Decision 12-12-035 December 20, 2012

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company (U39E) for Approval of Amended Purchase and Sale Agreement Between Pacific Gas And Electric Company and Contra Costa Generating Station LLC and for Adoption of Cost Recovery and Ratemaking Mechanisms.	Application 12-03-026 (Filed March 30, 2012)

(See Appendix A for List of Appearances)

ALTERNATE DECISION OF PRESIDENT PEEVEY APPROVING APPLICATION FOR AMENDED PURCHASE AND SALE AGREEMENT

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APPENDIX A – List of Appearances

ALTERNATE DECISION OF PRESIDENT PEEVEY APPROVING APPLICATION FOR AMENDED PURCHASE AND SALE AGREEMENT

1. Summary

This decision approves Pacific Gas and Electric Company's application for approval of its amended purchase and sale agreement with Contra Costa Generating Station LLC for the Oakley Generating Station. This proceeding is closed.

2. Project Description

The proposed Oakley Generating Station (Oakley) project is a 586 megawatt (MW) combined-cycle facility that would be located in Oakley, California. Pursuant to the amended purchase and sale agreement (PSA), Contra Costa Generating Station LLC (CCGS) would construct and sell the Oakley project to Pacific Gas and Electric Company (PG&E), with a commercial on-line date of June 2016. The transaction would result in an annual revenue requirement of approximately $200 million to allow PG&E to recover the non-fuel costs of constructing and operating the project.

3. Background

The Commission's biennial procurement review process, established pursuant to Assembly Bill 57 (Stats. 2002, ch. 835), Decision (D.) 04-01-050 and D.04-12-048, requires that investor-owned electric utilities submit long-term procurement plans that serve as the basis for utility procurement activities. Rulemaking (R.) 06-02-013 (the 2006 Long-Term Procurement Proceeding

(LTPP)) undertook the second biennial procurement review[1] for the utilities' long-term procurement plans for 2007 to 2016. D.07-12-052 (as modified by D.08-11-008) approved the 2006 LTPP and, among other things, directed PG&E to issue a request for offers (RFO) to obtain contracts for 800 to 1,200 MW of new operationally flexible and dispatchable capacity by 2015.

PG&E issued the 2008 RFO on April 1, 2008. By Application (A.) 09-09-021, PG&E sought Commission approval of the results of the 2008 RFO, including the Oakley project PSA.[2] By D.10-07-045, issued on July 29, 2010, the Commission approved some of the results of the 2008 RFO, but not the Oakley PSA. The Decision stated that PG&E may renew its request for approval of the Oakley PSA prior to its next RFO by showing that: 1) the power plant had all necessary permits for construction, and 2) "If the final results from the [California Independent System Operator] CAISO Renewable Integration Study demonstrates that, even with the projects approved by the Commission [in the 2006 LTPP], there are significant negative reliability risks from integrating a 33% Renewable Portfolio Standard."[3]

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[1] R.04-04-003 (the 2004 LTPP) undertook the first of the biennial procurement reviews and reviewed the utilities' long-term procurement plans for 2005 to 2014.

[2] The original Oakley project PSA had a commercial on-line date of June 2014.

[3] On August 23, 2010, PG&E petitioned to modify D.10-07-045 to approve the Oakley PSA on the basis that the amended PSA delayed the on-line date to June 2016. By D.10-12-050, the Commission granted that petition. On March 16, 2012, the Court of Appeals annulled D.10-12-050 for the Commission's failure to afford the parties the procedural rights to be apprised of the issues to be considered pursuant to Pub. Util. Code § 1701.1(b) and Rule 7.3, to conduct discovery, and to seek evidentiary hearing on the new issues presented by the petition. (TURN v. California Public Utilities Commission, Case No. A.132439, March 16, 2012 [unpublished].)

The 2006 LTPP concluded with the issuance of D.07-12-052. In the 2008 LTPP (R.08-02-007), the Commission determined that, rather than requiring the utilities to file new procurement plans, the proceeding should address a series of policy proposals to refine technical practices used to develop resource and procurement plans, and consider other procedural matters. Order Instituting Rulemaking 10-05-006 (the 2010 LTTP) closed R.08-02-007 and undertook the review of the utilities' long-term procurement plans for 2011 to 2020. That review concluded with the issuance of D.12-04-046, which approved a settlement characterized as:

> […] in essence, a punt. The settling parties have agreed to defer determination of the core issue in this proceeding: the utilities' future need for additional generation. To the extent there may be any such need, it appears to be primarily driven by the necessity to integrate higher levels of renewable generation onto the system, in anticipation of a 33% renewable portfolio standard (RPS) target. The settling parties state that: "There is general agreement that further analysis is needed before any renewable integration resource need determination is made."[4]

R.12-03-014 (the 2012 LTPP), undertaking the review of the utilities' long-term procurement plans for 2013 to 2022, is currently pending.

By this application, PG&E renews its request for approval of the amended Oakley PSA and for associated ratemaking and cost recovery. After the prehearing conference (PHC) on May 22, 2012, the assigned Commissioner issued a scoping memo and ruling on May 25, 2012, identifying the issues to be determined by the Commission in resolving the application and setting a schedule for addressing those issues. The issues are summarized as follows:

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[4] D.12-04-046 at 6.

1. Authority and Need:
   a. Does approval of the Oakley PSA require a certificate of public convenience and necessity (CPCN) pursuant to D.12-04-046 and/or Pub. Util. Code § 1001 et seq.?
   b. Is the Oakley PSA barred by D.12-04-046 for being utility-owned generation (UOG) procured outside of a competitive process and not needed to meet PG&E's authorized procurement due to a failed request for offers?[5]
   c. Is the Oakley PSA barred or authorized pursuant to D.07-12-052, which requires all UOG to be selected through a competitive process unless it is needed to meet a specific, unique reliability issue?[6]
   d. Is the Oakley project barred or authorized pursuant to D.10-07-045?
      i. Does the Oakley project have all necessary permits?
      ii. Has the CAISO issued its final report on its renewable resource integration study demonstrating significant negative reliability risks from integrating a 33% RPS?[7]
   e. Is there a need to procure new UOG outside of the Commission's on-going LTPP process and in exception

[5] PG&E stipulated that the project is not needed to meet its authorized procurement due to a failed request for offers. (May 22, 2012, PHC Transcript (Tr.) at 16.)

[6] PG&E stipulated that the other authorized purposes for procuring UOG outside of a competitive process pursuant to D.07-12-052 (to mitigate market power, because the project is a preferred resource, or because the project is a unique opportunity) do not apply. (PHC Tr. at 15.)

[7] PG&E stipulated that the other authorized conditions for renewing this application pursuant to D.10-07-045 (failure of approved projects, or early retirement of once-through cooling plants) do not apply. (PHC Reporter's Transcript at 12-13.)

to Commission policies and precedents regarding long-term procurement?

