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.12-03-014 (Filed March 22, 2012)

PACIFIC GAS AND ELECTRIC COMPANY'S (U 39 E) COMMENTS ON TRACK 3 PROPOSED DECISION

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Since Assembly Bill 57 was adopted in the aftermath of the 2000-2001 energy crisis, the Commission has issued a number of decisions that have adopted various procurement rules and policies. Many of these rules and policies have now become well-established and are familiar to the investor-owned utilities ("IOUs"), market participants, ratepayer groups and other Commission intervenors, and the Commission and its staff. In recent years, the Commission has issued decisions which incrementally modify and improve the existing body of procurement rules and policies. The *Proposed Decision Modifying Long-Term Procurement Planning Rules* ("PD") issued by Administrative Law Judge Gamson on January 28th in Track 3 of this proceeding continues this approach by adopting certain modifications and incremental improvements to the Commission's existing procurement rules.

In general, Pacific Gas and Electric Company ("PG&E") supports the PD and believes that it makes reasonable and appropriate incremental improvements in the Commission's established procurement rules and policies, and rejects proposed modifications that are unreasonable, unnecessary, or are inconsistent with California statutes or existing Commission precedent. There are, however, six aspects of the PD that require modification or clarification. First, the PD should be modified so that it is clear that Community Choice Aggregation ("CCA") load is only exempt from incremental stranded cost charges after a CCA submits a Binding

Notice of Intent ("BNI"). Second, the PD should be clarified to expressly state that exemption from non-bypassable charges is in relation to the vintaged Power Charge Indifference Amount ("PCIA") and does not include the Cost Allocation Mechanism ("CAM") charge. Third, the definitions of "upgraded plant" and "repowered plant" should be clarified to reduce any ambiguity and the likelihood of potential disputes. Fourth, the IOUs should not be required to file Tier 2 advice letters for bilateral transactions that are 50 megawatts ("MW") and greater. Fifth, energy tolling contracts should not be considered standard products. Finally, PG&E agrees with the PD regarding the development of guidelines for and reformatting of the Quarterly Compliance Reports ("QCRs"). However, the Procurement Review Group ("PRG") is not involved in the QCR review and thus it is unnecessary to include the PRG in the development of guidelines and the reformatting process.

Each of these points is addressed below, and PG&E provides specific language to modify the PD's Conclusions of Law and Ordering Paragraphs in Appendix A.[1] With these modifications and clarifications, PG&E fully supports the PD.

I. CCA LOAD SHOULD ONLY BE EXEMPT FROM INCREMENTAL STRANDED COST CHARGES AFTER A BNI IS SUBMITTED (Section 4.2.3)[2]

One of the key issues addressed by the PD concerns incremental stranded cost charges for CCA and direct access ("DA") customers. The PD states "[w]e require the IOUs, with information provided by the CEC and from other sources, to estimate reasonable levels of expected DA and CCA departing load over the 10-year term of the bundled plans."[3] The PD then clarifies that the "other sources" for CCA load is the Binding Notice of Intent or "BNI"

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[1] Appendix A also provides the subject index listing the recommended changes to the PD required by Rule 14.3(b).

[2] The headers in these comments reference in parentheses the applicable PD section.

[3] PD at p. 16.

submitted by a CCA.[4] This "forecasted" departing load would then be exempt from non-bypassable charges for stranded costs "incurred by the IOUs for the periods after the date of departure assumed in their approved bundled plans."[5] This statement accurately reflects protocols that are in place today for the assignment of cost responsibility associated with vintaged PCIA charges. In the case of the PCIA, both incremental stranded costs and incremental load departures are vintaged based on existing rules that define when forecasted load may be removed from PG&E's purchasing obligations. Assignment of cost responsibility associated with the CAM is however different than the rules for the vintage PCIA. PG&E address the CAM cost responsibility in Section II below.

