

PUBLIC VERSION

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA



FILED

04-14-10

04:59 PM

Application of Pacific Gas and Electric
Company for Approval of 2008 Long-Term
Request for Offer Results and for Adoption of
Cost Recovery and Ratemaking Mechanisms

Application 09-09-021
(Filed September 30, 2009)

(U 39 E)

OPENING BRIEF OF
CALIFORNIANS FOR RENEWABLE ENERGY, INC. (CARE)

Robert M. Sarvey
501 W. Grantline Rd
Tracy, Ca. 95375
Phone: (209) 835-7162
E-mail: sarveybob@aol.com

April 14th, 2010

Table of Contents

I.	INTRODUCTION AND RECOMMENDATIONS	3
II.	FACTUAL BACKGROUND	3
III.	DISCUSSION	4
A.	Is PG&E seeking authorization of any other projects or contracts, in any other proceeding, pursuant to the authorization granted in D.07-12-052?	4
B.	How much of the 800 – 1,200 megawatts which D.07-12-052 authorized should PG&E be allowed to procure in this proceeding? What criteria should be used to determine when, if ever, it would be appropriate for PG&E to procure any remaining megawatts?	7
1.	Revised Path 26 Power flow analysis	8
2.	Incremental Impacts of Energy Efficiency Policy Initiatives Relative to the 2009 Integrated Energy Policy Report Adopted Demand Forecast.....	12
3.	Resource Uncertainty.....	13
C.	Which of the PPAs and PSA proposed by PG&E are reasonable and in the best interest of PG&E’s customers and thus, should be approved by the Commission?.....	14
1.	Midway Sunset Project	14
2.	GWF Tracy Upgrade.....	14
3.	Los Esteros.....	15
4.	Marsh Landing.....	16
5.	Contra Costa Generating Station (Oakley)	19
D.	Should PG&E’s rate recovery and initial annual revenue requirement proposals for the Contra Costa Project, as modified by the Partial Settlement Agreement dated February 17, 2010, be approved?.....	21
E.	Was PG&E’s conduct of the 2008 LTRFO reasonable and consistent with Commission directives?.....	29
IV.	CONCLUSIONS.....	34

TABLE OF AUTHORITIES

Commission Decisions

D. 07-12-052 passim

D. 08-11-056 5

I. INTRODUCTION AND RECOMMENDATIONS

Pursuant to the schedule established by the February 1, 2010, Assigned Commissioner’s Ruling and Scoping Memo (Scoping Memo) in this proceeding, CALifornians for Renewable Energy (CARE) hereby submits its opening brief.

CARE recommends that the Commission reevaluate PG&E’s need in this proceeding based on the reports provided by the CEC which indicate that PG&E’s demand has dropped below a level where any new megawatts are needed. If the Commission fails to adopt this recommendation CARE recommends that the Commission hold PG&E to the lower end of the procurement authority authorized by D. 07-12-052 of 928 MW. CARE recommends that the Midway Sunset and GWF Upgrades be approved by the Commission. CARE recommends that the Commission reject the Los Esteros PPA, the Marsh Landing PPA, the Contra Costa 6 & 7 PPA, and the Oakley PPA. CARE recommends that the Commission reevaluate its LTRFO and provide PPA’s which are operationally flexible and geographically diversified to meet the remaining need. CARE recommends that PG&E be removed from the selection process based on their inappropriate actions related to the LTRFO.

II. FACTUAL BACKGROUND

In D.07-12-052 PG&E requested authority to procure 2,300 MW. The Commission ultimately authorized a need of only 800 MW to 1,200 MW. The Commission declined to adopt, “contingencies requested by PG&E for contracted resource uncertainty, anticipated revisions to the RA counting rules, and additional backup for RFO conditionality”, which accounts for the difference between PG&E’s requested authority of 2300 MW and the need approved in D.07-12-052. In addition to the 800 MW to 1200 MW the Commission also granted PG&E authority to replace two failed contracts from the 2006 RFO which totaled 312 MW. In total D. 07-12-052 authorized 1,112 MW to 1,512 MW for PG&E’s service area.

PUBLIC VERSION

In compliance with D.07-12-052, PG&E conducted a Long-Term Request for Offers (LTRFO) in 2008. PG&E received “more than forty eight offers with seventy-four offer variations” from twenty-one participants.

On April 1, 2009 PG&E requested authorization for the 184 MW Mariposa Power Purchase Agreements. The Commission released its proposed decision on that contract on September 29, 2009 in accordance with a joint settlement agreement executed by the parties. The PPA was finally approved October 15, 2009 in D. 09-10-017. This reduced PG&E’s authorized range of need to 928 MW to 1,328 MW

On September 30, 2009 PG&E filed the “Application for Approval of 2008 Long-Term Request for Offer Results and For Adoption of Cost Recovery and Ratemaking Mechanisms” (A.09-09-021) requesting Commission approval for four new contracts. The application included a request for approval of the Midway Sunset Project an existing QF facility which will provide 129 MW under peak July conditions for the first five years and, after that, 61 MW for an additional five years. As an existing facility, it does not reduce PG&E’s unmet need for new generation. PG&E also requested approval for the Marsh Landing Project a 713 MW peaker plant located next to PG&E’s new Gateway facility. In conjunction with the Marsh landing Project PG&E also requested approval of a contract extension for the Contra Costa 6 & 7 units, allegedly negotiated with a commitment to shut down the aged once through cooling units upon operation of the new Marsh Landing Facility.

Finally, the fourth agreement is a purchase and sale agreement (PSA) for the Contra Costa Generating Station – recently renamed the Oakley Generating Station – which would result in a new, gas-fired combined cycle (CC) utility-owned facility that will provide 586 MW under peak July conditions beginning in June of 2014. In total PG&E is requesting 1,305 MW of new generation in this application. The approval of all the contracts in this application would exceed the minimum 928 MW authorization that remains from D.07-12-052 by 377 MW.

III. DISCUSSION

A. Is PG&E seeking authorization of any other projects or contracts, in any other proceeding, pursuant to the authorization granted in D.07-12-052?

In A.09-10-022 and A. 09-10-34 PG&E is requesting 254 MW of incremental new capacity which it classifies as DWR novations. PG&E denies that these two upgrade contracts have anything to do with the procurement limits authorized in D. 07-12-052. PG&E does not

PUBLIC VERSION

dispute that the additional capacity represented by the LECEF Upgrade and the GWF Upgrade exceeds the need identified in the LTPP Decision when the capacity already approved and under consideration through the 2008 LTRFO is considered.¹ PG&E claims that the GWF Tracy Upgrade and the LECEF Upgrade are being undertaken as a novation pursuant to authorization conferred in the Direct Access Proceeding, R.07-05-025, not under the LTRFO.

[REDACTED]

[REDACTED]

[REDACTED]

¹ Application No. 09-10-034 REPLY OF PACIFIC GAS AND ELECTRIC COMPANY TO PROTESTS (PUBLIC VERSION) December 17, 2009 Page 11 <http://docs.cpuc.ca.gov/efile/REP/111720.pdf>

² [REDACTED]

[REDACTED]

In examining these two memos the Commission should be concerned by PG&E's representation that the two upgrade contracts have no relation to the need authorized in D. 07-12-052. [REDACTED]

[REDACTED]

[REDACTED] ⁴ PG&E apparently believes that the Commission is asleep at the wheel with this misrepresentation. Both the Los Esteros Upgrade and the GWF Upgrades were submitted and evaluated in PG&E's 2008 RFO. [REDACTED]

[REDACTED]

The Commission should fully consider these two upgrade proposals in this docket. Both of these proposals are upgrades to existing facilities and comply with the Commission's directive to consider Brownfield Proposals.⁵ As TURN's Testimony⁶ illustrates the novations upgrades

³ [REDACTED]

⁴ [REDACTED]

⁵As the Commission directed in D. 07-12-052, "To further clarify our directive from the 2004 LTPP decision, IOUs are to consider repowered or replacement options presented in a RFO before they choose options developed on Greenfield sites, or make a showing that justifies their decision not to do so.- D 07-12-053 page 230

PUBLIC VERSION

are a logical choice if the Commission decides to limit PG&E to the lower range of the authorization in D. 07-12-052.

B. How much of the 800 – 1,200 megawatts which D.07-12-052 authorized should PG&E be allowed to procure in this proceeding? What criteria should be used to determine when, if ever, it would be appropriate for PG&E to procure any remaining megawatts?