2. Contract reasonableness: Is the Oakley PSA reasonable?
3. Ratemaking and cost recovery treatment: What ratemaking and cost recovery treatment should apply to the Oakley project, considering but not limited to the ratemaking and cost recovery treatment that was adopted in A.09-09-021, updated to reflect the 2016 commercial operation date?

Evidentiary hearings were held on August 15 through August 17, and August 20, 2012. Parties filed opening briefs on September 17, 2012, and reply briefs on October 1, 2012, upon which the record was submitted.[8]

4. Application for Approval of the Oakley PSA does not Require a CPCN

Pub. Util. Code § 1001 prohibits a utility from beginning the construction of major utility plant "without first having obtained from the commission a certificate that the present or future public convenience and necessity require or will require such construction." CCGS, as the developer of the Oakley project, is the owner of the project until and unless it is transferred to PG&E pursuant to

[8] The September 18, 2012, informal ruling of the Administrative Law Judge (ALJ) granting PG&E's, the Division of Ratepayer Advocates' (DRA), Californians for Renewable Energy's (CARE), and the Coalition of California Utility Employees' (CCUE) and California Unions for Reliability Energy's (CURE) motions to file opening and closing briefs under seal is hereby affirmed. The September 27, 2012, informal ruling of the ALJ granting Communities for a Better Environment's (CBE) motion to introduce evidence into the record is hereby affirmed. The September 27, 2012, informal ruling of the ALJ granting CCGS' motion to withdraw its motion for party status is hereby affirmed. All other pending motions are deemed denied.

the PSA. Accordingly, pursuant to the plain language of § 1001,[9] PG&E does not require a CPCN for approval of the Oakley PSA.

Some of the parties argue that this strict interpretation of § 1001would create a loophole by which the Oakley project might be constructed without a Commission determination of need for the project. This argument overlooks the Commission's responsibility and authority to ensure that "[a]ll charges demanded or received by any public utility ... shall be just and reasonable" (§ 451) and the statutory constraint that "no public utility shall change any rate ... except upon a showing before the commission and a finding by the commission that the new rate is justified" (§ 454(a)). We enforce these requirements by approving rate recovery only for utility costs that are necessary and reasonable, regardless of whether they are incurred as a result of utility construction of major plant, or purchase of major plant, or purchase of power without the acquisition of major plant, or indeed any capital and operations and maintenance cost. For example, rate recovery of power purchase costs is contingent upon the Commission's "certification" that the purchases are needed and reasonable, typically (in the context of the LTPP procedures) upon review of a utility's request for approval of the results of an RFO. Rate recovery of forecasted capital and operations and maintenance costs is contingent upon the Commission's "certification" that they are needed and reasonable, typically in the utilities' general rate cases. Those determinations are not "CPCNs" pursuant to § 1001, although they effectively certify that the costs are publicly convenient and necessary.

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[9] All statutory references are to the Public Utilities Code.

Likewise here, in this application, we review the need for and reasonableness of the proposed Oakley PSA. CCGS does not require our determination of need and reasonableness in order to construct its project, and arguably PG&E does not require it, either, as a prerequisite to purchasing the project. PG&E does, however, require our determination of need and reasonableness in order to recover its costs of the project in rates. Although such determination is not a CPCN under these circumstances, the issue of need and reasonableness for PG&E to incur and recover the costs of the Oakley project is squarely before us.

5. PG&E has Satisfied all Commission Requirements Regarding Procurement of UOG

5.1. D.12-04-046 does not Apply to A.12-03-026

D.12-04-046 bars UOG unless it is needed to meet the utility's authorized procurement due to a failed RFO. Because D.12-04-046 was adopted after PG&E filed A.12-03-026, however, the provisions of D.12-04-046 do not apply to the proposed Oakley PSA. Commission decisions apply prospectively, unless the Commission clearly states its intention for retroactive application. D.12-04-046 does not contain any language stating that it applies retroactively. Moreover, for new generation projects that require considerable time and investment, it would set poor policy precedent to apply this requirement retroactively. Applying new rules adopted after an application has already been filed would create regulatory risk and uncertainty that could be hinder investment in new generation.

5.2. D.12-04-046 does not Bind the Commission

It is well-established that the Commission is not bound by its own precedent. (*In re Pacific Gas & Electric Co.* (1988) 30 CPUC2d 189, 223-225.)

D.12-04-046 does not bind the Commission from approving the amended Oakley PSA contrary to any established policy.

5.3. The Requirement in D.07-12-052 to Procure UOG through a Competitive Process has been Satisfied

D.07-12-052 requires all UOG to be selected through a competitive process unless, among other things not at issue here, it is needed to meet a specific, unique reliability issue. PG&E maintains that it has met that requirement because the Oakley project was originally selected as the winner of a competitive RFO.[10] Independent Energy Producers (IEP) alleges that PG&E has not met any of the exceptions to the rule in D.07-12-052 that UOG proposals must be subject to a competitive solicitation.[11]

Although the Oakley project was not approved by the Commission, D.10-07-045 established that PG&E could resubmit the Oakley project "prior to the next PG&E [long-term RFO]" if certain conditions are met. Because the Commission granted PG&E the authority to submit the Oakley project for approval ***prior to the next*** *RFO*, D.10-07-045 clearly finds that the requirement to procure new UOG through a competitive process has already been met, and PG&E need not hold another competitive RFO prior to resubmitting the Oakley project. Requiring PG&E to hold a competitive RFO as a condition of resubmitting the project would contravene the plain language of D.10-07-045, which allows PG&E to resubmit the project prior to the next RFO.

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[10] PG&E opening brief at 22.

[11] IEP opening brief at 11.

6. Resubmittal of the Oakley Project is Authorized by D.10-07-045

D.10-07-045 provided that PG&E may renew its request for approval of the Oakley PSA prior to the next PG&E [long-term] RFO, upon showing that it had all the necessary permits, and:

1) Another, approved project or projects fail, creating an open need such that the total capacity of all projects approved in this decision, other decisions approving capacity that the Commission determines should be counted towards PG&E authorized procurement, and the total net capacity difference do not sum to greater than the midpoint of the total range, currently 1128 MW;
2) If PG&E is able to retire once-through cooling (OTC) plant (other than Contra Costa 6 & 7) of comparable size, at least 3 years ahead of schedule; or
3) If the final results from the CAISO Renewable Integration Study demonstrates that, even with the projects approved by the Commission, there are significant negative reliability risks from integrating a 33% Renewable Portfolio Standard (RPS).

6.1. The Oakley Project has Received the Necessary Permits

The first condition for PG&E to resubmit the Oakley project is that the project has received the necessary permits as evidence that future delays or obstacles have been minimized. PG&E asserts that the Oakley project has all of the necessary permits.[12] PG&E states that two permits are necessary for construction of the Oakley project – a license from the California Energy Commission (CEC) and an authority to construct permit from the Bay Area Air

[12] PG&E Opening Brief at 36.

Quality Management District (BAAQMD). PG&E presents evidence that both of these permits have been obtained.

