

**PUBLIC UTILITIES COMMISSION**505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298**FILED**11-02-10
02:46 PM

November 2, 2010

Agenda ID #9922 and
Alternate Agenda ID #9924
Ratesetting

TO PARTIES OF RECORD IN APPLICATION 09-09-021

Enclosed are the proposed decision of Administrative Law Judge (ALJ) Darwin E. Farrar previously designated as the presiding officer in this proceeding and the alternate proposed decision of Commissioner John A. Bohn. The proposed decision and the alternate proposed decision will not appear on the Commission's agenda sooner than 30 days from the date they are mailed.

Pub. Util. Code § 311(e) requires that the alternate item be accompanied by a digest that clearly explains the substantive revisions to the proposed decision. The digest of the alternate proposed decision is attached.

When the Commission acts on these agenda items, it may adopt all or part of the decision as written, amend or modify them, or set them aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the proposed decision and alternate proposed decision as provided in Pub. Util. Code §§ 311(d) and 311(e) and in Article 14 of the Commission's Rules of Practice and Procedure (Rules), accessible on the Commission's website at www.cpuc.ca.gov. Pursuant to Rule 14.3, opening comments shall not exceed 15 pages.

Comments must be filed pursuant to Rule 1.13 either electronically or in hard copy. Comments should be served on parties to this proceeding in accordance with Rules 1.9 and 1.10. Electronic and hard copies of comments should be sent to ALJ Farrar at edf@cpuc.ca.gov and Commissioner Bohn's advisor Robert Kinosian at gig@cpuc.ca.gov. The current service list for this proceeding is available on the Commission's website at www.cpuc.ca.gov.

/s/ KAREN V. CLOPTON
Karen V. Clopton, Chief
Administrative Law Judge

KVC:hkr

Attachment

**Digest of Differences
Between ALJ Darwin E. Farrar's Proposed Decision and
the Alternate Proposed Decision of Commissioner John A. Bohn**

ATTACHMENT

Comparison of the PD and the APD

Proposed Decision by Administrative Law Judge (ALJ) Farrar
The proposed decision by ALJ Farrar denies the Petition for Modification (PFM) of Decision (D.) 10-07-045 filed by Pacific Gas and Electric Company (PG&E). The denial of the PFM confirms the Commission's decision in D.10-07-045 to deny PG&E's Purchase and Sales Agreement (PSA) with Contra Costa Generating Station LLC for the Oakley Project.

Alternate Proposed Decision of Commissioner Bohn
The alternate proposed decision (APD) by Commissioner Bohn grants the PFM of D.10-07-045 filed by PG&E. By granting the PFM, the APD authorizes PG&E to enter into a PSA with Contra Costa Generating Station LLC for the Oakley Project. The Oakley Project is a gas-fired combined-cycle facility that will produce 586 megawatts of generation when it comes on line in 2016. The PFM was requested on the ground that D.10-07-045 denied the Oakley Project because it had an on-line delivery date of June 2014 and PG&E had no demonstrated need in 2014 for the additional energy that the Oakley Project would produce. However, PG&E renegotiated the on-line date for the Oakley Project and it now has an on-line delivery date of 2016. Based on the extended delivery date, PG&E requested that D.10-07-045 be modified so that the Oakley Project was granted.

(END OF ATTACHMENT)

Decision PROPOSED DECISION OF ALJ FARRAR (Mailed 11/2/2010)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company
for Approval of 2008 Long-Term Request for
Offer Results and for Adoption of Cost Recovery
and Ratemaking Mechanisms (U 39 E)

Application 09-09-021
(Filed September 30, 2009)

**DECISION DENYING PACIFIC GAS AND ELECTRIC COMPANY'S PETITION
FOR MODIFICATION OF DECISION 10-07-045**

1. Introduction

In Decision (D.) 10-07-045, we granted, in part, the application of Pacific Gas and Electric Company (PG&E) for approval of its 2008 Long-Term Request for Offer results and adopted a cost recovery and ratemaking mechanism related thereto. In particular, we approved PG&E's Marsh Landing, Contra Costa units 6 & 7, and Midway Sunset procurement agreements. D.10-07-045 also approved a multi-party settlement agreement providing for recovery of the costs associated with the above procurement. However, D.10-07-045 did not approve a purchase and sale agreement with Contra Costa Generating Station LLC for the Contra Costa Generating Station in Oakley, California, a new natural gas-fired combined cycle facility that was expected to produce 586 megawatts of generation at July peak conditions beginning June 4, 2014.¹

¹ The Oakley Project was to be developed by Contra Costa Generating Station LLC and purchased and operated by PG&E after the plant became operational and passed performance tests.

