

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



**FILED**

11-30-09  
04:59 PM

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

Application No. 09-10-022

(U 39 E)

**REPLY OF PACIFIC GAS AND ELECTRIC  
COMPANY TO PROTESTS  
(PUBLIC VERSION)**

EVELYN C. LEE  
CHARLES R. MIDDLEKAUFF

Law Department  
PACIFIC GAS AND ELECTRIC COMPANY  
Post Office Box 7142  
San Francisco, CA 94120  
Telephone: (415) 973-2786  
Facsimile: (415) 973-5520  
E-mail: ECL8@PGE.COM

Attorneys for  
PACIFIC GAS AND ELECTRIC COMPANY

November 30, 2009

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

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

Application No. 09-10-022

(U 39 E)

**REPLY OF PACIFIC GAS AND ELECTRIC  
COMPANY TO PROTESTS  
(PUBLIC VERSION)**

**I. INTRODUCTION**

On October 16, 2009, Pacific Gas and Electric Company (“PG&E”) filed its Application for Approval of the GWF Transaction (“Application”). The Division of Ratepayer Advocates (“DRA”), The Utility Reform Network (“TURN”), and the Alliance for Retail Energy Markets and the California Large Energy Consumers Association (“AReM” and “CLECA” or, collectively, “AReM”) and Californians For Renewable Energy, Inc. (“CARE”) filed timely protests to the Application. In addition, DRA moved to consolidate the Application with PG&E’s application for novation of the California Department of Water Resources (“DWR”) agreements related to Calpine, Application No. 09-10-034 (the “Calpine Novation”) and AReM moved to dismiss the Application. PG&E hereby responds to the protests within the 10 days provided by Rule 2.6(e) of the Commission’s Rules of Practice and Procedure. PG&E will respond to the motions filed by DRA and AReM within the 15 days provided by Rule 11.1(e).

The protesting parties propose bifurcating the analysis of the GWF Transaction into two separate transactions: the novation of the 2002 DWR agreement to purchase power from three peaker units owned by GWF, and PG&E's procurement of an additional 145 MW of new combined cycle generation following a repower of the Tracy unit for a ten-year term beginning in 2012 or 2013, depending on the date of Commission approval ("the Tracy Upgrade PPA"). As PG&E explained in the Application and its supporting Testimony, however, the novation and additional procurement by way of the Tracy Upgrade PPA comprise a single transaction in which GWF and PG&E negotiated terms beyond the expiring DWR contract to provide continued and enhanced service to PG&E's customers.

As detailed below, the protesting parties fail to rebut PG&E's showing that the GWF Transaction is in the best interest of customers. Each asserts similar arguments against the GWF Transaction. They all argue procurement under the Tracy Upgrade PPA is inconsistent with various terms of the Long-Term Procurement Plan ("LTPP") Decision, D.07-12-052, including its determination of need and its support of competitive solicitation. They also argue that novation of DWR contracts should no longer be pursued because, with the enactment of SB 695, novation is no longer a precondition for the reopening of direct access. Finally, AReM alone asserts that the DWR Novation Decision, D.08-11-056, does not authorize the utilities to execute long-term procurement contracts as part of the novation process.

As detailed below, the contracts offer indisputable customer benefits in the form of 2010 jobs and economic stimulus, greenhouse gas reductions, reduced costs and greater efficiency, and substantial near-term improvements in electric reliability. Moreover, these benefits are uniquely certain due to the strong viability of the Tracy project. The GWF contracts are the proverbial "bird in the hand." The Tracy project has quickly advanced in the

licensing/interconnection processes. Construction of the project could start in 2010 and operation in 2012, but only if the Commission acts promptly. Rather than taking issue with these benefits, the protests instead focus entirely on procedural issues and the cumulative impact of the GWF transactions in combination with other procurement proposals. In essence, the protests ask the Commission to forgo tangible and immediate customer benefits based on misplaced procedural objections arising out of the Commission's procurement policies.

The Commission's procurement policies do not direct such an irrational result. The GWF Transaction meets the criteria for procurement in Cal. Pub. Util. Code section 454.5 and is entirely consistent with the Commission's prior orders regarding the novation of DWR contracts.

## **II. THE PROTESTS FAIL TO STATE ANY REASON TO REJECT THE APPLICATION.**

### **A. The GWF Transaction is Authorized by the Novation Decision Because It Offers Significant PG&E Customer Benefits Available Only with Novation.**

The Protesting Parties largely ignore that the GWF Transaction offers significant benefits to PG&E customers that are available only in conjunction with novation of the GWF agreements. Only through novation can PG&E shorten the duration of the existing Tracy agreement and bring the combined-cycle project on-line in 2012, a result that will yield multiple and substantial benefits to PG&E customers. These include the following:

#### **1. Dramatically improved fuel efficiency**

Early operation of the upgraded Tracy unit will enable PG&E to achieve major efficiency gains that might not be realized absent novation. By repowering the Tracy unit as a combined-cycle facility PG&E can roughly double its output, from 154 MWs to 300 MWs, while improving its efficiency by roughly a third. These additional megawatts, the majority of which are derived by converting waste heat to electricity, will provide important economic and

reliability benefits to ratepayers beginning in 2012, something that could not occur until later (if at all) without novation.

