

**BEFORE THE  
PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**



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Application of Pacific Gas and Electric Company (U 39-E) 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)

**PACIFIC GAS AND ELECTRIC COMPANY'S (U 39-E)  
OPENING BRIEF**

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**I. INTRODUCTION**

The Commission has repeatedly encouraged competitive procurement to encourage the construction of new, cost-effective generation resources and increase service reliability for utility customers. PG&E's 2008 Long-Term Request for Offers ("LTRFO") meets these important policy objectives. PG&E's 2008 LTRFO was exhaustive, robust, and fair. The 2008 LTRFO solicitation produced more than 48 offers with 74 variations from 21 different participants totaling 13,000 megawatts ("MW"). After receiving these offers, PG&E conducted a rigorous evaluation process, closely overseen by an Independent Evaluator ("IE") to ensure that the evaluation process was fairly designed and administered. Moreover, the Commission's Energy Division and PG&E's Procurement Review Group ("PRG") were actively involved in the development of the 2008 LTRFO development, review of offers, and selection of winning bidders.

Ultimately, the 2008 LTRFO resulted in three winning offers for new generation resources, and two additional agreements associated with existing facilities. One of the three winning offers, the 184 MW Mariposa Project, was approved by the Commission in D.09-10-017. PG&E seeks approval of the two other winning offers for new generation

resources, the Marsh Landing Generating Station (“Marsh Landing Project”) and Oakley Generating Station (“Oakley Project”)<sup>1</sup> in this proceeding. Both of these facilities would be efficient and operationally flexible gas-fired resources that will allow for the retirement of aging, inefficient units in PG&E’s service area and facilitate the integration of thousands of MW of new intermittent renewable resources scheduled to come on-line in California in the next three to five years. Not only do the Marsh Landing and Oakley Projects provide operational benefits, they are also economic and cost-effective. Both projects were selected because they, along with Mariposa, were the best offers submitted in the 2008 LTRFO. PG&E’s customers will benefit from these new generation resources for the further reason that they provide much-needed Bay Area Resource Adequacy (“RA”) capacity at reasonable and competitive prices.

The Marsh Landing Project is a 719 MW combustion turbine facility that will be subject to a 10-year Power Purchase Agreement (“PPA”) under which PG&E will provide the fuel for the facility, and be able to dispatch the facility as needed, subject to certain contractual constraints. After the 10-year PPA has expired, Mirant, the project developer, will be able to offer the Marsh Landing Project as a resource in California’s competitive wholesale energy markets. The Oakley Project is a 586 MW combined cycle facility that will be developed under a Purchase and Sale Agreement (“PSA”) and, when completed, will be transferred to PG&E to own as a utility asset. The Oakley Project will incorporate General Electric’s (“GE”) latest state-of-the-art turbine technology and will have one of the lowest heat rates of any conventional generation resource currently operating in California. It will set a new standard for efficient generating resources in California, especially in light of California’s new and stringent greenhouse gas (“GHG”) emissions standards.

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<sup>1</sup> The Oakley Project was previously referred to as the Contra Costa Generating Station. In this brief, PG&E will refer to it as the Oakley Project.

In addition to the Marsh Landing and Oakley Projects, PG&E is also seeking approval of a short-term tolling agreement for Mirant's existing Contra Costa Units 6&7 ("CC 6&7") and a 7-year PPA for the Midway Sunset Cogeneration facility, an existing, efficient combined heat and power qualifying facility ("QF") located in Kern County. The CC 6&7 PPA will result in the continued operation of two Contra Costa units until the Marsh Landing Project is completed. At that time, and subject to necessary regulatory and governmental approvals, the CC 6&7 units, which are more than 45 years old and use once-through cooling ("OTC") technology, will be permanently retired. The Midway Sunset PPA will allow an existing QF to continue to operate under the terms of an updated contractual arrangement with terms that incent the owner to operate it more efficiently and to reduce GHG emissions.

The ratemaking and cost recovery proposed in this proceeding are the subject of a Partial Settlement Agreement that is sponsored by a number of parties, including ratepayer representatives The Utility Reform Network ("TURN") and the Division of Ratepayer Advocates ("DRA"). The Partial Settlement Agreement allows the recovery of the costs of the Marsh Landing, CC 6&7 and Midway Sunset PPAs through approved Commission cost recovery mechanisms. For the Oakley Project, the Partial Settlement Agreement reduces the initial capital cost by \$24.5 million and fixes operations and maintenance ("O&M") rates up to January 1, 2022, subject to limited potential adjustments. The Partial Settlement Agreement also resolves stranded cost recovery issues consistent with recently-enacted California law.

Many aspects of PG&E's Application are undisputed by any party. The primary concerns raised by parties opposing PG&E's Application are that the new generation resources are not needed or are environmentally detrimental. These concerns are unfounded. First, with regard to the need for new resources, the Commission has already determined in the 2006 Long-Term Procurement Plan ("LTPP") proceeding that there is a need for 800 MW to 1,200 MW of

operationally flexible new generation resources. The Marsh Landing and Oakley Projects fill this need. Parties opposing this Application argue that circumstances have changed since the Commission made its need determination, and urge the Commission to reduce its need assessment and approve fewer projects. However, these parties cherry-pick information to justify “changed circumstances.” As PG&E demonstrated in its reply testimony, updated CEC load forecast demonstrates that there is a continuing need for these new resources, and they are made even more necessary by the increasing number of renewable energy projects being proposed for California.

Second, parties opposing the Application argue that the Marsh Landing and Oakley Projects are environmentally detrimental. While environmental issues are more appropriately addressed at the California Energy Commission (“CEC”), even a cursory review of PG&E’s Application demonstrates that there are environmental benefits to PG&E’s Application. The Marsh Landing and Oakley Projects are new, efficient generation resources that will allow older units to retire and will allow the addition of new units with quick dispatch capabilities to fill in behind the growing amount of intermittent renewable resources in PG&E’s electric portfolio.

Based on the substantial record before it, the Commission should approve all of these winning 2008 LTRFO offers, as well as the Partial Settlement Agreement that resolves ratemaking and cost recovery issues.