PG&E understands that the PD limits CCA exemptions from incremental stranded cost charges to situations where a CCA has provided a BNI. This approach is entirely reasonable. A CCA does not assume an obligation to serve specific customers until it submits a BNI. For example, PG&E's Electric Rule 23.2(A)(1) describes a BNI as follows:

> During the Open Season CCAs will be allowed to submit to the California Public Utilities Commission (Commission) and PG&E, a Binding Notice of Intent (BNI) to serve specified customer classes on a specific date. PG&E can then rely upon the BNI in making procurement decisions to meet its load and resource adequacy requirements, and enable the coordination of resource planning activities of PG&E and the CCA submitting the BNI (Participating CCA).
>
> The BNI shall be signed by the CCA and indicate, in specific detail, the forecast number of customers by rate class to which the CCA intends to offer service.*
>
> The BNI shall be self-executing, in that PG&E may rely on such notice to modify its procurement activities without further action by the Commission. Participating CCAs will be exempt from any CRS related to PG&E procurement contracts and generation assets acquired after the BNI is submitted. PG&E will assume liability going forward for those utility

[4] *Id.*

[5] PD at p. 17.

> procurement and generation obligations assumed after the Participating CCA has provided its BNI. (emphasis added)

PG&E's Commission-approved Electric Rules also address forecasts for CCA departing load after a BNI is submitted. For example, Electric Rule 23.2(A)(2) provides:

> Each Participating CCA shall meet and confer with PG&E upon submission of its BNI to develop a Load Forecast for the CCA for the year it commits to commence service.

After a BNI has been submitted, it is reasonable for the IOU not to procure on behalf of the CCA departing load, and thus there would be no additional stranded costs for incremental procurement contracted for after the BNI date.

While PG&E understands that the intent of the PD is to require a CCA to submit a BNI before the CCA load is incorporated in PG&E's departing load forecast and thus eligible for incremental stranded cost charge exemptions, the PD is not entirely clear because it refers both to the BNI and CEC load forecasts. This could cause confusion with regard to CCAs. It is not clear how the CEC will develop CCA load forecasts and, more importantly, CCAs are not obligated to serve customers included in a CEC load forecast. Indeed, the CEC could forecast significant CCA load departures in future years, but no CCA would have any obligation to serve this forecasted departing load. CCAs may decide because of market conditions that they do not want to serve additional departing load included in a CEC load forecast. Unlike the IOUs, which are providers of last resort and are required to serve all load, a CCA may simply decide not to serve certain load even if that load is included in a CEC departing load forecast. A CCA only commits itself to serve departing load when it submits a BNI. Thus, the appropriate trigger for ending further incremental non-bypassable charges is when a CCA has submitted a BNI.[6]

[6] PG&E will, for purposes of its annual ERRA Forecast proceeding, continue to accept the year-ahead Resource Adequacy filings made annually by CCAs as a demonstration that the CCA has committed to procuring for that load and thus is equivalent to a BNI.

PG&E understands that this is the intent of the PD. However, as the Commission is well aware, there have been numerous disputes between the IOUs and CCA representatives over the years regarding the meaning of language in Commission decisions. In order to minimize future disputes, and make the responsibility for non-bypassable charges entirely clear, the PD should be modified to state that for CCAs, a BNI is required for an exemption from future, incremental stranded charges. In addition, PG&E requests that the applicable incremental stranded cost be clearly identified as the vintaged PCIA to avoid confusion. In Appendix A, PG&E has proposed modifications to the Conclusions of Law and Ordering Paragraphs.

With regard to DA, the amount of DA is currently limited by statute[7] and thus it is unlikely in the near future that there will be substantial changes in DA load. If there are statutory changes in the future that allow for increased DA load, the Commission can revisit at that time how to address DA load departures with regard to the vintaging of stranded cost charges.