The majority of the parties in the proceeding⁷ believe that PG&E's need has fallen precipitously since the need determination was made in D. 07-12-052. Even the Commission acknowledges that PG&E's need has declined. In the Scoping Memo the Commission stated, "However, D.07-12-052 issued more than two years ago. During those two years California and the United States as a whole experienced the worst economic downturn since the Great Depression, resulting in sharply reduced electric demands. This drastically reduced electric demand as is reflected in the CEC's most recent energy demand forecast which shows that demand in PG&E's service area dropped precipitously between 2006 and 2007, and doesn't anticipate demand reaching the 2006 demand levels within the next five years.⁸ The CEC's 2009 IEPR,⁹ CARE,¹⁰ DRA,¹¹ TURN,¹² and Pacific Environment¹³ have all concluded that

Continued from the previous page

⁶ Exhibit 200 Direct Testimony of Kevin Woodruff on Behalf of The Utility Reform Network (Confidential Version) Attachment 1, Page 11, Line 2

⁷ TURN, DRA, Pacific Environment, CARE, CBE, Sierra Club

⁸ A. 09-09-021 Scoping Memo Page 6

⁹ 2009 IEPR page 3 <http://www.energy.ca.gov/2009publications/CEC-100-2009-003/CEC-100-2009-003-CMF.PDF>

¹⁰ Exhibit 402, Reply Testimony of CARE Page 2, Lines 21-23 "The 2009 adopted peak demand forecast predicts that in 2015 the demand in PG&E's service territory will be 591 MW less than the forecast that was utilized in D. 07- 12-052."

¹¹ Exhibit 100 TESTIMONY OF THE DIVISION OF RATEPAYER ADVOCATES February 22, 2010 Page 9, Lines 4-6 "According to the California Energy Commission 3 (CEC's) "California Energy Demand 2010-2020 Adopted Forecast," PG&E's need in 4 2015 is now forecasted to be 597 MW less than anticipated by the Commission in D.07-5 12-052."

¹² Exhibit 200 Direct Testimony of Kevin Woodruff on Behalf of The Utility Reform Network (Confidential Version) Application 09-09-021 February 22, 2010 Page 7 of 26 Lines 15-19 "a significant reduction in expected Northern California electric demand has occurred in recent years due to the ongoing economic recession. Given this decline and other factors, the Commission could consider approving a portfolio that yielded less than 928 MW of new capacity. However, the Commission appears to have precluded consideration of such an outcome in the LTRFO. See also Attachment A, Page 18, Lines 20-24: "Yes. If the Commission is considering possible adjustments to need, it must also consider

Continued on the next page

PUBLIC VERSION

PG&E's need as determined by the 2009 CED has diminished by 597 MW from the need determined in D. 07-12-052.

Despite the overwhelming evidence to the contrary PG&E testifies that Commission should adopt the higher range of need determined in D. 07-12-052 of 1,328 MW.¹⁴ The Commission does not need to spend a lot of time adjudicating the actual reduction to PG&E's need from the 2009 CED. PG&E in their reply testimony calculates that the 2009 California Energy Demand Forecast reduces PG&E's need in its service territory by 330 MW by 2015.¹⁵ The 330 MWs that PG&E estimates is very close to the 400 MW that constitutes the difference between the upper end of PG&E's procurement authority of 1,328 MW and the lower end of 928 MW. PG&E's calculated need reduction makes the Commission's decision very easy. The Commission should therefore on the basis of the 2009 CED alone limit PG&E to 928 MW of new resource acquisition in this proceeding. But in fact there are other recent developments which further reduce the demand in PG&E's service territory that the Commission should consider.

1. Revised Path 26 Power flow analysis

In D. 07-12-052 the Commission determined that PG&E's need should be increased by 3,000 MW¹⁶ to account for exports that would occur on North Path 26. The CEC believes that PG&E overstated the export of energy and therefore commensurately overstated the amount of new capacity needed to meet its service territory's needs. D 07-12-052 mentions the CEC's

Continued from the previous page

the sharp decline in economic conditions that has occurred since the load forecast used to develop D.07-12-052. This factor led the California Energy Commission (CEC) to reduce its long-term load forecast too, as PG&E acknowledged in response to TURN Data Request 1-4.”

¹³ Exhibit 500, Page 3, Pacific Environment testifies that “The December 2009 CEC forecast shows both short and long term lowered economic growth. Pacific Environment testifies that “The December 2009 CEC forecast shows both short and long term lowered economic growth.”

¹⁴ Exhibit 5 Reply Testimony of PG&E Page 3, Lines 1,2

¹⁵ Exhibit 5, Page 7, Footnote 14 22,078 MW (PG&E's service area 2015 peak, Table PGE-1, line 2), less 430 MW (Uncommitted Energy Efficiency, Table PGE-1, line 16), less 21,318 MW (CEC's 2009 IEPR peak forecast for PG&E's service area, Form 1.5b.)
22,078 – 430 – 21,318 = 330 MW.

¹⁶ D. 07-12-052 Page 116, Table PG&E-1, Line 12

PUBLIC VERSION

concerns in a one sentence description in the decision but does not elaborate on why the 3,000 MW level was utilized.¹⁷

In October of 2008 the CEC issued an analysis of the export of energy on NP-26 in a paper entitled, Revisiting Path 26 Power Flow Assumptions. The paper provided a more detailed description of California Energy Commission Staff's concerns regarding the California Public Utilities Commission's final decision allowing PG&E to increase its need determination by 3,000 MW to account for exports of energy. The study has two conclusions which are relevant to the Commission's decision here in A. 09-09-021. The first conclusion is that "the 3,000 MW North to South capacity flow assumption used in the Energy Commission Summer Supply and Demand Outlook reports since 2006 and in the CPUC's LTPP decision D.07-12-052 is clearly not correct."¹⁸ The second conclusion was that "Between 100 MW to 1,100 MW North to South appears to be a reasonable range of power flow values when PG&E 3 Day average temperatures exceed 99 degrees."¹⁹

TURN's expert Kevin Woodruff's provided testimony on this issue, "Further, the CEC staff has issued a report stating that D.07-12-052 misinterpreted prior CEC information regarding the exports from Northern to Southern California that can be expected to occur on a peak day. The decision, as shown in Table PGE-1 on page 116 at line 12, assumed that "Exports -- to SP 26" would be 3,000 MW for each year of the analysis. In assessing this assumption, the CEC report found as follows: In the 2006 LTPP, PG&E claimed that an Energy Commission study had concluded that 3,000 MW of generation would be exported over Path 26 during the peak hour, and used this value in estimating the reserve margin for their service area. Energy Commission staff testified that PG&E's use of this value was inappropriate since it was based on a physical system capability and not designed to deal with contractual, financial or market based analysis. The staff also testified that the correct number was likely to be lower and called for further analysis. Figure 1 shows that the 2006 LTPP final decision over estimated the amount of capacity flowing North to South on Path 26 during PG&E peak demand periods by at least 1,900

¹⁷ D. 07-12-052 Page 105

¹⁸ Exhibit 405, Page 1 Revisiting Path 26 Power Flow Assumptions (October 2008)
<http://www.energy.ca.gov/2008publications/CEC-200-2008-006/CEC-200-2008-006.PDF>

¹⁹ Exhibit 405, Page 2 Revisiting Path 26 Power Flow Assumptions (October 2008)
<http://www.energy.ca.gov/2008publications/CEC-200-2008-006/CEC-200-2008-006.PDF>

PUBLIC VERSION

MW. Thus, if the error identified by CEC staff were to be corrected, PG&E’s need determination would be reduced by at least 1,900 MW, or effectively to zero!”²⁰

DRA’s testimony agrees with TURN, “the CEC has also found that PG&E’s need determination in D. 07-12-052 over-estimated the amount of capacity flowing from North to South on Path 26 during PG&E peak demand periods. In the 2006 LTPP, PG&E assumed it may export up to 3,000 MW to SCE’s territory and adjusted its estimates of need to provide for the loss of that export. However, the CEC’s analysis, released in October 2008, proves that PG&E’s actual exports have ranged from 100 MW to 1,100 MW. This analysis concludes that PG&E overestimated by at least 1,900 MW.²² If **PG&E’s need determination was amended to correct for only this mistake, its current authority to procure new generation under D.07-12-052 would be wiped out all together.**”²¹

Pacific Environment’s expert Rory Cox, testified, “According to the CEC, the LTPP’s export assumptions are incorrect. In the LTPP decision, the Commission assumed that energy flow between Northern and Southern California (Path 26) would require PG&E to export 3,000 MWs of electricity.¹³ The CEC found the 3,000 MW level to be “no longer valid,” and “clearly not correct.” The CEC found that this assumption overestimated the actual amount being exported during peak demand times “by at least 1,900 MW.”¹⁵ The actual amount being exported – including a reserve margin – thus changes to a figure at least as low as 1,100 MWs. The CEC has called for a reevaluation of power flow assumptions and development of a new, accurate reserve margin. The CEC itself will be relying on a power flow assumption that is “significantly lower” than 3,000 MW.”²²

CARE’s expert also testified, “The CEC staff issued in October of 2008 a report entitled, REVISITING PATH 26 POWER FLOW ASSUMPTIONS. The report draws two conclusions that are important to any need determination that was authorized in D. 07-12-052. The first conclusion is that, “The 3,000 MW North to South capacity flow assumption used in the Energy Commission Summer Supply and Demand Outlook reports since 2006 and in the CPUC’s LTPP

²⁰ Exhibit 200 Attachment 1 “Direct Testimony of Kevin Woodruff on Behalf of The Utility Reform Network (Confidential Version) Applications 09-10-022 and 09-10-034 January 15, 2010” Page 19 of 36

²¹ Exhibit 100 TESTIMONY OF THE DIVISION OF RATEPAYER ADVOCATES Page 9 Lines 10-18

²² Exhibit 501 Page 4 lines 3-10

PUBLIC VERSION

decision D.07-12-052 is clearly not correct.” The second conclusion was “Between 100 MW to 1,100 MW North to South appears to be a reasonable range of power flow values when PG&E 3 Day average temperatures exceed 99 degrees.”²³ When correcting this error in the forecast of need in D. 07-12-052 PG&E’s need is reduced at a minimum by 1,900 MW and a maximum of 2,900 MW.”