## **II. FACTUAL AND PROCEDURAL BACKGROUND**

### **A. The Commission’s LTPP Decision and PG&E’s 2008 LTRFO.**

In Decision (“D.”) 07-12-052 (the “LTPP Decision”), the Commission determined that PG&E’s service area had a need for 800 to 1,200 MW of new generation resources by 2015.<sup>2</sup> These new generation resources would complement PG&E’s aggressive energy efficiency,

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<sup>2</sup> LTPP Decision, at p. 105.

demand response and renewable energy resources that had already been included in PG&E's 2006 LTPP.<sup>3</sup> The Commission also recognized that, to the extent any previously authorized resource is determined to be unavailable and the corresponding contract terminated, "the procurement authority for those megawatts remains."<sup>4</sup> Because two PPAs representing 312 MW approved in PG&E's 2004 LTRFO had terminated, PG&E's procurement authority under the LTPP Decision was 1,112 MW to 1,512 MW of new long-term generation resources (referred to as the "LTRFO Need Amount").<sup>5</sup> The LTPP Decision also specified the types of resources that PG&E should procure. In particular, the Commission determined:

To support the types of needs we anticipate in a GHG-constrained portfolio and to replace 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 intermittent types of renewable resources. Preference should be given to procurement that will encourage the retirement of aging plants, particularly inefficient facilities with once-through cooling, by providing, at minimum, qualitative preference to bids involving repowering of these units or bids for new facilities at locations or near the load pockets in which units are located.<sup>6</sup>

Consistent with the Commission's direction in the LTPP Decision, PG&E designed its 2008 LTRFO to solicit offers from new dispatchable and operationally flexible resources that would be available no later than May 2015.<sup>7</sup> Before the 2008 LTRFO was issued, PG&E met extensively with its PRG, Cost Allocation Mechanism ("CAM") Group<sup>8</sup> and the Commission's

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<sup>3</sup> *Id.*, at p. 116, Table PGE-1 (reflecting the inclusion of energy efficiency, demand response and renewable resources).

<sup>4</sup> *Id.*, at p. 106.

<sup>5</sup> Exhibit ("Ex.") 1, at p. 1-1 (describing authorized need amount).

<sup>6</sup> LTPP Decision, at p. 106 (emphasis in original).

<sup>7</sup> Ex. 1, at pp. 2-1, 2-3 – 2-5.

<sup>8</sup> The CAM Group was created to include representatives of direct access and Community Choice Aggregation ("CCA") customers if PG&E elected to use the CAM methodology approved by the Commission in D.06-07-029 and D.07-09-044 to allocate above-market costs associated with any winning PPA in the 2008 LTRFO.

Energy Division to review the 2008 LTRFO strategy, protocol and documents.<sup>2</sup> PG&E shared draft and final versions of all 2008 LTRFO documents with the members of the PRG, CAM Group and Energy Division and solicited feedback from these groups throughout the development process. The IE actively participated in the development of the 2008 LTRFO strategy, protocol and documents.<sup>10</sup>

On April 1, 2008, PG&E issued the 2008 LTRFO solicitation documents and widely-publicized the LTRFO both in press releases and e-mails to approximately 1,100 entities or individuals.<sup>11</sup> PG&E subsequently conducted a participants' conference on April 21, 2008, and a workshop on the LTRFO forms and documentation on June 19, 2008. PG&E also set up a mailbox for participants to submit questions and posted all questions and answers on its external 2008 All-Source Request for Offers website.<sup>12</sup>

In response to the 2008 LTRFO, PG&E received 48 offers with 74 variations from 21 different participants proposing approximately 13,000 MW.<sup>13</sup> Some of the offers received did not conform to the 2008 LTRFO protocols. Participants submitting these offers were given an opportunity to revise their non-conforming offer.<sup>14</sup> Offers were initially evaluated using eight different criteria with varying weights applied to each criteria. For each of the eight criteria, there was an evaluation team that was responsible for carefully reviewing and scoring each offer based on a pre-determined scoring protocol. The evaluation methodology was reviewed with the IE and the PRG before offers were received. In its initial prepared testimony, PG&E provided a

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<sup>2</sup> Ex. 1, at pp. 2-6; 5-1 – 5-5 (describing in detail involvement of PRG and CAM Group).

<sup>10</sup> Ex. 1, at pp. 2-6; 5-5 – 5-6 (describing in detail the role of the IE).

<sup>11</sup> *Id.*, at p. 2-7.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*, at pp. 3-1; 4-3.

<sup>14</sup> *Id.*, at p. 3-2.

detailed description of each of the eight evaluation criteria and the scoring approach for each criterion.<sup>15</sup> PG&E also included specific evaluation criteria to ensure that PPAs and PSA offers were compared as equally as possible.<sup>16</sup>

PG&E developed an initial ranking of offers and then reviewed this initial ranking with the IE, PRG and CAM Group in order to develop a shortlist of projects.<sup>17</sup> PG&E notified the shortlisted participants and proceeded to meet with each of them to review offers and receive any updates since the offers were submitted. The shortlisted projects were then placed into high, middle and low tiers for negotiations and PG&E subsequently initiated intensive negotiations with the high tier offers.<sup>18</sup> After extensive negotiations monitored by the IE, and numerous meetings with the PRG, CAM Group and IE to review the status of negotiations, PG&E selected four winning offers: (1) the Mariposa Project; (2) the Marsh Landing Project and the associated tolling agreement for CC 6&7; (3) the Oakley Project; and (4) the Midway Sunset Project. Each of these winning offers is described in more detail below.

## **B. Description Of Winning 2008 LTRFO Offers**

### **1. The Mariposa PPA**

The PPA between PG&E and Mariposa Energy, LLC (“Mariposa”) was the first agreement to be submitted for approval from the 2008 LTRFO as Application (“A.”) 09-04-001. On September 3, 2009, PG&E, DRA, TURN, Californians for Renewable Energy (“CARE”), Coalition of California Utility Employees (“CCUE”) and California Unions for Reliable Energy (“CURE”) filed a motion for approval of an all-party Settlement Agreement for the Mariposa

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<sup>15</sup> *Id.*, at pp. 3-2 – 3-8.

<sup>16</sup> *Id.* at p. 4-11.

<sup>17</sup> *Id.*, at p. 3-9.

<sup>18</sup> *Id.*, at p. 3-10.

Project with the Commission. On October 15, 2009, the all-party Settlement Agreement was approved by the Commission in D.09-10-017.

## **2. Marsh Landing PPA and CC 6 & 7 PPA**

The proposed Marsh Landing Project will be located north of Antioch, California on a brownfield site next to Mirant's existing Contra Costa power plant. The project will consist of four combustion turbines with a combined output of 719 MW under July peak conditions and is expected to be on-line by May 1, 2013. The Marsh Landing PPA has a 10-year term and is a fuel conversion agreement, meaning that PG&E pays for the natural gas used by the facility and arranges to have it delivered. Mirant, the developer of the Marsh Landing Project, is an experienced developer and has already initiated interconnection studies with the California Independent System Operator ("CAISO") for this project.<sup>19</sup>

The Marsh Landing PPA has a number of important benefits for PG&E's customers. First, the Marsh Landing Project will be a new peaking facility that will respond to PG&E's peak load requirements and allow for the integration of intermittent renewable resources.<sup>20</sup> Second, the Marsh Landing Project will provide much needed Bay Area RA capacity and provide a reliable new generation resource. Third, the Marsh Landing Project has one of the best market valuations of all of the offers received in PG&E's 2008 LTRFO, which ensures that PG&E customers receive energy and capacity from a new resource at just and reasonable prices based on a robust solicitation.<sup>21</sup> Finally, the Marsh Landing Project is operationally flexible and

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<sup>19</sup> See Ex. 1, pp. 3-11 – 3-16 (for a detailed description of the Marsh Landing Project and key contract terms); p. 4-6 (regarding compliance with Commission GHG emissions requirements); p. 4-8 (regarding transmission impacts); and pp. 6-1 – 6-2 (for a description of project milestones and contingencies).

