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The Honorable Michael Peevey, President
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, California 94102

**Re: Application 12-03-026 (Oakley Application): Response To IEP's Emergency
Motion Regarding *Ex Parte* Communications**

Dear President Peevey:

This letter responds to the Independent Energy Producers Association's ("IEP") December 6 letter in which IEP incorrectly asserted that Pacific Gas and Electric Company ("PG&E") was "misusing" extra-record material in *ex parte* communications. IEP attached to its letter an Emergency Motion that it had filed on December 5, 2012 regarding this alleged "misuse" of material. Attached to this letter is PG&E's response to IEP's motion, which PG&E is filing today.

As PG&E explains in more detail in its response, IEP's motion is unwarranted and meritless. In this proceeding, IEP has made every effort to divert the Commission's attention from the merits of the Oakley Generating Station ("Oakley Project") by filing numerous procedural motions and challenges. To date, virtually all of these motions have been unsuccessful.

With regard to the substance of its Emergency Motion, IEP makes two claims. First, IEP claims that PG&E improperly cited in an *ex parte* communication handout Commission Decision ("D.") 10-12-050, which approved the Oakley Project but was later annulled by the Court of Appeal. Second, IEP claims that in the same handout PG&E improperly cited California Independent System Operator ("CAISO") studies that were admitted into the record in this proceeding, subject to Administrative Law Judge ("ALJ") Yacknin's limitations on their use.

IEP's latest motion is meritless for three reasons. First, as a preliminary matter, PG&E's *ex parte* communication handout did not violate the Commission's *ex parte* rules or any specific ruling by ALJ Yacknin in this proceeding. Indeed, as PG&E explains in more detail in its response, IEP fails to cite any specific ALJ ruling or Commission rule precluding these types of *ex parte* communications.

Second, IEP expresses concern that PG&E's *ex parte* communication handout included references to D.10-12-050. However, PG&E's *ex parte* communication simply provided a brief history of the Oakley Project, including D.10-12-050, and specifically stated that the decision had been annulled. Moreover, contrary to IEP's claims, other parties in this proceeding have referred to D.10-12-050 in *ex parte* communications and their post-hearing briefs. These parties include The Utility Reform Network ("TURN"), the Division of Ratepayer Advocates ("DRA") and CALifornians for Renewable Energy ("CARE"). PG&E's response includes lengthy quotes from these parties' briefs and *ex parte* communications which reference and describe D.10-12-050. Notably, IEP did not make a motion regarding these parties' reference to D.10-12-050.

Finally, PG&E's references to certain CAISO studies were consistent with ALJ Yacknin's ruling that these studies could be admitted into the record to demonstrate whether the requirements of D.10-07-045 have been satisfied. The references to these studies in PG&E's *ex parte* communications were entirely appropriate, as PG&E demonstrates in its response.

In addition to summarizing its Emergency Motion, IEP's letter also raises questions regarding two substantive issues – the construction status of the Oakley Project and alleged limitations in the Oakley Project air permits that could impact its flexible operation. As to the Oakley Project construction status, the record clearly establishes that construction started in June 2011 and, in fact, the California Energy Commission's website currently lists the Oakley project as "approved and under construction." With regard to air permits, both testimony from PG&E witnesses and documentation from the Bay Area Air Quality Management District ("BAAQMD") demonstrate that the air permits have sufficient flexibility to allow for use of the project to facilitate renewable resource integration. Indeed, contrary to IEP's unsupported assertions, the BAAQMD concluded that the Oakley Project has sufficient "operational flexibility to efficiently address grid fluctuations due the intermittent nature of renewable generation such as solar and wind." *See* BAAQMD Decision at p. 1.

The issues raised in this proceeding with regard to the Oakley Project are important and substantive. The Oakley Project incorporates evolutionary upgrades to General Electric's ("GE") industry-leading turbine technology that will allow the facility to have one of the lowest heat rates in California, while also providing numerous other environmental benefits. As the evidentiary record in this proceeding demonstrates, the Oakley Project is the least cost, best-fit alternative to address the significant reliability challenges facing California. Specifically, the flexibility provided by the Oakley Project will be critical to ensuring that California can achieve its ambitious 33% Renewable Portfolio Standard ("RPS") energy goals, the retirement of aging and inefficient once-through cooling ("OTC") units, and increases in distributed generation.

In a December 9, 2012 article in the *Los Angeles Times* regarding the challenges to California's electrical system posed by the RPS goals and OTC retirements, IEP's

executive director Jan Smutney-Jones was quoted as saying that California will need to make billions of dollars in investments to prevent electrical grid problems, and that “the renewable energy mandate, coupled with the closure of coastal power plants, have created ‘one big happy dysfunctional system,’ [Smutney-Jones said].”

PG&E respectfully urges the Commission to deny IEP’s Emergency Motion and looks forward to the Commission addressing the Oakley Project on the merits.

Respectfully Submitted,



Brian Cherry
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Cc: Commissioner Timothy Simon
Commissioner Michel Florio
Commissioner Catherine Sandoval
Commissioner Mark Ferron
Paul Clannon, Executive Director
Hallie Yacknin, Administrative Law Judge
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Attachment