

**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 COMMENTS ON PROPOSED DECISION**

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I. INTRODUCTION

The Proposed Decision (“PD”) issued in this proceeding on May 26, 2010 is based on numerous factual errors, arguments that were not raised by any party in this proceeding that are substantively incorrect, and conclusory determinations with little or no evidentiary support. These serious factual and legal errors must be corrected by the Commission. In particular, three aspects of the PD require substantial revision.

First, the PD includes lengthy and unfounded accusations concerning PG&E’s conduct and integrity in its 2008 Long-Term Request for Offers (“LTRFO”). While the PD makes unfounded statements about PG&E conducting its evaluations in a “black box,” even a cursory review of the evidence in this proceeding demonstrates that these accusations are baseless. For example, the PD completely ignores that the Independent Evaluator (“IE”), who was involved in every aspect of the 2008 LTRFO, concluded that the process was “fair and rigorous.” Indeed, the IE ran his own parallel evaluation process and “concluded that PG&E administered its shortlisting and post-shortlisting evaluation and selection processes fairly.”¹ This is the exact same IE who reviewed PG&E’s conduct of the 2004 LTRFO and whose conclusions were relied on by the Commission when it approved the 2004 LTRFO results.² Rather than responding to

¹ Exhibit (“Ex.”) 1, Appendix 5.2 at p. 13.

² D.06-11-048 at p. 7 (“We are pleased to make this finding based on the report of the Independent

the conclusions in the IE's report, the PD simply ignores them. The PD also ignores the fact that the Commission's Energy Division was heavily involved in the development and review of the 2008 LTRFO through the Procurement Review Group ("PRG"), and that the Energy Division was specifically involved in reviewing the evaluation methodology used by PG&E in the 2008 LTRFO. If there were concerns about the evaluation process, they should have been raised by the Energy Division two years ago when the 2008 LTRFO was initiated. The PD makes no effort to explain why an evaluation process reviewed in detail by the IE, PRG, and the Energy Division should now be criticized as contrary to Commission decisions.

Second, and equally as troubling, is the PD's conclusion that PG&E only needs 950 - 1,000 megawatts ("MW") of new resources, rather than the 1,328 MW remaining from the amount authorized in the Commission's 2006 Long-Term Procurement Plan ("LTPP") decision (*i.e.*, D.07-12-052).³ The PD reaches this conclusion in a single sentence without any reference to the evidentiary record or any effort to quantify how 950 MW to 1,000 MW was selected. Contrary to the PD's conclusions, substantial evidence in the record of this proceeding amply demonstrates that the Commission should adopt the high end of the need range approved in the 2006 LTPP Decision and, on that basis, approve both new generation resources proposed by PG&E in this proceeding.

Finally, the PD rejects the Oakley Generating Station ("Oakley Project") Purchase and Sale Agreement ("PSA") based on a fundamental misunderstanding of the operating characteristics of the facility and the flawed determination about PG&E's new resource needs. The Oakley Project, which would utilize the next generation of General Electric ("GE") gas turbine and plant design, provides the quick start capability of a peaking unit and the reliability

Evaluator, who monitored and critically reviewed the process, and the general consensus opinion of the active parties in this proceeding.").

³ D.09-10-017, Ordering Paragraph 2(b).

and efficiency of a baseload facility able to operate throughout the year to provide support for intermittent renewable resources. The Oakley Project will be one of the most efficient, lowest emitting on an overall basis, and most operationally flexible conventional combined cycle generation resource in California. It will also provide much needed Bay Area Resource Adequacy (“RA”) and, as one of the winning offers in the 2008 LTRFO, has one of the best market valuations. In short, the Oakley Project is exactly the type of resource that the Commission directed PG&E to procure, and thus the Oakley PSA should be approved.

II. ARGUMENT

PG&E’s Opening Comments follow the same section headers in the same order as they were used in the PD. Pursuant to Commission Rule 14.3, a subject index listing recommended changes to the Findings of Fact, Conclusions of Law, and Ordering Paragraphs, and specific recommended changes are included in Attachment A.