<sup>20</sup> Ex. 5, at pp. 15-23.

<sup>21</sup> Ex. 1, p. 3-13 (describing pricing terms); Ex. 1, Appendix 5.1, Appendix B at pp. 22-23 (IE economic evaluation of Marsh Landing PPA); Ex. 5, at p. 32 (showing PG&E market valuation of Marsh Landing Project). See also Ex. 300, at p. 2 (testimony of CUE/CURE witness David Marcus that the Marsh Landing and Oakley Projects "were economically superior to all of the other projects short-listed during the RFO.").

capable of providing CAISO ancillary services.<sup>22</sup> These ancillary services are increasingly important as more intermittent resources come on-line in the CAISO control area.

In addition to the Marsh Landing Project, PG&E is also proposing to execute a short-term PPA with Mirant for the existing CC 6&7 units. The CC 6&7 PPA is a tolling agreement for the output from Units 6 and 7 beginning November 1, 2011 through April 30, 2013, when the Marsh Landing Project would come on-line. Assuming all necessary regulatory and governmental approvals are received, CC 6&7 would then be retired in April 2013.<sup>23</sup>

Like the Marsh Landing PPA, the CC 6&7 PPA has a number of customer benefits. First, the CC 6&7 PPA ensures that, subject to CAISO and governmental approvals, two aging and inefficient facilities that utilize OTC technology are permanently shut down. The CC 6&7 units were constructed 45 years ago and without the CC 6&7 PPA, it is uncertain when these facilities would retire.<sup>24</sup> Second, until adequate capacity from new resources comes on-line in PG&E's service area, the CC 6&7 units provide important and valuable attributes, such as Bay Area RA capacity, at a reasonable price.<sup>25</sup> Third, retirement of older, inefficient units such as the CC 6&7 units is consistent with California policy aims, including the reduction of OTC and GHG.<sup>26</sup> Finally, retirement of CC 6&7 will reduce transmission costs for both the Marsh Landing and Oakley Projects as retiring these existing units will free-up transmission capacity.<sup>27</sup>

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<sup>22</sup> Ex. 5, at pp. 17-19.

<sup>23</sup> Ex. 1, at pp. 3-17 – 3-19 (summarizing the terms of the CC 6 and 7 PPA).

<sup>24</sup> Ex. 1, at p. 6; Ex. 5, at pp. 26-27.

<sup>25</sup> *Id.*, at p. 26.

<sup>26</sup> LTPP Decision at p. 89 (describing state policy supporting retirement of existing, inefficient units).

<sup>27</sup> Ex. 1, at pp. 4-9 – 4-10; Ex. 300, at p. 13.

### 3. Oakley PSA

The proposed Oakley Project will be located in Oakley, California and will consist of two GE 7FA.05 gas turbines, two heat recovery steam generators, and one steam turbine producing 586 MW under July peak conditions. The facility will have a guaranteed heat rate of 6,752 Btu/kWh, among the lowest in PG&E's portfolio of conventional resources.<sup>28</sup> The Oakley Project is being developed by Radback Energy, which currently employs a number of individuals with a wealth of successful generation development and permitting experience, including the permitting and development of over 7,000 MW of resources in California.<sup>29</sup> The Oakley Project will be located adjacent to an industrial site currently owned by DuPont and is near necessary gas and electric interconnections.<sup>30</sup> The Oakley Project has a guaranteed commercial availability date of June 2014.

The proposed Oakley Project will provide a number of key benefits for PG&E customers. First, the Oakley Project will be designed to utilize an upgrade series of 7FA GE turbines, which will result in the facility having one of the lowest heat rates and the most flexible operating capabilities for a combined cycle facility in California.<sup>31</sup> Second, because of the new technology being utilized in the Oakley Project, it will set new standards for power plants including reduced CO<sub>2</sub> emissions due to the low heat rate.<sup>32</sup> Third, the Oakley Project will provide Bay Area RA capacity and provide a reliable new generation resource. Fourth, the Oakley Project has one of the best market valuations of all of the offers received in PG&E's 2008 LTRFO, which is even further enhanced by the Partial Settlement Agreement which lowers the initial capital costs and

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<sup>28</sup> Ex. 1, at p. 3-20.

<sup>29</sup> Ex. 1, at p. 3-21.

<sup>30</sup> *Id.*

<sup>31</sup> Ex. 300, at p. 16.

<sup>32</sup> Ex. 300, at p. 16.

fixes for a period of time the O&M costs.<sup>33</sup> Finally, like the Marsh Landing Project, the Oakley Project is operationally flexible and capable of providing a number of CAISO ancillary services.<sup>34</sup> This is exactly the type of resource that the Commission directed PG&E to procure in the LTPP Decision and is the type of resource that is essential for integrating the increasing number of renewable projects being developed in California.<sup>35</sup>

#### **4. Midway Sunset PPA**

The Midway Sunset Project is an existing natural gas-fired cogeneration facility located in Kern County, California. Steam from the facility is used in oil field operations located near the plant. The facility is comprised of three units and currently sells part of its output to PG&E and part to Southern California Edison (“SCE”).<sup>36</sup> Under the Midway Sunset PPA, PG&E will purchase 129 MW produced from two units of the facility for the first five years of the agreement, and 61 MW from one unit through the remainder of the term. The term expires September 30, 2016.<sup>37</sup> Under the PPA, Midway Sunset has guaranteed a heat rate to ensure low GHG emissions.<sup>38</sup> Since the Midway Sunset Project is already on-line, no additional transmission upgrades are necessary.

The Midway Sunset PPA has several important benefits. First, it furthers the Commission’s policy of encouraging QFs to participate in utility solicitations and is consistent

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<sup>33</sup> Ex. 1, Chapter 7 (describing Oakley Project capital costs); Chapter 8 (describing Oakley Project O&M costs) and Appendix 5.1, Appendix B at p. 24 (IE analysis of economic value); Ex. 5, at p. 32 (showing PG&E market valuation of Oakley Project). *See also* Ex. 300, at p. 2 (testimony of CCUE/CURE witness David Marcus that the Marsh Landing and Oakley Projects “were economically superior to all of the other projects short-listed during the RFO.”).

<sup>34</sup> Ex. 5, at pp. 17-19.

<sup>35</sup> LTPP Decision, at p. 106; Ex. 5, at p. 21.