2. Significantly improved and valuable resources

None of the protesters seriously challenge that the GWF Transaction will improve the value of the resources that the DWR contract currently provides. The GWF Transaction provides benefits immediately, as well as in both the short term and the long term. Absent novation, PG&E would receive none of these benefits. Because of the Replacement Agreement in the GWF Transaction, GWF's Hanford and Henrietta peaker units will immediately provide PG&E with improved operational flexibility and additional ancillary services.

In the near-term (*i.e.*, from November 2011 through December 2012), the Tracy peaker will be replaced by the Hanford and Henrietta peaking units through the Transition Agreement. This means PG&E will substitute at a favorable capacity rate the two more efficient and flexible Hanford and Henrietta peaking units for the less efficient and less flexible Tracy units. This substitution means PG&E (and its customers) obtain access to units with a 13% better heat rate, meaning 13% lower greenhouse gas emissions per MWh.<sup>1/</sup> Additionally, the equipment in use at Hanford and Henrietta (4 x GE LM6000 GTG) will provide fast start ancillary service capability not currently available from the Tracy unit due to the equipment in use there (2 x GE 7EA GTG). Thus, in the near term, novation allows PG&E effectively to trade generation that is both inefficient and less well-suited to PG&E's changing portfolio with generation that is precisely what PG&E and its customers need.

---

<sup>1/</sup> The Guaranteed Heat Rates of the Hanford/Henrietta units in the DWR contract are 10,340. The Tracy guarantee is 11,890. Therefore the heat rate benefit and associated CO2/MWh rate achieved as a result of the novation is a reduction of 13%. 2002A Transaction of the Amended and Restated Master Power Purchase & Sale Agreement between CDWR and GWF, Attachment 1, Tables 2 and 3 (available at: [http://www.cers.water.ca.gov/pdf\\_files/power\\_contracts/gwf/082202\\_gwf\\_amended\\_ppa.pdf](http://www.cers.water.ca.gov/pdf_files/power_contracts/gwf/082202_gwf_amended_ppa.pdf)).

In the longer-term, over the course of the ten-year Tracy Upgrade PPA, PG&E's customers will obtain a flexible combined cycle unit completely in line with current California procurement policy directives. The unit will be a brownfield project that advances the state's greenhouse gas ("GHG") policies. The current Tracy peaker -- comprised of two GE Frame 7EA combustion turbines -- is well suited for use as part of a combined cycle plant. Indeed, it was originally designed for conversion to combined cycle operation.<sup>2/</sup> Upgrading the existing facility yields a 35% better heat rate at base load operation, meaning 35% lower greenhouse gas emissions for each MWh generated. The new Tracy combined cycle unit also provides 65± MW of duct-fired capability, which is the approximate equivalent of having a peaker unit ready to go for changes in grid conditions. This new Tracy combined cycle unit could be available as soon as mid-2012.

### 3. Important economic stimulus

PG&E's objective in benefiting its customers is not focused on creating jobs *per se*, but one cannot ignore the near term and much needed economic benefits achieved by novation of the GWF contracts. According to GWF, if the GWF Transaction is approved by the Commission on the schedule proposed, the work associated with the Tracy upgrade will result in over 650,000 personnel-hours of union-wage construction jobs and 560,000 personnel-hours of secondary jobs starting in 2010, a much needed economic stimulus for hard-hit San Joaquin County.<sup>3/</sup>

In sum, novation provides PG&E with access to highly flexible and efficient resources

---

<sup>2/</sup> Under the original GWF/DWR contract for the Tracy unit, DWR had the option to have the facility converted to a combined cycle facility. DWR, however, chose not to exercise its rights to have the facility converted to the more efficient combined-cycle operation.

<sup>3/</sup> CEC Docket No. 07-AFC-8 (Application for Certification for the GWF Tracy Combined Cycle Power Plant), *Final Staff Assessment* (October 30, 2009), p. 4.8-8. CEC Staff confirm a total of 171 construction jobs and 147 secondary jobs per average month over the 22-month construction period, or 313 and 269 person-years, respectively. Based on 2,080 working hours per year, the resulting person-hours total 652,080 for construction jobs and 560,560 for secondary jobs. With a CPUC decision in April 2010, a significant portion of these hours would occur in 2010.

that will help it meet local reliability needs and better integrate increasing levels of intermittent resources, while in the very near term provide much needed economic stimulus to the local economy. These benefits commence for PG&E's customers upon Commission approval of the GWF Transaction agreements and can only be realized with novation. As discussed below, that is precisely what the Commission had in mind in D.08-11-056 when it allowed novation to include contract extensions.

