



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

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Application of Pacific Gas and Electric Company for Approval of Agreements Related to the Novation of the California Department of Water Resources Agreement with GWF Energy LLC, Power Purchase Agreement with GWF Energy II LLC, and Associated Cost Recovery (U39E).

**Application 09-10-022  
(Filed October 16, 2009)**

Application of Pacific Gas and Electric Company for Approval of the Novation of the California Department of Water Resources Agreements Related to the Calpine Transaction, and Associated Cost Recovery (U39E).

**Application 09-10-034  
(Filed October 30, 2009)**

**OPENING COMMENTS  
OF  
PACIFIC GAS AND ELECTRIC COMPANY (U 39-E)  
ON PROPOSED DECISION OF ALJ KENNEY**

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## TABLE OF CONTENTS

	Page
<b>I. INTRODUCTION AND SUMMARY OF PG&amp;E’S POSITION</b> .....	<b>1</b>
<b>A. Description of the Transactions</b> .....	<b>2</b>
<b>B. The Proposed Decision</b> .....	<b>3</b>
<b>C. Summary of PG&amp;E’s Position with Respect to the Proposed Decision</b> .....	<b>3</b>
1. Approval of the Upgrades Does Not Require a Finding of Additional Need.....	<b>3</b>
2. The Costs of the Upgrade PPA are Reasonable.....	<b>4</b>
3. The IE’s Report Appropriately Addressed the Issue of Need.....	<b>4</b>
4. The Question of PG&E’s Need for Incremental Long-Term Capacity is Beyond the Scope of This Proceeding.....	<b>5</b>
<b>II. RECOMMENDED CHANGES TO PROPOSED DECISION</b> .....	<b>5</b>
<b>A. The Transactions Should Be Approved Because They are Consistent With         Commission Decisions and are Reasonable as a Hedge Against the Risk of         Project Failure</b> .....	<b>5</b>
1. The Transactions Meet the Standard Applicable to Novations Resulting in New Long-Term Power Purchase Agreements.....	<b>5</b>
<b>(a) The Transactions are Just and Reasonable Based on Their Ranking in                 PG&amp;E’s Competitive Solicitation for Long-Term PPAs</b> .....	<b>6</b>
<b>(b) The Upgrades Should Provide the Hedge Against Project Failure                 Because They are Environmentally Preferred Over Aging Power                 Plants</b> .....	<b>6</b>
2. The Upgrade Projects are Consistent with PG&E’s LTPP .....	<b>8</b>
<b>B. The PD’s Criticism of PG&amp;E’s Use of the Independent Evaluator is         Unwarranted and Should Be Stricken from the Final Decision</b> .....	<b>8</b>
1. The IE was Required to Express an Opinion on Whether PG&E Should Contract for More Capacity than Authorized by D.07-12-052 to Hedge the Risk of Project Delay .....	<b>9</b>

**TABLE OF CONTENTS**  
**(continued)**

	<b>Page</b>
(a) Required by ACR .....	<b>9</b>
(b) Required by the IE Report Template .....	<b>10</b>
2. The IE’s Reliance on Information Provided by PG&E was Reasonable.....	<b>11</b>
3. The PD Confirms the Relevance of the IE’s Opinion.....	<b>11</b>
4. PG&E Employed the IE for a Legitimate Purpose and Should Recover The Cost of the IE’s Report in Rates .....	<b>11</b>
C. The PD Erred by Re-Examining the Question of PG&E’s Need for Incremental Long-Term Capacity.....	<b>12</b>
D. The Cost of the Upgrade PPAs is Reasonable .....	<b>13</b>
E. Procurement of the Upgrade PPAs is Consistent With the Long-Term Procurement Policies of PG&E’s LTPP and the Mariposa Settlement Agreement and Thus is Authorized by the DWR Novation Decision .....	<b>14</b>
<b>III. CONCLUSION .....</b>	<b>14</b>
 <b>APPENDIX A: The Proposed Modifications to Findings of Fact and Conclusions of Law Pursuant to Rule 1 4.3(b)</b>	

**TABLE OF AUTHORITIES**

**Page(s)**

**CALIFORNIA PUBLIC UTILITIES COMMISSION DECISIONS**

*Opinion Adopting Pacific Gas and Electric Company’s, Southern California Edison Company’s, and San Diego Gas & Electric Company’s Long-Term Procurement Plans*, R.06-02-013, D.07-12-052 (Dec. 20, 2007)..... passim

*Decision Authorizing Measures to Facilitate Removal of Department of Water Resources from the Role of Supplying Electric Power*, R.07-05-025, D.08-11-056 (Nov. 21, 2008) ..... **5**

**RULINGS**

*Assigned Commissioner’s Ruling and Scoping Memo in A.09-10-022 and A.09-10-034* (January. 5, 2010) ..... **4**

*Administrative Law Judge’s Ruling Issuing Templates for independent Evaluator Reports and Contract Approval Requests in R.06-02-013* (May 5, 2008) ..... **10**

**CPUC RULES OF PRACTICE AND PROCEDURE AND GENERAL ORDERS**

Rule 14.4..... **1**

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Application of Pacific Gas and Electric Company for Approval of Agreements Related to the Novation of the California Department of Water Resources Agreement with GWF Energy LLC, Power Purchase Agreement with GWF Energy II LLC, and Associated Cost Recovery (U39E).