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 PD wrongly concludes that PG&E is seeking authorization for the new facilities proposed in this proceeding and the GWF Tracy and Calpine’s Los Esteros Critical Energy Facility (“LECEF”) Projects to meet the new generation resource need identified in the 2006 LTPP Decision (*i.e.*, D.07-12-052).⁴ This conclusion is based on both factual errors and a clear misunderstanding of PG&E’s proposals in this proceeding and in Applications (“A.”) 09-10-022 and 09-10-034 (the “Novation Proceeding”).

First, in both this proceeding and the Novation Proceeding, PG&E has repeatedly stated that it has proposed the Mariposa, Marsh Landing and Oakley Projects, which were the winning participants in the 2008 LTRFO, to fill the system resource need identified in the 2006 LTPP

⁴ PD at pp. 14-15.

Decision.⁵ PG&E has also repeatedly stated that the GWF Tracy and LECEF Projects are not winning offers in the 2008 LTRFO and are not proposed to meet the 2006 LTPP Decision need amount. Instead, the GWF Tracy and LECEF Projects are offered in response to D.08-11-056 (the “Novation Decision”). PG&E has also repeatedly asserted that these projects provided significant benefits which merit approval for additional MW above the 2006 LTPP Decision need amount.⁶ The PD completely ignores these repeated and clear explanations that the only projects PG&E proposed to fill the 2006 LTPP Decision need amount are the Mariposa, Marsh Landing and Oakley Projects.

Second, the PD reaches its conclusion that PG&E is proposing excess MW to meet the 2006 LTPP Decision need amount by relying on factually erroneous statements. The PD alleges that in the Novation Proceeding, PG&E has “abandoned its suggestion that D.08-11-056 [*i.e.*, the Novation Decision] somehow provided an independent source of authority for long-term procurement separate and apart from the LTPP.” This assertion is simply wrong. Throughout the Novation Proceeding, PG&E repeatedly stated that its authority to seek approval for the GWF Tracy and LECEF Projects is based in part on the Novation Decision.⁷ PG&E never abandoned this argument and notably, other than citing TURN’s brief, the PD provides absolutely no evidence that PG&E has changed its position.

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⁵ See *e.g.* *Pacific Gas and Electric Company’s Opening Brief*, filed April 14, 2010, at p. 18; *Reply Brief of Pacific Gas and Electric Company*, filed February 5, 2010 in the Novation Proceeding at p. 24.

⁶ See *e.g.* *Opening Brief of Pacific Gas and Electric Company*, filed January 29, 2010 in the Novation Proceeding, at pp. 11-16, 29; *Reply Brief of Pacific Gas and Electric Company*, filed February 5, 2010 in the Novation Proceeding at pp. 7-14, 24.

⁷ See *e.g.* *Opening Brief of Pacific Gas and Electric Company*, filed January 29, 2010 in the Novation Proceeding, at p. 12 (referring to Novation Decision); *Reply Brief of Pacific Gas and Electric Company*, filed February 5, 2010 at p. 7 (same); *Opening Comments of Pacific Gas and Electric Company on Proposed Decision of ALJ Kenney*, filed May 10, 2010 at p. 5 (same).

The PD also erroneously states that PG&E “failed to identify any authority that allows it to procure MW in excess of those allocated in its LTPP.”⁸ This is also incorrect. PG&E is not seeking “excess MW” in this proceeding and thus has not briefed the issue here or provided authorities in this proceeding. However, in the Novation Proceeding, PG&E provided 12 pages of argument and citations to Commission decisions supporting procurement of additional MW from the GWF Tracy and LECEF Projects above the 2006 LTPP Decision need amount.⁹ Thus, contrary to the PD’s conclusion, PG&E has not failed to identify authorities that allow it to seek MWs above the amount approved in the 2006 LTPP decision.

Finally, the PD finds that all new resource MW should be counted against the LTPP need determination “absent specific exemption.”¹⁰ However, the GWF Tracy and LECEF Projects are subject to a specific exemption under the Novation Decision. If there were not existing DWR PPAs for the GWF Tracy and LECEF Projects, they would not fit within a specific exemption. However, these proposed projects are expressly covered by a Commission decision encouraging novation. Thus, even under the reasoning of the PD, the GWF Tracy and LECEF Projects should not count against the 2006 LTPP Decision need determination because they fall within a specific exemption.