**B. PG&E Properly Relies on Authority Granted in the Novation Decision to Enter the GWF Transaction.**

The protesting parties assert PG&E has improperly relied upon the authority of D.08-11-056 rather than the long-term request for offer ("LTRFO") process for approval of the GWF Transaction. The implication is that PG&E has done so to circumvent procurement limits put in place in the LTPP to the detriment of its customers. The truth is just the opposite: PG&E elected to proceed with the novation approach to achieve ratepayer benefits otherwise unavailable to it. As discussed below, D.08-11-056 remains valid and PG&E is obligated to comply with it. More importantly, the ratepayer benefits of the GWF Transaction depend on novation of the GWF agreements.

Indeed, the precise arguments the protesting parties are making here were already raised and rejected by the Commission in D.08-11-056. When the Commission adopted D.08-11-056 last year, it did so after considering arguments that renegotiation of the price or terms of the agreements should not be allowed. Recognizing that important ratepayer benefits might be achieved through such renegotiation, the Commission instead came down in favor of a case-by-case consideration of individual contracts:

We reject the proposal of certain parties to require categorically that all contracts be novated "as is" without first considering the merits of concurrently negotiating other amendments for any specific contract. It would be premature to make a categorical judgment on this issue for all contracts at this point.

\* \* \*

We view the provisions of the novation clauses as a potential source of bargaining strength for DWR and the IOUs by giving the DWR the unilateral option to require the counterparty to accept a “Replacement Contract” under essentially the same substantive terms, while preserving the flexibility to consider—but not be required to accept—additional terms that the counterparty may seek to negotiate on a concurrent basis. Accordingly, the resulting “Replacement Agreement” must, at a minimum be at least as beneficial for ratepayers as the existing contract. The potential also exists for parties to mutually negotiate a new agreement that is more beneficial to ratepayers compared to the existing agreement. At the same time, if negotiations with a particular supplier are to include making revisions beyond an “as is” novation, the risk of additional delay and uncertainty must be weighed against any potential ratepayer benefits that may be possible. Under no circumstances, however, is DWR obligated to effect a novation with a “Replacement Agreement” that is less beneficial to customers than the current contract. Given the uncertainty of the amount of benefits from novating the DWR contracts, we do not expect to see any “Replacement Agreements” that reduce customer benefits.<sup>4/</sup>

The Commission also considered and rejected arguments that new agreements that might benefit ratepayers should only be allowed through the LTPP/RFO process and not through novation. In so doing, it considered the arguments DRA and AReM are making here:

DRA argues that renegotiation of the DWR contracts outside of any competitive Request for Offer (RFO) process would prevent the statutorily required competition between suppliers of the capacity in question. DRA further argues that by [c]hanging the cost versus benefits analysis with respect to the DWR contracts,” novation of the DWR contracts “could effectively unwind” the IOU procurement process which calculates the net short generation capacity to meet California load over a 10-year period, and could result in duplicative procurement.

DRA further argues that novation of the DWR contracts could disrupt the Long-Term Procurement Planning (LTPP) process which includes a mechanism to calculate the net short generation capacity required over a 10-year period.

\* \* \*

AReM/CACES agree with DRA that the novation of DWR contracts must not confer on the IOUs an opportunity to circumvent the procurement requirements

---

<sup>4/</sup> D.08-11-56 at 69-70, emphasis added.

embedded in their LTPP authority. AReM/CACES propose a competitive auction bidding process as one way to address this concern. AReM/CACES further argue that even absent auction process, the Commission can still exercise appropriate oversight of any renegotiated contract terms, and limit cost recovery of any excess costs deemed not to be competitive.<sup>5/</sup>

The Commission rejected these positions, recognizing that important ratepayer benefits could be achieved through the novation process separate and apart from the RFO process:

One required element of the procurement plan must include “a competitive procurement process under which the electrical corporation may request bids for procurement-related services, including the format and criteria of that procurement process.”<sup>6/</sup> Additionally, these plans must include “a definition of each electricity product, including support and justification for the product type and amount to be procured under the plan ... the duration, timing, and range of quantities of each product to be procured.”<sup>7/</sup> Therefore, the commission-approved procurement plans under which the IOU will operate do not require procurement to come solely via competitive request for offers.

