proposed Decision to eliminate the limitations it proposes for procurement contracts with OTC units that extend beyond the deadline.

3. The Commission should eliminate or clarify the Proposed Decision's mandate for requiring RFOs to consider a facility's use of OTC.

On page 24, the Proposed Decision states that, ". . . the applicable RFO or other solicitation evaluation must take into consideration the plant's use of OTC." As explained below, the Commission should either remove this mandate or clarify it to avoid undue restrictions on utilities' ability to contract with OTC units that offer reliability benefits before their compliance deadlines, or benefits associated with achieving compliance with the OTC Policy.

The mandate as written is not sufficiently clear. At a minimum, it should be clarified to ensure that utilities retain flexibility to contract with OTC units as needed before their applicable OTC Policy compliance deadline, and once they achieve compliance as determined by the SWRCB. In this respect the Proposed Decision again seems focused on making the SWRCB's OTC Policy more stringent to the detriment of ensuring reliability at a reasonable cost. GenOn and the other operators of OTC facilities have submitted their implementation plans to the SWRCB. The SWRCB has adopted interim compliance measures in its OTC Policy. For units that are in compliance with the SWRCB's OTC Policy, the utilities should have flexibility to select those units in an RFO and to contract with the units up until the applicable OTC Policy compliance date, and beyond that date as long as the OTC unit is in compliance with the OTC Policy as determined by the SWRCB. The Proposed Decision's mandate as applied to these units could potentially skew the results of an RFO toward a less efficient outcome.

In addition, for procurement that extends beyond an OTC unit's compliance deadline, it should be recognized that offers involving OTC units could be beneficial if they provide for the implementation of measures that will bring the OTC units into compliance with the OTC Policy. This may involve retrofitting or repowering existing OTC units. In that case, the offer from the OTC units could provide cost-effective reliability benefits while also ensuring compliance with the OTC Policy mandates. Accordingly, consideration of this feature in an RFO should allow for favorable weighing in the evaluation process. In this regard, the Commission has an opportunity to help facilitate compliance with the OTC Policy goals by allowing (and even encouraging) contracts that provide the revenue stream needed to implement cost-effective retrofitting or repowering work at OTC facility sites. This would be a more effective way to encourage timely (or even early) OTC Policy compliance, and would be far more beneficial from a reliability perspective than the restrictions imposed in the Proposed Decision.

For these reasons, the mandate as written in the Proposed Decision should either be eliminated or clarified to reflect the concepts described above.

4. The Commission should modify the Proposed Decision to eliminate restrictions on utilities' ability to contract with OTC units that have achieved compliance with the OTC Policy.

In several places, the Proposed Decision seems to apply its restrictions and conditions to ***all*** facilities using OTC of any type, regardless of their state of compliance with the OTC Policy. For example, on page 25 in condition number 1, the contracting limitations apply to "power generated using OTC . . ." Finding of Fact 6, Conclusion of Law 3, and Ordering Paragraph 3 use similar terminology.

Unfortunately, the Proposed Decision's "using OTC" terminology fails to recognize that under the SWRCB's OTC Policy, an existing facility may continue to rely on OTC after the compliance deadline provided it complies with requirements for reducing impingement and entrainment impacts. This method of compliance is referred to as "Track 2" compliance. GenOn's affiliates have proposed Track 2 compliance for the Ormond Beach and Mandalay Generating Stations in the implementation compliance plans submitted to the SWRCB. Accordingly, the "using OTC" terminology could be interpreted to preclude contracts with Ormond Beach or Mandalay even after they have complied with the SWRCB's requirement because they technically will be continuing to use OTC after the compliance deadline (albeit in a manner that complies fully with the OTC Policy). To solve this problem, GenOn recommends replacing the "using OTC" terminology with a more accurate reference to facilities using OTC without having complied with either Track I or Track II of the SWRCB's OTC Policy. These units could be referred to as "non-compliant OTC units" or by similar terminology.

III. CONCLUSION.

Based on the foregoing, the Commission should approve the Settlement Agreement, but, just as importantly, revise the Proposed Decision to eliminate its unfounded conclusion that the existing record demonstrates there is no need for new generation by 2020. The Commission should also recognize the urgency associated with determining the possible need for new capacity and set a schedule that leads to a final need determination by the end of 2012. Finally, the Commission should revise the Proposed Decision to maintain existing flexibility to contract with OTC facilities and to clarify references to non-compliant OTC facilities.

GenOn appreciates the opportunity to submit these opening comments. GenOn's recommended changes to the Proposed Decision's Findings of Fact, Conclusions of Law, and Ordering Paragraphs appear in the attached Appendix.

Respectfully submitted,

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APPENDIX
PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDERING PARAGRAPHS

Findings of Fact:

Add new Findings of Fact:

The resource planning analyses presented in this proceeding do not conclusively demonstrate whether or not there is need to add capacity for renewable integration purposes through the year 2020.

Further analysis is needed before any renewable integration resource need determination is made.

Conclusions of Law:

Modify Conclusion of Law 3:

3. Utility procurement of electricity from generation facilities using once-through cooling should be structured to ~~result in compliance~~ **be consistent** with the SWRCB regulations regarding OTC.

Ordering Paragraphs:

Add new Ordering Paragraph:

Consistent with the recommendation of the parties to the Settlement Agreement, we will open a new phase of this proceeding to consider further analysis of the need for new generating capacity in 2020. We will establish a schedule that allows parties to consider the further analysis conducted by the California Independent System Operator once it is complete, and to test and respond to that analysis. Consistent with the settling parties' recommended schedule, our schedule will provide for a need determination to be adopted by the end of 2012.

Modify Ordering Paragraph 3(a) through (d):

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 **from units that are not in compliance with the State Water Resource Control Board regulations for once-through cooled units (referred to herein as non-compliant units)** beyond the applicable State Water Resources Control Board compliance deadline, **unless the units are brought into compliance as of the applicable deadline.** ~~and those~~ **Consistent with existing procurement rules,** agreements **with units utilizing once-through cooling** must be submitted to the

Commission 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. In addition, the applicable request for offers or other solicitation evaluation must take into consideration the plant's use of once-through cooling **if procurement from a non-compliant unit would extend beyond the applicable compliance deadline (unless the unit will be brought into compliance by the applicable deadline, and recognizing that proposals that achieve compliance may offer benefits that should be given value in an RFO evaluation)**.

b. ~~If such agreements terminate one year or less prior to the applicable State Water Resources Control Board compliance deadline, the advice letter or application must specifically show how the agreement 1) helps facilitate compliance with the State Water Resources Control Board policy regarding once-through cooling, and 2) does not prolong once-through cooling operation.~~

~~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 **non-compliant** unit using once-through cooling only up to the State Water Resources Control Board once-through cooling policy compliance date **(as imposed or extended by the State Water Resources Control Board), and thereafter only when the unit achieves compliance as determined by the State Water Resources Control Board** ~~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).

~~d.~~ **c.** Any such ~~advice letter or~~ application must ~~show compliance~~ **explain how the unit will comply** with all relevant State Water Resources Control Board policies and regulations **(recognizing that compliance determinations are made by the State Water Resources Control Board and not by this Commission)**, and show how the contract provides or facilitates cost-effective and reliable service.