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

The PD goes to great lengths to criticize how PG&E conducted the 2008 LTRFO, expressing concerns that were not raised by any party and that have no evidentiary support. The PD reaches its conclusions by completely ignoring the substantial evidence in the IE’s Report

⁸ PD at p. 14.

⁹ See *PG&E’s Reply Brief*, filed April 22, 2010 at p. 6, n. 10 (incorporating by reference briefs from the Novation Proceeding); *Opening Brief of Pacific Gas and Electric Company*, filed January 29, 2010 in the Novation Proceeding, at pp. 11-15 (providing authority for excess MW); *Reply Brief of Pacific Gas and Electric Company*, filed February 5, 2010 at pp. 7-14 (same).

¹⁰ PD at p. 15.

which concluded that “PG&E has conducted a fair and rigorous solicitation for resources/contracts that will help it meet its LTPP authorized capacity needs”¹¹ and the critical role that the Commission’s Energy Division played in reviewing PG&E’s 2008 LTRFO evaluation process before PG&E filed this application. Below, PG&E addresses each of the factual inaccuracies in the PD regarding PG&E’s conduct of the 2008 LTRFO.

First, the PD criticizes the methodology developed by PG&E to rank each offer received, and in particular the statistical value referred to as the “G-score.”¹² After computing the G-score, which indicates how well an offer scored compared to the total population of offers received in the 2008 LTRFO solicitation, PG&E developed its shortlist of offers.¹³ The PD asserts that PG&E’s weighting of certain offer evaluation criterion does not reflect Commission priorities and then cites the “Portfolio Fit” evaluation criterion as an example.¹⁴ However, in the 2006 LTPP Decision the Commission expressly directed PG&E to procure resources that were operationally flexible, which is exactly one of the characteristics the “Portfolio Fit” criterion is intended to measure.¹⁵ Thus, the very example cited by the PD demonstrates that PG&E was following the Commission’s stated priorities. Moreover, the G-score weightings were reviewed in detail by the PRG, including the Commission’s Energy Division, and the IE.¹⁶ The PD ignores the IE’s conclusion that “PG&E’s evaluation and selection process were designed to treat all technologies and types of bidders fairly, employing a consistent methodology that did not

¹¹ Ex. 1, Appendix 5.1 at p. 25.

¹² PD at pp. 17, 18-20. The G-score value is a standardized score that is derived from a weighted average of values assigned to the following eight individual evaluation criteria: market valuation, technical reliability, environmental leadership, project viability, participant qualifications, credit, conformance with non-price terms and conditions, and portfolio fit. *See* Ex. 1 at p. 3-9.

¹³ PD at pp. 17, 18-20.

¹⁴ PD at p. 19.

¹⁵ D.07-12-052 at p. 106 (directing PG&E to procure operationally flexible resources); Ex. 1 at p. 3-4 (describing that portfolio fit measures resource flexibility).

¹⁶ Ex. 1 at pp. 3-2, 3-9.

favor or disadvantage any generation technology or bidder – while obviously recognizing justifiable offer-specific differences (e.g., project location).”¹⁷ Finally, the PD concludes that PG&E gave its interests “disproportionate weight,” but fails to provide a single example of how the G-score ranking decisions were skewed to favor PG&E. For example, it is unclear how weighting “Portfolio Fit,” which is a Commission priority, benefits PG&E.

Second, the PD criticizes PG&E for excluding certain projects from the shortlist with higher G-scores than projects on the shortlist, and for eliminating some offers from consideration.¹⁸ This statement shows a fundamental misunderstanding of the shortlisting process. Many of the “projects” eliminated from shortlist consideration were simply variations of projects that were shortlisted. For example, a participant could propose several variations for the exact same location (*e.g.*, differing pricing terms or contract lengths). As PG&E explained in its testimony, it received 48 offers with 74 variations from 21 different participants.¹⁹ The PD fails to recognize that many of the “offers” that were not shortlisted were simply inferior variations of offers for the exact same project. Typically, PG&E shortlisted the best offer for a project rather than every variation. The PD also criticizes PG&E for considering specific project information to eliminate certain offers from the shortlist.²⁰ However, the PD selectively cites from PG&E’s testimony ignoring the statement that project specific information could be “a project proposed for an environmentally-sensitive area that otherwise could have scored well” being eliminated.²¹

¹⁷ Ex. 1, Appendix 5.1 at pp. 7-8; *see also* p. 5 (PG&E’s bid evaluation methodology was consistent with Commission direction and similar to the methodology employed in the 2004 LTRFO); p. 13 (“For the most part, Sedway Consulting found the G-score ranking process to be fair and rigorous. As noted above, Sedway Consulting believes that the portfolio fit weighting may have been a little higher than necessary, but this issue was discussed with PG&E, and the utility opted to expand the shortlist to address this concern.”).