CBE and other parties argue that Oakley will need to obtain a "Prevention of Significant Deterioration" (PSD) permit because it did not begin construction by July 1, 2011, the deadline after which all new sources of greenhouse gas emission will have to obtain the PSD permit.[13] Although PG&E asserts that Oakley began construction prior to July 1, 2011, CBE alleges that Oakley did not begin construction before July 1, 2011. The record shows, however, that the plant is currently under construction, with construction commencing in June 2011.[14] Therefore, we find that the evidence on the record shows that Oakley will not need a PSD permit.

CARE and CBE also allege that an "incidental take" permit from the Fish and Wildlife Service is required under the Endangered Species Act (ESA) for the Lange's Metal Mark Butterfly in the Antioch Dunes National Wildlife Refuge. Because the project has not acquired that permit, CARE and CBE contend that project does not have the all necessary permits.[15] In its review of the Oakley Project, however, the CEC determined that the project is in compliance with the ESA and that it "will not result in a take or jeopardy of the species at the Antioch NWR."[16]

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[13] CBE opening brief at 2.

[14] Exhibit 1, at 21.

[15] CARE opening brief at 13.

[16] Energy Commission Final Decision on the Oakley Project, May 2011, Biological Resources at 22.

IEP and other parties further speculated that Oakley's air quality permits limit Oakley's operational flexibility such that the benefits of the project would be reduced. Because these arguments address the plant's ability to operate flexibly and not the requirement in D.10-07-045 that Oakley has the necessary permits to begin construction, we address those arguments in Section 7.4.

The Commission finds that the Oakley project has received the required permits to meet the first necessary condition under D.10-07-045.

6.2. The CAISO has Issued Final Study Results Demonstrating Significant Negative Reliability Risks

On January 25, 2012, CAISO filed a document at the Federal Energy Regulatory Commission (FERC) entitled *Petition for Waiver of Tariff Provisions and Request for Confidential Treatment* (hereafter referred to as "the Sutter waiver petition"). In that document, CAISO states "… the ISO's analysis of future needs identified an estimated 3,570 MW capacity gap by the end of 2017." Prior to making its filing at FERC, ISO shared its findings with stakeholders and requested comment on those findings.[17]

PG&E argues that the Sutter waiver petition satisfies the requirement in D.10-07-045 that the final results of a CAISO study demonstrate significant reliability risks from integrating a 33% RPS. On the question of whether the CAISO's study results in the Sutter waiver petition constitute final results, PG&E points to the testimony of Mark Rothleder on behalf of CAISO before the FERC supporting the Sutter waiver petition: "As I will explain, the ISO's analysis

[17] California ISO, Petition for Waiver of Tariff Provisions and Request for Confidential Treatment, January 25, 2012, at 12.

concludes that, under an analysis using the assumptions described above consistent with good utility practice, there will be a shortage or gap of 3,570 MW for meeting system-wide needs in California by the end of 2017."[18]

In its opening brief, DRA argues that the Sutter waiver petition and other CAISO findings introduced by PG&E are not final results that can be used to demonstrate significant negative reliability risks. First, DRA asserts that all of the CAISO study results introduced by PG&E are derived from CAISO studies considered in the 2010 LTPP. DRA argues that the need determination in the Sutter waiver petition is essentially the same as the CAISO's 2010 high load trajectory model with the output adjusted for an earlier year and slight modifications to the resources CAISO assumed would be available. DRA also argues that those results cannot be used to show significant negative reliability risk because a settlement signed by PG&E and CAISO and adopted in D.12-04-046 stated that CAISO's resource planning analyses "do not conclusively demonstrate whether or not there is a need to add capacity for renewable integration purposes through the year 2020."

PG&E argues that the analysis CAISO conducted for the Sutter waiver petition is significantly different than the analysis conducted for the 2010 LTPP study. PG&E points to Mr. Rothleder's declaration stating that the Sutter waiver petition is not based on the CAISO's 2010 LTPP study determining resource needs for 2020.

[18] Declaration of Mark A. Rothleder on behalf of the CAISO before FERC.

DRA may be correct that that Sutter waiver petition was based to some extend on work conducted for the 2010 LTPP proceeding, but since all studies are likely to be based to some extend on earlier findings, we do not find this fact relevant. Moreover, the fact that CAISO signed a settlement in 2011 describing its study results as inconclusive does not change or diminish the fact that in 2012 Mr. Rothleder submitted sworn testimony before FERC stating unequivocally that there "will be a shortage or gap of 3,570 MW for meeting system-wide needs in California by the end of 2017." It is not necessarily inconsistent or contradictory for an agency to release inconclusive results prior to releasing conclusive ones. Moreover, the fact that later results are similar to earlier results does not mean that the agency's confidence in the accuracy of those results has not increased.

We further find that, to the extent that the CAISO ever releases "final" study results, the Sutter waiver petition constitutes a final result as contemplated by D.10-07-045. Prior to filing the Sutter waiver petition at FERC on January 25, 2012, the CAISO released the same study results in draft form and requested comment from stakeholders on December 6, 2011.[19] Because CAISO subsequently presented these same findings in a filing to a federal agency, used definitive and unequivocal language in describing them, and affirmed them in sworn testimony under penalty of perjury, the Commission finds that these study results meet the condition of being "final" as contemplated by D.10-07-045.

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[19] CAISO Petition for Waiver of Tariff Provisions and Request for Confidential Treatment, January 25, 2012 at 12.

6.3. D.10-07-045 does not Require Commission Endorsement of the CAISO Study as a Condition for Approving Oakley

TURN asserts that the language of D.10-07-045 should be interpreted to mean that in order for PG&E to submit, and the Commission to approve Oakley, the CAISO must not only submit a final study demonstrating negative reliability risk, but the Commission must also ratify or affirm that study. If it does not, TURN argues that the Commission is improperly delegating its decision-making authority. In its reply brief, DRA agrees with TURN that approval of the Oakley plant on the basis of CAISO studies that have not been endorsed by the Commission would be an improper delegation of Commission authority.[20]

In D.10-07-045, the Commission created a separate set of conditions, distinct from the LTPP process, under which PG&E would be allowed to submit Oakley. The requirement of a final CAISO study was one of the preconditions for PG&E to meet before the Commission would reconsider the Oakley plant. The question of how much weight the Commission should afford the study results is now before the Commission. TURN's arguments imply that the Commission must either accept the study results showing a shortage or gap of 3,750 MW for meeting system-wide needs in California by the end of 2017 or deny the Oakley application. This is not the case. The Commission retains its authority to approve new generation capacity, and it exercises that authority in this Decision by considering the evidence on the record, including findings from several other state agencies.

[20] DRA Reply Brief, October 1, 2012, at 9.