On August 23, 2010, PG&E filed a Petition for Modification of D.10-07-045 that sought to modify D.10-07-045 to approve the Contra Costa Project. This decision denies PG&E's Petition for Modification of D.10-07-045.

2. Procedural Background

In Decision (D.) 07-12-052, we authorized Pacific Gas and Electric Company (PG&E) to procure 800 to 1,200 megawatts (MW)² of new capacity by 2015 and authorized PG&E to issue requests for offers (RFOs) so as to obtain and execute long-term power purchase agreements (PPAs) for this new capacity.³ This number was subsequently increased to 928–1,328 MW due to new projects being authorized and the cancellation of previously approved projects.

In Application (A.) 09-09-021, PG&E sought approval of its 2008 Long-Term Request for Offer (LTRFO) results and adoption of a cost recovery and ratemaking mechanism related thereto. In particular, PG&E sought approval of: (1) a PPA with Mirant Marsh Landing for the net output of the Marsh Landing Generating Station, a new natural gas-fired combustion turbine facility that is expected to produce 719 MW beginning May 1, 2013; (2) a PPA with Mirant Delta LLC that would eventually require the closure of the Contra Costa units 6 and 7 which rely on once-through cooling technologies;⁴ (3) a purchase and sale agreement (PSA) with Contra Costa Generating Station LLC (Contra Costa) for the Contra Costa Generating Station in Oakley, California (Oakley Project), a new

² MW values are expressed in July peak operating conditions.

³ See D.07-12-052, Ordering Paragraph 4 at 300.

⁴ The PPA with Mirant Delta LLC is an 18-month tolling agreement that allows PG&E to dispatch the facility as needed.

natural gas-fired combined cycle facility that was expected to produce 586 MW of generation beginning June 4, 2014;⁵ and (4) a PPA with Midway Sunset Cogeneration Company for the partial output of an existing natural gas-fired cogeneration plant that will deliver 129 MW of Qualifying Facility generation under peak July conditions for five years beginning at Commission approval, and 61 MW through September 30, 2016. D.10-07-045 approved all but the Oakley Project above and, among other things, determined that the range established for PG&E in D.07-12-052 was based on data that overstated PG&E's need.⁶

In a separate proceeding, PG&E sought Commission approval of five power purchase agreements with GWF Energy LLC (GWF) and five power purchase agreements with Calpine Corporation (Calpine) that were originally solicited through PG&E's LTRFO process.⁷ These new PPAs result in PG&E procuring 254 MW of additional new capacity.⁸ In D.10-07-042, we conditionally approved these transactions. As set forth in OP 2 of D.10-07-042:

⁵ The Oakley Project will be developed by Contra Costa and purchased and operated by PG&E after the plant is operational and has passed performance tests.

⁶ Conclusion of Law (COL) 4 of D.10-07-045 determines that PG&E should only be allowed to procure between 950-1,000 MW of new generation resources.

⁷ See A.09-10-022 and A.09-10-034, filed October 16, 2009 and October 22, 2009, respectively.

⁸ Thus, through applications in A.09-09-021, A.09-10-022, and A.09-10-034, PG&E sought approval for 1,556 MW (719 MW (in Marsh Landing) + 586 MW (in Oakley) + 145 MW (in Tracy) + 106 MW (in Los Esteros) = 1,556 MW), when it was only authorized by D.07-12-052 to procure a maximum of 1,328 MW. To the extent PG&E's Petition for Modification (PFM) does not seek to modify Ordering Paragraph (OP) 5 of

Footnote continued on next page

If the Commission rejects the proposed Marsh Landing Project and/or the Oakley Project in Application (A.) 09-09-021, Pacific Gas and Electric Company shall proceed immediately with both the Tracy Transaction described in A.09-10-022 and the Los Esteros Critical Energy Facility Transaction described in A.09-10-034.

Consistent with the language above, on August 4, 2010, PG&E filed a Tier-1 Advice Letter (AL).⁹ Copies of the executed contracts comprising the Tracy Transaction and the Los Esteros Critical Energy Facility Transaction were included in PG&E's AL filing.