¹⁸ PD at p. 17.

¹⁹ Ex. 1, at p. 3-1.

²⁰ PD at p. 17.

²¹ Ex. 1 at p. 3-9.

It is difficult to believe that the PD, which strongly emphasizes the importance of environmental issues, would have PG&E ignore the fact that a project was on an environmentally-sensitive site and would have had PG&E shortlist an environmentally problematic project. More fundamentally, PG&E reviewed its recommended shortlist with the IE, the PRG, and the Energy Division at two lengthy meetings in October 2008 and in subsequent follow-up meetings, and both the IE and the PRG actively gave input on the shortlisting process.²²

Third, the PD criticizes PG&E for conducting certain aspects of the evaluation in a “black box” without IE or PRG involvement and that PG&E exercised “unilateral control.”²³ While these inflammatory statements are rhetorically colorful, they are simply wrong. As an example, the PD cites PG&E’s choice of G-scores weights. However, the evaluation methodology was reviewed with the PRG, including the Commission’s Energy Division, and the IE in a lengthy June 5, 2008 meeting, before RFO offers were even received.²⁴ The IE provided a lengthy description of his review of each aspect of the evaluation process, which he notes was similar to the 2004 LTRFO evaluation process, and concluded that “PG&E’s bid evaluation methodology was consistent with CPUC direction.”²⁵ While the Public Utilities Code requires findings to be based on substantial evidence,²⁶ the PD completely ignores this portion of the IE’s report and reaches its conclusion without reference to a single piece of evidence. The PD then re-states its criticism of the G-score weighting and shortlisting process. These issues have been addressed above.

Finally, in an effort to distance itself from the Commission’s earlier determination in D.09-10-017 that the 2008 LTRFO was “an open, competitive and fair solicitation and contract

²² *Id.*, at p. 3-9 (describing shortlisting process) and pp. 5-2 – 5-4.

²³ PD at p. 18, 20.

²⁴ Ex. 1 at pp. 3-2, 3-9 and 5-2 – 5-4.

²⁵ *Id.*, at Appendix 5.1, at pp. 4-5.

²⁶ Public Utilities Code §1757 (a)(4).

selection process,” the PD asserts that D.09-10-017 was “based on a far more limited record than is currently before us.”²⁷ This is absolutely wrong. The detailed solicitation and bid selection information referred to by the PD provided in this proceeding is essentially identical to the information presented in the Mariposa proceeding (*i.e.*, A.09-04-001). The PD notes that there are six volumes in this proceeding, which is twice as large as the filing in the Mariposa proceeding.²⁸ The additional volumes of evidence PG&E submitted in this proceeding are copies of all of the proposed PPAs, which are quite lengthy. The PD also asserts that a full record was not developed in the Mariposa proceeding because there was a settlement. However, the Commission’s determination that the 2008 LTRFO was open, competitive and fair was based on PG&E’s testimony, not the settlement, and is the exact same offer selection and evaluation documents developed throughout the solicitation and included in testimony that was presented in this proceeding.²⁹ The PD also states that the Mariposa application was considered on an expedited basis for a single project and thus concerns were not identified. However, the G-score weighting, evaluation criteria, and shortlisting process were all reviewed in detail in PG&E’s testimony in the Mariposa proceeding. The identical shortlist was submitted in evidence in each proceeding. In short, the PD’s efforts to distance itself from the determination made by the Commission less than eight months ago are completely baseless.

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

The PD concludes, without any evidence or citation to the record, that the appropriate range for new generation resources is 950 MW to 1,000 MW.³⁰ The PD bases this on arguments

²⁷ PD at p. 21.