As of the date of this decision, the Commission continues to review the CAISO's work in the 2012 LTPP (R.12-03-014), where the CAISO has offered testimony that "the ISO is continuing its study work [regarding the potential need for system capacity needed to integrate renewable resources] and believes the ultimate system decision can be taken up in 2013 after being informed by the Commission's decision on local capacity needs at the end of this year."[21] The Commission does not prejudge the final results of the 2012 LTPP by this decision. Rather, the Commission finds that PG&E has met the preconditions for resubmitting the Oakley Project. The Commission must now decide whether the record supports approving PG&E's application.

6.4. The 2015 Procurement Window Established in D.10-07-045 does not Apply to the Oakley Project

The scoping memo for this proceeding issued on May 25, 2012, and asked parties the following question: "Is the Oakley project barred or authorized pursuant to D.10-07-045?"

In its brief, DRA states that "Oakley cannot be authorized pursuant to D.10-07-045 because its commercial operations date is *after* the procurement timeframe considered in A.09-09-021." DRA argues that because the Amended PSA has a guaranteed commercial availability date of June 1, 2016, it is outside the scope of the issues considered in A.09-09-021. DRA also states that nothing in the issues considered in A.09-09-021 or the language of D.10-07-045 indicates that the Commission would approve Oakley to meet procurement needs for a period starting after the procurement horizon authorized in D.10-07-045 and

[21] Exhibit 30 at 2.

D.07-12-052.[22] DRA also asserts that changing the project online date to 2016 causes it to fall outside the issues of need that were encompassed within the scoping memo in A.09-09-021.[23]

In D.10-07-045, the Commission closed A.09-09-021 and simultaneously created new conditions under which need for the Oakley plant could be established. Nothing in D.10-07-045 indicates that the Commission intended the 2015 procurement window to apply to the condition under which the Commission permitted PG&E to resubmit the Oakley project: a final CAISO study demonstrating reliability risk. DRA's arguments also ignore the facts that this is a new proceeding, triggered by a new application; and the scoping memo specifically contemplates procurement outside of the LTPP process. For these reasons, we reject DRA's argument that the Commission cannot consider the Oakley project at this time because the project's operational date is outside the scope of A.09-09-021.

7. Need for the Oakley Project

7.1. Evidence on the Record Shows a Negative Reliability Risk by 2020

PG&E argues that the CAISO has identified a need for flexible resources that will help integrate the 33% RPS requirement and phase out older plants using once-through cooling. In particular, PG&E cites the Sutter waiver petition and statements by CAISO Chief Executive Officer, Steve Berberich as indicating that "under the most likely scenarios" California will be several thousand megawatts short of flexible capacity within the next five years.

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[22] DRA opening brief at 9.

[23] DRA opening brief at 11.

On August 14, 2012, DRA filed a motion to strike portions of PG&E's prepared and rebuttal testimony on the grounds that the identified portions are hearsay statements by representatives of the CAISO. In particular, DRA moved to strike references to the Sutter waiver request and the testimony of Mr. Rothleder before FERC and other statements from CAISO regarding the need for new resources to support system-wide operational flexibility needs beginning in 2017-2018.[24]

At the hearing on August 15, 2012, the ALJ in this proceeding granted DRA's motion in part, stating:

> I will not allow these, this evidence, however, to be used for the purpose of proving on this record the truth of the matter asserted; that is, for proving that there is a system reliability need or -- of -- for the purpose of proving that what this ISO says is true, or that the Commission should find on the basis of what the ISO says that the ISO, what the ISO says is true. The ISO's statements are not binding on the Commission, and in that way they are not judicially noticeable authority. And they are subject to dispute. They are being challenged before the PUC.

As DRA points out in its protest, hearsay evidence is admissible in Commission proceedings, although it is generally given less weight by the Commission than other evidence,[25] and the ALJ has allowed those studies into the record for limited purposes. Accordingly, we afford the CAISO studies and statements introduced by PG&E less weight than we would for a CAISO study

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[24] Motion of the Division of Ratepayer Advocates to Strike Portions of the Testimony of Pacific Gas and Electric, August 14, 2012.

[25] *Motion of the Division of Ratepayer Advocates to Strike Portions of the Prepared and Rebuttal Testimony of Pacific Gas and Electric Company*, August 14, 2012, at 10.

that was subject to cross examination in a Commission proceeding. We do not accept as true the CAISO's assertion that there is a shortfall of 3,750 MW by 2018, and we do not authorize PG&E or other utilities to procure generation sufficient to meet that need at this time.

But we also recognize that the CAISO was established by the Legislature with a mandate to ensure reliability, and that it is a primary source relied upon by the Commission to establish future system needs. Thus, even though we give the CAISO findings reduced weight in this proceeding – and we do not accept as true the CAISO's conclusion that there is a need for 3,750 MW in 2018 – we still find that it is persuasive evidence that the retirement of OTC plants and integration of the 33% RPS by 2020 creates the potential for a significant reliability risk.

7.2. Oakley is a Hedge against Risks Caused by Regulatory Lag

Following the Commission's approval of the IOU's long-term procurement plans in D.07-12-052, the Commission opened the 2008 long-term procurement proceeding, R.08-02-007, for the years 2008-2018. That proceeding did not approve any new long-term procurement plans for the IOUs, but instead focused on procurement policy development and integration of renewables into the IOUs' resource portfolios. The Assigned Commissioner's Ruling and Scoping Memo, dated August 28, 2008 for R.08-02-007 stated: "to the extent the LTPP lens is focused on the seven year and greater timeframe for new plants to be built, this proceeding in some cases must infer policy objectives that have not

been articulated to a level of detail required for making procurement decisions."[26]

In its opening brief, PG&E argues that an RFO is infeasible to meet a need that could arise by 2018. PG&E points to testimony from IEP in the 2012 LTPP proceeding in which IEP witness, Monsen testified that "the lead time for constructing new resources can be 6-8 years or more. PG&E also asserts that a conservative estimate for developing and conducting an RFO is 16 months.[27] PG&E further points out that delays in interconnection to the CAISO grid and local opposition can delay a project. PG&E cites Calpine's Russell City Project as an example of a project that has taken 12 years from the start of development to the online date. PG&E also notes that Oakley is not subject to the Prevention of Significant Deterioration permit, which applies to project that began construction after July 1, 2011. Projects approved as part of the 2012 LTPP would likely be subject to that permit.[28]

IEP counters that although RFOs can take as long as PG&E asserts, there is no reason they must take that long, and it points to SCE's 2006 peaker solicitation as an example where an RFO was completed relatively quickly. IEP also states that PG&E ignores the fact that the seven to nine year development time asserted by IEP includes the time required for pre-development. Finally, IEP states that some projects will come online faster than the average.[29]

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[26] R.08-02-007 at 5.

[27] PG&E opening brief at 24.

[28] PG&E opening brief at 25.

[29] IEP opening brief at 13-14.

We note that there are many factors that affect the length of time to develop a project, including time to obtain permits, time to negotiate an interconnection agreement with CAISO and any potential local opposition. Assuming the current LTPP cycle results in a determination of need by early 2014, and that it takes 16 months to conduct an RFO[30] and another seven years to complete siting, financing and construction of new generation,[31] it is unlikely that new generation could be brought online through the current LTPP before 2020.

