

**PUBLIC UTILITIES COMMISSION**505 VAN NESS AVENUE
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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. CLOPTONKaren V. Clopton, Chief
Administrative Law Judge

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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 **ALTERNATE PROPOSED DECISION OF COMMISSIONER BOHN**
(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 GRANTING PACIFIC GAS AND ELECTRIC COMPANY'S
PETITION FOR MODIFICATION OF DECISION 10-07-045**

1. Summary

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 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 for the Oakley Generating Station (Oakley Project) 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

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 Oakley Project. This decision grants PG&E's Petition for Modification of D.10-07-045, with one condition: that no ratepayer funds be expended on this contract prior to 2016.

2. Procedural Background

In Decision (D.) 07-12-052, the Commission approved the three investor-owned utilities' (IOU) long-term procurement plans for the term 2006 through 2015 and we authorized Pacific Gas and Electric Company (PG&E) to procure 800 – 1,200 megawatts (MW)² of new capacity by 2015. PG&E was authorized to issue requests for offers (RFOs) 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 to adjust for the viability uncertainty that caused many approved projects to cancel and fail to follow through on construction.

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

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

² MW values are expressed in July peak operating conditions.

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

with Mirant Delta LLC for 18 months that would require the closure after 18 months 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 for the Contra Costa Generating Station in Oakley, California (Oakley Project), a new state-of-the-art natural gas-fired combined cycle facility that was expected to produce 586 MW of generation beginning June 4, 2014; and (4) a PPA with Midway Sunset Cogeneration Company (Sunset) 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, when the contract expires. 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.⁵

In a separate proceeding, PG&E sought Commission approval of power purchase agreements with GWF Energy LLC, for the Tracy Transaction (Tracy) and Calpine Corporation, for the Los Esteros Critical Energy Facility Transaction (Los Esteros) that were originally solicited through PG&E's LTRFO process.⁶ These new PPAs would result in PG&E procuring 254 MW of additional new capacity. In D.10-07-042, we conditionally approved these transactions. As set forth in OP 2 of D.10-07-042:

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

⁵ Conclusion of Law (COL) 4 of D.07-12-052 determines that PG&E should only be allowed to procure between 950 - 1000 MW of new generation resources.

⁶ See A.09-10-022 and A.09-10-034, filed October 16, 2009 and October 22, 2009, respectively.

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). Copies of the executed contracts comprising the Tracy and the Los Esteros Transactions were included in PG&E's advice letter filing.

On August 23, 2010, PG&E filed a Petition for Modification (PFM) of D.10-07-045 seeking to modify D.10-07-045 so that the Commission approves a revised 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 advice letter 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 (GO) 96-B, Section 7.6.1 allows it to approve an advice letter that has been protested if the protest is not made on proper grounds as set forth in General Rule 7.4.2 of GO 96-B. Energy Division then denied DRA's protest on claims that the protest was improper since PG&E's advice letter was filed in compliance with OP 2 of D.10-07-042.⁷

⁷ 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 re-negotiated the project PSA to extend the guaranteed commercial availability date from June 1, 2014 to June 1, 2016. PG&E asserts that this amendment, which postpones for two years PG&E's obligation to take ownership of the power plant under the PSA, represents a significant change and is consistent with suggestions made by several Commissioners at the time D.10-07-045 was issued.

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. They rely in particular on OP 4 of D.10-07-045 which provided 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 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: (1) that the Oakley Project is economically superior

to most projects bid into PG&E's 2008 RFO;⁸ (2) 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"; (3) "PG&E has also made the showing of changed circumstances required by Rule 16.4."⁹

4. Discussion

4.1. PG&E Satisfies the Rule 16.4 Requirements for a Petition for Modification

4.1.1. PG&E's Changed Facts are 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 two-year extension of the PSA constitutes the "changed circumstances" upon which PG&E relies in support of its PFM.

PG&E asserts that, "the modification of the Oakley Project guaranteed commercial availability date in the amendment constitutes a significant change in circumstances."¹⁰ 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.¹¹ In response to this criticism, PG&E asserts that "the change in the PSA guaranteed commercial availability date is material."¹² According to PG&E "[t]his is indisputably a change in facts and

⁸ 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.

⁹ Response to PFM filed by CUE/CURE, September 22, 2010, at 1.

¹⁰ PG&E PFM at 3.

¹¹ TURN Comments on PFM at 3-4; DRA Comments on PFM at 6-7.

¹² PG&E Reply to Opposition at 3-4.

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.”¹³ 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”¹⁴ while under the amended PSA the Oakley Project would be on-line no later than June 1, 2016.

Rule 16.4(b) 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. PG&E filed the Declaration of Marino Monardi in support of the PFM. Mr. Monardi’s Declaration, at 1, paragraph 3, sets forth the changed on-line date from June 1, 2014 to no later than June 1, 2016.

The turbulent economy in which we are currently situated has threatened or doomed the viability of many large capital projects that have been in the planning process for years. Power plant projects are no exception. It is very unusual for this Commission to be presented with a viable project, which could come online, with the same commercial terms, two years later than originally planned during project development. This unique opportunity necessitates that the Commission reexamine the record of this proceeding to weigh the costs and benefits of bringing this project on-line in 2016, two years later than previously proposed.