Further, in D.03-12-062, the Commission authorized IOUs to enter into negotiated bilateral contracts for short term transactions of less than 90 days duration and with delivery beginning less than 90 days forward and negotiated bilateral contracts for longer-term products provided the IOU include justification in quarterly compliance filings. Therefore, as the Commission has implemented Pub. Util. Code § 454.5, it has given each IOU explicit authority, subject to proper conditions and justifications, to contract on a bilateral basis. As the Commission stated in D.07-12-052, it prefers that long term procurement be conducted via competitive procurement mechanisms, however it by no means removes bilateral contracts from the IOUs’ options to meet its residual net short positions. In addition, nothing in this process prohibits an IOU from utilizing market benchmarks – including conducting an RFO – to determine whether the renegotiated contract is, indeed, competitive with other options.<sup>8/</sup>

As the foregoing makes plain, D.08-11-056 disposes of the protesters’ arguments in this proceeding regarding the proper scope of a renegotiated DWR agreement. The Commission rejected the arguments that AReM *et al.* made here in recognition that bilateral negotiations can benefit ratepayers -- as exemplified by the GWF Transaction.

---

<sup>5/</sup> D.08-11-056 at 46-48.

<sup>6/</sup> *See*, Pub. Util. Code § 454.5(b).

<sup>7/</sup> *See*, Pub. Util. Code § 454.5(b).

<sup>8/</sup> D.08-11-056 at 48-49, emphasis added.

**C. The GWF Transaction Conforms to Cal. Pub. Util. Section 454.5's Requirements.**

AReM claims that “the new MW agreements do not comply with the competitive procurement requirements in D.07-12-052” and further asserts that, “bilateral negotiation of long-term PPAs is not supported by any legal authority or Commission rule or policy.” It also argues “[the procurement criteria called for by Section 454.5 and implemented by D.07-12-0152] clearly contemplate that long term PPAs will be executed only as a result of a competitive process.”<sup>9/</sup>

That is simply wrong. As already discussed, the Commission explained that the utilities could procure long-term electricity supplies through bilateral negotiation so long as the Commission’s conditions are met: “Therefore, as the Commission has implemented Pub. Util. Code § 454.5, it has given each IOU explicit authority, subject to proper conditions and justifications, to contract on a bilateral basis.” The Commission further explained that while it prefers that long term procurement be conducted via competitive procurement mechanisms, “it by no means removes bilateral contracts from the IOUs’ options to meet its residual net short positions.”<sup>10/</sup>

The Commission’s “primary focus in reviewing the LTTPs has been whether the utilities are procuring preferred resources as set forth in the Energy Action Plan (“EAP”), in the order of energy efficiency, demand response, renewables, distributed generation and clean fossil fuel.”<sup>11/</sup> The LTTP Decision also directed the utilities to assign more priority to the environmental impacts and benefits of facility development, including the distinction between including

---

<sup>9/</sup> AReM Protest at 5, quoting D.08-11-056, at 52.

<sup>10/</sup> D.08-11-056 at 54.

<sup>11/</sup> D.07-12-052 at 2.

Greenfield versus Brownfield development. Finally, the Commission observed “...one criterion that we believe requires far greater scrutiny by the IOUs is project viability.”<sup>12/</sup>

On all of these metrics, the Tracy Upgrade advances Commission’s priorities. The conversion of the Tracy unit from a less efficient and less flexible peaking resource to an efficient combined cycle unit with peaking capability is precisely the kind of clean fossil fuel technology the Commission prefers. As a brownfield development, the Tracy Upgrade not only has a limited incremental impact on surrounding land use, but makes use of existing transmission and gas laterals. Because of its increased efficiency, it will also result in advancing the State’s GHG objectives by meeting the State’s emission portfolio standard. The project is also highly viable. The Tracy peaker has operated successfully since 2003. GWF has a proven track record of successful project development, and according to GWF, the Tracy Upgrade has the support of the local community. The Tracy Upgrade is nearly through the CEC AFC permitting process and there is every reason to believe that it can achieve operation by 2012.

Notwithstanding these facts, AReM argues that the Tracy Upgrade should be subject to the same standards for the utilities’ procurement of new Utility Owned Generation (“UOG”).<sup>13/</sup> However, the rules for UOG procurement are inapposite because the GWF plant will not be utility-owned. Thus, AReM’s concerns are misplaced.

**D. Generation In Excess of Need Identified in the LTPP Decision Should Be Considered Against the Risk of Non-Delivery.**

TURN objects that the Tracy Upgrade would result in “PG&E’s procuring more generating capacity than was authorized in the LTPP decision.”<sup>14/</sup> AReM asserts that the “[n]ew MW Agreements cause PG&E’s new generation procurement to exceed the authority granted to

---

<sup>12/</sup> Ibid at 157.

<sup>13/</sup> AReM Protest at 7 and 8.

<sup>14/</sup> TURN Protest at 1.

it pursuant to the LTPP Decision.”<sup>15/</sup> DRA questions “[w]hether the Tracy Upgrade PPA is consistent with the need approved for PG&E in [the LTPP Decision].”<sup>16/</sup> CARE asserts that PG&E’s request violates the settlement agreement in A.09-04-001 which limited PG&E’s procurement in the LTPP to 1,535 MW.