PG&E’s response to the CEC’s study and the other experts in this proceeding’s testimony is simply that in the 2006 LTPP Decision, the Commission already considered the CEC’s viewpoint on the assumed export level.²⁴ This premise strains credibility as the CEC report was supplemental information that was not provided to the Commission in D. 07-12-052.

Next PG&E argues that the CEC path 26 study is defective because it reflects a period of surplus, rather than stress conditions.²⁵ When asked to define their issues with the CEC Path 26 assessment by DRA PG&E replied,

“The October 2008 CEC staff paper examines the power flows on Path 26 for three summer years during which the planning reserve margin (PRM) in the CAISO area exceeded the required PRM. In those conditions, flows reflect economic trades, rather than emergency support from one area to the other. In contrast, PG&E believes the proper conditions to use in determining the support an area receives from the other one is when the CAISO and the individual areas are at the required PRM.”²⁶

PG&E wants to redefine the parameters under which the CEC actually conducted the study. *“PG&E believes the proper conditions to use in determining the support an area receives from the other one is when the CAISO and the individual areas are at the required PRM.”* At this time modeling a 15-17% Planning Reserve margin would be an unrealistic assumption and of little use in current conditions. As provided in CARE’s testimony²⁷ the CAL-ISO 2009

²³ <http://www.energy.ca.gov/2008publications/CEC-200-2008-006/CEC-200-2008-006.PDF> page 1,2

²⁴ D. 07-12-052 Page 105 mentions the CEC viewpoint on Path 26, “In addition, the CEC believes that PG&E overstates the export of energy and therefore commensurately overstates the amount of new capacity needed to meet its service territory’s needs.” That is the only mention of the Path 26 assumptions in D. 07-12-052

²⁵ PG&E never explains what surplus and stress conditions are and how they affect the path 26 flow assumptions made by the CEC.

²⁶ Exhibit 18 answer 8 (a)

²⁷ Exhibit 402, Page 10, Lines 7-9

PUBLIC VERSION

Summer Assessment predicts a 30.6 % planning margin in 2009 for NP-26.²⁸ D. 07-12-052 predicted a 20.9% planning margin for 2009 which is 46% less than CAL-ISO's predicted planning margin for NP-26²⁹ As the record demonstrates "PG&E does not know the actual exports across Path 26 for 2007, 2008 and 2009."³⁰

Finally PG&E testifies that any discussion of this 1900- 2900 MW demand reduction should be reviewed only in the PRM proceeding (CPUC Docket R.08-04-012) and that the 1900 to 2900 MW demand reduction in the CEC's report is irrelevant to the Commission's determination on PG&E's range of need in this proceeding.³¹ PG&E's arguments are without merit. The reduction in demand that is reported in the CEC's revised Path 26 analysis is another primary reason to adopt PG&E's lower range of need of 928 MW.

2. Incremental Impacts of Energy Efficiency Policy Initiatives Relative to the 2009 Integrated Energy Policy Report Adopted Demand Forecast

In the OIR for the 2008 LTPP proceeding, the CPUC, in consultation with the Energy Commission, directed utilities and other parties to pursue the issue of overlap between the energy efficiency impacts embedded in Energy Commission Demand forecasts and the uncommitted savings corresponding to CPUC energy efficiency goals in the *2009 IEPR* proceeding. Energy Commission staff proposed an overall project design with two subprojects: (1) improvements in the characterization of committed efficiency program impacts which were reported in the staff's *2009 IEPR* demand forecasts, and (2) estimation of incremental uncommitted savings from policy initiatives using the *2008 Goals Study* program delivery mechanisms.³²

To resolve the second issue the Energy Commission developed The Incremental Impacts of Energy Policy Initiatives Relative to the 2009 Integrated Energy Policy Report which it issued in January of 2010. The report was designed to estimate the *incremental* impacts of the CPUC's 2008 Energy Efficiency Goals Update Report. There is no dispute that these demand reductions

²⁸ 2009 Summer Loads and Resources Operations Preparedness Assessment Page 4 table 1
<http://www.caiso.com/23ab/23abd69829524.pdf>

²⁹D. 07-12-052, Page 116 , Table PG&E 1, Line 23

³⁰ Exhibit 17 Response to DRA_006-Q06 3/24/10

³¹ Exhibit 5 Page 13 Lines 3-6

³² Exhibit 404 INCREMENTAL IMPACTS OF ENERGY EFFICIENCY POLICY INITIATIVES RELATIVE TO THE *2009 INTEGRATED ENERGY POLICY REPORT* ADOPTED DEMAND

Continued on the next page

PUBLIC VERSION

were not included in the 2009 CEC California Demand Forecast.³³ The CEC’s January 2010 report estimates that the incremental impacts of prospective CPUC 2008 Energy Efficiency Goals programs in the PGE service territory would amount to 506 MW to 795 MW of Peak Demand Savings by the year 2015. By the year 2020 the study predicts a much larger savings of 1,731 MW to 2,722 MW.³⁴ PG&E suggests in their reply testimony that the Commission ignore the study in their deliberation of whether to authorize 800 MW or 1200 MW of capacity in this proceeding because these incremental EE impacts are not firm.³⁵ As the CEC report says “the CPUC staff intends to use these projected load impacts as part of the portfolio assessment analyses used to define the need for electricity resources in the forthcoming 2010 Long Term Procurement Plan rulemaking.” This report is also very useful to the Commission in this proceeding and should be an important factor in selecting PG&E’s need at the lower end of the range of 928 –1,328 MW. Finding of law 12 in D. 07-12-052 states, “We agree with the CEC’s recommendation that the portion of IOU’s EE goals not included in the forecast (i.e., the uncommitted EE that does not overlap with EE-induced reductions embedded in the CEC forecast in the years beyond the Commission EE programs’ three-year program cycle) should be treated as a resource in the LTPP. We conform to these principles in the following IOU-specific EE treatments.”³⁶

3. Resource Uncertainty

Some of the parties have argued that the Russell City, “Contingency” could lead to the need to procure more than the lower range of need of 928 MW. D. 07-12-052 firmly rebukes this suggestion, “To the extent that PG&E is requesting this 500 MW to replace one of the resources that PG&E secured in its last Long Term RFO (i.e., as a default contingency for a

Continued from the previous page

FORECAST Page 18 <http://www.energy.ca.gov/2010publications/CEC-200-2010-001/CEC-200-2010-001-D.PDF>

³³ Exhibit 5 Page 11 line 26,27 “Mr. Cox fails to mention that the CEC’s Incremental Impacts Staff Report he quotes explains that these incremental EE impacts are not firm, and because of that reason, these incremental EE savings were not included in the 2009 CED Adopted Forecast.”

³⁴Impacts of Energy Policy Initiatives Relative to the 2009 Integrated Energy Policy Report

ATTACHMENT A: TECHNICAL REPORT page 146

<http://www.energy.ca.gov/2010publications/CEC-200-2010-001/CEC-200-2010-001-ATA.PDF> page 146

³⁵ Exhibit 5 Page 11 Lines 27,28

³⁶ D. 07-12-052 page 292 Finding of Law 13

PUBLIC VERSION

subset of the new generation currently under contract above and beyond the 10% default cushion described above, effectively raising the 600 MW contingency to 1,100 MW, or nearly 20% of the contracted “pipeline” resources), our position here is consistent with the discussion above – **we would expect the IOUs to handle these uncertainties by delaying retirements** (in this case, via contracts) until these uncertainties are addressed.”³⁷

C. Which of the PPAs and PSA proposed by PG&E are reasonable and in the best interest of PG&E’s customers and thus, should be approved by the Commission?

1. Midway Sunset Project

The Midway Sunset Project deserves Commission approval as it is an existing combined heat and power project. It ranks the best for viability because it is already constructed. The project is reasonably priced and provides resource adequacy in PG&E’s service territory.

2. GWF Tracy Upgrade

The GWF Tracy Project is the most viable new project in the LTRFO as it has just received its license form the California Energy Commission on April 8, 2010.³⁸ The only other new project that would rank even close to GWF for viability would be the Los Esteros Upgrade but the Los Esteros Upgrade is in the process of a CEC amendment at the moment and must renew its Authority to Construct with the BAAQMD.³⁹ The GWF Tracy Upgrade could be online as soon as 2013 and would require the least time to become operational.