²⁸ *Id.*

²⁹ D.09-10-017 at p. 5.

³⁰ PD at p. 32.

by intervenors concerning the Planning Reserve Margin (“PRM”), 2009 CEC demand forecast, export assumptions, and energy efficiency considerations.³¹ However, on each of these issues, the PD either concludes that there is no direct impact on the 2006 LTPP Decision need amount or the PD fails to quantify or make clear the exact impact.³² The 950 MW to 1,000 MW need range is described in a single sentence without any evidentiary support or quantification. This is not reasoned decision-making. In its opening and reply briefs, PG&E provided detailed arguments, all supported by evidence in the record, demonstrating that the Commission should adopt the high end of the 2006 LTPP Decision need range.³³ The PD’s cursory decision to the contrary must be modified.

The PD bases its conclusions largely on faulty assumptions and facts. For example, the PD asserts that PG&E’s service area need for 2010 has decreased by 6.9% from the 2007 CEC Integrated Energy Policy Report (“IEPR”) to the 2009 IEPR.³⁴ However, as PG&E clearly explained in its reply testimony, the CEC IEPR demand numbers were for Northern California, not just the PG&E service area. The decrease in PG&E’s service area peak between the 2007 and 2009 IEPR forecasts is only 2.35% by 2018, which is the period when the plants at issue here would be on-line, significantly less than the 6.9% number in the PD.

The PD also criticizes PG&E for not raising problems with the California Energy Commission’s Path 26 study relied on by TURN, DRA, and other parties “in the proceeding leading to D.07-12-052 or via a petition to modify D.07-12-052.”³⁵ The answer to this is simple, but demonstrates a lack of careful review of the record. The CEC report was released in October

³¹ *Id.* (referencing Sections 3.4.1, 3.4.2, 3.4.3, and 3.4.4 of the PD).

³² PD at pp. 24-25 (PRM issues should be addressed elsewhere and impact is unquantified); p. 27 (CEC demand forecast not explicitly adopted and exact impact unclear); pp. 27-28 (no conclusion on export assumptions); p. 28 (impact of energy efficiency will be evaluated in a separate proceeding).

³³ *PG&E Opening Brief* at pp. 20-23; *PG&E Reply Brief* at pp. 11-23.

³⁴ PD at p. 6.

³⁵ PD at p. 28.

2008, almost a year after D.07-12-052 was issued.³⁶ Obviously PG&E could not have referred to it in the proceeding leading up to the issuance of D.07-12-052. Moreover, since PG&E believed the report was flawed,³⁷ there would be no reason for PG&E to file a petition to modify D.07-12-052.

Finally, the PD's rejection of a winning bid in the 2008 LTRFO (*i.e.*, the Oakley Project) based on re-adjusted need numbers will likely have a chilling effect on the market for the development of new generation in California. As PG&E explained in its reply testimony, participants in the 2008 LTRFO spent substantial amounts of time and money preparing offers and participating in the LTRFO process.³⁸ If, after the LTRFO is concluded, a winning participant's offer is rejected based on claims that PG&E's service area need "may" have changed, developers in the future will be hesitant to participate in RFOs where, at the end of the process, the entire basis for the RFO can be reopened.

Unfortunately, like the PD, parties in this proceeding have cherry-picked and misused numbers to support their conclusions. For example, in an *Ex Parte* meeting on June 7, DRA represented that the Oakley Project was not needed because PG&E's Solar Photovoltaic ("PV") Program provided 500 MW of additional capacity to meet the 2006 LTPP need amount. This is flawed for several reasons, all of which have been pointed out to DRA. First, new renewable resources were already included in the 2006 LTPP Decision need analysis before the Commission reached the conclusion that there was 1,328 MW of additional need.³⁹ DRA essentially double counts the PV Program resources. Second, as DRA is well aware, 500 MW of PV does not provide 500 MW of net qualifying capacity as PV, which is an intermittent resource,

³⁶ See Ex. 5 at p. 13, n. 37 (reference to CEC Report being issued in October 2008).

³⁷ Ex. 5 at pp. 12-13.

³⁸ Ex. 5, at pp. 33-34.