II. THE INCREMENTAL STRANDED COST CHARGE EXEMPTION SHOULD NOT APPLY TO CAM CHARGES (Section 4.2.3)

The PD provides that "forecasted departing DA and CCA load would not be subject to non-bypassable charges for any incremental stranded procurement costs incurred by the IOUs for the period after the date of departure assumed in their approved bundled plans."[8] This portion of the PD should be clarified to state that these rules do not apply to CAM charges. CAM procurement was established by Public Utilities Code Section 365.1(c)(1) and is intended to procure generation resources to meet system and local reliability needs, benefitting all distribution customers, including bundled, CCA and DA customers. As the PD explains in another section, CAM procurement costs "must be passed on to bundled service, DA and CCA

[7] Public Utilities Code Section 365.1(a).

[8] PD at p. 17.

customers."[9] Regardless of when a customer departs from bundled service for CCA or DA service, that customer still benefits from CAM procurement and thus should not be able to avoid paying its fair share of the CAM charges. PG&E is concerned parties may interpret the "non-bypassable charge" language in Section 4.2.3 of the PD to apply to CAM charges. Thus, the PD should be clarified, as proposed in Appendix A, to make clear that this language does not apply to CAM.

III. THE DEFINITIONS OF UPGRADED AND REPOWERED PLANTS REQUIRES CLARIFICATION (Section 6.1.2)

The PD adopts a number of new rules regarding the participation of upgraded and repowered plants in IOU Request for Offers ("RFOs"). PG&E does not oppose these new rules. However, in order to minimize future disputes regarding what constitutes an upgraded or repowered plant, some clarifications to the definitions provided in the PD are warranted.[10] Specifically, PG&E proposes the following additional language, indicated in bold and underlining, to clarify these definitions:

> Upgraded plant: Upgrades are defined as expanding the generation capacity at a generation facility at, or enhancing the operation of a generation facility. **An upgraded plant's incremental capacity may participate in a utility's long-term RFO** so long as such incremental MWs **(1)** can provide the necessary attributes that the Commission has authorized the utility to procure**; and (2) meets the minimum offer size of the solicitation**. An upgraded plant or a plant with incremental capacity additions would be a plant where the main generating equipment is retained and continues to operate.
>
> Repowered plants: Repowers are defined as capital investments that extend the useful life of a generation facility, after the planned retirement date **and the plant's subsequent performance and economic life are similar to that of a new facility of like technology as a result of such investment**. A repowered facility is a facility where the main generating equipment (such as the turbine) is changed out for new equipment.

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[9] PD at p. 46.

[10] PD at p. 29 (defining "upgraded" and "repowered" plants).

These modifications make clear when the incremental capacity of an upgraded plant can participate in an RFO, including a requirement that the incremental capacity meets the minimum offer size amount specified for other resources in the RFO. This creates a level playing field and ensures that an offer for the incremental capacity of an upgraded plant is treated equally with other RFO offers for new generating facilities by meeting the RFO minimum offer size requirement. PG&E has also clarified the definition of repowered plant to make clear that the repowering essentially makes the plant a "new" facility by having performance and an economic life similar to a new plant. Again, this creates a level playing field between new generating facilities and repowered plants. PG&E's proposed clarifications are relatively narrow, but will likely help to minimize future disputes as to what type of upgraded or repowered plants can participate in an RFO.

IV. TIER 2 ADVICE LETTERS SHOULD NOT BE REQUIRED FOR BILATERAL, MEDIUM-TERM CONTRACTS OVER 50 MW (Section 7.3.2)

The PD asserts there is a "gap in Commission oversight" regarding certain medium-term procurement transactions and thus requires the IOUs to file all bilateral, medium-term transactions over 50 MWs in a Tier 2 advice letter.[11] This aspect of the PD has several flaws. First, the PD appears to assume that bilateral, medium-term transactions for over 50 MW are not currently reviewed by the Commission. However, this is not the case. All short- and medium-term transactions are included in an IOU's QCR and are reviewed by Commission staff and the Energy Division through the QCR. Thus, there is no gap in Commission oversight of these medium-term bilateral transactions.