As described in PG&E’s testimony the GWF Upgrade Project has a reasonable market value compared to other market alternatives for new or upgraded generation.⁴⁰

³⁷ D. 07-12-052 page 99, Also see Exhibit 402 CARE Reply Brief Page 5 and 6 for a full explanation of why the Russell City Contingency should not increase PG&E’s need determination.

³⁸ http://www.energy.ca.gov/sitingcases/tracyexpansion/notices/2010-04-01_CEC_Notice_of_Decisions_TN-56096.PDF

³⁹ http://www.energy.ca.gov/sitingcases/losteros2/compliance_phase_1/2009-10-30_Critical_Energy_Amendment_with_Attachments_TN-53900.pdf Page 2

⁴⁰ [REDACTED]

[REDACTED]

[REDACTED]

As a Brownfield site the GWF Project complies with Commission direction in D. 07-12-052, “To further clarify our directive from the 2004 LTPP decision, IOUs are to consider repowered or replacement options presented in a RFO before they choose options developed on Greenfield sites, or make a showing that justifies their decision not to do so.⁴¹ The GWF Tracy Project lowers Greenhouse Gas emissions per MW hour in comparison with the existing facility.

Finally the GWF Project is the only project in the 2008 RFO that complies with the 33% RPS standard because the project is proposing to add a 50 MW Solar Thermal Component in conjunction with the 145 MW Upgrade. The project owner has recently signed an agreement with the City of Tracy to buy the adjacent 200 acres for the Solar Farm which demonstrates the project owner’s commitment to the solar component. The solar upgrade will lower start times and provide a better heat rate for the facility.

The project does have concentration issues with the recent approval of the Mariposa PPA but the upgrade to combined cycle lowers the projects NOx, CO, and POC emissions per megawatt hour. The project warrants Commission approval.

3. Los Esteros

The Los Esteros Upgrade has high viability. As mentioned above it is currently undergoing an amendment of its CEC license and a renewal of its authority to construct with the BAAQMD.⁴²

[REDACTED]

[REDACTED] ⁴³ [REDACTED]

[REDACTED] ⁴⁴

Continued from the previous page

[REDACTED]

⁴¹ D 07-12-053 page 230

⁴² http://www.energy.ca.gov/sitingcases/losesteros2/compliance_phase_1/2009-10-30_Critical_Energy_Amendment_with_Attachments_TN-53900.pdf Page 2

⁴³ Exhibit 8 Response to DRA_005-Q03

PUBLIC VERSION

The Los Esteros Critical Energy Facility (LECEF) currently consists of four GE LM 6000 natural gas-fired simple-cycle CTs. The Aero-derivative technology can cycle from on to off, on to part load, and from full load down to spinning reserve to meet the variable demand. The current configuration of the LECEF provides for a start time of five to ten minutes making it ideally suited to support intermittent renewables. As combustion turbines, the Peakers provide a valuable, cost-effective means of integrating more renewables into PG&E's resource mix.

Calpine plans to convert the LECEF into a combined-cycle power plant through the addition of a Steam Turbine Generator (STG), additional HRSG equipment, a six-cell cooling tower, and ancillary equipment ("LECEF Upgrade"). The AFC Calpine filed with the California Energy Commission indicates that start up times could last as long as four hours.⁴⁵ Under the circumstances the ratepayers would be better served by the lower price and significant flexibility that the existing LECEF configuration would provide. A contract extension for the LECEF in its current configuration would provide the ratepayers with better value than the proposed LECEF Upgrade.

4. Marsh Landing

[REDACTED]

[REDACTED]

D. 07-12-052 stated that, To support the types of needs we anticipate in a GHG-constrained portfolio and to replace the aging units on which some of this authorization is based, we require PG&E to procure dispatchable ramping resources that can be used to adjust for the morning and evening ramps created by the intermittent types of renewable resources.⁴⁷ As a combustion turbine the Marsh Landing Project has the quick starting capability that is needed to back up intermittent renewable resources. The AFC supplement filed on September 15, 2009 limits the maximum number of starts per year to 167 per turbine and the annual hours of

Continued from the previous page

⁴⁴ Exhibit 200 Direct Testimony of Kevin Woodruff on Behalf of The Utility Reform Network (Confidential Version) Applications 09-10-022 and 09-10-034 January 15, 2010 Page 12, Table 4

⁴⁵ Los Esteros AFC Volumen 1 page 8.1-30, 8.1-32 Los Esteros

http://www.energy.ca.gov/sitingcases/losesteros2/documents/applicants_files/AFC_VOLUME_01_SECTIONS_1-10.PDF

⁴⁶ Exhibit 200 Direct Testimony of Kevin Woodruff on Behalf of The Utility Reform Network (Confidential Version) Applications 09-10-022 and 09-10-034 January 15, 2010 Page 12, Table 4

PUBLIC VERSION

operation are limited to 1,705.⁴⁸ While the Marsh Landing Facility is fast ramping its limitations on start ups and annual hours of operation lack the flexibility to support intermittent resources.

PG&E has stated, “PG&E requires more frequent dispatch capabilities for PSA offers than PPA offers. Marsh Landing’s anticipated environmental permits will meet the requirements in PG&E’s LTRFO.”⁴⁹ PG&E’s needs to review its own document. The 2008 RFO states:

“In this solicitation, PG&E has a strong preference for operationally flexible, dispatchable resources. In general, PG&E will assess the value of the Offer’s operating flexibility versus the Offer’s costs.

Resources that are capable of being committed to production a high number of times per year and those capable of multiple starts and stops per day are preferred. For example, flexible resources should be capable of being “cycled” on and off at least 300 times per year .⁵⁰”

The above requirement is for all offers in the 2008 RFO not just PSA offers. This requirement is appropriate since intermittent wind and solar resources may fluctuate in output many times a day. The Marsh Landing Project must increase its number of starts per year to be just and reasonable and in the ratepayers’ best interests.

A key feature of the Marsh Landing PPA is the promised shutdown of the Contra Costa 6 & 7 units. The conditions related to its shutdown have not been revealed in this proceeding. The Preliminary Determination of Compliance for the Marsh Landing Facility was released on March 24. The permit contains the conditions required for the closure of the Contra Costa 6 & 7 units.

Mirant Delta, LLC, has agreed to include the following enforceable permit condition in its air permits: “Subject to: (i) receipt of final, non-appealable

Continued from the previous page

⁴⁷ D. 07-12-052 page 106

⁴⁸ http://www.energy.ca.gov/sitingcases/marshlanding/documents/applicant/2009-09-15_Applicants_Amendment_to_the_Application_for_Certification_TN-53293.PDF page 3-11

⁴⁹ Exhibit 7 [CONFIDENTIAL] REPLY COMMENTS OF PACIFIC GAS AND ELECTRIC COMPANY (U 39-E), THE DIVISION OF RATEPAYER ADVOCATES, THE UTILITY REFORM NETWORK, THE COALITION OF CALIFORNIA UTILITY EMPLOYEES, AND CALIFORNIA UNIONS FOR RELIABLE ENERGY Page 12

⁵⁰ http://www.pge.com/includes/docs/word_xls/b2b/wholesaleelectricssolicitation/LTRFO040108.doc PG&E Long Term request for Offers April 1, 2008 page 5

PUBLIC VERSION

*California Public Utilities Commission approval of the Tolling Agreement for Units 6 and 7 at the Contra Costa Power Plant by and between Mirant Delta, LLC and Pacific Gas and Electric Company and dated as of September 2, 2009, as amended from time to time, **without material condition or modification unacceptable to either party thereto in its sole discretion; and (ii) the receipt of all other approvals and consents from the relevant local, state and federal governmental agencies (including but not limited to the California Independent System Operator) necessary for the shutdown and permanent retirement from service of Units 6 and 7; Mirant Delta, LLC will shut down and permanently retire Units 6 and 7 from service at 2400 PDT on April 30, 2013.**” Mirant Delta, LLC, has agreed that prior to the Air District’s issuance of the FDOC for the Marsh Landing facility; Mirant Delta will submit an application for an amendment to its Air District permit to incorporate the foregoing permit condition.*⁵¹

From that condition it appears that Mirant can at its own discretion if its does not like a modification of the PPA refuse to shut down the units. Further it takes the consent of relevant local, state and federal governmental agencies (including but not limited to the California Independent System Operator) to shutdown Units 6 and 7. The relevant local state and federal government agencies approval is not defined. Experiences with the closure of the Hunters Point Power Plant and the Mirant Potrero Power Plant would counsel against relying on any agreement that is conditioned on approval of multiple agencies.