<sup>36</sup> Ex. 1, at p. 3-25.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*, at p. 3-28.

with Commission directives to retain existing QF capacity.<sup>39</sup> Second, the PPA provides incentives for Midway Sunset to operate efficiently to minimize GHG emissions.<sup>40</sup> Third, the PPA includes modern contract terms that are a significant improvement over the existing QF form contract, which dates back to the 1980s.<sup>41</sup> Finally, as the IE concluded, the Midway Sunset PPA is more cost-effective than the standard QF contract that is currently pending Commission approval and has more favorable terms and conditions.<sup>42</sup>

### **C. The Independent Evaluator’s Report**

One of the key aspects of the 2008 LTRFO process was the active involvement of the IE. As described above, the IE was involved at each phase of the 2008 LTRFO, from the development of the 2008 LTRFO documents and evaluation methodology, to shortlisting, to the monitoring of negotiations with shortlisted participants and the selection of winning offers. The IE reviewed all of the offers received and “performed an independent evaluation of both types [of offers, *i.e.*, PPA and PSA], and ensured that there was no bias (for or against) the utility ownership/PSA offer type.”<sup>43</sup> The IE also “conducted parallel economic evaluations that were consistently applied across all offers”<sup>44</sup> and performed an “independent assessment and scoring of the qualitative aspect of each offer.”<sup>45</sup> In its detailed report, the IE concluded:

- PG&E’s evaluation design was rigorous and fair and was “designed to facilitate a broad comparison of resources that could

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<sup>39</sup> *Id.*, at p. 7.

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*, at p. 4.

<sup>42</sup> Ex. 1, Appendix 5.1, Appendix B at p. 25.

<sup>43</sup> Ex. 1, Appendix 5.1, at p. 10.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*, at pp. 10-12.

include new conventional generation, renewable resources, repowered generation, and Qualifying Facilities.”<sup>46</sup>

- “PG&E did a good job of publicizing the 2008 LTRFO solicitation and the solicitation was adequately robust, as ultimately evidenced by the substantial response that it received from the bidding community.”<sup>47</sup>
- “PG&E administered its shortlisting and post-shortlisting evaluation and selection process fairly.”<sup>48</sup>
- “PG&E’s evaluation process complied with appropriate [Least-Cost Best-Fit] criteria and was fairly designed and administered such that all counterparties and product types were treated consistently and fairly and had equal opportunity to make it onto PG&E’s shortlist.”<sup>49</sup>
- “PG&E’s solicitation process was quite similar to what [the IE] has seen in other utility solicitations across the country.”<sup>50</sup>
- “PG&E has provided consistent information and applied consistent ‘pressure’ on all shortlisted bidders to conform as closely as possible to PG&E’s pro forma contract positions. [The IE] believes that PG&E conducted negotiations in a fair and appropriate manner.”<sup>51</sup>
- “PG&E has done an adequate job of complying with the Code of Conduct safeguards and maintaining an appropriate balance in its evaluation and negotiation of PPA and PSA contracts. The IOU has been fair in its approach and has not shown favor to either deal structure.”<sup>52</sup>
- “[T]he Mirant Marsh Landing and Midway Sunset PPAs and the Contra Costa Generating Station PSA all merit CPUC approval because the contracts’ economics and their general terms and conditions compare quite favorably to other alternative

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<sup>46</sup> *Id.*, at p. 5, 13.

<sup>47</sup> *Id.*, at p. 18.

<sup>48</sup> *Id.*, at p. 13.

<sup>49</sup> *Id.*, at p. 17.

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*, at p. 20.

<sup>52</sup> *Id.*, at p. 22.

transactions that PG&E shortlisted and substantially negotiated in its LTRFO solicitation.”<sup>53</sup>

The IE described each of the winning bids and provided a detailed discussion as to the benefits of each project.<sup>54</sup>

#### **D. Procedural Background**

On April 1, 2009, PG&E filed A.09-04-001 requesting approval of a PPA with Mariposa Energy, LLC (“Mariposa”). The Mariposa PPA was the first agreement to be submitted for approval from the 2008 LTRFO. On September 3, 2009, PG&E, DRA, TURN, CARE, CUE and CURE filed a motion for approval of an all-party Settlement Agreement with the Commission. In the Settlement Agreement, the parties agreed that the unmet LTRFO Need Amount, after deducting the MWs anticipated from the Mariposa PPA, was 1,328 MW under peak July conditions.<sup>55</sup> The Settlement Agreement was approved by the Commission on October 15, 2009, in D.09-10-017.

On September 30, 2009, PG&E filed its second Application in this proceeding seeking approval of four additional agreements arising from PG&E’s 2008 LTRFO: (1) Mirant Marsh Landing PPA; (2) CC 6&7 PPA; (3) Oakley PSA; and (4) Midway Sunset PPA. In this proceeding, DRA, TURN, CARE, Pacific Environment, Sierra Club of California, and Communities for a Better Environment (“CBE”) protested the Application. In addition, the California Municipal Utilities Association (“CMUA”) filed a clarification that did not appear to be a protest. On November 16, 2009, PG&E replied to the protests.

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<sup>53</sup> *Id.*, at p. 23.

<sup>54</sup> *Id.*, at pp. 24-25; *see also* Ex. 1, Appendix 5.1, Appendix B, pp. 21-25 (describing in detailed confidential testimony the benefits of each winning bid).

<sup>55</sup> D.09-10-017, at p. 4.

On December 2, 2009, a prehearing conference was held by Administrative Law Judge (“ALJ”) Darwin Farrar. On February 1, 2010, Assigned Commissioner Peevey issued a Scoping Memorandum which established a schedule for the proceeding.

On February 9, 2010, PG&E filed and served on the service list a notice of settlement conference to be held on February 16, 2010 at TURN’s offices in San Francisco to discuss a settlement in principle between and among PG&E, TURN, CURE, CUE and DRA. After the settlement conference, these parties finalized a Partial Settlement Agreement that reflects an agreement on ratemaking and cost-recovery issues raised in PG&E’s Application. The settling parties agreed on cost recovery and ratemaking proposals applicable to each of the agreements addressed in the Application to the extent that the Commission approves the agreements. The Partial Settlement Agreement did not resolve whether all or a portion of the agreements should be selected to meet the LTRFO Need Amount or whether the selection of the winning 2008 LTRFO projects was just and reasonable.

On February 22, 2010, intervenor testimony was served by CARE, CCUE and CURE, DRA, Pacific Environment and TURN, and on March 10, 2010, reply testimony was served by PG&E, CARE, CUE and CURE, DRA and Pacific Environment.

On March 12, 2010, the parties conducted a conference call in advance of the March 24<sup>th</sup> scheduled hearing date and agreed to waive evidentiary hearings. The parties agreed to a process and schedule for identification and submission of prepared testimony and discovery responses to create a record in this proceeding.