**Application 09-10-022  
(Filed October 16, 2009)**

Application of Pacific Gas and Electric Company for Approval of the Novation of the California Department of Water Resources Agreements Related to the Calpine Transaction, and Associated Cost Recovery (U39E).

**Application 09-10-034  
(Filed October 30, 2009)**

**OPENING COMMENTS OF  
PACIFIC GAS AND ELECTRIC COMPANY (U 39-E)  
ON PROPOSED DECISION OF ALJ KENNEY**

**I. INTRODUCTION AND SUMMARY OF PG&E’S POSITION**

Pursuant to Rule 14.4 of the Commission’s Rules of Practice and Procedure, Pacific Gas and Electric Company (“PG&E”) hereby comments on the Proposed Decision of ALJ Kenney (“PD”) regarding the consolidated Applications of PG&E for California Public Utilities Commission (“CPUC” or “Commission”) for approval of the proposed Power Purchase Agreements (“PPAs”) with GWF Energy LLC (“GWF”) and Calpine Energy Services (“Calpine”).<sup>1</sup>

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<sup>1</sup> The *Proposed Decision of ALJ Kenney Granting in Part and Denying in Part Pacific Gas and Electric Company’s Applications for Approval of Power Purchase Agreements* was mailed 4/20/10. These Comments are being filed within the twenty-day period allowed for Opening Comments on a Proposed Decision per Public Utilities Code §311(d). The combined Applications are referred to as a single Application herein for the sake of simplicity.

PG&E charged with the responsibility to maintain adequate levels of generation for its customers and mindful of multiple policy directives from this Commission to:

- (1) Assist in the exit of the DWR from the business of buying power;
- (2) Maximize environmental protection by optimizing the use of existing, brownfield facilities;
- (3) Move aggressively to transform the generation system so that new intermittent renewables could be fully integrated; and
- (4) Reduce emissions immediately from exiting power generation facilities, including greenhouse gas emissions, decided, in its best judgment to enter into these transactions.

We believe they are fully in the interest of our customers. The PD's rejection of these agreements is based primarily on a fear that customers may end up with excess capacity, despite the fact that taken together, these transactions would constitute less than one percent of PG&E's peak load. We believe the PD incorrectly ignores immediate and long term benefits of these transactions in order to avoid an overbuilding circumstance that recent history shows is unlikely to occur.

**A. Description of the Transactions.**

In this Application, PG&E requests authorization to novate the existing California Department of Water Resources ("DWR") PPA with GWF for the delivery of electricity from GWF's Tracy, Hanford, and Henrietta generation facilities, and after GWF's Tracy unit is upgraded to a larger combined cycle steam generator, to increase deliveries from that facility by an additional 145 MW under a new ten-year PPA (the "Tracy Transaction"). PG&E also requests authorization to novate the existing DWR PPA for deliveries from Calpine's Los Esteros Critical Energy Facility ("LECEF"), and after the LECEF is converted to a larger combined cycle steam generator, to increase deliveries by an additional 109 MW under a new

ten-year PPA (the “LECEF Transaction”). With respect to the DWR PPA for deliveries from the ten Calpine peaking facilities (“Peakers”), PG&E seeks to novate it and extend deliveries under a new PPA until the end of 2021.<sup>2</sup>

**B. The Proposed Decision.**

The PD approves PG&E’s novation and extension of the Peakers deliveries but denies authorization of the Tracy Transaction and the LECEF Transaction, without prejudice.<sup>3</sup> PG&E is authorized to resubmit those or substantially similar transactions for CPUC approval, via Advice Letter, in the event of failure by a CPUC-approved fossil fuel generation project.<sup>4</sup> The PD’s rejection of the Tracy and LECEF Transactions is based on findings that PG&E does not need the new capacity provided by the Tracy Upgrade and the LECEF Upgrade under their new ten-year PPAs (“Upgrade PPAs”) either to hedge the risk of project delay or failure or to integrate renewable generation, and that the cost of the Upgrade PPAs is unreasonable.<sup>5</sup>

**C. Summary of PG&E’s Position with Respect to the Proposed Decision.**

**1. Approval of the Upgrades Does Not Require a Finding of Additional Need.**

The PD correctly notes that the Upgrade facilities are being proposed as a hedge to the risk of delay or failure of new generation to be procured by PG&E under its Long-Term Procurement Plan (“LTPP”), which was approved by the LTPP Decision.<sup>6</sup> However, by treating the 254 MW of Upgrade capacity as incremental capacity, the PD adopts an

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<sup>2</sup> The Peakers Replacement Agreement extends the term of local capacity units in the Bay Area out to 2021 and local capacity outside the Bay Area out to 2017.