PG&E’s 2006 Long Term Procurement Plan includes a table which shows that the Contra Costa 6 unit is not needed for reliability in 2006 and beyond.⁵² PG&E’s also stated on the same page that the Contra Costa 6 &7 Units would no longer be needed after the Gateway Project (Contra Costa 8) became operational:

Currently, Contra Costa Unit 7 is required to meet reliability requirements for the Greater Bay area. PG&E is proceeding with the construction of Contra Costa 8 (“CC8”), a new 530 MW combined cycle power plant. Completing the proposed Contra Costa 8 Power Plant, currently scheduled

⁵¹ BAAQMD PDOC for Marsh Landing Page 7, <http://www.baaqmd.gov/~media/Files/Engineering/Public%20Notices/2010/18404/Marsh%20Landing%20PDOC%20March%20032210.ashx>

⁵² PACIFIC GAS AND ELECTRIC COMPANY VOLUME 1 – 2006 LONG-TERM PROCUREMENT PLAN SECTION V – PROCUREMENT STRATEGY BY RESOURCE Page v-44 Line 1 http://www.cpuc.ca.gov/LTTPs2006_2016/PGE/PGE%20Volume%20I%20Sections%20V%20thru%20VII%20and%20Attachments%202006%20LTTP.pdf

*for 2010, would eliminate the need for the older Contra Costa units for local reliability requirements.*⁵³

Mirant owns 38% of the Bay Area Generation and Calpine owns 41% [REDACTED]

[REDACTED]

The Mash Landing and Radback proposals add to a large concentration of generating resources in Contra Costa and follow the recently constructed Gateway Facility. All of these projects are within one mile of each other. These asset concentration issues are magnified by the poor air quality in Contra Costa which forces operating limitations in the air permits which limit these projects usefulness in supporting intermittent renewable resources. The concentration issues also present viability problems. The effect on the viability of the projects is substantial as community resistance threatens not only to delay the projects but possibly cancel them. These factors are demonstrated by the appearance of several influential environmental organizations who are opposing these proposed contracts in this docket due to environmental concerns.⁵⁵

The diversity of the concern related to the environmental impacts from these proposed projects is demonstrated by the presence of the San Joaquin Valley Air Pollution Control District who is participating in these siting cases at the California Energy Commission.⁵⁶

5. Contra Costa Generating Station (Oakley)

[REDACTED]

⁵³ PACIFIC GAS AND ELECTRIC COMPANY VOLUME 1 – 2006 LONG-TERM PROCUREMENT PLAN SECTION V – PROCUREMENT STRATEGY BY RESOURCE
Page v-44 Line 4-8
http://www.cpuc.ca.gov/LTTPs2006_2016/PGE/PGE%20Volume%20I%20Sections%20V%20thru%20VII%20and%20Attachments%202006%20L

⁵⁴ [REDACTED]

⁵⁵ Exhibit 402 CARE Reply Brief, Page 11, Lines 7-16
⁵⁶ Exhibit 402 CARE Reply Brief, Page 11, Lines 17-20

[REDACTED]

As explained later the value of the Contra Costa Generating Station is directly related to the amount of cost recovery above the bid price that the project is allowed to pass on to the ratepayers. The partial settlement agreement allows a significant cost increase for this project without a reasonableness review. The partial settlement agreement also provides no cap on costs that PG&E can request through an advice letter.

The Contra Costa Generating Station has serious asset concentration issues as it is located near the Gateway Project and Marsh Landing Project. Concerns from many Environmental groups and even the San Joaquin Valley Air pollution Control District threaten the projects viability due to the project areas poor air quality. The project had initially proposed a very low PM 2.5 emission rate of 7.5 pounds per hour per turbine because of the poor air quality in the area and the EPA classification of the BAAQMD as attainment for PM 2.5. Now that the EPA has re classified the BAAQMD as non attainment the Project has increased its PM 2.5 emissions to 9 pounds per hour per turbine because the lower emission rate is no longer needed for PG&E to avoid PSD review.⁵⁸

[REDACTED]

Another factor to be considered is the impact to the hybrid market that the CPUC is attempting to establish. The majority of recent power plant additions have been utility owned generation. The Gateway Project, the Colusa Project and the Humboldt Project total 1,350 MW of utility owned generation that is either operating or under construction. If the Commission had allowed the Tesla Project that would have been another 565 MW of utility owned generation

⁵⁷ Exhibit 8 **PACIFIC GAS AND ELECTRIC COMPANY Long Term Request for Offers 2008 Solicitation-II** Application 09-09-021 Confidential Attachment to DRA-005, Question 3

⁵⁸ http://www.energy.ca.gov/sitingcases/contracosta/documents/applicant/2010-03-09_Applicant_Response_to_Data_Requests_44-67_TN-55826.PDF

PUBLIC VERSION

in the PG&E service territory. Of the merchant projects selected in the LTTP only the Panoche Energy Center (399 MW); and Starwood Power (118 MW) are under construction for a total of 517 MW. “The Energy Commission believes these issues deserve a fuller vetting, including an assessment of alternative market models that would better serve the goal of reduced cost to customers. The Energy Commission will invite the California Public Utilities Commission to participate in a more complete evaluation of the existing hybrid market structure as part of the *2010 Integrated Energy Policy Report Update* to identify possible market enhancements and changes to utility procurement practices that would facilitate the reemergence of merchant investment.”⁶⁰

D. Should PG&E’s rate recovery and initial annual revenue requirement proposals for the Contra Costa Project, as modified by the Partial Settlement Agreement dated February 17, 2010, be approved?

The ratemaking proposal for the Contra Costa Project as modified by the partial settlement agreement should not be approved. It is difficult to evaluate the relative cost-effectiveness of a 10-year PPA with the Contra Costa PSA which will result in utility ownership of an asset with a 30-year operating life.”⁶¹ As stated in D.07-12-052 “There is general agreement among parties that comparing UOG to IPP bids presents many challenges. Parties who do feel that it is possible to compare UOG and IPP bids have provided precious little detail regarding how, specifically, to do so. The IOUs take two very different positions on comparing UOG and IPP bids in the RFO process. PG&E and SDG&E both argue that UOG and IPP bids can be compared within a competitive RFO, though neither party provided any substantial description in their LTTPs regarding how the different risk and return regimes faced by the two

Continued from the previous page

⁵⁹ Exhibit 1 PG&E-4, Page 14

⁶⁰ Exhibit 400 CARE Opening testimony Page 6, Lines 1-6 See also: We do not prohibit UOG in this decision; however, we weigh heavily in the remainder of this section the concerns related to UOG expressed by the IPP community as we consider whether and how UOG and IPP bids can be compared in a competitive solicitation and the appropriate role of UOG in IOU procurement. However, we do weigh heavily in favor of a competitive market first approach as we discuss further. D. 07-12-052 page 201

⁶¹ Exhibit 7 [CONFIDENTIAL] REPLY COMMENTS OF PACIFIC GAS AND ELECTRIC COMPANY (U 39-E), THE DIVISION OF RATEPAYER ADVOCATES, THE UTILITY REFORM NETWORK, THE COALITION OF CALIFORNIA UTILITY EMPLOYEES, AND CALIFORNIA UNIONS FOR RELIABLE ENERGY Page 6 line 7,8

PUBLIC VERSION

entities would be reconciled to compare their bids fairly. SCE, on the other hand, does not believe that IOU and IPP bids can be compared in a meaningful, quantitative manner.⁶²

TURN testified, “Another concern is the uncertainties raised by the 30-year life of the Radback Project.”⁶³ “The Radback project would have a 30-year economic life, while the other three contracts proposed in this application and the Novations dockets have durations ranging from eighteen months to ten years. Asset valuation over a longer time horizon is more uncertain because the uncertainties about input assumptions grow over time.”⁶⁴ PG&E and the IE assessment of Radback's Market value use, “PG&E’s assumptions about the future value of Radback’s capacity for Resource Adequacy (RA) purposes.”⁶⁵ Analysis of alternative capacity value assumptions may have yielded different quantitative results and conclusions.”⁶⁶ Further, Radback’s costs will be front-loaded onto customers pursuant to Straight-Line Depreciated Original Cost (SLDOC) utility ratemaking, unlike the generally more levelized annual cost recovery of all the other contracts being considered in this case and the Novations docket.”⁶⁷

Another issue with PG&E’s ratemaking proposal as modified by the partial settlement is the ability to pass on costs to ratepayers from the Radback PSA that were not included in the market evaluation of the Radback Proposal. The Settlement Agreement allows PG&E to pass on 54 million dollars in costs without a reasonableness review. In addition to this the settlement agreement allows PG&E to pass on costs above the 54 million dollars through submission of advice letters. This results in an inadequate market evaluation of the Radback proposal and an unfair comparison to other offers by the other participants in the RFO who cannot pass additional costs on to ratepayers. Any additional costs that are passed on to ratepayers that were not included in the market valuation of the Radback PSA deflate the market value of the Radback PSA in relation to other offers it was compared against to be selected as the winning offer. A

⁶² D. 07-12-052 Page 202, 203

⁶³ Exhibit 200 Direct Testimony of Kevin Woodruff on Behalf of The Utility Reform Network (Confidential Version) Application 09-09-021 February 22, 2010 Page 16 line 29, Page 17 line 1