¹³ *Id.*

¹⁴ *Id.* at 4.

4.2. The Modification PG&E Seeks is within the Scope of the Proceeding

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.” 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.” Subsequent rulings make clear that this procurement authority extends through the year 2015.¹⁵

In D.07-12-052 the Commission relied on an exhibit of PG&E’s load forecast (TABLE PGE-1), adjusted using the CEC’s base forecast, to establish PG&E’s need determination through 2015.¹⁶ The Commission found that this exhibit “provides [the basis for] a need determination for PG&E for the 10-year planning period using the assumptions and conclusions reached in this decision without any additional contingencies.” This 10-year planning period includes the year 2016, although the Commission only decided to authorize procurement through 2015. Thus, we believe that consideration by the Commission of procurement opportunities into the year 2016 fairly is within the scope of this proceeding.

In December 2007, when the Commission made its scoping decision, it did not know the results of the 2008 RFO. Those results allow the Commission to consider PG&E’s need for additional generating capacity in the year 2016 without over-procuring for the time period up through 2015. The Oakley Project, as revised, will address a need commencing in the year 2016 that we

¹⁵ Order Instituting Rulemaking (OIR) 08-02-007, July 1, 2009, at 5.

¹⁶ D.07-12-052 - Table PGE-1, at 116 and at 32.

believe is demonstrated in the record. The record established the difference in forecasted need between 2015 and 2016 to be 137 MW. PG&E's Petition thus gives the Commission an appropriate opportunity to reconsider its earlier decision to limit authority through 2015 based on new information: the Oakley Project will be on-line in 2016, two years later than its original on-line date of 2014.

4.3. The Amended Agreement Complies with the Design of PG&E's 2008 LTRFO

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 ..." ¹⁷ The Oakley Project could come online earlier than May 2015. In that posture, the Oakley Project was similarly situated with all other projects that bid into the RFO.

4.4. Granting the PFM does not 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 power purchase agreements. D.10-07-042 granted conditional authority for PG&E to proceed with the Tracy Transaction and the Los Esteros 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." ¹⁸ (Emphasis added)

¹⁷ PG&E Application at 8.

¹⁸ D.10-07-042 at 2.

The conditional approval granted PG&E in D.10-07-042 was triggered by our decision in A.09-09-021. Granting the requested PFM has no bearing on the conditional approval of the Tracey and Los Esteros Transactions in A.09-09-021 because the contractual starting date for the Oakley Project is now two years later than the Oakley contract that was rejected in D.10-07-042.

4.5. The Record of the Proceeding Supports the Requested Modification

PG&E and Oakley negotiated a contract amendment that results in PG&E procuring at least 1,556 MW through 2016. However, 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 2016.¹⁹ 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.”²⁰

Because PG&E’s amendment potentially provides generation resources in the year 2016, we must consider the need for generation in 2016. As stated above, the record demonstrates a need for an additional increment of 137 MW from 2015 through 2016. It should be noted that this need assessment is calculated based on a minimum planning reserve margin of 15%.

The record also shows that the Sunset cogeneration PPA decreases from 129 MW to 61 MW by September 2015, and continues at that output through September 2016 when the contract expires. This creates an additional need of 68

¹⁹ See TURN Comments at 4-5; DRA Comments at 6-8; WPTF/AReM Comments at 5.

MW from September 2015 through September 2016 and then at the expiration of the Sunset contract the need increases by 129 MW. Thus, these two deficits combined show a need for 266 MW of additional procurement in 2016. In light of this information, the Commission is persuaded that it should reconsider its decision to authorize need only through 2015, instead of 2016. Adding an additional year to the need determination also provides a reason for the Commission to revisit its decision to limit PG&E's procurement authorization to between 950 – 1000 MW of new generation resources instead of 1,328 MW, the highest amount that could be authorized consistent with D.07-12-052. The additional 328 MW that could be authorized, plus the 266 MW of deficits/contract expirations by the end of 2016, total 594 MW and that constitutes more megawatts than the 586 MW that the Oakley Plant will produce.

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

²⁰ PG&E Response at 6, citing D.07-12-052 at 116, Table PGE-1, Line 23.

have not been articulated to a level of detail required for making procurement decisions.”²¹ This recognized, conservative time period of seven years to build a plant is important because the procurement authority granted by the Commission in D.07-12-052 assumed the 2010 LTPP cycle,²² which will cover the 2011-2020 planning period, would begin in early 2009.²³ This cycle has yet to get substantively underway. Using a conservative estimate of 2011 as the commencement of the 2010 LTPP cycle, it is unlikely that any new plant to address need determined in that proceeding would come online before 2018. Indeed, it is reasonably likely—and therefore of concern to the Commission—that any new projects approved in the 2010 LTPP cycle might be delayed well beyond 2018.