On the other hand, the Oakley project is fully permitted and began construction in June 2011.[32] Therefore, we find it much more likely that Oakley will be available to mitigate any reliability risk that could occur by 2020 than projects PG&E might select as part of a solicitation resulting from the 2012 LTPP proceeding.

TURN argues that the Commission could delay consideration of Oakley and still provide enough time to bring the project online by 2018.[33] But doing so would undoubtedly increase the risk that the project could lose viability and fail altogether. PG&E asserts that CCGS could not meet its commercial availability date if the amended PSA were approved as part of a procurement authorization established under Track 2 the current LTPP proceeding (R.12-03-014).[34] PG&E further alleges in its opening brief that financial exposure due to regulatory

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[30] PG&E opening brief at 24.

[31] R.08-02-007 at 5 and PG&E opening brief at 24.

[32] Exhibit 1 at 21.

[33] TURN opening brief at 26-27.

[34] Exhibit 2 at 38.

uncertainty of delaying project approval could jeopardize project finance and permitting.

DRA disputes PG&E's claims, asserting that they are based on hearsay evidence and should be given no weight.[35] DRA points to schedules and provisions in the PSA contract as evidence that a delay in project approval would not necessarily result in project termination or affect the ability of the developer to complete the project by the Guaranteed Commercial Availability date of June 2016.

Although the evidence PG&E presented on the impact of delaying approval constitutes hearsay, we find it logical to conclude that delaying the project increases the risk that the project will fail.

The question before the Commission is whether it is better to approve the Oakley plant now to hedge against a reliability risk that may occur before 2020 or to wait for the current LTPP planning process to conclude before authorizing PG&E to solicit bids for new generation. If the Commission waits, it will be more certain of the magnitude of the risk and the future date that generation will be needed to preserve system reliability. But if the Commission waits, it may ultimately determine that there is a reliability risk that will occur before 2020 and that there is not sufficient time to construct generation to meet the projected shortfall. In our judgment, system reliability risks posed by regulatory lag outweigh the cost of near term excess capacity that could be caused by Oakley.

[35] DRA Reply brief at 12.

7.3. Oakley is a Least-cost, Best-fit Option

In order to ensure that any generation developed by California IOUs would be the least cost and best fit compared with other options available, D.07-12-052 required all OUG to be selected through a competitive process. As discussed in the Section 5.3, PG&E has satisfied that requirement, and requiring a second competitive RFO prior to re-submitting Oakley would be counter to the plain language of D.10-07-045.

Western Power Trading Forum (WPTF) argues that the Commission "can have no confidence that the Oakley Project is the best, much less the only viable means for meeting reliability requirements associated with renewable integration when PG&E has not solicited any proposals for independently-owned generation to meet that need." WPTF also asserts that the Commission has no assurance that Oakley is competitively priced when the bids it is being compared against are over four years old.[36]

We find that WPTF's assertion ignores the Commission's actions in D.10-07-045, which directed PG&E to resubmit the Oakley project *prior to* the next competitive solicitation if certain conditions are met. It would be contradictory for the Commission to invite PG&E to submit an application for a project prior to the next competitive solicitation and then deny that application because it was not submitted as part of a competitive solicitation.

[36] WPTF opening brief at 2-3.

7.4. Oakley is a Modern, Efficient Plant that will Reduce Pollution and Help Integrate Renewable Resources

PG&E testifies that that Oakley is a modern, highly efficient generating plant with an expected heat rate of 6,752 British thermal units per kilowatt-hour (Btu/kWh), which is guaranteed in the PSA with CCGS. PG&E asserts that this would be the lowest heat rate in its portfolio.[37] The lower heat rate means the plant will use less fuel and produce fewer emissions of CO_2 and other pollutants than plants with a higher heat rate.

CARE argues that the type of technology employed in the Oakley project has not been used before, and thus the expected heat rate is speculative. CARE further asserts that because the PSA allows the average heat rate to be 105% of the guaranteed heat rate, the actual heat rate could be as high as 7,119 Btu/kWh. IEP concurs with CARE Oakley's actual heat rate will be higher than 6,752 Btu/kWh. CARE also alleges that PG&E changed the Oakley project heat rate in a data response such that the Oakley heat rate is actually 7,010 Btu/kWh.[38] CCUE counters that the contract term CARE refers to is not an indication of actual operating characteristics and that CARE confuses "baseload heat rate" with "average heat rate" in its assertion that the heat rate is actually 7,010.[39]

We agree with PG&E and CCUE that it is reasonable to accept 6,752 Btu/kWh as the expected heat rate for Oakley. The CCGS has contractually committed to ensuring the plant operates within 5% of the guaranteed heat rate

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[37] Exhibit 1 at 5-19.

[38] CARE opening brief at 20-21.

[39] CCUE reply brief at 28.

only gives us more confidence that this number will be born out. We further agree with PG&E that this heat rate would reduce greenhouse gas emissions and other pollutants compared with other grid resources Oakley would displace.

In addition to the low heat rate, PG&E asserts that the Oakley project will provide significant operating flexibility, which will allow it to operate under a wide range of operating scenarios and help California integrate intermittent renewable generation. In particular, PG&E testifies that the Oakley plant can provide quick start capability, non-spinning reserves, spinning reserves over a large range, regulation up or down, and short minimum run times.[40] PG&E claims those attributes are exactly the kind needed to integrate renewable resources.[41]

IEP and Fairfield Energy Center LLC and Madera Energy Center LLC (jointly, Fairfield/Madera) argue that air quality permits for Oakley severely limit the ability of the plant to operate flexibly and reduce its ability to integrate intermittent renewable resources through the entire year.[42] PG&E counters that IEP's conclusion is based on assumptions about the number of starts/stops and operating hours rather than limits on those activities in the permits. PG&E points out that increased emissions caused by starting and stopping more than expected would be offset by lower emissions when the plant is not operating at base load.[43] We find PG&E's explanation reasonable and agree that Oakley can operate flexibly to integrate renewables. This conclusion is supported by the

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[40] Exhibit 1 at 2-8 to 2-10.

[41] PG&E opening brief at 69.

[42] IEP opening brief at 31-37; Fairfield and Madera opening brief at 7-8.

[43] PG&E reply brief at 87-88.

BAAQMD, which issued the Authority to Construct permit IEP claims will limit Oakley's ability to operate flexibly. In its Final Determination of Compliance, issued February 11, 2011, BAAQMD noted that Oakley would help integrate intermittent renewable generation while reducing emissions compared with existing generation. BAAQMD wrote:

> The shorter startup periods of the proposed plant mean that it can come on-line and provide electricity to the grid more quickly, and also translate to reduced startup emissions; while the combined-cycle configuration retains high thermal efficiency. This fast startup capability coupled with high efficiency will give the plant a high degree of operational flexibility, which will allow it to rapidly respond to grid fluctuations that will result as more intermittent renewable resources are integrated into the grid while providing highly efficient generating capacity."[44]

Thus, we conclude that the Oakley project is an efficient, modern plant with a low heat rate compared with other conventional sources and operational characteristics that will allow it to operate flexibly and integrate renewable resources onto the grid. This view is shared by other state agencies, including BAAQMD, as referenced above, and the CEC, which noted: "The [Oakley Project] will be consistent with the state's GHG policies and will help achieve the state's GHG goals by (1) causing a decrease in overall electricity system GHG emissions; and (2) fostering the addition of renewable generation into the system, which will further reduce system GHG emissions."