On March 19, 2010, CARE and Pacific Environment filed comments on the Partial Settlement Agreement and CARE requested hearings on the settlement. On March 24, 2010, PG&E, CUE and CURE, DRA and TURN filed reply comments in support of the Partial Settlement Agreement and argued that hearings were not necessary because there were no

material contested issues of fact. On March 24, 2010, ALJ Farrar notified the parties by e-mail that he had determined that a hearing on the Partial Settlement Agreement was not necessary because there were no contested issues of material fact.

On April 7, 2010, PG&E submitted a joint motion to admit the public and confidential testimony, as well as identified discovery responses, into the record in this proceeding.

**E. The Partial Settlement Addressing Cost Recovery and Ratemaking.**

PG&E, TURN, DRA, CUE and CURE jointly sponsored a partial settlement that resolves all of the ratemaking and cost recovery issues in this proceeding. Under the Partial Settlement Agreement, all of the costs and payments associated with the Marsh Landing PPA, CC 6&7 PPA, and the Midway Sunset PPA would be recovered in rates through PG&E's Energy Resources Recovery Account ("ERRA").<sup>56</sup> With regard to the Oakley PSA, PG&E's ratemaking proposal (which is included as Chapter 9 in PG&E's prepared testimony) would be adopted with the following key changes: (1) O&M costs would be fixed until January 1, 2022; (2) PG&E would have only limited opportunities to make O&M rate changes before 2022; (3) PG&E's initial capital cost estimate would be reduced by \$24.5 million, and an incentive structure would be implemented with three bands of recovery providing shareholder and ratepayer benefits and burdens; (4) PG&E would have limited ability to recover any capital additions prior to January 1, 2022; and (5) PG&E would provide an annual report concerning plant availability and heat rates to DRA, TURN and the Commission's Energy Division for the Oakley Project, as well as other PG&E-owned facilities.<sup>57</sup>

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<sup>56</sup> Partial Settlement Agreement, III.C.

<sup>57</sup> See Motion for Approval of Partial Settlement, filed February 17, 2010, at pp. 5-6 (summarizing elements of settlement regarding Oakley PSA ratemaking); Partial Settlement Agreement, III.B.

In addition to addressing the cost recovery and ratemaking for the PPAs and PSA, the Partial Settlement also includes a proposal to recover any stranded costs through a non-bypassable “Net Capacity Cost Charge” implemented pursuant to the recently enacted Senate Bill (“SB”) 695.<sup>58</sup> The Partial Settlement Agreement includes a proposed methodology for determining net capacity costs and then allocates those costs to benefitting customers, including utility bundled, Community Choice Aggregation (“CCA”) and direct access customers based on their pro-rata share of coincident peak load. These benefitting customers are also allocated a pro-rata share of the RA value of the Marsh Landing and Oakley Projects, which are particularly valuable because they provide Bay Area RA capacity. Since the CC 6&7 PPA and Midway Sunset PPA do not provide new system capacity, any stranded costs associated with these contracts would be recovered with the Commission’s non-bypassable charge rules established in D.04-12-048 and D.08-09-012.

### **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?**

The short answer to this question is “No.” In the LTPP Decision (*i.e.*, D.07-12-052), the Commission determined a need range of 800 MW to 1,200 MW, which was augmented by the 312 MW of failed projects from the 2004 LTRFO, for a total need of 1,112 MW to 1,512 MW.<sup>59</sup> In April 2009, PG&E submitted an Application for approval of the 184 MW Mariposa Project to fulfill a portion of this need. In the Settlement Agreement proposed in that proceeding and approved by the Commission in D.09-10-017, the parties and the Commission agreed that the unmet LTRFO Need Amount, after deducting the MW anticipated from the Mariposa PPA, is

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<sup>58</sup> Partial Settlement Agreement, III.D.

<sup>59</sup> Ex. 5, at p. 3 (Q&A 2).

1,328 MW under peak July conditions.<sup>60</sup> The remaining need will be filled by the Marsh Landing and Oakley projects.<sup>61</sup> Combined, the Marsh Landing and Oakley Projects account for 1,305 MW, which is just below the total number of MW approved by the Commission as the remaining need to be filled.

Several parties have asserted that the GWF Tracy and Los Esteros Critical Energy Facility (“LECEF”) Upgrade projects proposed in A.09-10-022 and 09-10-034, respectively, are also proposed to fill the LTPP Decision identified need. This assertion is simply wrong. The GWF Tracy and LECEF Upgrades were not winning bidders in the 2008 LTRFO and are not being proposed to meet the LTPP Decision need.<sup>62</sup> PG&E has repeatedly and clearly stated in both this proceeding and in the A.09-10-022 and A.09-10-034 proceedings that the GWF Tracy and LECEF Upgrades are not intended to meet the LTPP Decision need and instead are being proposed on their own merits and as part of an effort to novate several existing California Department of Water Resource (“DWR”) contracts.<sup>63</sup>

TURN has suggested that, as an alternative, the Commission could approve the GWF Tracy and LECEF Upgrades to meet the LTPP Decision need and reject one of the winning bidders from the 2008 LTRFO.<sup>64</sup> However, this proposal has several fundamental flaws. First, the winning bidders selected in the 2008 LTRFO provide the best market value for PG&E’s customers, as compared to the GWF Tracy and LECEF Upgrades.<sup>65</sup> It is surprising that TURN, which represents consumers, would propose an alternative that would be more costly than

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<sup>60</sup> D.09-10-017, at Finding of Fact 7; Ordering Paragraph 1(b).

<sup>61</sup> Since Midway Sunset is an existing facility, it does not count against the new generation resource need approved by the Commission in the LTPP decision.

<sup>62</sup> Ex. 5, at pp. 29-30 (Q&A 42).

<sup>63</sup> *Id.*

<sup>64</sup> Ex. 200, at p. 4.

<sup>65</sup> Ex. 5, at pp. 31-32 (Q&A 46).

PG&E's proposal and would not result in the best market value for PG&E customers. Second, selecting non-winning LTRFO offers over winning LTRFO offers would have a significant chilling effect on the competitive wholesale market.<sup>66</sup> Participants in the 2008 LTRFO spent a considerable amount of time and effort to prepare their bids, and the winning bidders spent even more time to negotiate and finalize the PPAs and PSA proposed in this proceeding. If the Commission were to approve new generation resource PPAs that were not winning bidders in the 2008 LTRFO, potential participants in future RFOs may be hesitant to commit the time and resources necessary to prepare an offer if they believe the Commission may not approve their contract, even when they are a winning bidder. As the Independent Energy Producers Association noted in its Pre-hearing Conference Brief:

As a matter of policy, re-opening the need assessment would add a significant new element of instability into a market that investors already view with some anxiety. If the Commission as a matter of policy revises its procurement authorizations to match constantly changing demand assessments, then the Commission would create another barrier to private sector investment in energy infrastructure. IEP urges the Commission to reject this policy path and instead to signal the investment community that the Commission's determinations of future need (as expressed in authorizations to the investor-owned utilities to procure and contract) are stable and reliable (in the absence of extraordinary circumstances not present in this case).<sup>67</sup>

The Marsh Landing and Oakley Projects satisfy the 1,328 MW service-area need identified by the Commission and are the winning bidders in the 2008 LTRFO. These projects should be approved by the Commission to fulfill the LTRFO Need Amount.