<sup>3</sup> PD, Ordering Paragraph (“OP”) 1 and 2.

<sup>4</sup> PD, OP 4.

<sup>5</sup> PD at p. 51, “Conclusion”.

<sup>6</sup> “LTPP Decision” refers to Decision (“D.”) 07-12-052.

unnecessarily rigid reading of the LTTP Decision and, consequently, misses the opportunity to procure reasonably priced and viable new generation resources as a hedge against project failure in the LTTP. The final decision should approve the Upgrade PPAs.

## **2. The Costs of the Upgrade PPAs are Reasonable.**

The PD finds that the cost of the Upgrade PPAs is unreasonable because their costs exceed the costs of the winning 2008 Long-Term Request for Offers (“LTRFO”) projects (Mariposa, Marsh Landing, and Oakley).<sup>7</sup> However, the PD acknowledges that the Upgrade PPAs are “next in line” after the projects selected for PG&E’s 2008 LTRFO.<sup>8</sup> Because the Upgrade PPAs are needed to provide a hedge against the risk of project failure, and they are “next in line” in the 2008 LTRFO, the costs of the Upgrade PPAs are reasonable.

### **D. The IE’s Report Appropriately Addressed the Issue of Need.**

The PD faults PG&E for hiring an Independent Evaluator (“IE”) to express an opinion on PG&E’s procurement of more capacity than authorized by the LTTP decision and denies PG&E’s recovery for the costs incurred to obtain the IE’s opinion.<sup>9</sup> This determination is inconsistent with the Assigned Commissioner’s Ruling and Scoping Memo (“ACR”) issued in this Application,<sup>10</sup> the requirements of the IE’s Template adopted, pursuant to D.07-12-052, and the PD’s own recognition that the standard for approving the conversion of a DWR contract into a long-term contract for incremental capacity would be met by a showing of need and reasonable cost.<sup>11</sup> Nothing in the record in this proceeding supports the PD’s conclusions that the IE’s

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<sup>7</sup> PD at p. 47 (“If the cost of the Upgrade PPAs is higher than the market price, then the cost is inherently unreasonable.”).

<sup>8</sup> PD at p. 38.

<sup>9</sup> PD at p. 43 and Conclusion of Law 13.

<sup>10</sup> *Assigned Commissioner’s Ruling and Scoping Memo*, 01/05/10.

<sup>11</sup> PD at p. 37.

opinion is beyond the scope of its responsibilities or that PG&E should not recover the costs incurred to obtain the IE's opinion.

**E. The Question of PG&E's Need For Incremental Long-Term Capacity Is Beyond The Scope Of This Proceeding.**

The ACR states that the amount of new capacity authorized by the LTPP Decision will not be re-litigated in this Application.<sup>12</sup> Although the PD properly evaluated the Tracy and LECEF Transactions in terms of their ability to address PG&E's need for incremental capacity, the PD inappropriately examined selected inputs to the need for electricity in spite of the ACR. This discussion of need is beyond the scope of the proceeding and must be stricken from the final decision.

**II. RECOMMENDED CHANGES TO PROPOSED DECISION**

**A. The Transactions Should Be Approved Because They are Consistent With Commission Decisions and are Reasonable as a Hedge Against the Risk of Project Failure.**

**1. The Transactions Meet the Standard Applicable to Novations Resulting in New Long-Term Power Purchase Agreements.**

The PD finds that all of the criteria adopted by D.08-11-056 and the related Implementation Ruling (together, the "DWR Decision") for determining whether the extension of a novated contract is reasonable will be met if the capacity, energy, and ancillary services provided by the PPA are needed and the PPA is reasonably priced.<sup>13</sup> Here, these requirements are readily satisfied.

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<sup>12</sup> ACR at p. 4.

<sup>13</sup> PD at p. 37.

**(a) The Transactions are Just and Reasonable Based on Their Ranking in PG&E’s Competitive Solicitation for Long-Term PPAs.**

PG&E does not propose to increase the amount of need adopted in the LTPP. The PD correctly observes that the purpose of the Upgrades is not to fill the need authorized by D.07-12-052, but to hedge the risk that other projects will fail or be delayed significantly.<sup>14</sup>

The Tracy and Calpine Upgrade projects are proposed for procurement in addition to the resources that PG&E has selected to fill the 1,112 MW to 1,512 MW of unmet need adopted for PG&E’s LTPP. The PD acknowledges that after the three offers selected to fill LTPP need, the Tracy and Calpine Upgrade projects were the next best offers received by PG&E in response to the 2008 LTRFO.<sup>15</sup> However, the PD states that . . . *we also generally agree with DRA and TURN’s assessment that the two projects are a poor deal for ratepayers.*<sup>16</sup> It is unclear why the PD reaches this conclusion. The Upgrade Projects were properly evaluated, and the fact is that the Upgrades were the next-best projects.<sup>17</sup> Based on this uncontroverted evidence, the Upgrade PPAs are just and reasonable.