On August 23, 2010, PG&E filed a PFM of D.10-07-045 seeking to modify D.10-07-045 so that the Commission approves the Oakley Project. On August 24, 2010, the Division of Ratepayer Advocates (DRA) filed a protest to PG&E's AL. DRA's AL protest asked the Commission to either reject PG&E's AL without prejudice or suspend it and hold it in abeyance until PG&E's PFM in this proceeding is resolved. The Commission's Energy Division responded to DRA's protest on September 1, 2010. Energy Division noted that General Order (G.O.) 96-B, Section 7.6.1 allows it to approve an AL that has been protested if the protest is not made on proper grounds as set forth in General Rule 7.4.2 of G.O. 96-B. Energy Division then denied DRA's protest on claims that the protest was improper since PG&E's AL was filed in compliance with OP 2 of D.10-07-042.¹⁰

D.10-07-045, PG&E also seeks authority to procure 231-281 additional MW after approval of the Contra Costa Project.

⁹ This AL has been designated AL 3711-E by the Commission's Energy Division.

¹⁰ As stated in a September 1, 2010 letter from Energy Division: "Rejecting the advice letter would require Energy Division to treat rejection of the Oakley project in D.10-07-045 as if it was invalid, in contravention of a CPUC decision."

3. Parties' Positions

3.1. PG&E's PFM

PG&E's PFM states that changed circumstances support modifying the decision to provide for approval of the Oakley Project. According to PG&E, the utility and Contra Costa have renegotiated the project PSA to extend the guaranteed commercial availability date from June 1, 2014 to June 1, 2016. PG&E asserts that this amendment represents a significant change that is consistent with several Commissioners' suggestions.

3.2. Opposition to the PFM

On September 22, 2010, The Utility Reform Network (TURN), DRA, and Western Power Trading Forum (WPTF) and Alliance of Retail Energy Markets (AReM) (collectively, "opposing parties") filed comments in opposition to PG&E's PFM. Each of these parties argues that PG&E has not employed the correct procedural vehicle for bringing the Oakley Project back for Commission consideration. Specifically, OP 4 of D.10-07-045 provides that:

Pacific Gas and Electric Company may resubmit this project, via application, for Commission consideration if any of the conditions detailed in Section 3.5.6 above are met.

The opposing parties argue that the PFM is improper because none of the above reference conditions have been met. These parties also argue that the only factual change PG&E claims in support of its PFM is misleading and at best de minimis, and should be afforded no weight by the Commission.

TURN further notes that PG&E's filing raises new factual issues and, unlike an application, a petition for modification deprives it and other parties of due process in the form of full discovery, presentation of testimony, evidentiary hearings, and legal briefing.

DRA argues that a PFM cannot legally modify D.10-07-045 to approve the Oakley Project because, by the terms of D.10-07-042, the denial of the Oakley Project created a vested right in two other projects, and governmental entities may not interfere with vested contractual rights. DRA further notes that the PFM seeks to relitigate PG&E's approved need as determined in D.07-12-052 and D.10-07-045. According to DRA, the additional 586 MW associated with the Oakley Project would exceed the procurement authority granted to PG&E in D.07-12-052 and OP 5 of D.10-07-045. Moreover, DRA asserts that there is no evidence in the record that the Oakley Project is needed in 2016.

For their part, WPTF and AReM add that all of PG&E's authorized need has been met with other projects that have been approved by the Commission and the Oakley Project is not needed to meet PG&E's projected bundled customer demand. WPTF and AReM further assert that any reconsideration of the Oakley Project should take place in the context of its next Long-Term Procurement Plan (LTPP) proceeding, when and if there is a determination that new resources are needed.

3.3. Support for the PFM

On September 22, 2010, the Coalition of California Utility Employees and California Unions for Reliable Energy (CUE/CURE) filed comments supporting the PFM. The comments filed by CUE/CURE provide three arguments in support of granting the PFM. First, CUE/CURE asserts that the Oakley Project is economically superior to most projects bid into PG&E's 2008 RFO.¹¹ Next,

¹¹ CUE/CURE relies on exhibits submitted by it (Exh. 300 - CUE/CURE/Marcus at 2:9-17, 13:1-9) and PG&E (Exh. 67 - PG&E Answer 2) as support for this claim.