The Commission must consider the implications of continuing to rely on resources with high heat rates to provide California with an ability to meet peak

[44] PG&E Exhibit 1 at 3-7.

demand and to integrate renewable energy. Approving the Oakley Project will provide California with much more efficient way to meet peak demand and integrate renewable generation than much of the current generation fleet. Furthermore, the Oakley project provides load following, a highly desirable integration attribute uncommon to peaking facilities.

While arguments for and against the Oakley Project have focused on capacity need issues, there are other features of this project that make it a uniquely valuable addition to PG&E's resource mix. As noted by Commissioner Bohn,[45] the Oakley plant "has many beneficial features, including a very high efficiency and low air emission rates, and utilizes the most up to date technology from General Electric." These are exactly the type of attributes the state of California will need to help with renewable integration.

7.5. Oakley would Use Less Water than other Conventional Resources

Finally, it is worth noting that in addition to reducing air pollution compared with grid resources Oakley could replace, Oakley would also use much less water than other grid resources. In its opening testimony, PG&E provided evidence that, as a dry-cooled plant, Oakley will use 90% less water than wet-cooled plants of similar size that were constructed in the past 12 years.[46] No party to the proceeding challenges this assertion and thus we agree with PG&E that Oakley would use less water than other conventional resources.

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[45] *See* Concurrence of Commissioner John A. Bohn, filed as part of D.10-07-045.

[46] Exhibit 1 at 2-15.

7.6. Oakley will likely have a Beneficial Impact on Electricity Market Prices

CCUE argues that because of Oakley's low heat rate, the plant is likely to have the effect of lowering the CAISO single-auction market price. CCUE asserts that when Oakley operates, it will displace another generator with a higher CAISO bid price. By reducing the market clearing price, according to CCUE, Oakley could save customers more than it costs them in operating costs.[47] We find the arguments of CCUE reasonable and agree that adding more efficient generation to the grid will ultimately lower costs to consumers.

7.7. Oakley will Facilitate the Phase-out of OTC Facilities

The state Water Resources Control board has adopted regulations that require the retirement or repowering of 8,099 MW of power plants using OTC by 2018, and the retirement or repowering of 12,079 MW of such plants by the end of 2020.[48] Most of the OTC plants operating in CAISO territory are older plants with relatively high heat rates compared with Oakley. Because Oakley has a lower heat rate than plants using OTC, Oakley will be dispatched before those plants and consequently displace them. Thus, we find that Oakley will help California achieve its environmental policy goal of phasing out plants that use OTC technology.[49]

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[47] Exhibit 3 at 10.

[48] Exhibit 1 at 5-13.

[49] Exhibit 5, Attachment G, at 2.

8. Unique Circumstances Warrant Consideration of the Oakley Project Outside of the Current LTPP Proceeding

Consideration of the Oakley project presents a unique circumstance for the Commission. The project was initially submitted as part of the 2006 LTPP proceeding in accordance with Commission policies and procedures that existed at the time. Although D.10-07-045 denied the project, that decision invited PG&E to resubmit the project for approval if certain conditions were met. As discussed in Section 7.5 above, the plain language of D.10-07-045 makes clear that the Commission was not requiring PG&E to submit Oakley as part of a subsequent LTPP proceeding. Moreover, the Commission approved Oakley in D.10-12-050, which was subsequently annulled by the Appeals Court. As a result, the Oakley project has reached the point where it is ready to begin major construction.[50]

Several parties to this proceeding, including DRA, TURN, and CBE have advocated that PG&E should be required resubmit the Oakley project as part of the ongoing 2012 LTPP proceeding. As discussed above, the plain language of D.10-07-045 shows the Commission clearly did not intend for PG&E to resubmit Oakley pursuant to a subsequent LTPP decision. If it had, the Commission simply would've directed PG&E to submit Oakley as part of a subsequent LTPP proceeding and would not have created a separate set of conditions under which PG&E could resubmit Oakley *prior to* the next long-term RFO, which presumably would occur pursuant to that subsequent LTPP.

D.10-07-045 acknowledges that maintaining a reliable energy grid while implementing California's ambitious environmental goals is a difficult challenge.

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[50] PG&E Post-hearing brief, at 48.

The decision also acknowledges the challenge of completing generation projects in California's current regulatory environment. Thus, the decision created a unique exception to LTPP precedent by allowing the Oakley project to be resubmitted upon meeting certain conditions. The Commission determined that if PG&E could demonstrate that the project was ready to be constructed and a CAISO study showed a reliability risk from the implementation of the 33% RPS, then the Commission would reconsider the project. It is unlikely that a future generation project will have obtained its final construction permits before being considered for approval by the Commission. As the Commission continues to refine its understanding of the integration needs of an increasingly complex electrical grid, it is unlikely that it will consider generation projects for approval outside the LTPP. But due to the readiness of this project, the risk that it will fail if not approved by this decision, and the uncertainty of whether other generation projects could be online prior to 2020 to address a possible reliability risk, it is appropriate for the Commission to consider approving Oakley at this time.

9. PG&E's Ratemaking Proposal

When the Commission initially considered the Oakley project in A.09-09-021, PG&E entered into a partial settlement agreement with TURN, DRA, and other parties addressing ratemaking and cost recovery. PG&E has proposed a ratemaking mechanism in this proceeding that identical to the one that resulted from the settlement in A.09-09-021.

9.1. PG&E's Capital Cost Adjustment Proposal is Reasonable

DRA recommends that the Commission discard PG&E's proposed cost sharing bands on the grounds that the bands incentivize PG&E to exceed initial cost estimates.[51] DRA argues that even though PG&E shareholders would be penalized in the $20-$40 million and $40-$60 million bands, shareholders would also profit from additions to rate base. TURN supports DRA's proposal and offers calculations showing that shareholders would be better off in either cost sharing band than they would if they came in at or under the cost estimate. DRA and TURN advocate eliminating PG&E's proposed cost-sharing bands and instead require PG&E to submit an application or Tier 3 Advice Letter for any cost increase beyond the proposed estimated cost.

We find the DRA/TURN recommendation on the capital cost sharing mechanism unreasonable and unsupported in the record. DRA offers no financial analysis to conclude that the increased profit to shareholders from additional rate base within the cost-sharing bands would exceed the cost to shareholders. While TURN does offer such analysis,[52] TURN's analysis is fundamentally flawed because it incorrectly allocates the entirety of PG&E's 8.79% authorized rate of return to shareholders when in reality a substantial portion of a utility's authorized rate of return accrues to debt holders.