⁶⁴ Exhibit 200 Direct Testimony of Kevin Woodruff on Behalf of The Utility Reform Network (Confidential Version) Application 09-09-021 February 22, 2010 Page 17 of 26 Lines 7-10

⁶⁵ Exhibit 200 Direct Testimony of Kevin Woodruff on Behalf of The Utility Reform Network (Confidential Version) Application 09-09-021 February 22, 2010 page 19 2-4

⁶⁶ Exhibit 200 Direct Testimony of Kevin Woodruff on Behalf of The Utility Reform Network (Confidential Version) Application 09-09-021 February 22, 2010 page 19 lines 4-5

PUBLIC VERSION

good illustration of this effect is PG&E’s reevaluation of the market value of the Radback Proposal in their reply comments on the partial settlement. In order to reassess the value of the Radback PSA PG&E ran its offer evaluation model using: (a) the Partial Settlement Agreement reduction of \$24.5 million; and (b) a \$29.5 million higher initial capital cost for the Contra Costa Project to reflect additional capital cost recovery allowed by the Partial Settlement Agreement. ⁶⁸

[REDACTED]

What is missing from PG&E’s assessment in Table 1 of the partial settlement agreement’s impact on the market value of the Radback Project, is the other costs that PG&E may ask the Commission to approve in an advice letter. According to the partial settlement agreement, “PG&E can propose to adjust its O&M rates via an expedited advice letter process in the first eight years (*i.e.*, until 2022) for : (1) delays in closing; (2) increased O&M caused by governmental agency requirements or changes in permitting assumptions; (3) changes in operating profile from the maximums assumed in forecast (*i.e.*, 333 starts/year and 4329 operating hours/year); and (4) on a one time basis, PG&E may update its forecast of Long Term Service Agreement (“LTSA”) costs to reflect the terms and conditions in the executed contract.”⁷⁰ There are no limits in the settlement on these costs and even if they are subject to an

Continued from the previous page

⁶⁷ Exhibit 200 Direct Testimony of Kevin Woodruff on Behalf of The Utility Reform Network (Confidential Version) Application 09-09-021 February 22, 2010 Page 17 of 26

⁶⁸ Exhibit 7 [CONFIDENTIAL] REPLY COMMENTS OF PACIFIC GAS AND ELECTRIC COMPANY (U 39-E), THE DIVISION OF RATEPAYER ADVOCATES, THE UTILITY REFORM NETWORK, THE COALITION OF CALIFORNIA UTILITY EMPLOYEES, AND CALIFORNIA UNIONS FOR RELIABLE ENERGY page Table 1 page 9

⁶⁹ [REDACTED]

⁷⁰ Exhibit 6 MOTION FOR APPROVAL OF PARTIAL SETTLEMENT AGREEMENT BETWEEN AND AMONG PACIFIC GAS AND ELECTRIC COMPANY, THE DIVISION OF RATEPAYER ADVOCATES, THE UTILITY REFORM NETWORK, THE COALITION OF CALIFORNIA UTILITY EMPLOYEES, AND CALIFORNIA UNIONS FOR RELIABLE ENERGY Page 5 item 1

PUBLIC VERSION

advice letter their approval further degrades the market value of the Radback Project in relation to other offers submitted in PG&E 2008 RFO.

Similarly and even more important is the partial settlements allowance of changes in the Capital Cost with no cost cap. The Partial Settlement Agreement allows PG&E to propose to adjust its initial capital cost target via an expedited advice letter for: (1) delays in closing; (2) operational performance enhancements; and (3) changes beyond PG&E's control (including new permit or regulatory requirements, greenhouse gas issues, and costs incurred under the change in law sharing mechanism in the PSA).⁷¹

PG&E states in their reply that, advice letter changes to initial capital cost are reasonable and appropriate.⁷² PG&E points to the Commissions previously approved mechanism for the Gateway project which resulted in the conversion of the project from wet cooling to dry cooling. According to PG&E this project improvement was a **regulatory permit requirement**.⁷³ What PG&E doesn't reveal is that advice letter requested a 75.5 million dollar capital cost increase and another 13.2 million dollar increase to the revenue requirement for unspecified reasons.⁷⁴ This amounted to an 88.7 million dollar increase in the price of the project. The question then becomes what would a 88.7 million dollar and possibly more, increase in the capital cost, do to the market value of the Radback Project and how would that increase affect its status as a winning project in the 2008 RFO. The partial settlement needs to provide a cap on additional capital costs which protects the ratepayers and ensures that in fact the Radback PSA is the winning offer.

⁷¹ Exhibit 6 MOTION FOR APPROVAL OF PARTIAL SETTLEMENT AGREEMENT BETWEEN AND AMONG PACIFIC GAS AND ELECTRIC COMPANY, THE DIVISION OF RATEPAYER ADVOCATES, THE UTILITY REFORM NETWORK, THE COALITION OF CALIFORNIA UTILITY EMPLOYEES, AND CALIFORNIA UNIONS FOR RELIABLE ENERGY
Page 6 Item 5

⁷² Exhibit 7 [CONFIDENTIAL] REPLY COMMENTS OF PACIFIC GAS AND ELECTRIC COMPANY (U 39-E), THE DIVISION OF RATEPAYER ADVOCATES, THE UTILITY REFORM NETWORK, THE COALITION OF CALIFORNIA UTILITY EMPLOYEES, AND CALIFORNIA UNIONS FOR RELIABLE ENERGY Page 10 first sentence

⁷³ Exhibit 7 [CONFIDENTIAL] REPLY COMMENTS OF PACIFIC GAS AND ELECTRIC COMPANY (U 39-E), THE DIVISION OF RATEPAYER ADVOCATES, THE UTILITY REFORM NETWORK, THE COALITION OF CALIFORNIA UTILITY EMPLOYEES, AND CALIFORNIA UNIONS FOR RELIABLE ENERGY Page 10

⁷⁴ http://www.pge.com/notes/rates/tariffs/tm2/pdf/ELEC_3104-E.pdf PG&E advice letter 3104-E page 1

PUBLIC VERSION

In regards to the Gateway Project the EPA has issued an NOV to the project for not having a valid PSD permit.⁷⁵ PG&E is in negotiations with EPA on a draft consent decree that is not final. The current version of draft consent decree would require PG&E to install the Op-Flex Technology and pay a \$20,000 fine. This amount could be subject to another advice letter increasing the cost to the ratepayer for the Gateway Project. The point is the open ended ability to increase costs for Radback agreed to in the partial settlement allows PG&E to file advice letters that expose ratepayers to a never ending adjustment of the final price of the Radback project.

This is completely unfair to other market participants who have in good faith bid their proposals into the 2008 RFO with no mechanism to recover excess costs from ratepayers. PG&E states, “These claims are overstated. . . . A merchant generator faced with unanticipated costs can make an economic decision to not go forward with its project.”⁷⁶ That is precisely the point the merchant generator must abandon the project while PG&E can ask for more ratepayer money through the partial settlement terms and still make their guaranteed rate of return currently at

[REDACTED]

There is also great potential for capital cost increases for the Radback Project. The Radback Proposal uses a new fast start technology which poses a technology risk which could lead to excess additional capital and O&M expenditures. The project also is subject to additional emission offset expenses that were not evaluated in the initial proposal. The Radback Project has filed an amended air quality section in the AFC at the California Energy Commission which increases the projects PM-10/2.5 emissions from 7.5 pounds per hour to 9 pounds per hour for each turbine.⁷⁷ The project has also requested a change in its operating profile running more

⁷⁵ United States vs. Pacific Gas and Electric Civil Action No. 09-4503

⁷⁶ Exhibit 7 [CONFIDENTIAL] REPLY COMMENTS OF PACIFIC GAS AND ELECTRIC COMPANY (U 39-E), THE DIVISION OF RATEPAYER ADVOCATES, THE UTILITY REFORM NETWORK, THE COALITION OF CALIFORNIA UTILITY EMPLOYEES, AND CALIFORNIA UNIONS FOR RELIABLE ENERGY Page 7

⁷⁷ http://www.energy.ca.gov/sitingcases/contracosta/documents/applicant/2010-02-11_Applicant_Response_to_Data_Requests_Set_1_1-43_TN-55333.pdf OAKLEY GENERATION STATION PROJECT RESPONSE TO CEC STAFF DATA REQUESTS 1-43 page 8 data Request 5 Page 8 item 5

PUBLIC VERSION

hours than originally proposed in the AFC which increases criteria pollutant emissions.⁷⁸ The project is also now proposing a PM-10 emission reduction program which will consist of street sweepers, fireplace retrofits and other air reduction programs.⁷⁹ It is not clear whether Radback or PG&E will be responsible for these additional costs.⁸⁰

PG&E seems to be focused on only one aspect of the evaluation (levelized market value) of the Radback proposal to determine that the settlement agreement is just and reasonable and in the best interests of the public. Market value is only one component of an offers value in the RFO analysis. [REDACTED]

[REDACTED]⁸¹ The Radback Project is proposed to be built within a half mile of the Marsh Landing Project and PG&E’s Gateway Generating Station. The environmental G score weight is only [REDACTED] of the market evaluation and does not accurately represent the magnitude of the asset concentration issues that are included in this proposed portfolio that the settling parties are stating is just and reasonable.