Second, requiring a Tier 2 advice letter filing would unnecessarily burden Commission staff and the IOUs, while providing no benefit. The PD would require the IOUs to prepare, and

[11] PD at p. 40.

Commission staff to review, additional filings that simply repeat information already included in the QCR. The QCRs are filed quarterly by each of the IOUs as a Tier 2 advice letter. If a medium-term, bilateral transaction is inconsistent with an IOU's Commission-approved procurement authority, than non-compliance can and should be addressed in the QCR. There is no need for an additional regulatory filing when medium-term, bilateral transactions can be, and already are, reviewed through the QCR filings.

Finally, if the PD intends the Tier 2 advice letter process to be an additional approval requirement, separate and apart from the QCR, this requirement will likely have a detrimental impact on customers. It has been PG&E's experience that some generators are unwilling to enter into contracts if the contract is contingent on a regulatory approval process which can often be lengthy. This is especially true for short- and medium-term contracts which already have a limited duration. For example, a medium-term contract may only have a duration of four (4) months. The regulatory approval process itself is often substantially longer than this relatively short duration transaction. Generators are often unwilling to undergo the uncertainty and delay of the regulatory approval process for a short- or medium-term transaction. Other generators may be willing to enter into a contract that is subject to regulatory approval, but will only do so at a premium. In either case, customers will face increased costs as a result of more limited contracting choices or generators charging premiums for the uncertainty associated with regulatory approval. The PD did not identify any benefits associated with the proposed Tier 2 advice letter process that would offset the increased customer costs. Thus, this requirement in the PD should be eliminated.

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V. ENERGY TOLLING CONTRACTS ARE NOT STANDARD PRODUCTS (Section 7.3.2)

In a section addressing bilateral transactions, the PD concludes that "RA capacity and energy tolling are widely available and not difficult to procure via a competitive solicitation."[12] Based on this, the PD determines that RA capacity and energy tolling should be considered "standard products" for purposes of the existing bilateral contracting rules. PG&E does not dispute that RA capacity has become a standard product. However, energy tolling agreements are much different than RA capacity. These agreements are often carefully negotiated based on the specific operating characteristics of a specific generating facility. Because generating facilities differ, at times in very significant ways, it is not possible to have a "standard product" energy tolling agreement. Moreover, the location of a specific generating facility, fuel usage and other factors may significantly impact an energy tolling agreement. The PD does not offer any factual basis for concluding that an energy tolling agreement is a "standard product", nor is there any evidence in the record to support this conclusion. The PD should be revised to remove the references to tolling agreements as "standard products."

VI. THE QCR REVISION PROCESS SHOULD BE MODIFIED

PG&E supports the creation of a QCR reporting guide.[13] A guide will assist the Energy Division and the Water Utilities and Audit Division as they review the executed transactions submitted in the QCR filing. PG&E also supports the proposal to reformat the QCR. However, PG&E recommends the guide creation and reformatting process identified in the PD be modified. The last time the QCR was reformatted, Energy Division, working with IOUs, developed a working group whose task was to prepare a format which assisted the Energy Division with identifying all of the IOU's quarterly executed transactions and procurement

[12] PD at p. 41.

[13] PD at p. 65.

processes. This process worked well and was efficient. The PRG is not responsible for reviewing the QCR and thus the PD's requirement that the PRG be included in the QCR process should be eliminated. There is no need to include the PRG in this process and doing so many only require more time and resources being expended than is necessary.

VII. CONCLUSION

For the foregoing reasons, PG&E respectfully requests that the Commission adopt the PD, as modified and clarified in these comments. PG&E's proposed changes to the PD's Conclusions of Law and Ordering Paragraphs are included in Appendix A.