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<sup>66</sup> Ex. 5, at pp. 33-35 (Q&As 47-49).

<sup>67</sup> Prehearing Conference Brief of the Independent Energy Producers Association, p. 3 (filed November 30, 2009).

**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?**

In the LTPP Decision, the Commission determined a range of need for PG&E’s service area from 800 MW to 1,200 MW. The LTPP Decision MW range corresponds to the 15-17 percent range approved by the Commission for each utility’s planning reserve margin (“PRM”).<sup>68</sup> Specifically, 800 MW represents a 15% PRM for PG&E’s service area and 1,200 MW represents a 17% PRM for PG&E’s service area.<sup>69</sup> In the Scoping Memo, the Assigned Commissioner determined that the 800 MW to 1,200 MW range would not be re-litigated in this proceeding, but that parties could argue “what the appropriate level of megawatts is for PG&E, within the previously specified range.”<sup>70</sup>

In its reply testimony, PG&E demonstrated that the Commission should utilize the high end of the range in this proceeding, and accordingly approve the Marsh Landing PPA and the Oakley PSA.<sup>71</sup> In particular, 800 MW is the minimum amount of capacity needed to ensure that PG&E satisfies the Commission’s minimum PRM requirements. If any new generation resources anticipated in the LTPP Decision do not materialize, PG&E’s PRM will fall below the Commission-mandated 15% requirement.<sup>72</sup> Given the significant uncertainties associated with new generation resource development, procuring the high end of the LTPP Decision need range (*i.e.*, 1,200 MW) ensures that if other resources do fail, PG&E will not be out-of-compliance with the Commission-mandated PRM requirements. In addition, new resource additions are inherently “lumpy.” When a new resource comes on-line, reserve margins may exceed the PRM

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<sup>68</sup> Ex. 5, at p. 3 (Q&A 2).

<sup>69</sup> *Id.*

<sup>70</sup> *Assigned Commissioner’s Ruling and Scoping Memo*, issued February 1, 2010, at p. 7.

<sup>71</sup> Ex. 5, at pp. 3-15 (Q&As 3-22).

<sup>72</sup> *Id.*, at p. 3 (Q&A 3).

requirements for a few years. However, retirements of existing units will result in a corresponding sudden decrease in the PRM. Thus, although PG&E may have capacity in excess of the PRM in the early years of a new resource coming on-line, this excess will rapidly decrease as older, less efficient resources are retired.<sup>73</sup>

In order to justify procuring at the lower end of the LTPP Decision service area need range, Pacific Environment, DRA and CARE all point to various factors that were considered in the LTPP Decision, and then assert that circumstances have now changed. For example, all three parties argue that recent demand forecasts adopted by the CEC in 2009 are significantly lower than the demand forecasts used in the LTPP Decision, and thus there is a reduced need for new generation resources.<sup>74</sup> However, as PG&E demonstrated in its reply testimony, these parties simply cherry-pick statements from the CEC's demand forecast reports, without considering all of the information discussed by the CEC.<sup>75</sup> When the CEC data is adjusted for PG&E's service area and net energy efficiency savings, the change in demand between the forecast used in the LTPP Decision and adopted by the CEC in 2009 is only approximately 300 MW.<sup>76</sup> Moreover, the difference in demand forecasts is readily offset by uncertainty associated with economic and demographic factors used by the CEC.<sup>77</sup>

DRA, Pacific Environment and CARE also assert that increased energy efficiency, export assumptions, and changes in retirement schedules all justify the Commission adopting the lower end of the LTPP Decision need range.<sup>78</sup> However, in each of these areas, PG&E demonstrated in

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<sup>73</sup> *Id.*

<sup>74</sup> *See e.g.*, Ex. 100, at p. 9 (DRA testimony); Ex. 400, at p. 9 (CARE testimony); Ex. 501, at pp. 3-4 (Pacific Environment testimony).

<sup>75</sup> Ex. 5, at pp. 4-5 (Q&A 4).

<sup>76</sup> *Id.*, at pp. 5-7 (Q&As 5-11).

<sup>77</sup> *Id.*, at pp. 7-8 (Q&A 11).

<sup>78</sup> *Id.*, at pp. 11-15 (citing intervenor testimony and providing citations).

its reply testimony that these assertions are overstated, and are based on selective quotes from reports or an incomplete discussion of the information relied on by these parties.<sup>79</sup> For example, the LTPP Decision need determination included an assumption that 4,200 MW of aging units would retire by 2015.<sup>80</sup> However, the State Water Resources Control Board (“SWRCB”) has set deadlines to retrofit, repower or retire all of the aging natural gas-fired units using OTC technology by 2017.<sup>81</sup> In PG&E’s service area, the SWRCB deadlines would impact approximately 5,600 MW of aging facilities, which could result in 1,400 MW more in retirements than anticipated in the LTPP Decision.<sup>82</sup> Thus, not only are the retirement schedules in the LTPP Decision reasonable, they also do not take into consideration retirements that will likely occur in 2016-2017. The development of the Marsh Landing and Oakley Projects will allow for the timely retirement of the aging OTC technology units and could facilitate the expedited achievement of the SWRCB’s deadlines. Other examples of the problems with DRA’s, Pacific Environment’s and CARE’s arguments are detailed in PG&E’s reply testimony. In short, DRA, Pacific Environment, and CARE have not provided any substantive evidence that supports the lower end of the LTPP Decision need range and therefore their arguments that both new resources are unneeded to fill customer demand should be disregarded.

As the Commission is well aware, the determination of service area need is an art, not a science. Any need determination is comprised of multiple factors, all of which can change over time and which at any point in time can justify a different need determination. Here, the parties opposing PG&E’s Application are essentially asking the Commission to gamble that all of the

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<sup>79</sup> *Id.*

<sup>80</sup> LTPP Decision, at p. 116, Table PGE-1, Line 5.

<sup>81</sup> Ex. 5, at pp. 13-14 (Q&A 20).