CUE/CURE asserts that “the Commissioners ruled against Oakley, indicating that the Oakley Project could be approved if PG&E modified the contract to allow for a later availability date, greater flexibility, and newer technology.”¹² Finally, CUE/CURE states “PG&E has also made the showing of changed circumstances required by Rule 16.4.”¹³

4. Discussion

4.1. PG&E fails to satisfy the Rule 16.4 Requirements for a Petition for Modification.

4.1.1. PG&E’s changed facts are not material.

PG&E claims to have negotiated a modification to the PSA that extends the guaranteed commercial availability date of the Oakley Project by two years, from June 1, 2014 to June 1, 2016. This modification to the PSA is the only changed circumstances or fact PG&E documents.

PG&E asserts that, “the modification of the Oakley Project guaranteed commercial availability date in the amendment constitutes a significant change in circumstances.”¹⁴ In contrast, opposing parties argue that the amendment to the Oakley PSA’s guaranteed delivery date does not constitute a changed fact or circumstance sufficient to justify the PFM.¹⁵ In response to this criticism, PG&E asserts that “the change in the PSA guaranteed commercial availability date is

¹² CUE/CURE fails to identify any record support or provide a citation for its claim.

¹³ CUE/CURE provides no discussion of this issue outside of this statement.

¹⁴ PG&E PFM at 3.

¹⁵ TURN Comments on PFM at 3-4; DRA Comments on PFM at 6-7.

material.”¹⁶ According to PG&E “[t]his is indisputably a change in facts and circumstances because the PSA that was before the Commission in A.09-09-021, and on which the Commission based D.10-07-045, has subsequently been amended.”¹⁷ Consistent with this argument, PG&E notes that “under the original PSA, . . . the Oakley Project would have been on line no later than June 1, 2014”¹⁸ while under the amended PSA the Oakley Project would be on line no later than June 1, 2016. Thus, rather than provide a guaranteed delivery date that is later than 2014, PG&E identifies as a new fact an amendment that may or may not change the project delivery date.

Rule 16.4(b) of the Commission’s Rules of Practice and Procedure (Rules) requires that allegations of fact must be supported by evidence that is in the record or that is judicially noticeable, and that new or changed facts be supported by a declaration or affidavit. Providing the source for existing facts and documentation for new facts as required by Rule 16.4(b) is necessary to allow these facts to be weighed and considered when reviewing a PFM.

Here the language of the PG&E – Oakley contract has been changed. However, there is nothing in the amended agreement or the PFM that suggests that the change in language will likely result in a different outcome under the contract. Rather than extend the project delivery date, the plain language of the amendment merely gives Contra Costa the option of delivering the project at a later date. Moreover, the possibility of later delivery does not appear to be either

¹⁶ PG&E Reply to Opposition at 3-4.

¹⁷ *Id.*

¹⁸ *Id.* at 4.

expected or encouraged. PG&E's PFM asks the Commission to add to COL 10 language authorizing it to "recover costs incurred pursuant to the Oakley Project PSA pursuant to the terms of the Partial Settlement . . ." ¹⁹ which provides that the Oakley Project "is expected to be operational in 2014 . . ." Thus, rather than provide "a later date for construction and operation, so as to better match the needs of PG&E and its ratepayers," ²⁰ the amendment gives Contra Costa the flexibility to keep or extend the project delivery date, while preserving incentives for it to deliver the project within the original time-frame. Because it offers only the possibility of a changed outcome (the likelihood of which is reduced by other changes requested in the PFM), we do not believe the changed fact submitted by PG&E is sufficiently material to support modification of the decision.

PG&E also claims that "several Commissioners expressed support for the Oakley Project and indicated that, if the date for the Oakley Project had been later, the project may have been approved." ²¹ PG&E does not claim that the alleged statements reflect the Commission's opinion, are part of the record of the proceeding, or may be judicially noticed. Indeed, PG&E acknowledges that such statements are not facts of record where it chastises TURN for relying on statements made by another Commissioner at that same meeting. As PG&E notes in its response to TURN, the information "was never entered into the

¹⁹ PFM Appendix A at 3.

²⁰ See Concurrence of Commissioner John A. Bohn at 2, which PG&E includes as part of Attachment A to its PFM.

²¹ Petition at 1-2.

record, never provided to the parties, and never adopted by the Commission.”²² Consistent with PG&E’s own argument, the alleged statements do not and indeed cannot justify PG&E’s PFM.