Respectfully submitted,

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APPENDIX A

PG&E respectfully proposes the following changes to the Conclusions of Law and Ordering Paragraphs in the PD. Underlining represents additions and strikethroughs deletions.

Conclusions of Law

7. In order to allow incremental capacity to bid into new generation Requests for Offers, the term "incremental capacity" is defined as: "capacity incremental to what was assumed in the underlying needs assessment." In this context, the following terms are also defined:

- Upgraded plant: Upgrades are defined as expanding the generation capacity at a generation facility at, or enhancing the operation of a generation facility. An upgraded plant's incremental capacity may participate in a utility's long-term RFO so long as such incremental MWs (1) can provide the necessary attributes that the Commission has authorized the utility to procure; and (2) meets the minimum offer size of the solicitation. An upgraded plant or a plant with incremental capacity additions would be a plant where the main generating equipment is retained and continues to operate.

- Repowered plants: Repowers are defined as capital investments that extend the useful life of a generation facility, after the planned retirement date and the plant's subsequent performance and economic life are similar to that of a new facility of like technology as a result of such investment. A repowered facility is a facility where the main generating equipment (such as the turbine) is changed out for new equipment.

8. ~~It is in the public interest to impose greater oversight of medium-term bilateral contracts. Utilities will not be required to submit Tier II Advice Letters seeking Commission approval to enter into a medium-term bilateral contract if the size of the contract is over 50 MW. This rule is in addition to all previous procurement rules.~~

Ordering Paragraphs

1. Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company (collectively, the IOUs) shall estimate reasonable levels of expected Direct Access and Community Choice Aggregation departing load over the 10-year term of the IOUs bundled plans., ~~using information provided by the California Energy Commission~~

Reasonable incremental departure forecasts should be made for Direct Access if Direct Access is re-opened by the Legislature and,~~/or~~ for Community Choice Aggregation, by a Community Choice Aggregator in its Binding Notice of Intent. The IOUs shall then exclude this departing load from their future bundled procurement plans, and only procure for the assumed amounts of retained bundled load. Having been excluded from the bundled portfolio planning scenarios, the forecasted Direct Access and Community Choice Aggregation departing load's vintage Power Charge Indifference Amount shall not be subject to ~~non-bypassable charges for~~ any incremental stranded procurement costs incurred by the IOUs for the period after the date of departure assumed in their approved bundled plans. This Ordering Paragraph does not apply to the Cost Allocation Mechanism (CAM) charge.

2. In order to allow incremental capacity to bid into new generation Requests for Offers, the term "incremental capacity" is defined as: "capacity incremental to what was assumed in the underlying needs assessment." In this context, the following terms are also defined:

> 1. Upgraded plant: Upgrades are defined as expanding the generation capacity at a generation facility at, or enhancing the operation of a generation facility. An upgraded plant's incremental capacity may participate in a utility's long-term RFO so long as such incremental MWs (1) can provide the necessary attributes that the Commission has authorized the utility to procure; and (2) meets the minimum offer size of the solicitation. An upgraded plant or a plant with incremental capacity additions would be a plant where the main generating equipment is retained and continues to operate.
>
> 2. Repowered plants: Repowers are defined as capital investments that extend the useful life of a generation facility, after the planned retirement date and the plant's subsequent performance and economic life are similar to that of a new facility of like technology as a result of such investment. A repowered facility is a facility where the main generating equipment (such as the turbine) is changed out for new equipment.

3. ~~Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company shall submit Tier II Advice Letters seeking Commission approval to~~

~~enter into a medium-term bilateral contract if the size of the contract is over 50 megawatts. This rule is in addition to all previous procurement rules.~~

5. ~~No later than ninety (90) days after the effective date of this decision, Pacific Gas and Electric Company, Southern California Edison Company and San Diego gas and Electric Company shall devote a portion of an upcoming Procurement Review Group meeting to creation of a quarterly compliance reporting guide similar to the guide for Resource Adequacy reporting.~~