

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



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

(U 39 E)

Application No. 09-10-034
(Filed October 30, 2009)

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

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December 17, 2009

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I. INTRODUCTION

On October 30, 2009, Pacific Gas and Electric Company (“PG&E”) filed its Application for Approval of the Calpine 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 GWF, Application No. 09-10-022 (the “GWF 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 responded to the motion by DRA to consolidate the applications on December 4, 2009 and will respond to the motion filed by AREM within the 15 days provided by Rule 11.1(e).

PG&E's Application seeks Commission approval of five transactions. Three of the transactions are associated with novation of DWR's Calpine 2 contract which are referred to as a Novation Agreement, a Replacement Agreement and the Los Esteros Critical Energy Facility (LECEF) Upgrade Power Purchase Agreement ("PPA"). The two remaining transactions are associated with novation of DWR's Calpine 3 contract, which are referred to as a Novation Agreement and a Replacement Agreement. Together, these transactions are referred to as the Calpine Transaction.

The protesting parties propose bifurcating the analysis of the Calpine Transaction into two separate transactions: the novation of the existing Calpine contracts with DWR and PG&E's procurement of additional megawatts ("MW") of new combined cycle generation following an upgrade of the LECEF for a ten-year term (the "LECEF Upgrade PPA"). As PG&E explained in the Application and its supporting testimony, however, the novation and additional procurement by way of the LECEF Upgrade PPA comprise a single transaction in which Calpine 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 Calpine Transaction is in the best interest of customers. Each asserts similar arguments against the Calpine Transaction. They all argue procurement under the LECEF 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 Senate Bill ("SB") 695, novation is no longer a precondition for the reopening of direct access. Finally, TURN and AReM assert 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.^{1/}

As detailed below, the contracts offer indisputable customer benefits in the form of competitive costs and greater efficiency, substantial near-term improvements in electric reliability, greenhouse gas reductions and job growth and economic stimulus. Moreover, these benefits are uniquely certain due to the strong viability of the LECEF Upgrade project. The LECEF Upgrade project has its California Energy Commission (“CEC”) license in hand, and has quickly advanced in the electric transmission interconnection process. Rather than taking issue with these benefits, the protests instead focus entirely on procedural issues and the cumulative impact of the Calpine 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 Calpine 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.

^{1/} Additionally, only CARE asserts that the existing DWR contracts may not be valid due to pending legal challenges. CARE Protest at 3-4. CARE has raised this argument before in the Commission’s general novation proceeding, R.07-05-025, and the Commission has previously concluded that CARE’s argument has no merit. “[W]e find no basis in the arguments of CARE that pending federal litigation relating to existing wholesale power contracts provides any basis to halt progress in this proceeding.....” (D.08-11-056 at 83-84).

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

A. The Calpine 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 Calpine Transaction offers significant benefits to PG&E customers that are available only in conjunction with novation of the DWR contracts. As detailed in Chapters 2 and 3 of PG&E's prepared testimony in support of the Calpine Transaction, only through the various agreements that comprise the Calpine Transaction can PG&E obtain greater benefits for customers than are currently provided under the existing DWR contracts. These benefits include, but are not limited to, the following:

1. Calpine 2 Contract

- Better efficiency. The LECEF Replacement Agreement facilitates construction of the LECEF Upgrade and, on an interim basis, provides for dispatchable capacity from the Gilroy facility at a better heat rate than currently provided by the existing LECEF facility. The LECEF Upgrade PPA provides for the upgrade of the LECEF facility from combustion turbine to combined cycle gas turbine technology resulting in an increase in capacity while, at the same time, a significant decrease in fuel consumption and emissions per kWh of generation.
- Environmental. The LECEF Upgrade will result in a reduction in CO2 emissions and other greenhouse gases and criteria pollutants per unit of electricity generated.
- Operating flexibility. The LECEF Replacement Agreement and LECEF Upgrade PPA provide PG&E with operational benefits by designating PG&E as Scheduling Coordinator for the LECEF facility. The LECEF Upgrade PPA will provide PG&E with additional load following capacity, including spinning reserves, regulation, and up to two starts per day, to allow PG&E to respond to changing load and/or resource conditions.

- Brownfield development. The LECEF Upgrade is a brownfield project located in the Greater Bay Area load center that will be developed on the site of the existing LECEF facility and will utilize existing infrastructure, such as existing natural gas pipelines to supply fuel for plant operations, recycled water from the South Bay Water Recycling Program, and existing storm water discharge facilities.

- Project viability. The LECEF Upgrade is an upgrade to a currently operating facility. The project has an existing license from the CEC and the CAISO has completed a Phase I Interconnection Study Report for the project.

2. Calpine 3 Contract

- Enhanced unit specific dispatch rights. The Peakers Replacement Agreement provides PG&E with “call rights” on the energy from each specific unit and transmits the RA associated with each unit, including local attributes when appropriate.

- Increased dispatch rights. The Peakers Replacement Agreement increases the current 2,000-hour-per-year limitation on PG&E’s dispatch rights to include all periods (both peak and non-peak) and all months.

- Reduced need for Reliability Must-Run Resources. The Peakers Replacement Agreement enables PG&E to claim the local capacity attributes associated with individual Peaker units for resource adequacy purposes.

- Extended term. The Peakers Replacement Agreement provides PG&E with unit specific energy dispatch rights and local capacity in the Bay Area through December 31, 2021 and unit specific energy dispatch rights and local capacity outside the Bay Area and system capacity through December 31, 2017.