The LTPP Decision adopted a total need of 800 to 1,200 MW of new generating capacity in PG&E’s service territory by 2015 in order to meet long-term system reliability needs and maintain a planning reserve margin of 15 to 17%.<sup>17/</sup> PG&E does not dispute that the additional capacity procured under the Tracy Upgrade PPA exceeds the need identified in the LTPP Decision when the capacity already procured through the 2008 LTRFO is considered.<sup>18/</sup> It should be noted, however, that the GWF Transaction is being undertaken as a novation pursuant to authorization conferred in the Direct Access Proceeding, R.07-05-025, not under the LTRFO. Thus, CARE’s concerns are misplaced.

There are reasons why procurement in excess of identified need may make sense. The development of new generation resources is subject to events outside of the Commission’s control and which have the potential to impact both the on-line date as well as the viability of such resources. For example, resource policies adopted by the California Energy Commission (“CEC”) and the State Water Resources Control Board (“SWRCB”) severely limit the use of inland fresh water for power plant cooling and often require installation of air-cooled technologies that have the potential to decrease not only planned, but also existing, generation

---

<sup>15/</sup> AReM Protest at 4.

<sup>16/</sup> DRA Protest at 3.

<sup>17/</sup> D.07-12-052 at 105-106. In addition, the LTPP allowed the utilities to procure additional capacity to replace any previously approved contracts that failed to develop.

<sup>18/</sup> The Commission already approved a PPA for 184 MWs of capacity from the Mariposa Energy Center in D.09-10-017 and in A.09-09-021 PG&E is seeking Commission approval for 1,305 MWs of new generation resources arising from the 2008 LTRFO.

capacity.<sup>19/</sup> In addition, the SWRCB is likely to adopt soon policies mandating the cessation of once-through cooling at a number of existing natural gas-fired power plants. The CEC has also adopted recent policies prioritizing its processing of licenses such that proposed gas-fired facilities will face much longer licensing times than in the past.<sup>1</sup>

The U.S. Environmental Protection Agency has recently proposed new rules for the consideration of greenhouse gas emissions in issuing Prevention of Significant Deterioration (“PSD”) permits that will also make licensing of new facilities more difficult.<sup>20/</sup> The land use impacts of new generation proposed in environmentally sensitive habitats has also led to significant project redesign and delayed development schedules of substantial projects, sometimes indefinitely.<sup>21/</sup>

Congress’ proposed designation of lands in the Mojave Desert as the Mother Road National Monument has forced numerous solar generating facilities to relocate.<sup>22/</sup> The CAISO has noted that limits on access to capital also have the potential to disrupt development. “These concerns are driven in large part by the significant downturn in the U.S. economy that has occurred since the GIPR tariff provisions were proposed in July 2008. The economy is in the midst of a recession which has had a particularly serious impact on U.S. and international

---

<sup>19/</sup> California Energy Commission, *2003 Integrated Energy Policy Report* at 41.

<sup>20/</sup> EPA is proposing to tailor the major source applicability thresholds for GHG emissions under the Prevention of Significant Deterioration (PSD) and Title V programs of the Clean Air Act and to set a PSD significance level for GHG emissions. This proposed rule would phase in the applicability thresholds for both the PSD and Title V programs for sources of GHG emissions. The first phase, which would last 6 years, would establish a temporary level for the PSD and Title V applicability thresholds at 25,000 tons per year (tpy), on a “carbon dioxide equivalent” (CO<sub>2</sub>e) basis, and a temporary PSD significance level for GHG emissions of between 10,000 and 25,000 tpy CO<sub>2</sub>e.” *See*: [www.epa.gov/nsr/documents/GHGTailoringProposal.pdf](http://www.epa.gov/nsr/documents/GHGTailoringProposal.pdf).

<sup>21/</sup> *See, e.g.* CEC Docket No. 07-AFC-8 (Application for Certification for the Carrizo Energy Solar Farm), *Committee Order Terminating Proceedings* (November 18, 2009) (at [http://www.energy.ca.gov/sitingcases/carrizo/notices/2009-11-18\\_Committee\\_Order\\_Terminating\\_Proceeding.pdf](http://www.energy.ca.gov/sitingcases/carrizo/notices/2009-11-18_Committee_Order_Terminating_Proceeding.pdf)).

<sup>22/</sup> [http://feinstein.senate.gov/public/index.cfm?FuseAction=NewsRoom.PressReleases&ContentRecord\\_id=1B2BFD79-5056-8059-769B-EFA99AD34933](http://feinstein.senate.gov/public/index.cfm?FuseAction=NewsRoom.PressReleases&ContentRecord_id=1B2BFD79-5056-8059-769B-EFA99AD34933)

financial markets. This impact has increased the difficulty of gaining access to investment capital, which has made it harder for interconnection customers to provide the financial security required by the current GIPR tariff provisions.”<sup>23</sup>

Last, but certainly not least, the California Independent System Operator (“CAISO”) Large Generator Interconnection Procedure is revealing the need for major transmission network upgrades that are likely to impose very substantial costs and possible delays for many proposed generating facilities.<sup>24</sup> Given all of these recent developments, there is a substantial risk that presumed resources will not be available as scheduled or at the assumed volumes.