We find PG&E's proposal for recovery of capital costs to be reasonable and consistent with Commission precedent, whereby cost overruns have been subject to cost sharing bands up to a certain point, beyond which they are subject to

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[51] DRA opening brief at 32.

[52] TURN opening brief at 42.

reasonableness review. Moreover, we find that it is reasonable to allow PG&E to recover the first $20 million in cost overruns with no penalty given the fact that PG&E reduced its initial capital cost estimate by $24.5 million to reflect the elimination of the $24.1 million owner's contingency.[53]

9.2. PG&E must File an Application to Increase Initial Capital Costs for Delays in Closing and Operational Enhancements

PG&E proposes that it be allowed to change the initial capital cost estimate through an advice letter process for delays in closing, operational enhancements, and changes beyond PG&E's control such as new permit and regulatory requirements. DRA opposes this proposal and instead advocates that PG&E should be required to file an application to increase the initial capital, with the exception of costs that are beyond PG&E's control, such as new permit, regulatory requirements and greenhouse gas emissions.[54] PG&E notes that DRA's proposal to use an application to increase initial capital costs for delays in closing and operational enhancements is consistent with the Commission's decision regarding the Colusa project,[55] PG&E argues that the Colusa project included an owner's contingency and the Oakley proposal does not. PG&E also argues that the advice letter process should be used to avoid further delay.

We find PG&E's argument unconvincing and adopt DRA's proposal to require PG&E to file an application to increase the initial capital cost estimate due to delays in closing or operational enhancements. As PG&E notes, use of an

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[53] PG&E opening brief at 92.

[54] DRA opening brief at 34.

[55] D.06-11-048.

application for this purpose is consistent with Commission precedent in the decision approving the Colusa project. Although PG&E argues that the capital cost for Colusa included an owners' contingency and the Oakley proposal does not, we note that the Colusa decision did not allow PG&E to exceed the initial capital cost without being subject to reasonableness review, while PG&E's Oakley proposal does. In fact, PG&E uses the lack of owners' contingency in the Oakley application to argue for the inclusion of cost-sharing bands. PG&E cannot use the lack of owner's contingency to just both the existence of cost-sharing bands and the ability to increase the initial capital cost via advice letter.

Accordingly, we require PG&E to file an application if it wishes to increase the initial capital cost due to delays in closing or operational enhancements. PG&E may file an advice letter to increase initial capital costs due to factors beyond PG&E's control, such as new permit and regulatory requirements.

9.3. PG&E's O&M Proposal is Reasonable

PG&E proposes an initial operations and maintenance (O&M) proposal that can be adjusted for escalation in labor rates changes and in the material index for the long-term service agreement (LTSA). In addition, PG&E could adjust the initial O&M expenses once to reflect the terms and conditions once the LTSA is finalized. PG&E also proposes that it be able to request an adjustment to its O&M estimate through an advice letter process for changes to the O&M estimate related to staffing changes to address permitting requirements, changes to the Oakley Project operating profile, and changes in the commercial operations date.

DRA opposes PG&E's O&M proposal, recommending instead that O&M expenses be fixed for the first ten years of Oakley's operations. DRA further

recommends that if the O&M costs are not fixed, PG&E should be required to file an application or a Tier 3 Advice Letter if PG&E seeks to increase costs during the first eight years of operations.

We find that PG&E's O&M proposal is reasonable. As PG&E points out in its opening brief, the use of an advice letter for changes to the O&M estimate for staffing changes, permitting requirements and changes to commercial operation date are consistent with Commission precedent.[56] In addition, we agree that it is reasonable to allow PG&E to adjust its O&M estimate for changes to commercial operation date given the lack of a contingency for unplanned outages or curtailment-related repair costs in the original estimate.

9.4. The Shared Value Agreement is Reasonable

The amended Oakley PSA includes a Shared Value Agreement (SVA) that includes a number of provisions that would take effect in the event that the transfer of ownership from CCGS to PG&E is delayed but the facility is ready for commercial operation. During the first 120-day period under which the SVA is in effect, PG&E will purchase fuel for the Oakley project and schedule Oakley into the CAISO markets. During that time, net energy revenues will be split between PG&E and CCGS, with total revenue to CCGS limited to $7.5 million per 30-day period up to 120 days. During the term of the SVA, CCGS will be responsible for repair costs of any equipment that breaks or malfunctions.

DRA argues that the SVA is not reasonable and should be rejected. DRA contends that the SVA could result in PG&E ratepayers paying the same price for a plant that is 1.5 years old as they would pay for a brand new plant. DRA

[56] D.06-11-048 at 30-31.

further argues that PG&E's ratepayers might not fully benefit from RA value provided under the SVA because PG&E might not be able to submit the Oakley facility in its year-ahead RA showing if the SVA is in effect. DRA concludes that executing the SVA would be like having PG&E's ratepayers buy a used car for the price of a new one. DRA recommends either the SVA should be removed from the PSA or PG&E should reduce the initial capital cost to reflect depreciation during the time Oakley has operated under the SVA.

We agree with PG&E that the SVA is reasonable and beneficial to ratepayers. Because PG&E's ratepayers would benefit from the revenues produced by Oakley for the term of the SVA, while CCGS would be responsible for repair costs, comparing the SVA to the purchase of a used car at the price of a new car is not an apt analogy. A more accurate analogy would be a car buyer who is able to lease a car at no cost for the first year and a half, at which point the buyer would pay for the car at the new car price. Under that scenario, the purchaser is made better off because she can still use the car for the first 18 months as if she had bought it in the first month, but she gains the time value of money on the 18 months for which the purchase was delayed.

Moreover, there is no evidence that the SVA would reduce PG&E's ability to use the Oakley plant for RA credit compared to a situation where the SVA does not exist. If the SVA does not exist, PG&E still might not be able to submit Oakley in its year-ahead RA showing due to uncertainty about the closing date. Any circumstance that could cause PG&E to doubt its ability to take ownership of the plant will exist whether the SVA is in place or not. Thus, we approve the shared-value agreement.

10. Comments on Alternate Proposed Decision

The alternate proposed decision of the Commissioner in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on December 10, 2012 by CBE, CARE, CCUE, CURE, DRA, Fairfield/Madera, IEP, PG&E and WPTF, and reply comments were filed on December 17 by CBE, CARE, CCUE, CURE, DRA, IEP, PG&E, and WPTF. Most of the comments reassert arguments that have been adequately addressed by the proposed decision, and so we make no substantive revisions to the proposed decision.

11. Assignment of Proceeding

President Michael R. Peevey is the assigned Commissioner and Hallie Yacknin is the assigned ALJ and presiding officer in this proceeding.