4.2. The modification PG&E seeks is outside the scope of the proceeding.

OP 4 of D.07-12-052 provides that “PG&E is authorized to procure 800-1,200 MW of new resources (including fossil fuel resources) by 2015.”²³ However, as PG&E states:

Under the Amendment, the guaranteed commercial availability date has been extended to June 1, 2016.²⁴

PG&E has amended its agreement with Oakley such that the Oakley Project may come on line in 2016 and thereby moved the project beyond the authorization period established in D.07-12-052 and outside the scope of this proceeding.

4.3. The amended agreement does not comply with the design of PG&E’s 2008 Long-Term Request for Offers.

PG&E states that it “. . . designed the 2008 LTRFO to solicit: (1) offers for 800-1,200 MW of operationally flexible and dispatchable resources that would be available by no later than May 2015, and earlier if possible . . .”²⁵ By amending

²² PG&E Reply to Opposition at 6-7.

²³ The scoping memo in this proceeding states that “[i]n D.07-12-052 we determined PG&E’s new long-term resources, authorized PG&E’s LTPP for the 10-year period 2007-2016, and authorized PG&E to procure 800-1,200 megawatts of new resources.” However, OP 4 of D.07-12-052 unequivocally states that PG&E must procure the authorized resources by 2015. See D.07-12-052 at 300.

²⁴ Declaration of Marino Monardi in support of PFM at 1.

²⁵ PG&E Application at 8.

the agreement to change the guaranteed availability date for this project, PG&E has unilaterally changed one of the factors underlying the Oakley Project's being selected over other projects. PG&E does not address this issue in its PFM. We have no way of knowing what, if any, other projects might have been submitted and/or if the ranking of applications might have changed using PG&E's alternate date. Establishing different criteria for the Oakley Project post hoc undermines the fair and equal treatment afforded applicants by the original process.

4.4. Granting the PFM would create inconsistency between two recent decisions.

In D.10-07-042, the Commission addressed A.09-10-022 and A.09-10-034, applications by PG&E seeking approval to replace three novated agreements with new long-term PPAs. D.10-07-042 granted conditional authority for PG&E to proceed with the Tracy Transaction and the Los Esteros Critical Energy Facility Transaction, both of which were part of PG&E's LTRFO. The conditional authority granted required "PG&E to proceed immediately with both of these transactions if PG&E's request for approval of the proposed Marsh Landing Project and/or Oakley Project is denied in A.09-09-021."²⁶

The conditional approval granted to PG&E in D.10-07-042 was triggered by our decision in A.09-09-021. Granting the requested PFM would modify D.10-07-045 such that both the Oakley and Marsh Landing projects are approved in A.09-09-021. Therefore by the terms of D.10-07-042, which no party has sought to modify, PG&E would no longer have authority to proceed with the novation

²⁶ D.10-07-042 at 2.

agreements. PG&E's PFM does not address this inconsistency or how best to resolve it.

4.5. The record of the proceeding does not support the requested modification.

As noted above, PG&E and Oakley have negotiated a contract amendment that results in at least 1,556 MW being procured by 2016, while OP 4 of D.07-12-052 authorized PG&E to procure 800–1,200 MW of new resources (including fossil fuel resources) by 2015. Parties opposing the PFM raise questions related to the need for additional generation in 2016.²⁷ PG&E responds to these concerns by noting that “according to the Commission’s prior determination in the 2006 LTPP proceeding [D.07-12-052], the 2016 Planning Reserve Margin (PRM) will likely be 10.9% as a result of aging power plant retirements and load growth if no new generation resources are added.”²⁸ PG&E goes on to note that its PFM neither asserts that there are new facts regarding the need determination that justified the Oakley Project, nor seeks to introduce any evidence regarding need.

However, the fact that a party does not seek to introduce any evidence in a PFM does not mean that the modifications requested do not call certain facts into question. Here, the amendment made by PG&E has the potential to extend generation into 2016. Consistent with OP 4 of D.07-12-052, the record of this proceeding only goes to PG&E’s procurement of new resources by the year

²⁷ See TURN Comments at 4-5; DRA Comments at 6-8; WPTF/ AReM Comments at 5.

²⁸ PG&E Response at 6, citing D.07-12-052 at 116, Table PGE-1, Line 23.

2015.²⁹ Parties opposing the PFM argue that the record does not show a need for these MW. This is a question of fact, raised by the modification PG&E seeks.