³⁹ D.07-12-052, at p. 116, table PGE-1, Line 6 (subtracting out new renewable resources from PG&E demand).

has a much lower net qualifying capacity. Thus, subtracting 500 MW from the 2006 LTPP need amount is misleading. Finally, because PV is intermittent, it is not the type of operationally flexible resource with ramping capabilities required under the 2006 LTPP Decision.

D. 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?

While the PD recognizes that the Oakley Project has a low heat rate, provides operational flexibility and Bay Area RA, and has one of the best market valuations in the 2008 LTRFO, it criticizes the project on several grounds.⁴⁰ First, the PD asserts that the Oakley Project is not sufficiently flexible, relying on an argument made by CARE.⁴¹ However, CARE and the PD incorrectly focus on the number of starts as the basis for determining whether a facility is sufficiently flexible. The discussion of “ramping resources” referred to in the 2006 LTPP Decision does not require a unit to start and stop with every ramp. Instead, these resources can be considered fully operational (*i.e.*, not stopped), but have sufficient flexibility and short run times to adjust to changing demand and intermittent resources. The PD completely ignores PG&E’s testimony that the Oakley Project provides exactly this kind of flexibility, as well as the ancillary services needed under the CAISO’s tariff to integrate renewable resources.⁴² Moreover, the Oakley Project’s operating profile, specifically the number of starts, is consistent with the 2008 LTRFO Solicitation Protocol⁴³ and other proposed new generation resources. Finally, the PD ignores the fact that the Oakley PSA would allow more starts per year than the Marsh Landing PPA and more hours of operation per year than either the Marsh Landing or the Mariposa Project.

⁴⁰ PD at p. 36.

⁴¹ *Id.*

⁴² Ex. 5 at pp. 17-19 (describing ancillary services and short run times for the Oakley Project).

⁴³ Ex. 5, Attachment A at p. 2.

The Oakley Project is also an essential resource for integrating renewable resources and meeting PG&E's customers' energy needs. The Mariposa Project and the Marsh Landing Project are both simple cycle gas turbine "peaker" plants. Peakers fill the need of providing additional generation during the highest peak demand periods. Because of the low efficiency, peakers are generally dispatched infrequently and have low capacity factors. Operating at such low capacity factors, peakers do not contribute significantly to the meeting annual energy demands. Combined-cycle gas turbine generation facilities, because of their superior efficiency, are dispatched at much higher capacity factors and therefore contribute significantly to meeting annual energy demands. Without the Oakley Project, 100% of the new generation from the 2008 LTRFO would be peaking generation, providing very little benefit in PG&E's ability to meet increasing annual energy consumption. Moreover, new renewable resources need to be integrated not only at the peak, but throughout the day. The Marsh Landing Project has operational constraints limiting it to 1,752 hours per year. However, the Oakley Project is currently being permitted for various scenarios of operation up to 6,924 hours per year, which allows for flexible operation throughout the day. The Oakley Project is a resource that can be operated throughout the year to integrate renewables, which is a critical operational need.

The PD also cites CARE's argument regarding a discrepancy in the heat rate of the Oakley Project; however, no such discrepancy exists. PG&E's testimony clearly states that the Oakley Project's heat rate will be one of the lowest in California at 6,752 Btu/kWh at full load.⁴⁴ CARE claims there is a discrepancy because the project's heat rate when operating at minimum load would be higher. Virtually every power plant will have a higher heat rate when the plant is not operating at full capacity – this is true for all of the winning bids in PG&E's 2008 LTRFO. The unremarkable fact that the Oakley Project will have a higher heat rate when it is not operated

⁴⁴ Ex. 1 at p. 3-20, n. 35.

at full load is certainly no basis for denying the Oakley Project. Indeed, the Oakley Project's heat rate at full load is approximately 3,000 Btu/kWh better than both the Marsh Landing and Mariposa Projects.