<sup>82</sup> Retirements in PG&E’s service area would include: Humboldt Bay, Potrero 3, 4-6; Morro Bay 3 & 4; Contra Costa 6 & 7; Moss Landing 1 & 2 and 6 & 7; Pittsburg 5-7.

assumptions in the LTPP Decision need determination, including aggressive assumptions about energy efficiency, demand response and new renewable resource development, will all come to fruition and that PG&E can therefore simply procure the low-end of the LTPP need range. If these parties are wrong, and some of these resources are not developed, there will not be sufficient new resources to meet projected customer needs in Northern California. Given that the development of a new generation resource can take up to seven years<sup>83</sup>, or in some cases even longer, if the Commission adopts the low end of the need range, there is a very real risk that there will not be sufficient time to develop new resources if they are needed by 2015 or, if new resources can be developed, the corresponding acceleration will result in customers paying an enormous premium. Rather than jeopardize reliability in Northern California as a result of capacity shortages, the Commission should instead utilize the high end of the LTPP Decision service area need to ensure that there is a 17% PRM in Northern California. While there may be some lumpiness in 2013-2014 with additional resources coming on-line, having excess capacity for a short period of time far outweighs the risks and costs associated with capacity shortages.

**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?**

All three PPAs and the PSA proposed in this proceeding should be approved. As described in detail above in Section II.B, each of these agreements provides important benefits for PG&E's customers and will ensure continued, reliable service in California. The Midway Sunset PPA, which is largely uncontested, ensures continued service from an existing QF project under the terms and conditions of a modern PPA. The Midway Sunset PPA also incents the owner to operate the facility in an efficient manner. The CC 6&7 PPA provides for the continued service of two aging units until these facilities are replaced by the Marsh Landing

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<sup>83</sup> LTPP Decision, at p. 21.

Project. Once the Marsh Landing Project becomes operational, and subject to regulatory and governmental approval, the CC 6&7 units will be retired. As described above, the Marsh Landing PPA and Oakley PSA will result in efficient and cost-effective new generation facilities that satisfy Local RA capacity requirements and provide PG&E with significant operational flexibility. Both the Marsh Landing and the Oakley Projects are needed to address PG&E's service area need, as explained in Section III.C, above. All of these projects, which were winning offers in the 2008 LTRFO, should be approved.

**D. Should PG&E be authorized to recover costs incurred pursuant to the PPAs in the Energy Revenue Recovery Account (ERRA) and to recover any stranded costs associated with the agreements?**

Under Commission policy, to the extent the agreements are approved, costs associated with the Marsh Landing, CC 6&7, and Midway Sunset PPAs should be fully recovered in rates by PG&E through the ERRA balancing account.<sup>84</sup> Since the utilities resumed their procurement obligations after the energy crisis, ERRA has been the Commission-approved vehicle to assure recovery of costs incurred under PPAs. There is no reason to change that well-established policy in this proceeding. To the extent these contracts are approved by the Commission, no party appears to dispute recovery of these costs through ERRA. With regard to stranded costs associated with the CC 6&7 and Midway Sunset PPAs, PG&E has proposed utilizing the non-bypassable charge methodology approved by the Commission in D.04-12-048 and D.08-09-012. No party has disputed this element of PG&E's proposal.

With regard to the recovery of stranded costs for the Marsh Landing PPA, in the Partial Settlement Agreement, the joint parties proposed a stranded cost recovery mechanism based on the recently enacted SB 695, which provides a statutory cost recovery mechanism for new

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<sup>84</sup> See D.02-10-062, at p. 61 (adopting ERRA as the balancing account "for different types of energy resources."); D.06-11-048, at p. 33 (utilizing ERRA for PPAs from 2004 LTRFO).

generation resources. Under SB 695, which is now codified in Public Utilities Code section 365.1, the Legislature established a mechanism for the recovery of net capacity costs associated with new generation resources. SB 695 provides that when the Commission approves:

[A] contract with a third party, or orders, in the situation of utility-owned generation, an electrical corporation to obtain generation resources that the commission determines are needed to meet system or local area reliability needs for the benefit of all customers in the electrical corporation's distribution service territory, the net capacity costs of those generation resources are allocated on a fully nonbypassable basis consistent with departing load provisions as determined by the commission, to all of the following: (i) Bundled service customers of the electrical corporation. (ii) Customers that purchase electricity through a direct transaction with other providers. (iii) Customers of community choice aggregators.<sup>85</sup>

SB 695 further provides that:

The resource adequacy benefits of generation resources acquired by an electrical corporation pursuant to subparagraph (A) shall be allocated to all customers who pay their net capacity costs. Net capacity costs shall be determined by subtracting the energy and ancillary services value of the resource from the total costs paid by the electrical corporation pursuant to a contract with a third party or the annual revenue requirement for the resource if the electrical corporation directly owns the resource.<sup>86</sup>

The Partial Settlement Agreement fully implements these provisions. First, the Partial Settlement Agreement provides for the determination of net capacity costs through a methodology approved by the Commission in D.07-09-044,<sup>87</sup> and allocates these costs to bundled, CCA and direct access customers, as prescribed by SB 695. Second, under the Partial Settlement Agreement “benefitting customers” are not only allocated the net capacity costs, but they are also allocated the RA benefits associated with the Marsh Landing Project. Thus,

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<sup>85</sup> Pub. Util. Code sec. 365.1(c)(2)(A).

<sup>86</sup> *Id.*, sec 365.1(c)(2)(B).

<sup>87</sup> D.07-09-044, Appendix A, Section IX (approving settlement that included stranded cost allocation methodology under to be used prior to an energy auction).

bundled, CCA and direct access customers will receive benefits from the Partial Settlement Agreement because they will be allocated some of the valuable Local RA capacity associated with the Marsh Landing Project. Notably, only two parties protested the Partial Settlement Agreement, and neither of these parties raised any concerns regarding the stranded cost allocation portion of the Partial Settlement Agreement.

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

PG&E submitted detailed testimony supporting its initial capital cost estimate, O&M estimates, and ratemaking proposal for the Oakley Project.<sup>88</sup> This testimony is largely undisputed. As a result of the Partial Settlement Agreement, PG&E agreed to lower the initial capital cost estimate by \$24.5 million and to fix the O&M costs until January 1, 2022, subject to certain limited adjustments. Only CARE disputed the ratemaking and cost recovery aspects of the Partial Settlement Agreement.<sup>89</sup> The settling parties addressed CARE’s concerns in its reply comments on the Partial Settlement Agreement, filed March 24, 2010. In their comments, the settling parties demonstrated that the Partial Settlement Agreement is reasonable because it lowers the initial capital cost estimate by a substantial amount, fixes the O&M costs until 2022, and adopts a sharing mechanism that strongly incents PG&E to manage costs.<sup>90</sup> In addition to the annual revenue requirement proposal, the Partial Settlement Agreement also addresses stranded cost recovery for the Oakley PSA. Similar to the description above concerning the

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<sup>88</sup> See Ex. 1, Chapters 7-9.

<sup>89</sup> Pacific Environment also filed a protest to the Partial Settlement Agreement, but this protest primarily addressed the issue of need, not specific aspects of the ratemaking or cost recovery proposals.

<sup>90</sup> *Reply Comments of 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*, filed March 24, 2010 at pp. 7-9.

Marsh Landing PPA, recovery of the net capacity costs for the Oakley PSA would be accomplished by implementing SB 695.