**(b) The Upgrades Should Provide the Hedge Against Project Failure Because They are Environmentally Preferred Over Aging Power Plants.**

In support of the Tracy and LECEF Transactions, PG&E noted that the Commission recognized in the LTPP Decision the value of transitioning from the use of aging units to new peaking and intermediate units that are better able to support intermittent-heavy portfolios. The

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<sup>14</sup> PD at p. 39.

<sup>15</sup> PD at p. 38.

<sup>16</sup> PD at p. 41.

<sup>17</sup> Exhibit (“Ex.”) 1-C, PG&E Prepared Testimony for A.09-10-022, Confidential Appendix 3 and Ex.2-C, PG&E Prepared Testimony for A.09-10-034, Confidential Appendix 3, and Ex. 3-C, “Supplement to IE Report for PG&E’s 2008 LTRFO/All source Solicitation for New Power Supplies”, Confidential Appendix A-2.

PD asserts that PG&E's characterization of D.07-12-052 is "incomplete and inaccurate", because although the LTPP Decision adopted a policy to transition away from aging facilities, the LTPP Decision also decided to meet contingencies by relying on aging facilities that were expected to retire over the next seven years.<sup>18</sup> However, aging power plants cannot be relied on indefinitely.

On May 4th, the California State Water Resources Control Board ("SWRCB"), Division of Water Quality, adopted a policy on the use of coastal and estuarine water for power plant cooling.<sup>19</sup> Nineteen existing electric power plans are affected by this policy, which requires the installation of dry cooling or other measures, to achieve a ninety-three percent (93 %) reduction in intake flow rate or the equivalent reduction on marine life kill. The SWRCB imposes specific deadlines for attainment by each power plant.

The LTPP presumes that facilities scheduled for retirement could be used as hedges against project delay or failure. However, the SWRCB's once-through cooling policy may disqualify those plants from continued operation and reduce the assumed capacity reserve. The SWRCB acknowledged that "in response to the Policy, the CPUC anticipates modifying its LTPP proceeding and procurement processes to require the IOUs to assess replacement infrastructure needs and conduct targeted requests for offers ("RFOs") to acquire replacement, repowered, or other wise compliance generation capacity."<sup>20</sup> This highlights the need for the

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<sup>18</sup> "Regarding the portion of this contingency that is the result of conventional generation contracts, we would expect the IOUs to handle this uncertainty in a similar manner that they did with the many viability challenges that plagued the vertically integrated utility era – delaying retirements (in this case, via contract extensions with aging facilities) until these uncertainties are addressed." Decision 07-12-052, at p. 97

<sup>19</sup> PG&E respectfully requests the Commission to take official notice, pursuant to Rule 13.9 Official Notice of Facts, specifically Evidence Code section 452 subdiv (b), of "State Water Resources Control Board; Board Meeting Session – division of Water Quality, May 4, 2010, Item 5"

<sup>20</sup> Id. at p.2.

Upgrade Projects, which will utilize once-through cooling and are highly viable projects, to furnish a hedge against project delay or failure.

If a new generation resource that is currently scheduled to be constructed in Northern California fails, such as the Russell City project, aging power plants cannot be relied on in the long-term to fill this capacity. The GWF and LECEF Upgrades are exactly the kind of resources that would act as a hedge to any potential project failure and would provide a long-term hedge to any resource shortages.

## **2. The Upgrade Projects are Consistent with PG&E's LTPP.**

The PD correctly notes that the purpose of the Upgrades is not to fill the need authorized by D.07-12-052 but to hedge the risk that other projects will fail or be delayed significantly.<sup>21</sup> These projects are not resources within the plan but will help ensure that capacity represented by generating resources within the plan will materialize. Therefore, they are consistent with PG&E's LTPP. The final decision should approve the Upgrade PPAs because they are both reasonable in cost and consistent with PG&E's need.

### **B. The PD's Criticism of PG&E's Use of the Independent Evaluator is Unwarranted and Should Be Stricken from the Final Decision.**

The PD states:

*PG&E notes the IE endorses PG&E's strategy of contracting for more capacity than authorized by D.07-12-052 to hedge the risk of project delay and failure. We are troubled that PG&E hired an IE to express an opinion on this matter. D.07-12-052 states the "purpose of an IE...is to ensure a fair, competitive procurement process." (cit. om.) Thus, it is beyond the scope of the IE's responsibility to opine on whether PG&E should contract for more capacity than authorized by D.07-12-052.*<sup>22</sup>

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<sup>21</sup> PD at p. 39.

<sup>22</sup> PD at p. 43.