The PD concludes that the Marsh Landing Project should be approved because it “best reflect[s] the environmental priorities stated in D.07-12-052” and provides reliable service at a fair price, but rejects the Oakley Project.⁴⁵ Again, the PD's reasoning is fatally flawed. Both the Marsh Landing and Oakley Projects provide unique environmental benefits and, as winning participants in the 2008 LTRFO, both are reasonably priced.⁴⁶ Each of these projects has unique characteristics. For example, the Oakley Project will include GE's newest turbine technology which will result in some of the highest efficiency output, reduced emissions and improved operational flexibility in California.⁴⁷ The Oakley Project will be more efficient than any existing facility or even the other winning LTRFO offers, and will thus effectively reduce GHG emissions on a per kWh basis. The Marsh Landing Project will not use this new GE turbine technology, but has other benefits, such as facilitating the shutdown of Contra Costa Units 6 and 7. In short, both projects provide significant benefits and both projects should be approved.

Finally, the PD assumes a contractual linkage between Marsh Landing and Contra Costa 6 and 7 when it directs PG&E and Mirant to take the actions necessary to retire Contra Costa 6 and 7 on April 30, 2013, or when the Marsh Landing Project becomes operational, whichever comes first.⁴⁸ The Contra Costa 6 and 7 PPA allows for retirement on April 30, 2013, subject to governmental approvals, not earlier. PG&E suggests that the PD be modified to direct PG&E and Mirant to take the actions specified in Sections 2.3-2.4 of the Contra Costa 6 and 7 PPA.

⁴⁵ PD at p. 38.

⁴⁶ Ex. 5 at pp. 15-20 (addressing environmental benefits); p. 32, Table 1 (addressing market value).

⁴⁷ Ex. 5 at p. 25.

⁴⁸ PD at p. 38; Ordering Paragraph 4.

E. 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?

This issue was adequately addressed in the PD.

F. 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 supports the PD's determination on this issue.⁴⁹

III. CONCLUSION

PG&E respectfully requests that the Commission revise the PD according to the specific changes appearing in Attachment A and that the Commission approve the Marsh Landing, Contra Costa 6 and 7 and Midway Sunset PPAs, and the Oakley PSA, and the Partial Settlement for purposes of ratemaking and cost recovery.

Respectfully submitted,

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⁴⁹ PD at p. 47.

ATTACHMENT A

**SUBJECT INDEX AND
SPECIFIC PROPOSED REVISIONS TO
FINDINGS OF FACT, CONCLUSIONS OF LAW
AND ORDERING PARAGRAPHS**

Pursuant to Commission Rule 14.3, PG&E provides the following subject index listing recommended changes to the Findings of Fact, Conclusions of Law and Ordering Paragraphs in the PD, as well as specific changes proposed by PG&E.

Subject Index of Recommended Changes:

Recommended Change	Findings of fact, Conclusions of Law and Ordering Paragraphs Affected
PG&E’s conduct of the 2008 LTRFO, including evaluation criteria	FOF 2, 5, 6, 7, 8; COL 8
Scope of the proceeding with regard to the GWF Tracy and LECEF Upgrade Projects proposed in A.09-10-022 and A.09-10-034	FOF 3, 4; COL 5, 6, 7
Determination of the appropriate range of need	FOF 9, 10, 11, 12; COL 4; OP 3
Approval of the Oakley Project	FOF 16; COL 9, 10, and 12; OP 2, 4

Proposed Revisions to Findings of Fact:¹

2. PG&E’s conduct of the 2008 LTRFO was ~~not~~ wholly consistent with Commission directives in D.07-12-052.

~~3. The GWF Tracy and Los Esteros Critical Energy Facility Upgrades (now being addressed in A.09-10-022 and A.09-10-034) were submitted and evaluated in PG&E’s 2008 RFO.~~

~~4. D.08-11-056 established that the policy favoring novation of the DWR contracts would have to be carried out in a manner consistent with the utilities LTTPs.~~

5. PG&E involved the IE and PRG in ~~some, but not~~ all, aspects of the RFO as required by D.07-12-052.

~~6. PG&E made some decisions at key junctures in the RFO process that may have dictated the outcome of the process, for which it provided no explanation of, nor rationale.~~

~~7. Of the eight factors that PG&E weighted to compute its G-score, “environmental leadership” was given one of the lowest weights.~~

¹ Proposed additions are included in underlining and deletions in strikethrough.