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

PG&E provided extensive, and largely un rebutted, testimony demonstrating that its 2008 LTRFO was conducted reasonably and consistent with Commission directives.<sup>91</sup> PG&E’s 2008 LTRFO was conducted consistent with the LTPP Decision, the Energy Action Plan II, GHG performance standards and reduction strategies and requirements for RFOs involving utility-owned generation offers.<sup>92</sup> The IE, PRG and the Commission’s Energy Division were actively involved at each step of the 2008 LTRFO process, from the development of the solicitation protocol, documents and code of conduct; development and application of evaluation criteria; shortlisting offers; negotiations and selection of final winning offers.<sup>93</sup> The IE concluded that “PG&E has conducted a fair and rigorous solicitation for resources/contracts that will help it meet its LTPP authorized capacity needs.”<sup>94</sup> Notably, no party that participated in the 2008 LTRFO, including participants that did not have winning offers, has asserted in this proceeding that the solicitation was unfair or was not conducted reasonably. In fact, the Commission determined in D.09-10-017 that PG&E conducted an open, competitive and fair solicitation and contract selection process.<sup>95</sup>

However, CARE and Pacific Environment asserted that the Marsh Landing and Oakley Projects do not operate consistently with the requirements of the 2008 LTRFO protocol.<sup>96</sup> These

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<sup>91</sup> Ex. 1, at pp. 4-1 – 4-7.

<sup>92</sup> *Id.*, at pp. 4-1 – 4-7, 4-10 – 4-11; *see also* D.09-10-017, Conclusion of Law 1.

<sup>93</sup> *Id.*, Chapter 5.

<sup>94</sup> *Id.* Attachment 5.1, at p. 25.

<sup>95</sup> D.09-10-017, Finding of Fact 2.

<sup>96</sup> Ex. 400, at pp. 7-8 (CARE testimony); Ex. 501, at pp. 13-14 (Pacific Environment testimony).

arguments are factually incorrect. The 2008 LTRFO protocol did not dictate operating hour requirements for PPAs such as Marsh Landing, and when PG&E performed its evaluation of the Marsh Landing offer, it considered the operating constraints that are included in the Marsh Landing permit applications.<sup>97</sup> Similarly, concerns that the Oakley Project does not have the operating flexibility requested in the 2008 LTRFO solicitation protocol are also unfounded, as demonstrated in PG&E's reply testimony and the attached declaration from the developer of the Oakley Project.<sup>98</sup>

In its testimony, Pacific Environment also raised concerns about whether PG&E had followed the environmental leadership protocol in the 2008 LTRFO Solicitation process.<sup>99</sup> However, as PG&E demonstrated in its reply testimony, these concerns are unfounded. Before it received offers from participants in the 2008 LTRFO, PG&E developed environmental evaluation protocols that were reviewed by the IE and PRG.<sup>100</sup> PG&E then reviewed each offer based on the environmental evaluation criteria that it had developed and reviewed with the IE and PRG.<sup>101</sup> As a result of its environmental evaluation, certain offers were disqualified for consideration for the 2008 LTRFO shortlist. During the shortlisting and negotiation process, PG&E continued to consider environmental issues and, in particular, the impact of constructing two new generation resources in Contra Costa County.<sup>102</sup> While the CEC is ultimately responsible for considering environmental issues, PG&E was able to negotiate with Mirant the

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<sup>97</sup> Ex. 5, at pp. 22-23 (Q&As 31-32).

<sup>98</sup> See Ex. 5, at pp. 23-24 (Q&A 33) and Attachment A.

<sup>99</sup> Ex. 501, at pp. 15-22.

<sup>100</sup> See Ex. 1, at pp. 3-7 – 3-8 (describing environmental protocols); pp. 5-2 – 5-3 (describing IE and PRG involvement in review of evaluation criteria); Appendix 5.1, at p. 4 (describing IE's review of evaluation criteria); Ex. 5, at p. 26 (Q&As 36-37).

<sup>101</sup> Ex. 5, at p. 24 (Q&A 34).

<sup>102</sup> *Id.*

shutdown of the CC 6&7 units, 45 year old units that utilize OTC technology. PG&E was able to agree on enhancements to the design of the Oakley Project that incorporated GE's newest combustion turbine technology that will result in more flexible, higher efficiency operations and substantial environmental benefits.<sup>103</sup> In short, PG&E not only followed its environmental evaluation criteria, it actively considered environmental issues during the negotiation process and was able to obtain agreements from the winning participants that resulted in significant environmental benefits.

#### **IV. CONCLUSION**

For the foregoing reasons, PG&E respectfully requests that the Commission:

A. Approve the Marsh Landing, Midway Sunset and CC 6&7 PPAs and Oakley PSA and find them to be reasonable and in the best interest of customers.

B. Approve the ratemaking and cost recovery proposal in the Partial Settlement Agreement and determine that the Marsh Landing PPA and the Oakley PSA are needed to meet system or local area reliability needs for the benefit of all customers in PG&E's service territory (consistent with SB 695); and,

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<sup>103</sup> *Id.*

C. Find PG&E's conduct of the 2008 LTRFO was reasonable and consistent with Commission directives.

Respectfully submitted,

CHARLES R. MIDDLEKAUFF  
MARY A. GANDESBERY

By: \_\_\_\_\_/s/\_\_\_\_\_  
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April 14, 2010

CERTIFICATE OF SERVICE BY ELECTRONIC MAIL OR U.S. MAIL

I, the undersigned, state that I am a citizen of the United States and am employed in the City and County of San Francisco; that I am over the age of eighteen (18) years and not a party to the within cause; and that my business address is Pacific Gas and Electric Company, Law Department B30A, 77 Beale Street, San Francisco, CA 94105.

I am readily familiar with the business practice of Pacific Gas and Electric Company for collection and processing of correspondence for mailing with the United States Postal Service. In the ordinary course of business, correspondence is deposited with the United States Postal Service the same day it is submitted for mailing.

On the 15<sup>th</sup> day of April 2010, I served a true copy of:

**PACIFIC GAS AND ELECTRIC COMPANY'S (U 39-E)  
OPENING BRIEF**

**[XX]** By Electronic Mail – serving the enclosed via e-mail transmission to each of the parties listed on the official service list for A.09-09-021 with an e-mail address.

**[XX]** By U.S. Mail – by placing the enclosed for collection and mailing, in the course of ordinary business practice, with other correspondence of Pacific Gas and Electric Company, enclosed in a sealed envelope, with postage fully prepaid, addressed to those parties listed on the official service list for A.09-09-021 without an e-mail address.

I certify and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on this 15<sup>th</sup> day of April 2010 at San Francisco, California.

/s/

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STEPHANIE LOUIE

# THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA SERVICE LIST

Last Updated: March 24, 2010

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Total number of addressees: 50

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