The PD would disregard the IE’s opinion, find that PG&E used an IE for “an improper purpose”, and deny PG&E cost recovery of amounts expended to obtain the IE’s opinion on this issue. This determination is contrary to CPUC precedent, the facts of this case, sound public policy, and should be stricken from the final decision.

**1. The IE Was Required To Express An Opinion On Whether PG&E Should Contract For More Capacity Than Authorized By D.07-12-052 To Hedge The Risk Of Project Delay.**

**(a) Required by the ACR.**

A Pre-Hearing Conference (“PHC”) was held on December 16, 2009 to determine, among other things, the scope of the Application proceedings. The ACR was issued on January 5, 2010 and stated that the Commission would consider

*(w)hether it is reasonable for PG&E to contract for more new capacity than authorized by D.07-12-052 due to the risk of project/contract failure or other factors . . .*<sup>23</sup>

In addition, the ACR directed PG&E to serve supplemental written testimony containing

*(a) report from the Independent Evaluator (“IE”) regarding the IE’s assessment of the 254 MW of new capacity requested by PG&E in A.09-10-022 and A.09-10-034.*<sup>24</sup>

PG&E retained Sedway Consulting, the IE that oversaw the 2008 LTRFO in which the Upgrades participated, to produce the required IE Report. Based upon consideration of net market values, viability, the furtherance of the CPUC’s repowering policies, and the project size, the IE concluded that . . . *the repowering PPAs represent appropriate hedges against the loss of any of the three LTRFO contracts.*<sup>25</sup> This conclusion responds to the ACR’s identification of

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<sup>23</sup> ACR, p.4

<sup>24</sup> ACR, p. 5.

<sup>25</sup> Exhibit 3, PG&E Supplemental Testimony, p. 1-2, citing *Supplement to Independent Evaluation Report for PG&E’s 2008 LTRFO*, etc., at p.2.

the procurement of extra capacity to cover project failure as key to the issue of PG&E's reasonableness.

**(b) Required by the IE Report Template.**

The PD quotes the LTPP Decision in a way that insinuates that the purpose of an IE Report is limited to ensuring a fair, competitive procurement process and excludes all other areas of inquiry.<sup>26</sup> However, the LTPP directed Energy Division to develop a template for IEs to use when developing their reports and required that among other things, that IEs answer the question, "Does the contract merits Commission approval?"<sup>27</sup> Accordingly, the CPUC Independent Evaluator Report Template ("Long Form") was issued on May 8, 2008 by ALJ's Ruling and is used for transactions that require submission of an Application for CPUC approval. The IE Report Template additionally requires an IE to state whether the contract(s) are reasonably priced and *needed* (emphasis added), and whether they reflect a functioning market. In addition, the IE must explain *whether he agrees with the IOU* (emphasis added) that the contract(s) merit CPUC approval.<sup>28</sup>

**2. The IE's Reliance On Information Provided By PG&E Was Reasonable.**

The PD's decision to *accord no weight to the IE's opinion on (the) matter* of contracting for capacity outside the LTPP is linked to the belief that,

*. . . the IE relied on information provided by PG&E and did not consider the many issues raised by the Opposing Parties.*<sup>29</sup>

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<sup>26</sup> P. 7, *supra*,

<sup>27</sup> D.07-12-052, pp. 141 and 142, *see, also* O.P. 12.

<sup>28</sup> See, *Administrative Law Judge's Ruling Issuing Templates for independent Evaluator Reports and Contract Approval Requests*, R. 06-02-013, May 8, 2008, Attachment A, "CPUC Independent Evaluator report Template (Long Form)", Topic H on p. 5 (IE Report Template).

<sup>29</sup> PD footnote 55, p. 43.

The PD should not fault the IE for relying on information provided by PG&E, because bid information resides with the IOU conducting the solicitation for offers to sell, and the primary evaluation of a particular offer is based on the offer's net market value relative to that of all the other viable bids. Moreover, the IE is required by the IE Report Template to describe the discussion between the IE, PRG, Energy Division, and IOU regarding the LCBF evaluation process, including any areas of disagreement between the IE and the IOU, if possible.<sup>30</sup> Under the circumstances, the IE's use of information provided by PG&E is no reason to disregard the IE's opinion.

### **3. The PD Confirms the Relevance of the IE's Opinion.**

The PD itself identifies the need for the capacity to be provided by a PPA as a fundamental factor in determining if the replacement of a DWR contract with a new long-term PPA should be approved.<sup>31</sup>

### **4. PG&E Employed the IE for a Legitimate Purpose and Should Recover the Cost of the IE's Report in Rates.**

PG&E obtained an IE Report assessing the merits of the Upgrade PPAs because it was required to do so by the ACR. The IE's consideration of whether the Upgrades could serve as a reasonable hedge against non-development by other LTRFO resources is within the scope of the IE's duties, within the scope of the proceeding, and was required by the ACR. The report conforms to the Commission's requirements for IE Reports. There is no reason to deny PG&E the recovery of its IE costs in rates. Accordingly, the PD's unsubstantiated criticism of PG&E for retaining the IE to produce a report, its rejection of the IE's opinion, and its denial of rate

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<sup>30</sup> IE Report Template, p. 3, Topic C, "Was the LCBF evaluation process fairly administered? 8. "Results analysis".

