BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

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Application of Pacific Gas and Electric Company (U39E) for Approval of 2008 Long-Term Request for Offer Results and for Adoption of Cost Recovery and Ratemaking Mechanisms (U39E)	A.09-09-021 (Filed September 30, 2009)

OPENING COMMENTS OF THE DIVISION OF RATEPAYER ADVOCATES ON THE PROPOSED DECISION ON PACIFIC GAS AND ELECTRIC COMPANY'S 2008 LONG-TERM REQUEST FOR OFFER RESULTS AND ADOPTING COST RECOVERY AND RATEMAKING MECHANISMS

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I. INTRODUCTION

Pursuant to Rule 14.3 of the Commission's Rules of Practices and Procedure, the Division of Ratepayer Advocates (DRA) submits the following Opening Comments to the Proposed Decision (PD) of Administrative Law Judge (ALJ) Darwin Farrar, granting in part and denying in part Pacific Gas and Electric Company's (PG&E) 2008 Long-Term Request for Offer Results and Adopting Cost Recovery and Ratemaking Mechanisms. Specifically, the PD approves the Marsh Landing, Contra Costa 6 & 7 Power Purchase Agreement (PPA), the Midway Sunset PPA, and the multi-party Settlement Agreement that provides for recovery of the costs associated with the approved contracts. The PD also denies the Contra Costa Generating Station LLC (Contra Costa LLC) Purchase and Sale Agreement (PSA). DRA supports the PD.

II. THE PD CLARIFIES THAT ALL LONG-TERM PROCUREMENT MUST BE BASED ON THE LONG TERM PROCUREMENT PLAN FINDINGS OF NEED

The PD includes an examination of the long-term procurement planning (LTPP) proceedings and decisions that form the context in which PG&E's need for new

generation will be determined. In this respect, it strengthens California's long-term planning for energy resources and clarifies the basis for all new generation procurement going forward. Along with ALJ Kenney's PD in A.09-10-034 and A.09-10-022,[1] this PD, if approved without modification, will ensure that investor owned utilities (IOUs) take the LTPP's need determinations more seriously as a planning mandate rather than an indeterminate policy suggestion that can be ignored at will.

If approved, the PD will also make the process of approving need more efficient. PG&E deliberately submitted six new generation resources from its 2009 LTRFO in three different applications in the hope that each proceeding would limit its consideration to the evidence on the record before it, without fully appreciating the individual applications in light of the bigger picture that includes these other proceedings. This PD, like the decisions in the Consolidated Proceedings before it, saw through this misleading approach and rejected it.

III. THE INVESTOR OWNED UTILITIES' AUTHORITY FOR PROCUREMENT OF NEW GENERATION IS BASED ON PUBLIC UTILITIES CODE SECTION 454.5

The PD clarifies that the only authority the IOUs have to solicit and procure new resources comes from the LTPP, as provided for in Public Utilities Code Section 454.5.

> As a general rule, to support decisional consistency and discourage the parsing of projects into different applications as a means to circumvent our rulings, to the extent that procurement is allowed outside of the proceeding to approve the agreements that are within the utilities previously authorized procurement authority, any approved MW should be counted against authorized procurement consistent with this general rule. Absent specific exemption, projects that allow utilities to procure new generation during the time-frame covered by their LTPPs should count toward the authorization granted in the LTPP where they are approved by this Commission.

(PD at pp. 14-15.)

[1] Hereinafter, jointly referred to as "the Consolidated Proceedings."

This clarification, that the utilities' only authority for adding new generation comes solely from the LTPP "absent specific exemption," is long overdue in light of PG&E's tactics seen here. The LTPP has reemphasized the statutory requirement that utility need for new generation resources must be established and supported in their long-term plans and in the LTPP.

The LTPP process has become more reliable as the process matures, and as parties gain more experience with the LTPP process as the PD notes, "according to the CAL-ISO 2009 Summer Assessment, PG&E currently enjoys a 30.6% planning reserve margin," during off peak hours (PD, p. 23, quoting Pacific Environment and CARE). Thus, whatever margin of error exists in the need determination made in the LTPP is more than adequately offset by the cushion in the planning reserve margin. There now exists more coordination of the CPUC need determination with the CEC's Integrated Energy Policy Report (IEPR) and its updates. Whereas in the past, the utilities may have rightfully asserted that the CEC did not adequately utilize the IOUs' data, that is no longer the case. The PD observes this fact as well:

> No party in this proceeding genuinely disputes that the CEC's 2009 IEPR forecast of the Peak demand for the PG&E service area in 2015 is less than in the 2007 CEC forecast relied upon in D.07-12-052
>
> PG&E's argument asks us to ignore actual error because of the possibility of further errors, which are as likely to offset the reduction in demand as they are to increase it . We are not persuaded by PG&E's argument.

(PD at p.26.)

In the Consolidated Proceedings, PG&E's sole justification for the Commission approval of the new generation upgrades was that D.08-11-056 authorized novation of the Department of Water Resources (DWR) contract. Yet, PG&E abandoned this justification when it became clear that the decision it referred to provided that any procurement of new generation along with novation is subject to the "just and

reasonable" review standards of Public Utilities Code section 454, and must be done in the context of the LTPP.[2] As the PD states:

> However, as TURN points out, in the consolidated proceedings (A.09-10-022 and A.09-10-034), PG&E argued and abandoned its suggestion that D.08-11-056, somehow provided an independent source of authority for long-term procurement separate and apart from the LTPP. Here PG&E offers no authority for its proposition that its removal of the GWF Tracy and Los Esteros Critical Energy facility upgrade projects from the LTRFO proceeding somehow grants PG&E authority to procure additional resources beyond, or as PG&E phrased it, "outside" those allotted PG&E in D.07-12-052. We therefore reject this argument.
>
> (PD, p.13 -14.)