Findings of Fact

1. The original Oakley PSA, with a June 2015 on-line date, was solicited in the 2008 RFO pursuant to D.07-12-052 (the decision on the 2006 LTPP) for purposes of procuring new capacity by 2015.
2. The amended Oakley PSA has a June 2016 on-line date.
3. D.10-07-045 denied PG&E's request for approval of the Oakley project.
4. D.10-07-045 provided that PG&E may renew its request for approval of the Oakley PSA, "prior to the next PG&E [long-term Request for Offers]," upon showing that it had all necessary permits, and the CAISO's issuance of final results of its renewable resource integration study demonstrating significant negative reliability risks from integrating a 33% RPS.

5. The Oakley facility has all of the necessary permits to begin construction.

6. PG&E has not held a long-term request for offers since the Commission approved D.10-07-045.

7. D.12-04-046 approved a settlement signed on August 3, 2011 in which the settling parties, including PG&E and the CAISO, stipulated that further analysis is needed before any renewable integration resource need determination is made.

8. On January 25, 2012, CAISO released as part of the Sutter waiver petition final study results asserting that there is a shortage of 3,750 MW for meeting system-wide needs in California by the end of 2017.

9. The Sutter waiver petition constitutes final study results as contemplated by D.10-07-045.

10. PG&E has met the requirements for resubmittal of the Oakley project in D.10-07-045 by showing that: the project has all necessary construction permits and the CAISO issued final results from its renewable integration study demonstrating significant negative reliability risks from integrating a 33% RPS.

11. In issuing D.10-07-045, the Commission did not intend for PG&E to submit Oakley as part of a subsequent LTPP proceeding.

12. The Commission does not accept as true the CAISO's conclusion that there is a need for 3,750 MW in 2018, but it nevertheless finds that it is persuasive evidence that the integration of the 33% RPS and phase-out of once-through cooled plants creates the potential for a significant reliability risk before 2020.

13. Both the Energy Commission and the BAAQMD have found that the operational flexibility of the Oakley plant can help facilitate the integration of renewable energy resources into the electric grid.

14. The Oakley project is at risk of failure if not approved at this time.

15. The Oakley project would be operating before 2020 and would mitigate the risk of insufficient generation to integrate the 33% RPS and phase out once-through cooled plants.

16. It is more likely that Oakley will be online by 2020 than other similar projects PG&E might pursue as part of the current LTPP proceeding that have not yet received permits begun construction.

17. It is unclear whether there is enough time for new generation projects to be constructed through the current LTPP process to be operational by 2020.

18. System reliability risks posed by regulatory lag outweigh the cost of new-term excess capacity that could be caused by Oakley.

19. The Oakley project has satisfied the requirement in D.07-12-052 that all utility-owned generation be procured through a competitive solicitation.

20. It would be contradictory with the plain language of D.10-07-045 to require PG&E to submit Oakley as part of a new competitive solicitation.

21. The prohibition on utility-owned generation in D.12-04-046 does not apply to the Oakley project because that decision was approved by the Commission after PG&E filed A.12-03-026.

22. Unique circumstances warrant consideration of the Oakley project outside of the Commission's current long-term procurement proceeding.

23. The Oakley project would provide benefits to California that include renewable integration and reduced emissions and water use compared with other plants in PG&E's fleet.

24. The Oakley project is highly viable, with construction of the plant already underway.

25. All aspects of PG&E's ratemaking proposal are reasonable, with the exception that PG&E must file an application to increase initial capital costs for delays in closing and operational enhancements.

Conclusions of Law

1. The amended Oakley PSA is not subject to Pub. Util. Code § 1001.

2. Approval of the amended Oakley PSA and rate recovery of its costs is subject to a Commission determination that the amended Oakley PSA is just and reasonable pursuant to Pub. Util. Code §§ 451 and 454(a).

3. The Commission's general long-term procurement planning policy barring UOG unless it is needed to meet the utility's authorized procurement due to a failed request for offers, adopted in D.12-04-046, does not apply to the Oakley project because that decision was approved after A.12-03-026 was filed.

4. The Oakley project has met the requirement in D.07-12-052 that all UOG be procured through a competitive solicitation.

5. It would be inconsistent with D.10-07-045 to require PG&E to hold a second competitive RFO before resubmitting the Oakley project.

6. D.12-04-046 (2010 LTPP decision) does not supersede the specific authority conferred in D.10-07-045, which issued in PG&E's application for approval of the results of its 2008 RFO (A.09-09-021), to renew its application for the Oakley PSA under certain circumstances.

7. D.10-07-045's authority to bring a renewed application for approval of the Oakley PSA extended only until PG&E's subsequent RFO.

8. PG&E has not held an RFO since D.10-07-045 was approved.

9. The Commission has not made a determination of need in an LTPP since D.07-12-052.

10. PG&E has met the requirement in D.10-07-045 that the results of a final CAISO study demonstrate a negative reliability risk.

11. In issuing D.10-07-045, the Commission did not intend for PG&E to resubmit the Oakley project as part of a subsequent LTPP proceeding.

12. The application for approval of the amended Oakley PSA should be approved.

13. PG&E must file an application to increase initial capital costs for delays in closing and operational enhancements.

14. All other aspects of PG&E's ratemaking proposal are approved.

15. The ALJ's September 18, 2012, informal ruling granting motions to file opening and closing briefs under seal should be affirmed.

16. The ALJ's September 27, 2012, informal ruling granting CBE's motion to receive evidence should be affirmed.

17. The ALJ's September 27, 2012, informal ruling granting CCGS' motion to withdraw its motion for party status should be affirmed.

18. All other pending motions should be deemed denied.

19. The proceeding should be closed.

20. This order should be effective immediately.

O R D E R

IT IS ORDERED that:

1. The March 20, 2012, application of Pacific Gas and Electric Company (PG&E) (U39E) for Approval of Amended Purchase and Sale Agreement Between Pacific Gas And Electric Company and Contra Costa Generating Station LLC and for Adoption of Cost Recovery and Ratemaking Mechanisms is

approved, with the exception that PG&E must file an application to increase the initial capital cost estimate for delays in closing or operational enhancements.

2. The Administrative Law Judge's September 18, 2012, informal ruling granting motions to file opening and closing briefs under seal is affirmed.

3. The Administrative Law Judge's September 27, 2012, informal ruling granting Communities for a Better Environment's motion to receive evidence is affirmed.

4. The Administrative Law Judge's September 27, 2012, informal ruling granting Contra Costa Generating Station, LLC's motion to withdraw its motion for party status is affirmed.

5. All other pending motions are deemed denied.

6. The proceeding is closed.

This order is effective immediately.

Dated December 20, 2012, at San Francisco, California.

MICHAEL R. PEEVEY
President
TIMOTHY ALAN SIMON
MARK J. FERRON
Commissioners

I abstain.

/s/ MICHEL PETER FLORIO
Commissioner

I dissent.

/s/ CATHERINE J.K. SANDOVAL
Commissioner

APPENDIX A

********** SERVICE LIST **********
Last Updated on 19-NOV-2012 by: AMT
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