<sup>31</sup> The PD states that the criteria for the replacement of a DWR contract with a new long-term PPA would be met *if there is a need for the capacity, energy, and ancillary services provided by the PPA and the PPA is reasonably priced.* PD at p. 37.

recovery for IE expenses should be stricken from the final decision.

**C. The PD Erred by Re-Examining the Question of PG&E's Need for Incremental Long-Term Capacity.**

Section 7.2.3 of the PD is entitled “There is No Need for More New Capacity than Authorized by D.07-12-052”, and evaluates information introduced by parties opposed to the transactions (“Opposing Parties”) to show that there is no risk of capacity shortage to be served by the Upgrades.<sup>32</sup> The information consists of an October 2008 CEC Staff Report entitled “Revisiting Path 26 Power Flow Assumptions” and the “California Energy Demand 2010-2020 Adopted Forecast” of the CEC Staff.

The ACR states that the amount of new capacity authorized by D.07-12-052 is not subject to re-litigation in this proceeding. The PD also asserts that it does not revisit the Commission’s findings of need<sup>33</sup>. PG&E strongly supports these precepts because PG&E’s request for authorization to procure projects resulting from its 2008 LTRFO is pending in A. 09-09-021. The Commission should not make any unnecessary findings regarding PG&E’s need for incremental capacity because a discussion of need could have an inadvertent effect on the 2008 LTRFO proceeding. In spite of the ACR and the need for caution, the PD proceeds to question the finding of need adopted by D.07-12-052 based on the incomplete analysis and cherry-picked subset of factors offered by the Division of Ratepayer Advocates (“DRA”), including a CEC Staff Report that was not received in evidence or tested for accuracy, relevance, or reliability in this proceeding. The highlighted excerpts make inappropriate findings about PG&E’s need, or demand, based on extra-record information and should be stricken from the final decision as shown:

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<sup>32</sup> PD at pp. 44-45.

<sup>33</sup> “We emphasize that today’s decision does not revisit the Commission’s determination in D. 07-12-052 that PG&E has a need for 800 MW to 1,200 MW (now 1,112 MW to 1,512 MW) of new capacity by 2015.” PD at p. 45.

*The Opposing Parties cite two reports which reinforce our conclusion that there is no risk of a supply shortage. First, the CEC staff issued a report in October 2008 which states unequivocally that D.07-12-052 “overestimated the amount of capacity flowing North to South on Path 26 during PG&E peak demand periods by at least 1,900 MW”. If the CEC staff report is correct, then PG&E has no need to procure 1,112 MW to 1,512 MW of new capacity authorized by D.07-12-052, and certainly no need to procure more capacity than authorized by D.07-12-052 in order to hedge the risk of project delay and failure.*

*Second, the CEC adopted a report on December 2, 2009, titled The California Energy Demand 2010-2010 Adopted Forecast (hereafter, the “2009 Forecast”). The 2009 Forecast, when compared to the 2007 Forecast that was used by D.07-12-052, shows the CEC has reduced its forecast of peak demand in PG&E’s planning area in 2015 by 597 MW. The CEC attributes the drop in forecasted demand to lower economic growth and increased energy efficiency. The reduction in forecasted peak demand is more than double the 254 MW of new capacity provided by the Tracy and LECER Upgrades, which calls into question PG&E’s claim that it needs these two projects to ensure reliability.<sup>34</sup>*

**D. The Cost of the Upgrade PPAs is Reasonable.**

The PD reasons that since there is no need for the Upgrade capacity, the cost is unreasonable. This is a non-sequitur; if capacity is not needed, then it should not be purchased. However, in this case, PG&E has demonstrated that the Upgrades' capacity represents a sound procurement risk hedge. Given all the additional beneficial characteristics of the Upgrades, which the PD recognizes at page 49,<sup>35</sup> this hedge is reasonably priced. Moreover, as the PD recognized, the Upgrade PPAs were the next in order in the 2008 LTRFO and thus represent the next best value after the 2008 LTRFO winners.

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<sup>34</sup> PD at p. 44-45.

<sup>35</sup> “We recognize that the Tracy Transaction and the LECEF Transaction have many benefits, including the novation of DWR contracts, improved fuel efficiency, brownfield development, lower emissions, and the positive net market value of many of the contracts that comprise these Transactions.” PD at p. 49.

**E. Procurement of the Upgrade PPAs is Consistent with the Long Term Procurement Policies of PG&E’s LTPP and the Mariposa Settlement Agreement and Thus is Authorized by the DWR Novation Decision.**

The Mariposa Settlement re-calculated PG&E’s LTPP need in terms that include unfilled capacity due to the non-development of resources selected in PG&E’s 2004 LTRFO. Since procurement of the Upgrade PPAs is consistent with the policies underlying the LTPP, procurement of the Upgrades is also consistent with the Mariposa Settlement, as well as with the DWR Novation decision.