It is unfortunate that regulatory resources have to be wasted to reach what is clear under the statute setting up the LTPP. However, the Commission now has the opportunity to make the LTPP what it was intended by the Legislature to be, the sole source for all long-term new generation procurement in the state, regardless of technology, such as solar, wind or the novation upgrades.

IV. THE PD CORRECTLY CONCLUDES THAT PG&E SHOULD ONLY BE ALLOWED TO PROCURE TO THE LOWER END OF THE APPROVED NEED RANGE FROM D.07-12-052

The PD correctly determines that PG&E procure resources at the lower end of the range established in D.07-12-052.[3] As a result, the Contra Costa LLC contract is denied. The evidence to support this conclusion is quite overwhelming. Specifically, the facts supporting that conclusion include:

- California and the United States as a whole experienced the worst economic downturn since the Great Depression, resulting in sharply reduced electric demands. (PD at p. 5)

[2] D.08-11-056, p. 51-53.

[3] PD at p.32.

- In the California Energy Commission's (CEC) "California Energy Demand 2010-2020 Adopted Forecast," PG&E's need in 2015 is now forecasted to be 597 MW less than anticipated by the Commission in D.07-12-052.[4]
- The CEC Revisiting Path 26 Power Flow Assumptions Report found that PG&E's need determination from D.07-12-052 over-estimated the amount of capacity flowing North to South on Path 26 during 2008 by at least 1,900 MWs.[5]
- The California Independent System Operator (CAISO) shows PG&E's service territory to have a 38.5% planning reserve for the summer of 2010.[6] This is over double the planning reserve margin of 15-17% adopted by the Commission in D.07-12-052.
- The CEC Summer 2010 Forecast projects a Reserve Margin of 30%-45% for PG&E's service territory.[7] This is consistent with the CAISO Summer 2010 Forecast findings.
- Track 1 of the new LTPP Rulemaking (R.10-05-006), will examine, among other things, PG&E's needs for new resources to meet system or local resource adequacy over the 2011-2020 planning horizon, including need for replacement generation infrastructure to eliminate reliance on power plants using once-through-cooling (OTC).[8]

Due to the preponderance of facts supporting procurement at the low end of PG&E's need, the denial of Contra Costa LLC is prudent at this time.

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[4] CEC California Energy Demand 2010-2020 Adopted Forecast (CED 2009 Adopted), December 2009, p. 55, Table 10, PG&E Planning Area Forecast, Peak MWs, (CED 2009 Adopted Forecast for 2015 is 25,163 MWs) – (CED 2007 Forecast for 2015 is 25,760 MWs) = -597 MWs.

[5] CEC Report, Revisiting Path 26 Power Flow Assumptions, October 2008, p. 3 In 2006 LTPP, PG&E assumed exports up to 3,000 MW. Actual exports were 100-1,100 MW. Overestimate of at least 1,900 MW.

[6] California ISO 2010 Summer Loads and Resources Operations Preparedness Assessment, May 10, 2010, Table 1, p. 4. Planning Reserve calculation shows NP-26 with a 38.5% Planning Reserve for Summer 2010.

[7] CEC Report, Summer 2010 Electricity Supply and Demand Outlook, CEC-200-2010-003-SD, May 2010; Table 4: NP 26 California ISO 2010 Summer Outlook (MW) shows the Reserve Margin to range from 30 to 45% in the months of June through September, 2010.

[8] Rulemaking 10-05-006 OIR to Integrate Procurement Policies and Consider LTPP, May 6, 2010, pp. 12-13.

V. CONDITIONING THE APPROVAL OF MARSH LANDING AND THE CONTRA COSTA 6 & 7 PPA ON OTC RETIREMENTS IS GOOD POLICY

The PD conditions the approval of the Marsh Landing Project and the Contra Costa 6 & 7 PPA on the retirement of the Contra Costa 6 & 7 (OTC units).[9] This is an excellent example of finding creative solutions to achieve state policy goals. In general, the Commission may find that owners of OTC facilities do not share the State's enthusiasm to retire or invest in compliant upgrades for statewide OTC facilities. As a result of conditionally approving Marsh Landing Project and the Contra Costa 6 & 7 PPA, the PD aligns private interests with the public interest goal of eliminating once through cooling. The Commission should look for more win-win opportunities like these in pursuing the state's OTC policy.

VI. CONCLUSION

For all the foregoing reasons, DRA requests that the Commission adopt its recommendations in support of the PD.

Respectfully submitted,

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[9] PD at p. 38. … Our approval of the Marsh Landing Project and the Contra Costa 6 & 7 PPA is conditioned on PG&E's and the Mirant Corporation's agreement to undertake all necessary and appropriate activities to obtain the necessary permits and approvals to retire Contra Costa 6 & 7 as scheduled, on April 30, 2013, or when the Marsh Landing Project becomes operational, whichever comes first.

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June 15, 2010

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of **OPENING COMMENTS OF THE DIVISION OF RATEPAYER ADVOCATES ON THE PROPOSED DECISION ON PACIFIC GAS AND ELECTRIC COMPANY'S 2008 LONG-TERM REQUEST FOR OFFER RESULTS AND ADOPTING COST RECOVERY AND RATEMAKING MECHANISMS** to the official service list in **A.09-09-021** by using the following service:

[X] **E-Mail Service:** sending the entire document as an attachment to all known parties of record who provided electronic mail addresses.

[ ] **U.S. Mail Service:** mailing by first-class mail with postage prepaid to all known parties of record who did not provide electronic mail addresses.

Executed on **June 15, 2010** at San Francisco, California.

/s/ CHARLENE D. LUNDY
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