Furthermore, in D.10-07-042, the Commission approved contracts for 11 peaking facilities. The contracted capacity approved as part of this decision decreases from 502 MW to 325 MW at the end of 2017, a reduction of 177 MWs. With this reduction, combined with the shortage noted above, PG&E runs the risk of being 771 MW short by 2018, even without accounting for load growth. Currently there is no resource other than the Oakley Project that has been considered, vetted, and is at such an advanced stage in the permitting process that could be available on time to fill this potential gap.

Thus the Oakley Project is uniquely situated to be in place to fill this critical gap. We previously concluded that the cost of this additional insurance outweighed the benefits, if, as PG&E originally proposed, such costs were

²¹ Page 5.

²² Need determinations have not been made since D.07-12-052. The 2008 LTPP cycle did not conduct a needs determination.

²³ R.08-02-007, July 1, 2009, at 6.

imposed upon ratepayers in 2014. On balance, however, the record provides the Commission with numerous grounds to consider approving the amended Oakley contract, with a 2016 commencement date in lieu of the original 2014 commencement date.

To further protect ratepayers, the Commission will impose an additional condition on this approval: No ratepayer funds may be expended on this contract prior to 2016.

4.6. There Has Been no Needs Determination Since D.07-12-052

To date, it has been three years since the Commission has made a needs determination. As noted above, the 2010 LTPP is currently behind schedule. Although the Commission and its staff are working diligently to make up ground on that proceeding, it may be another year or even two before the Commission makes another needs determination for PG&E with respect to its generation resources. This means the Commission and the public potentially could face a gap as long as five years between need determinations. A time lapse of that duration creates substantial risk for capacity shortfalls. The Commission has, before it now, a proposed resource that would be able to come on line precisely during the gap created by the time lapses between needs determination. It would not be prudent for Commission to turn a blind eye at an excellent opportunity to hedge the risk of capacity shortfall by declining to consider the revised Oakley contract.

4.7. The Oakley Plant Can Integrate Renewable Resources

While arguments for and against the Oakley Project have focused on capacity need issues, there are other features of this project which make it a uniquely valuable addition to PG&E's resource mix. As noted by Commissioner

Bohn,²⁴ the Oakley plant “has many beneficial features, including a very high efficiency and low air emission rates, and utilizes the most up to date technology from General Electric.” These are exactly the type of attributes the state of California will need to help with renewable integration. Denying approval of a plant that would provide these attributes would be acting contrary to the Commission’s stated goal, in D.07-12-052, of integrating renewable resources through LTPP.

4.8. Oakley is an Exceptional Project and is Highly Viable

The Commission’s decision to deny Oakley was in no way based on the attributes of the project. As D.10-07-045 notes, “we understand that developing and building a power plant in California is a long process, fraught with pitfalls.”²⁵ The original Oakley Project was a highly viable project and the revised project is equally viable. The original Oakley Project was well into the permitting process, thus demonstrating its viability.

Therefore, the revised Oakley Project represents a highly viable, highly efficient and low polluting project that will fill a need for 2016 and effectively hedge the risks created by the time lapse between needs determinations in the LTPP. Therefore, the PFM should be approved.

5. Comments on Alternate Proposed Decision

The alternate proposed decision of Commissioner John A. Bohn in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission’s

²⁴ See Concurrence of Commissioner John A. Bohn, filed as part of D.10-07-045.

²⁵ D.10-07-045 at 40.

Rules of Practice and Procedure. Comments were filed on _____, 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 Administrative Law Judge in this proceeding.

Findings of Fact

1. PG&E and Contra Costa negotiated a modification to the Oakley Project PSA, extending the delivery date of the project from June 2014 to June 2016.
2. The modification PG&E seeks is within the scope of the proceeding and supported by record evidence.
3. 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.
4. The amended agreement complies with the design of PG&E's 2008 LTRFO because it could come on line as early as 2014.
5. By amending its agreement with Contra Costa such that the Oakley Project may come on line in 2016, PG&E has presented the Commission with an opportunity to address need established in D.07-12-052.
6. The factual questions raised in this PFM related to generation need in 2016 have been answered with record evidence.
7. The record of the proceeding supports a finding of need for 594 MW of new generation by the end of 2016 and 771 MW by 2018.
8. There has been no LTPP needs determination since D.07-12-052, creating a risk of capacity shortfall in 2016 and beyond.
9. The revised Oakley Project can mitigate the risk of capacity shortfall in 2016 and beyond that has been created by the time lapse between LTPP needs determinations.

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 are 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 complied with the Rule 16.4(b) requirements for a petition for modification through the filing of the Declaration of Marino Monardi in support of the PFM.
4. The changed facts submitted by PG&E are sufficiently material to support its PFM.
5. Establishing different guaranteed delivery date criteria for the Oakley Project is a unique opportunity.
6. Generation need in 2016 was within the scope of this proceeding.
7. Achieving policy objectives was within the scope of this proceeding.

O R D E R

IT IS ORDERED that:

1. The petition of the Pacific Gas and Electric Company for modification of Decision 10-07-045 is approved subject to the condition that no ratepayer funds be expended on this contract prior to January 1, 2016.
2. Application 09-09-021 is closed.

This order is effective today.

Dated _____, at San Francisco, California.