~~8. The finding in D.09-10-017 that PG&E conducted an open, competitive and fair solicitation and contract selection process was based on a far more limited record than is available in this proceeding.~~

~~9. We relied on the CEC's 2007 draft forecast in D.07-12-052 because it was the most current public information available and therefore provided a better 'snapshot' of the current needs of the system.~~

~~10. The CEC's 2009 IEPR subsequently found the 2007 California Energy Demand forecasted need determination to be "markedly" higher.~~

~~11. No party in this proceeding disputes that the CEC's 2009 IEPR forecast of peak demand for the PG&E planning area in 2015 is less than in the 2007 CEC forecast relied upon in D.07-12-052.~~

12. Given reporting errors and changes in demand in its service territory, Based on the record in this proceeding, PG&E only needs is authorized to procure up to 1,328 MW ~~950-1000~~ of its previously approved MW allotment.

16. The Marsh Landing project, Contra Costa 6 & 7 tolling agreement, Oakley Project, and the Midway Sunset PPA are reasonable and in the best interest of PG&E's customers and thus, should be approved by the Commission.

Proposed Revisions to Conclusions of Law:

4. PG&E is authorized to procure up to 1,328 MW ~~may procure no more than 950-1000~~ of its previously approved MW allotment in this proceeding, consistent with our determination in D.09-10-017.

5. D.07-12-052 provided the only legal authority that PG&E has to solicit new resources in the 2008 LTRFO and that authority was based on Public Utilities Code Section 454.5.

6. The DWR novations decisions (D.08-11-056) provide a separate basis for the GWF Tracy and LECEF Upgrade Projects. ~~did not create an exception to approved procurement plans.~~

~~7. As a general rule, to support decisional consistency and discourage the parsing of projects into different applications as a means to circumvent our rulings, to the extent that procurement is allowed outside of the proceeding to approve the agreements that are within the utility's previously authorized procurement authority, any approved MW should be counted against the authorized procurement. Consistent with this general rule, absent specific exemption, projects that allow utilities to procure new generation during the time frame covered by their LTTPs should count toward the authorization granted in the LTTP where they are approved by this Commission.~~

~~8. Our previous finding that PG&E “conducted an open, competitive and fair solicitation and contract selection process” is applicable to PG&E’s selection of the Mariposa Energy Center only.~~

9. Following approval of the Marsh Landing, Contra Costa 6 & 7, Oakley Project, and Midway Sunset PPAs, PG&E’s does not have any remaining procurement need under D.07-12-052 (as revised by subsequent decisions) except if other approved projects are subsequently terminated is between 231–281 MW.

10. PG&E should be authorized to recover costs incurred pursuant to the PPAs and PSA approved in this decision in the ERRRA and to recover any stranded costs associated with the agreements pursuant to the terms of the Partial Settlement Agreement.

12. The Marsh Landing project, and Contra Costa 6 & 7, Oakley Project, and Midway Sunset agreements are reasonable and in the best interest of PG&E’s customers and thus, should be approved by the Commission.

Proposed Revisions to Ordering Paragraphs:

2. The Marsh Landing Power Purchase Agreement, the Contra Costa 6 & 7 Power Purchase Agreement, Oakley Purchase and Sale Agreement and Midway Sunset Power Purchase Agreement are approved.

~~3. Pacific Gas and Electric Company is further authorized to procure between 231–281 megawatts of new generation pursuant to the authority granted it in Decision 07-12-052.~~

4. Our approval of the Marsh Landing Project and the Contra Costa 6 & 7 power purchase agreement is conditioned on Pacific Gas and Electric Company’s and the Mirant Corporation’s agreement to undertake all necessary and appropriate activities to obtain the necessary permits and approvals to retire Contra Costa 6 & 7 as scheduled, on April 30, 2013, ~~or when the Marsh Landing Project becomes operational, whichever comes first.~~ Specifically, PG&E and Mirant shall take the actions specified in Sections 2.3 and 2.4 of the Contra Costa 6 and 7 PPA so that Contra Costa 6 and 7 can be retired as scheduled, on April 30, 2013.

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 15th day of June 2010, I caused to be served a true copy of:

**PACIFIC GAS AND ELECTRIC COMPANY’S (U 39-E)
OPENING COMMENTS ON PROPOSED DECISION**

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

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 15th day of June 2010 at San Francisco, California.

/s/
STEPHANIE LOUIE

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA SERVICE LIST

Last Updated: June 14, 2010

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