The procurement of incremental generation from the Tracy Upgrade could mitigate the risk of procurement in a shortage scenario and should not be delayed, lest the opportunity for construction in 2010 and operation in 2012 be lost. The Tracy Upgrade is ideal for this function due to its superior viability. As noted in PG&E’s Testimony, GWF is a reliable developer with a history of successfully operating power generation facilities in California. The Tracy Upgrade technology is standard and well understood. The project has been studied for interconnection to the grid and found to require minimal transmission improvements. It is expected to receive final certification from the CEC in March 2010 and has already received a favorable Final Staff Assessment in the licensing process. The conversion from a peaking plant to an enhanced combined cycle gas turbine will result in a load-following facility with start/stop capability approaching that of a peaker. Thus, the Tracy Upgrade capacity will serve PG&E customer

---

<sup>23</sup> California Independent System Operator, *Amendment to Tariff Provisions on Generator Interconnection Process Reform in Docket No. ER09-1722-000 and Filing to Comply with September 17, 2009 Order in Docket No. ER08-1317-005*, September 18, 2009, at p. 3; available at <http://www.caiso.com/242d/242dd33e5ebc0.pdf>

<sup>24</sup> “Nearly 60% of renewable Transition Cluster capacity had cost estimates for Network Upgrades alone of \$100 million or more.” California Wind Energy Association, *Comments Of The California Wind Energy Association On Proposed Changes To The Large Generator Interconnection Process*, August 25, 2009, at p. 3, available at <http://www.caiso.com/2415/2415cf154b0c0.pdf>

interests in secure energy supplies while consideration is given in future proceedings to procurement in excess of identified need.

**E. Novation of DWR Contracts Should be Continued Pursuant to the CPUC's Implementation of SB 695.**

The policies directing the utilities to resume responsibility for electricity procurement under existing DWR contracts were established in the rulemaking to consider the resumption of direct access (“Direct Access Proceeding”, R.07-05-025). Guidelines on the use of novation to transfer DWR’s contractual obligations and a deadline by which the utilities were to submit novated contracts for Commission review were adopted by the Novation Decision. SB 695 repeals the provisions in the Water Code that, during the energy crisis of 2000-2001, suspended the direct access of retail customers to energy service providers, until the DWR no longer supplied electricity pursuant to statutes enacted during the energy crisis. DRA and TURN suggest that the Novation Decision might no longer provide the basis for the GWF Transaction because the removal of DWR from its procurement entity role not required for the limited resumption of direct access authorized by SB 695.<sup>25/</sup> AReM makes a similar observation and states that it has initiated discussions with Energy Division staff to determine how the DWR contract novation process can be severed from the Commission’s implementation of direct access.<sup>26/</sup>

After the protests were filed, however, the Commissioner assigned to R.07-05-025 issued an order specifying how the pertinent terms of SB 695 are to be addressed in the rulemaking. The Assigned Commissioner recognized that in D.08-11-056, the Commission adopted measures to expedite the phase-out of the DWR from its role of supplying electric power to retail customers, based on a target date of January 1, 2010 for completing the phase-out. In view of

---

<sup>25/</sup> DRA Protest at 3; TURN Protest at 4.

<sup>26/</sup> AReM Protest at 11.

the revised priorities under SB 695, the Assigned Commissioner suspended the activities of the Working Group, whose mission was to develop protocols and strategies for DWR contract novation. With respect to contract novation, however, the Assigned Commission stated, “[t]he utilities should, however, each independently continue their *best efforts* to implement novation or renegotiation of DWR contracts where it is cost-effective to do so.”<sup>27/</sup> In light of this direction, the Commission should continue to treat the Application as a matter of high priority in accordance with the Novation Decision.

**F. Reply to TURN’s Confidential Appendix A.**

TURN includes additional grounds for protest in TURN’s Confidential Appendix A, which is referenced on page 2 of its protest. PG&E’s Reply is provided in PG&E’s Confidential Appendix A, which is incorporated herein by this reference. CARE is concerned that the Novation might not be just and reasonable. PG&E’s reply to TURN provides insight into the reasonableness of the Novation; however, PG&E reserves the right to further address this issue as framed by the parties.

**III. PROCEDURAL ISSUES**

**A. Scope of the Proceeding**

DRA has moved to consolidate this proceeding with PG&E’s Calpine Novation application. PG&E will respond to DRA’s motion in a separate filing.