PG&E's claim that D.07-12-052 shows the correct PRM for 2016 illustrates the problem with the PFM. First, PG&E ignores changes in the California Energy Commission (CEC) forecast that gave rise to the data PG&E now cites. As noted in D.10-07-045, "the CEC 2009 IEPR found the 2007 California Energy Demand (CED) forecasted need determination to be 'markedly' higher than actual need."³⁰ Our agreement with this determination resulted from parties being allowed to explore this issue in the proceeding.³¹ PG&E urges us to deny parties further input, and to ignore the record evidence and findings in the record that it does not challenge, so as to find sufficient need in 2016. Second, the PRM PG&E references is predicated on no new generation resources being added; however subsequent decisions have already added new generation resources. Finally, in citing D.07-12-052 to support its position, PG&E simply references a table that it prepared and which the decision included but does not appear to comment on. PG&E fails to identify any language in the decision adopting or even discussing the portions of the table it seeks to rely upon.

Because PG&E's amendment potentially provides generation resources in 2016, we must consider the need for generation in 2016. This issue was not

²⁹ The question of need also arises since the PFM would also increase PG&E's procurement beyond what was authorized in either D.07-12-052 or D.10-07-045. See footnote 8 *infra*.

³⁰ See D.10-07-045 at 26-27, citing CEC 2009 IEPR at 51, and D.10-07-045, Finding of Fact (FOF) 10. PG&E's PFM does not seek to modify this language.

³¹ See Scoping Memo at 7-8 and FOFs 9 and 10 of D.10-07-045.

presented in the Scoping Memo and PG&E fails to identify anything in the evidentiary record that supports its claim of need. Therefore the PFM should be denied.

5. Comments on Proposed Decision

The proposed decision of the Administrative Law Judge (ALJ) in this matter was mailed to the parties in accordance with Pub. Util. Code § 311 and comments were allowed under Rule 14.3. Comments were filed on _____ by _____, and reply comments were filed on _____ by _____.

6. Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner and Darwin E. Farrar is the assigned ALJ in this proceeding.

Findings of Fact

1. PG&E and Contra Costa negotiated a modification to the PSA that may or may not result in the Oakley Project being delivered later than June 1, 2014.

2. The plain language of the amendment by PG&E and Contra Costa provides the option of delivering the Oakley Project later than June 1, 2014.

3. The modification PG&E seeks is outside the scope of the proceeding.

4. PG&E's 2008 LTRFO solicited offers for 800-1,200 MW of operationally flexible and dispatchable resources that would be available by no later than May 2015, and earlier if possible.

5. By amending its agreement with Contra Costa such that the Oakley Project may come on line in 2016, PG&E has moved the project beyond the authorization period established in D.07-12-052.

6. The PFM raises new factual questions related to generation need in 2016.

7. The record of the proceeding does not address the need for generation in 2016.

Conclusions of Law

1. Rule 16.4(b) requires that allegations of fact be supported by evidence that is in the record or that is judicially noticeable, and that new or changed facts be supported by a declaration or affidavit.

2. Providing the source for existing facts and documentation for new facts as required by Rule 16.4(b) is necessary to allow these facts to be appropriately weighed and considered when reviewing the PFM.

3. PG&E has failed to comply with the Rule 16.4(b) requirements for a petition for modification.

4. D.10-07-042 granted conditional authority for PG&E to proceed with the Tracy Transaction and the Los Esteros Critical Energy Facility Transaction, both of which were part of PG&E's LTRFO.

5. The changed facts submitted by PG&E are not sufficiently material to support its PFM.

6. Establishing different guaranteed delivery date criteria for the Oakley Project post hoc deprives other parties of a fair and equal process.

7. Granting the PFM would create inconsistency between recent Commission decisions.

8. Generation need in 2016 was not within the scope of this proceeding.

O R D E R

IT IS ORDERED that:

1. The Petition of Pacific Gas and Electric Company for Modification of Decision 10-07-045 is denied.

2. Application 09-09-021 is closed.

This order is effective today.

Dated _____, at San Francisco, California.

INFORMATION REGARDING SERVICE

I have provided notification of filing to the electronic mail addresses on the attached service list.

Upon confirmation of this document's acceptance for filing, I will cause a Notice of Availability of the filed document to be served upon the service list to this proceeding by U.S. mail. The service list I will use to serve the Notice of Availability of the filed document is current as of today's date.

Dated November 2, 2010, at San Francisco, California.

/s/ KE HUANG
Ke Huang

N O T I C E

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