[REDACTED]⁸² To determine if the Radback Project as proposed is just and reasonable and in the best interests of the public the concentration issues should be heavily weighted by the Commission.

PG&E has stated that, “PG&E has not requested authority to recover abandoned project costs for the Contra Costa Project under the application or the Partial Settlement Agreement.”⁸³

⁷⁸ http://www.energy.ca.gov/sitingcases/contracosta/documents/applicant/2010-011_Applicant_Response_to_Data_Requests_Set_1_1-43_TN-55333.pdf AFC Air Quality Attachment DR 2-1 Section Revision Page 5.10

⁷⁹ Attachment DR 2-1 page

⁸⁰ Exhibit 1 (PG&E-4) page 15 Table 1.12 note 3

⁸¹ Exhibit 1 (PG&E-2) Confidential Appendix 1.2 page 11

⁸² [REDACTED]

⁸³ Exhibit 7 [CONFIDENTIAL] REPLY COMMENTS OF PACIFIC GAS AND ELECTRIC COMPANY (U 39-E), THE DIVISION OF RATEPAYER ADVOCATES, THE UTILITY REFORM NETWORK, THE COALITION OF CALIFORNIA UTILITY EMPLOYEES, AND CALIFORNIA UNIONS FOR RELIABLE ENERGY Page 11 First paragraph

PUBLIC VERSION

PG&E's prepared testimony states, "PG&E may incur costs other than those associated with accepting the project under the terms of the PSA. If PG&E does refuse to close on the facility, it will request to recover any incurred costs as **abandoned project costs**."⁸⁴ It appears from PG&E's testimony that those costs are significant.⁸⁵

D. 07-12-052 states, "We will not, however, permit IOUs to recoup from ratepayers any bid development costs associated with losing PSA or EPC bids, in the event that any such costs are incurred."⁸⁶

CARE has throughout this proceeding questioned the operating profile of the Radback Project.⁸⁷ The operating profile that has been put forward by PG&E in this proceeding has not matched the application that Radback had submitted at the CEC in its AFC.

In response to Pacific Environments legitimate concerns in their comments on the joint settlement agreement PG&E replied:

"Contrary to its assertion, the three dispatch scenarios referenced by Pacific Environment, and discussed in Attachment A to PG&E's reply testimony, are not new requirements. The table is based on the operating requirements included in the Contra Costa PSA, as Table 2.12 – Annual Emissions Calculations.26/ It specifies the maximum emissions for the air permit and the Maximum Emission Reduction Credits or Mitigation for the Contra Costa Project."For these reasons, PE's additional claim that these operating scenarios "were not taken into account in the Proposed Partial Settlement Agreement" is also inaccurate."

CARE and Pacific Environment in waiving their request for evidentiary hearings on the proposed settlement agreed to submit data requests on the joint parties' responses to our comments to eliminate any factual issues that remained. PG&E refused to answer CARE's data request one of which was a request to provide a copy of Schedule E the annual emissions calculations referenced by the joint parties which allegedly provided, *"the maximum emissions*

⁸⁴ Exhibit 1 (PG&E-1) Page 9-9 lines 14-17

⁸⁵ [REDACTED] (PG&E-1) page 7-8 line 5

⁸⁶ D. 07-12-052 Page 207 Lines 1-3

⁸⁷ PROTEST OF CALIFORNIANS FOR RENEWABLE ENERGY, INC. (CARE) TO APPLICATION OF PG&E FOR APPROVAL OF 2008 LONG-TERM RFO RESULTS AND FOR ADOPTION OF COST RECOVERY AND RATEMAKING MECHANISMS Page 4

<http://docs.cpuc.ca.gov/efile/P/109233.pdf>

PUBLIC VERSION

for the air permit and the Maximum Emission Reduction Credits or Mitigation for the Contra Costa Project.”⁸⁸ On Monday March 29, 2010 PG&E sent the following email to CARE:

Gentlemen: On October 1, 2009, PG&E sent you via UPS delivery two full sets of the confidential version of its Prepared Testimony in PG&E’s Application for Approval of 2008 Long Term Request for Offer Results and for Adoption of Cost Recovery and Ratemaking Mechanisms (CPUC docket A.09-09-021). We recently discovered, however, that a document mentioned on page 15 of Volume 4 (“Exhibit PG&E-4”) is missing from the bound volume we provided you. Please find attached here an electronic copy of Attachment E-1 (“Annual Emissions Calculations”) to Exhibit E (“Generation Operating Characteristics”) of the Contra Costa Generating Station Purchase and Sale Agreement. The attached PDF document is confidential and subject to Stipulated Protective Order and Non-Disclosure Agreements executed between CARE and PG&E.

As it turned out none of the parties including the settling parties had seen attachment E which provided, *the maximum emissions for the air permit and the Maximum Emission Reduction Credits or Mitigation for the Contra Costa Project.*” Therefore Pacific Environments “*claim that these operating scenarios “were not taken into account in the Proposed Partial Settlement Agreement”* is entirely accurate.

On Thursday April 1st PG&E sent the following email:

PG&E and Contra Costa Generating Station LLC (“CCGS”) have agreed to update Exhibit E and Attachment E-1 to the Purchase and Sale Agreement (“PSA”) between PG&E and CCGS. PG&E intends to provide a copy of the updated Exhibit E and Attachment E-1 separately to parties that have signed Non-Disclosure Agreements, and will include the updated Exhibit E and Attachment E-1 as a separate exhibit on the joint exhibit list that is being prepared. Copies of updated Exhibit E and Attachment E-1 will be provided by separate e-mail. Please feel free to call if you have any questions.

The fact is the emissions the mitigation and the operating profile of the Radback Project have just been revealed to the settling parties after the settlement agreement was finalized. In three days time that emission profile has been revised. Other parties who signed the non disclosure agreement received the projects annual emissions, mitigation, and operating profile after the close of the record, after the close of discovery, and after any opportunity for an evidentiary hearing. The Radback proposal was evaluated in the RFO with the wrong operating

⁸⁸ *Id.*

profile, emission calculations, and mitigation expense. The very issue that CARE raised in its protest on October 30, 2009 has now been fully exposed on April 1, 2010.

E. Was PG&E’s conduct of the 2008 LTRFO reasonable and consistent with Commission directives?

PG&E in evaluating the projects in the LTRFO considered the other project impacts on the projects that PG&E was trying to permit outside the LTRFO. More specifically when considering projects in the Tracy area PG&E factored in what impacts those projects would have on the permitting of the Tesla Project. The evidence of this is contained in Exhibit 37(c) (RFO 08 Final Environmental/ Permitting and Land Scores): For the Tracy Area several project evaluations were influenced by PG&E’s pursuit of the Tesla Project. For example:

[REDACTED]

[REDACTED]

⁸⁹

When considering projects in the Antioch area in the LTRFO PG&E factored into its deliberation the impact from choosing those projects would have on the permitting of the Gateway Project. Mirant proposed a 583 MW Combined Cycle Project at the Marsh Landing Site.⁹⁰ The project as proposed in the AFC would have had a nominal electrical output of 930 MWs generated from four power blocks: two Siemens Flex Plant 10 (FP10) combined-cycle units; and two Siemens 500F combustion turbine units operating in simple-cycle mode.

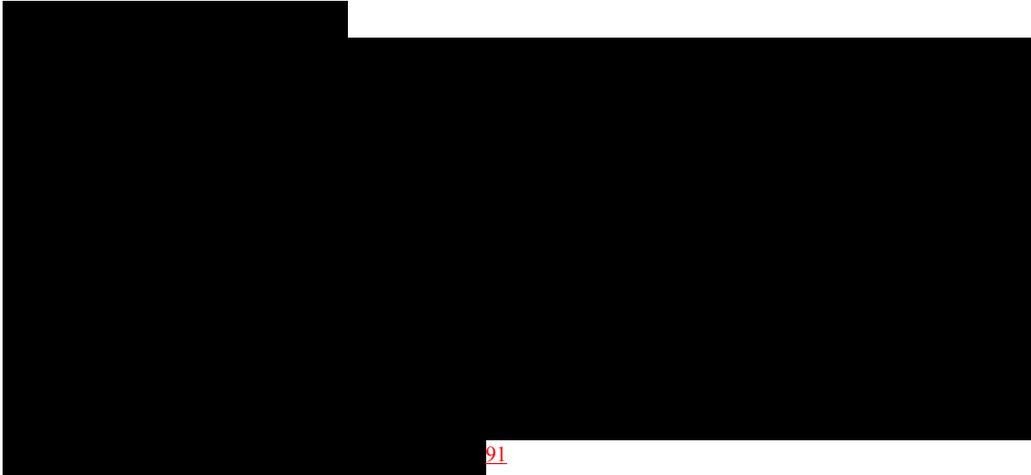
[REDACTED]

[REDACTED]

Mirant Marsh Landing Combined Cycle

⁸⁹ Exhibit 37 (c) LongTermRFO-Solicitation 2008-II_EXH_PGE_20100406-Exh037 –Conf line 66

⁹⁰ Exhibit 37 (c) LongTermRFO-Solicitation 2008-II_EXH_PGE_20100406-Exh037 Line 39



These permitting notes demonstrate that PG&E was evaluating offers in the LTRFO in relation to its other permitting activities being conducted outside the LTRFO. The original proposal for the Mirant Marsh Landing Project included two Siemens Flex Plant 10 (FP10) combined-cycle units. These units would in fact cause a significant impact to the PG&E Gateway Project permitting and also the proposed fast start 586 MW Contra Costa Generating station. In response to PG&E's selection approach Mirant abandoned the two combined cycle turbines and instead submitted an amendment at the CEC for the current 719 MW four combustion turbine configuration.⁹² The Commission should be extremely disturbed by PG&E's actions.