TURN asserts that either the GWF Transaction under consideration should be limited to the contracts other than the Tracy Upgrade and the Transition Agreement, or that all long-term procurement agreements tendered by PG&E, including the two resulting from the LTRFO, the Calpine Los Esteros agreements, and the Tracy Upgrade, should be consolidated to determine

---

<sup>27/</sup> Assigned Commissioner’s Ruling on Procedures to Address Senate Bill 695 Issues Relating to Direct Access Transactions, R.07-05-052, 11/18/09, at 8, Ruling Paragraph 4 (emphasis added).

how best to obtain new capacity by PG&E customers. PG&E objects to TURN's framing of the issues, which essentially proposes to replicate the resource planning process using a limited subset of potential resources identified by PG&E. This is not appropriate because the GWF Transaction, and any other DWR novations, are products of R.07-05-025 and the November 18, 2009 Assigned Commissioner's Ruling in that proceeding confirms that a basis for review exists under the Novation Decision, independent of the LTRFO.

**B. Evidentiary Hearing is Not Required.**

The facts in this proceeding are relatively straightforward and undisputed. The terms of the GWF Transaction have been made available to non-market participants and the Commission. To the extent parties think these terms are unreasonable, or that the Tracy Upgrade is unneeded, parties can make those assertions in briefs. There is no need for an evidentiary hearing in this proceeding.

**IV. CONCLUSION**

Based on the foregoing, the protests of TURN, AReM, and DRA provide no reason for the Commission not to approve the GWF Transaction.

Dated: November 30, 2009

EVELYN C. LEE  
CHARLES R. MIDDLEKAUFF

By: \_\_\_\_\_/s/\_\_\_\_\_  
**EVELYN C. LEE**

Law Department  
Post Office Box 7442  
San Francisco, CA 94120  
Telephone: (415) 973-2786  
Facsimile: (415) 973-5520  
E-Mail: ECL8@PGE.COM

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

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

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

On the 30<sup>th</sup> day of November 2009, I served a true copy of:

**REPLY OF PACIFIC GAS AND ELECTRIC  
COMPANY TO PROTESTS  
(PUBLIC VERSION)**

**[XX]** By Electronic Mail – serving the above-named document via e-mail transmission to each of the parties listed on the official service list for A.09-10-022 with an e-mail address.

**[XX]** By U.S. Mail – by placing the above-named document for collection and mailing, in the course of ordinary business practice, with other correspondence of Pacific Gas and Electric Company, enclosed in a sealed envelope, with postage fully prepaid, addressed to those parties listed on the official service list for A.09-10-022 without an e-mail address.

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

Executed on this 30<sup>th</sup> day of November 2009 at San Francisco, California.

/s/

---

KAREN PRICE

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

Last Updated: November 25, 2009

## CPUC DOCKET NO. A0910022

Total number of addressees: 24

CHARLES R. MIDDLEKAUFF  
**PACIFIC GAS AND ELECTRIC COMPANY**  
PO BOX 7742  
SAN FRANCISCO CA 94120  
Email: crmd@pge.com  
Status: INFORMATION

MARC D. JOSEPH  
**ADAMS BROADWELL JOSEPH & CARDOZO**  
601 GATEWAY BLVD., STE. 1000  
SOUTH SAN FRANCISCO CA 94080-7037  
FOR: California Unions or Reliable Energy (CURE)  
Email: mdjoseph@adamsbroadwell.com  
Status: INFORMATION

VIDHYA PRABHAKARAN  
**DAVIS WRIGHT & TREMAINE LLP**  
505 MONTGOMERY ST, STE 800  
SAN FRANCISCO CA 94111  
Email: vidhyprabhakaran@dwt.com  
Status: INFORMATION

JIM SPENCE CALIFORNIA ENERGY RESOURCES  
SCHEDULING  
**DEPARTMENT OF WATER RESOURCES**  
3310 EL CAMINO, STE 120  
SACRAMENTO CA 95821  
Email: jspence@water.ca.gov  
Status: INFORMATION

DONALD C. LIDDELL  
**DOUGLASS & LIDDELL**  
2928 2ND AVE  
SAN DIEGO CA 92103  
Email: liddell@energyattorney.com  
Status: INFORMATION

CHRISTOPHER T. ELLISON ATTORNEY  
**ELLISON, SCHNEIDER & HARRIS, L.L.P.**  
2600 CAPITOL AVE, STE 400  
SACRAMENTO CA 95816-5905  
Email: cte@eslawfirm.com  
Status: INFORMATION

SEAN P. BEATTY  
**MIRANT CALIFORNIA, LLC**  
PO BOX 192  
PITTSBURGH CA 94565  
Email: sean.beatty@mirant.com  
Status: INFORMATION

SHANNON L. SIMS  
**PACIFIC GAS AND ELECTRIC COMPANY**  
PO BOX 770000, B9A  
SAN FRANCISCO CA 91477-0001  
Email: s2sc@PGE.COM  
Status: INFORMATION