**III. CONCLUSION**

Substantive errors in the PD must be corrected so that the final decision in this proceeding is consistent with Commission decisions, the scope of the proceeding, and the facts of this case. In particular, the final decision must find that procurement of the Upgrade Facilities is reasonable both in terms of need and price, the PD’s repudiation of the IE’s report and disallowance of PG&E’s IE expense must be deleted, and language challenging the Commission’s previous findings of PG&E’s need for new long-term resources must be deleted.

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## APPENDIX A

### PROPOSED MODIFICATIONS TO FINDINGS OF FACT AND CONCLUSIONS OF LAW PURSUANT TO RULE 14.3 (B)

(ADDITIONAL LANGUAGE IS UNDERLINED  
AND DELETED LANGUAGE IS IN STRIKE-OUT FONT.)

#### PROPOSED FINDINGS OF FACT

5.	<del>PG&amp;E does not need to procure n</del> <u>New capacity from the Upgrade PPAs is needed at this time</u> to (i) hedge the risk that other projects for new capacity might fail or be delayed significantly, or (ii) integrate intermittent renewable generation <u>with environmentally preferred generation</u> .
6.	The cost of the Upgrade PPAs is <del>unreasonable</del> <u>because the Upgrade Projects were ranked as the two next best offers after</u> <del>when compared to the market price for capacity, energy, and ancillary services contained in the winning bids from PG&amp;E's 2008 LTRFO.</del>
10.	<del>The cost of the Upgrade PPAs would become reasonable if a fossil project authorized by the Commission fails, as PG&amp;E will not have any cheaper alternatives available at that time from a competitive procurement process to fill the need for new capacity authorized by D.07-12-052.</del>
16.	PG&E was ordered to submit <del>hired an IE to prepare a</del> <u>Report report on the Upgrade Projects that included the IE's opinion on whether the Projects merit Commission approval.</u> <del>should approve PG&amp;E's request to procure the Upgrade more capacity than authorized by D.07-12-052 for the purpose of hedging the risk that other projects for new capacity might fail or be delayed significantly.</del>

**PROPOSED CONCLUSIONS OF LAW**

2.	The Upgrade PPAs <del>do not</del> comply at this time with D.07-12-052, D.09-10-017, and the Mariposa settlement agreement.
3.	The Tracy Transaction and LECEF Transaction are <del>not</del> just and reasonable under § 451 at this time. <del>Both Transactions should be denied without prejudice.</del> <u>because the underlying projects are needed and will provide electricity at a reasonable cost. The underlying projects are viable, the PPAs support the CPUC's promotion of the repowering of peaking projects, the PPAs' economics are reasonable, and the incremental capacity is appropriate and can serve as a reasonable hedge against the failure of any of the other LTRFO contracts.</u>
4.	Pursuant to D.08-11-056, it is in the public interest to novate the DWR-GWF Contract and the DWR-LECEF Contract to PG&E. <del>PG&amp;E should work with DWR to novate these contracts as soon as practical and submit the novated agreements for Commission approval using the Tier 3 advice letter process.</del>
5.	<u>Pursuant to D.07-12-052, D.09-10-017, and D.08-11-056, it is in the public interest for PG&amp;E to enter into the Transition Agreement and the Tracy Upgrade Agreement with GWF. If a Commission-approved project for new fossil capacity fails, PG&amp;E may be able to procure one or both of the Upgrade PPAs and not exceed 1,512 MW of new capacity. Under this scenario, the Upgrade PPAs would be in compliance with D.07-12-052, D.09-10-017, and the Mariposa settlement agreement.</u>
6.	<u>Pursuant to D.07-12-052, D.09-10-017, and D.08-11-056, it is in the public interest for PG&amp;E to enter into the LECEF Upgrade Agreement with Calpine. PG&amp;E should be authorized to resubmit the Tracy and LECEF Transactions, or substantially similar transactions, if any Commission-approved project for new fossil capacity fails, subject to the conditions specified in the body of today's decision and order. PG&amp;E should be allowed to exclude the novation of DWR contracts from the resubmitted transactions if PG&amp;E intends to seek, or has already sought, separate Commission approval for the novations.</u>
11.	PG&E should be authorized to recover the net costs it incurs under <u>the Tracy Transaction, the LECEF Transaction, and the Peakers Transaction, including stranded costs.</u>

13.	The IE's Report <u>opines on whether the Transactions merit Commission approval, as required by the IE Template implemented pursuant to is not authorized by D.07-12-052 in consideration of the issues adopted by the Assigned Commissioner's Ruling and Scoping Memo. to opine on whether PG&amp;E should be allowed to procure more new capacity than authorized by D.07-12-052. Any costs incurred by PG&amp;E to obtain the IE's opinion on this matter should not be recovered from ratepayers.</u>
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**PROPOSED ORDERING PARAGRAPHS**