In the Mariposa Proceeding A. 09-04-001 CARE, CURE, DRA, TURN and PG&E executed a settlement agreement. In the settlement agreement PG&E agreed to submit one application for the 1,112 to 1,512 MW of procurement authority that was left after the approval of the Mariposa Project. The purpose was to allow the settling parties to review in one application the rest of PG&E's procurement authority in a holistic manner and determine which contracts were best for the ratepayer. The settlement agreement provided:

a. The parties agree that the total need to be procured from the 2008 Long-Term Request for Offers (LTRFO) will be limited to 1,512 MW under peak July conditions, inclusive of the 184 MW included in the Mariposa PPA.

⁹¹ Exhibit 37 (c) LongTermRFO-Solicitation 2008-II_EXH_PGE_20100406-Exh037 –Conf line 39

⁹² <http://www.energy.ca.gov/sitingcases/marshlanding/index.html>

PUBLIC VERSION

b. *The parties agree that the balance of PG&E's need authorization (1,328 MW) will be met, but not exceeded, by one application for approval of additional agreements resulting from PG&E's 2008 LTRFO.*⁹³

The Commission approved the settlement agreement in its Proposed Decision issued on September 29, 2009.⁹⁴ The next day PG&E submitted A. 09-09-021 for 1,305 MW of new generation. Before the ink was dry on that application PG&E applied for another 254 MW of new generation disguised as DWR novations in A. 09-10-022 and A. 09-10-034. PG&E alleged this new generation which consisted of the GWF and Los Esteros Upgrades was not subject to the settlement agreement or the procurement limits set by the Commission in D. 07-121-052. PG&E claims that the GWF Tracy Upgrade and the LECEF Upgrade are being undertaken as a novation pursuant to authorization conferred in the Direct Access Proceeding, R.07-05-025, not under the LTRFO. In the course of a couple of weeks PG&E not only submitted applications for more megawatts than the Commission had authorized but it submitted them in two applications in violation of the Settlement Agreement on which the Decision in A. 09-04-001 was based.

[REDACTED]

In doing so PG&E violated the settlement agreement on which A. 09-04-001 decision was based and also launched a collateral attack on the need authorization in D. 07-12-052. CARE is not the only party that believes PG&E's actions have been improper.

TURN has testified that, [REDACTED]

[REDACTED]

⁹³ <http://docs.cpuc.ca.gov/efile/PD/107704.pdf> page 4

⁹⁴ DECISION ADOPTING ALL-PARTY SETTLEMENT AGREEMENT REGARDING PACIFIC GAS AND ELECTRIC COMPANY'S REQUEST FOR POWER PURCHASE AGREEMENT WITH MARIPOSA ENERGY, LLC <http://docs.cpuc.ca.gov/efile/PD/107704.pdf>

⁹⁵ Exhibit 200 Direct Testimony of Kevin Woodruff on Behalf of The Utility Reform Network (Confidential Version) Application 09-09-021 February 22, 2010 Attachment 4

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

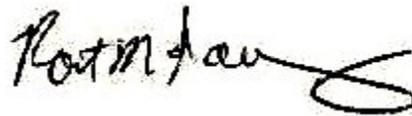
[REDACTED]

IV. CONCLUSIONS

There is overwhelming evidence in this proceeding that PG&E's need has fallen drastically since the issuance of D. 07-12-052. The Commission should only allow PG&E to procure 928 MW or less which is the lower end of the procurement authority previously authorized. The Commission should approve the Midway Sunset and GWF contracts since they are reasonable and in the best interests of the ratepayers. The other contracts do not warrant Commission approval without modification.

PG&E has not conducted itself appropriately in this LTRFO. PG&E has tainted the selection process by inserting considerations of projects it was pursuing outside the LTRFO into the offer evaluation process. PG&E has violated the settlement agreement that the Decision in A. 09-04-001 is based upon. PG&E has attempted to mislead the Commission and mount a collateral attack on the need determination the Commission made in D. 07-12-052. Going forward the Commission should remove PG&E from the selection process and allow the independent evaluator or some other independent party to select the winners in the LTRFO.

Respectfully submitted,



Robert M. Sarvey
501 W. Grantline Rd
Tracy, Ca. 95375
Phone: (209) 835-7162
E-mail: sarveybob@aol.com

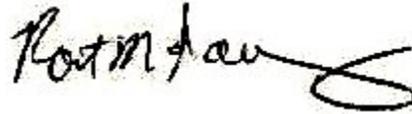
April 14th, 2010

⁹⁶ Direct Testimony of Kevin Woodruff on Behalf of The Utility Reform Network (Confidential Version) Application 09-09-021 February 22, 2010 Pages 23-26

PUBLIC VERSION

Verification

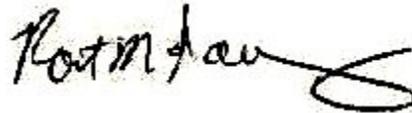
I am an officer of the Intervening Corporation herein, and am authorized to make this verification on its behalf. The statements in the foregoing document are true of my own knowledge, except matters, which are therein stated on information and belief, and as to those matters I believe them to be true. I declare under penalty of perjury that the foregoing is true and correct. Executed on this 14th day of April 2010, at Tracy, California.



Robert M. Sarvey - Treasurer (CARE)
CALifornians for Renewable Energy, Inc.
501 W. Grantline Rd
Tracy, Ca. 95375

Certificate of copy sent electronically

I hereby certify that I have this day served the foregoing document "*Opening Brief of CALifornians for Renewable Energy, Inc. (CARE)*" under CPUC Docket Application 09-09-021. Each person designated on the official service list, has been provided a copy via e-mail, to all persons on the attached service list on April 28, 2010, for the proceeding, Application 09-09-021. Transmitting the copies via e-mail to all parties who have provided an e-mail address. First class mail will be used if electronic service cannot be effectuated.



Robert M. Sarvey
501 W. Grantline Rd
Tracy, Ca. 95375
Phone: (209) 835-7162
E-mail: sarveybob@aol.com

PUBLIC VERSION

A0909021 Service List

JPacheco@sempra.com,
mdjoseph@adamsbroadwell.com,
nao@cpuc.ca.gov,
mflorio@turn.org,
dbehles@ggu.edu,
magq@pge.com,
bcragg@goodinmacbride.com,
crmd@pge.com,
l_brown369@yahoo.com,
slazerow@cbecal.org,
sarveybob@aol.com,
ed.mainland@sierraclub.org,
martinhomerc@gmail.com,
blaising@braunlegal.com,
anne.cleary@mirant.com,
liddell@energyattorney.com,
wkeilani@semprautilities.com,
eklebaner@adamsbroadwell.com,
filings@a-klaw.com,
Kcj5@pge.com,
nes@a-klaw.com,
will.mitchell@cpv.com,
sscb@pge.com,
darwin.farrar@cpuc.ca.gov,

taj8@pge.com,
william.kissinger@bingham.com,
todd.edmister@bingham.com,
jeffgray@dwt.com,
vidhyaprabhakaran@dwt.com,
cem@newsdata.com,
CPUCCases@pge.com,
RegRelCPUCCases@pge.com,
john.chillemi@mirant.com,
sean.beatty@mirant.com,
mrw@mrwassoc.com,
dmarcus2@sbcglobal.net,
michaelboyd@sbcglobal.net,
brbarkovich@earthlink.net,
wynne@braunlegal.com,
kdw@woodruff-expert-services.com,
steven@iepa.com,
abb@eslawfirm.com,
wmc@a-klaw.com,
edf@cpuc.ca.gov,
dbp@cpuc.ca.gov,
kkm@cpuc.ca.gov,
mwt@cpuc.ca.gov,
shi@cpuc.ca.gov,
ys2@cpuc.ca.gov,