MICHAEL E. BOYD PRESIDENT  
**CALIFORNIANS FOR RENEWABLE ENERGY, INC.**  
5439 SOQUEL DRIVE  
SOQUEL CA 95073-2659  
FOR: Californians for Renewable Energy, Inc. (CARE)  
Email: michaelboyd@sbcglobal.net  
Status: INFORMATION

JEFFREY P. GRAY ATTORNEY  
**DAVIS WRIGHT TREMAINE, LLP**  
505 MONTGOMERY ST, STE 800  
SAN FRANCISCO CA 94111-6533  
Email: jeffgray@dwt.com  
Status: INFORMATION

DANIEL W. DOUGLASS ATTORNEY  
**DOUGLASS & LIDDELL**  
21700 OXNARD ST, STE 1030  
WOODLAND HILLS CA 91367  
Email: douglass@energyattorney.com  
Status: INFORMATION

ANDREW BROWN  
**ELLISON, SCHNEIDER & HARRIS L.L.P.**  
2600 CAPITOL AVE, STE 400  
SACRAMENTO CA 95816-5905  
Email: abb@eslawfirm.com  
Status: INFORMATION

LYNN M. HAUG ATTORNEY  
**ELLISON, SCHNEIDER & HARRIS, L.L.P.**  
2600 CAPITOL AVE, STE 400  
SACRAMENTO CA 95816-5905  
Email: lmh@eslawfirm.com  
Status: INFORMATION

**MRW & ASSOCIATES, LLC**  
1814 FRANKLIN ST, STE 720  
OAKLAND CA 94612  
Email: mrw@mrwassoc.com  
Status: INFORMATION

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

Last Updated: November 25, 2009

## CPUC DOCKET NO. A0910022

Total number of addressees: 24

KEVIN WOODRUFF  
**WOODRUFF EXPERT SERVICES**  
1100 K ST, STE 204  
SACRAMENTO CA 95814  
Email: kdw@woodruff-expert-services.com  
Status: INFORMATION

MARTIN HOMECA ATTORNEY  
**CALIFORNIANS FOR RENEWABLE ENERGY, INC.**  
PO BOX 4471  
DAVIS CA 95617  
FOR: CALifornians for Renewable Energy, Inc.  
Email: martinhomec@gmail.com  
Status: PARTY

Noel Obiora  
**CALIF PUBLIC UTILITIES COMMISSION**  
LEGAL DIVISION  
505 VAN NESS AVE RM 4107  
SAN FRANCISCO CA 94102-3214  
FOR: DRA  
Email: nao@cpuc.ca.gov  
Status: PARTY

Steven K. Haine  
**CALIF PUBLIC UTILITIES COMMISSION**  
ENERGY DIVISION  
505 VAN NESS AVE AREA 4-A  
SAN FRANCISCO CA 94102-3214  
Email: shi@cpuc.ca.gov  
Status: STATE-SERVICE

Matthew Tisdale  
**CALIF PUBLIC UTILITIES COMMISSION**  
ELECTRICITY PLANNING & POLICY BRANCH  
505 VAN NESS AVE RM 4104  
SAN FRANCISCO CA 94102-3214  
Email: mwt@cpuc.ca.gov  
Status: STATE-SERVICE

EVELYN C. LEE  
**PACIFIC GAS AND ELECTRIC COMPANY**  
PO BOX 7442  
SAN FRANCISCO CA 94120-7442  
FOR: Pacific Gas And Electric Company  
Email: ECL8@pge.com  
Status: PARTY

LYNNE M. BROWN  
**CALIFORNIANS FOR RENEWABLE ENERGY INC.**  
24 HARBOR ROAD  
SAN FRANCISCO CA 94124  
FOR: CALifornians for Renewable Energy, Inc. (CARE)  
Email: l\_brown369@yahoo.com  
Status: PARTY

MICHAEL PETER FLORIO ATTORNEY  
**THE UTILITY REFORM NETWORK**  
115 SANSOME ST, STE 900  
SAN FRANCISCO CA 94104  
FOR: The Utility Reform Network  
Email: mflorio@turn.org  
Status: PARTY

Timothy Kenney  
**CALIF PUBLIC UTILITIES COMMISSION**  
DIVISION OF ADMINISTRATIVE LAW JUDGES  
505 VAN NESS AVE RM 5021  
SAN FRANCISCO CA 94102-3214  
Email: tim@cpuc.ca.gov  
Status: STATE-SERVICE

Jake Wise  
**CALIF PUBLIC UTILITIES COMMISSION**  
ENERGY DIVISION  
505 VAN NESS AVE AREA 4-A  
SAN FRANCISCO CA 94102-3214  
Email: jw2@cpuc.ca.gov  
Status: STATE-SERVICE