1.	Application (A.) 09-10-022 is approved. <del>denied without prejudice.</del>
2.	A.09-10-034 is approved. <del>granted to the extent it requests Commission approval of the Peakers Transaction. A.09-10-034 is denied, without prejudice, to the extent it requests Commission approval of the Los Esteros Transaction.</del>
3.	<p><u>Pacific Gas and Electric Company (PG&amp;E) may recover via the Energy Resources Recovery Account the net costs it incurs under the Tracy Novation Agreement, the Tracy Replacement Power Purchase Agreement (PPA), the Tracy MRTU Replacement PPA, the Tracy Transition PPA, and the Tracy Upgrade PPA, including any stranded costs. The recovery of stranded costs, if any, from departing load customers shall be implemented via a non-bypassable charge in accordance with D.04-12-048 and D.08-09-012.</u></p> <p><del>Pacific Gas and Electric Company shall work with the California Department of Water Resources to novate to Pacific Gas and Electric Company as soon as practical Department of Water Resources' existing contracts to purchase power from the Tracy Facility and the Los Esteros Critical Energy Facility. Pacific Gas and Electric Company may submit the novated agreements for Commission approval using the Tier 3 advice letter process.</del></p>
4.	<p><u>Pacific Gas and Electric Company (PG&amp;E) may recover via the Energy Resources Recovery Account the net costs it incurs under the Los Esteros Critical Energy Facility (LECEF) Novation Agreement, the LECEF Replacement PPA, and the LECEF Upgrade PPA, including any stranded costs. The recovery of stranded costs, if any, from departing load customers shall be implemented via a non-bypassable charge in accordance with D.04-</u></p>

	<p><u>12-048 and D.08-09-012.</u></p> <p><del>Pacific Gas and Electric Company may resubmit the Tracy Transaction and/or the Los Esteros Critical Energy Facility Transaction, or substantially similar transactions, for Commission approval via the Tier 3 advice letter process if any Commission authorized project for new fossil capacity fails. The resubmitted transactions must (i) not exceed the new capacity authorized by Decision (D.) 07-12-052; (ii) be no more costly to ratepayers in terms of out-of-pocket costs and levelized net market value than the transactions submitted in the instant proceeding; and (iii) provide at least the same level of operating flexibility as the transactions submitted in the instant proceeding. All of the capacity provided by the resubmitted transactions must have the ability to support the integration of intermittent renewable generation. The resubmitted transactions may exclude the novation of existing contracts if Pacific Gas and Electric Company intends to seek, or has already sought, separate Commission approval for the novations.</del></p>
5.	<p><del>Pacific Gas and Electric Company's may resubmit the Tracy Upgrade Power Purchase Agreement, the Los Esteros Upgrade Power Purchase Agreement, or substantially similar agreements, using the Tier 3 advice letter process no later than (i) the issuance of Pacific Gas and Electric Company's next long-term request for offers, or (ii) the issuance of the next Commission decision establishing Pacific Gas and Electric Company's long-term procurement plan pursuant to Pub. Util. Code § 454.5, whichever occurs first. If Pacific Gas and Electric Company submits the Tier 3 advice letter after (i) or (ii), Pacific Gas and Electric Company shall explain in the advice letter why the resubmitted Upgrade Power Purchase Agreements should be approved apart from the next long-term request for offers or long-term procurement plan decision.</del></p>
<del>6.</del> <u>5.</u>	<p>Pacific Gas and Electric Company (PG&amp;E) may recover via the Energy Resources Recovery Account the net costs it incurs under the Peakers Novation Agreement and the Peakers Power Purchase Agreement, including any stranded costs. The recovery of stranded costs, if any, from departing load customers shall be implemented via a non-bypassable charge in accordance with D.04-12-048 and D.08-09-012.</p>
<del>7.</del> <u>6.</u>	<p><u>No ruling is necessary to authorize Pacific Gas and Electric Company to may not recover the costs that it incurred to obtain an opinion from the Independent Evaluator on whether Pacific Gas and Electric Company should be allowed to procure more new capacity than authorized by D.07-12-052.</u></p>

**CERTIFICATE OF SERVICE  
BY ELECTRONIC 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.

On the 10<sup>th</sup> day of May, 2010, I caused to be served a true copy of:

**OPENING COMMENTS  
OF  
PACIFIC GAS AND ELECTRIC COMPANY (U 39-E)  
ON PROPOSED DECISION OF ALJ KENNEY**

[XX] By Electronic Mail serving the enclosed, via E-Mail transmission, to each of the parties listed on the official Service List for CPUC Docket No's. A.09-10-022 and A.09-10-034.

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 10<sup>th</sup> day of May, 2010 at San Francisco, California.

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/S/  
**ELIZABETH J. DIAMOND**