B. PG&E Properly Relies on Authority Granted in the Novation Decision to Enter into the Calpine 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 Calpine 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 Calpine Transaction depend on novation of the DWR 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.^{2/}

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 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

^{2/} D.08-11-56 at 69-70, emphasis added.

terms, and limit cost recovery of any excess costs deemed not to be competitive.^{3/}

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.”^{4/} 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.”^{5/} 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.^{6/}

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

^{3/} D.08-11-056 at 46-48.

^{4/} *See*, Pub. Util. Code § 454.5(b).

^{5/} *See*, Pub. Util. Code § 454.5(b).

^{6/} D.08-11-056 at 48-49, emphasis added.

benefit ratepayers -- as exemplified by the Calpine Transaction.

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

AReM claims that there is “no justification” for PG&E to have bilaterally negotiated agreements for new MW outside of the competitive procurement process^{7/} and asserts that 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.”^{8/}

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.”^{9/}

The Commission’s “primary focus in reviewing the LTPPs 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.”^{10/} The LTPP Decision also directed the utilities to assign more priority to the environmental impacts and benefits of facility development, including the distinction between including

^{7/} AReM Protest at 9.

^{8/} AReM Protest at 7.

^{9/} D.08-11-056 at 54.

^{10/} 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.”^{11/}

On all of these metrics, the LECEF Upgrade advances Commission’s priorities. The conversion of the LECEF 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 LECEF 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 LECEF peaker has operated successfully since 2003. Calpine has a proven track record of successful project development and Calpine has stated that it holds long-term leases for all of the land needed to construct and operate the LECEF Upgrade project; the project has an existing license from the CEC and the California Independent System Operator Corporation (“CAISO”) has completed a Phase I Interconnection Study Report for the LECEF Upgrade.

Notwithstanding these facts, AReM argues that the LECEF Upgrade should be subject to the same standards for the utilities’ procurement of new Utility Owned Generation (“UOG”).^{12/} However, the rules for UOG procurement are inapposite because the LECEF plant will not be utility-owned. Thus, AReM’s concerns are misplaced.

^{11/} Ibid at 157.

^{12/} AReM Protest at 8-9.

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

TURN objects that the LECEF Upgrade would result in “PG&E’s procuring more generating capacity than was authorized in the LTPP decision.”^{13/} AReM asserts that the “[n]ew MW Agreements cause PG&E’s new generation procurement to exceed the new generation procurement authority granted to it [pursuant to the LTPP Decision].”^{14/} DRA questions “[w]hether the LECEF Upgrade PPA is consistent with the need approved for PG&E in [the LTPP Decision].”^{15/} Similarly, CARE asserts that PG&E “should not be allowed to procure more generation than authorized in [the LTPP Decision].”^{16/}

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%.^{17/} PG&E does not dispute that the additional capacity procured under the LECEF Upgrade PPA exceeds the need identified in the LTPP Decision when the capacity already procured through the 2008 LTRFO is considered.^{18/} It should be noted, however, that the Calpine 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, the protesting parties’ 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

^{13/} TURN Protest at 1.

^{14/} AReM Protest at 3.

^{15/} DRA Protest at 3.

^{16/} CARE Protest at 6.

^{17/} 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.

^{18/} 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.

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 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 capacity.^{19/} 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.^{20/}

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.^{21/} 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.^{22/}

^{19/} CEC, *2003 Integrated Energy Policy Report* at 41.

^{20/} <http://gov.ca.gov/press-release/11073>.

^{21/} 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” (CO₂e) basis, and a temporary PSD significance level for GHG emissions of between 10,000 and 25,000 tpy CO₂e.” See: www.epa.gov/nsr/documents/GHGTailoringProposal.pdf.

^{22/} 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).

Congress' proposed designation of lands in the Mojave Desert as the Mother Road National Monument has forced numerous solar generating facilities to relocate.^{23/} 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 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."^{24/}

Last, but certainly not least, the CAISO's 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.^{25/} 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 LECEF Upgrade could mitigate the risk of procurement in a shortage scenario and should not be delayed, particularly given the superior viability of the LECEF Upgrade. Calpine is a reliable developer with a history of successfully operating power generation facilities in California. The LECEF Upgrade

^{23/}

http://feinstein.senate.gov/public/index.cfm?FuseAction=NewsRoom.PressReleases&ContentRecord_id=1B2BFD79-5056-8059-769B-EFA99AD34933

^{24/}

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.aiso.com/242d/242dd33e5ebc0.pdf>

^{25/}

"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.aiso.com/2415/2415cf154b0c0.pdf>

technology is standard and well understood. 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 LECEF Upgrade capacity will serve PG&E customer 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 is not required for the limited resumption of direct access authorized by SB 695.^{26/} AReM makes a similar observation.^{27/}

However, the Commissioner assigned to R.07-05-025 has recently 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 the revised

^{26/} DRA Protest at 3; TURN Protest at 4-5.

^{27/} AReM Protest at 10-11.

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.”^{28/} 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 its protest in TURN’s Confidential Appendix A, which is referenced on page 3 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 GWR Novation application. PG&E has responded to DRA’s motion in a separate filing.

TURN asserts that either the Calpine Transaction under consideration should be limited to simple novation of the exiting DWR contracts, or that all long-term procurement agreements tendered by PG&E, including the two resulting from the LTRFO, and the agreements under the GWF Transaction, should be consolidated to determine how best to obtain new capacity by

^{28/} 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).

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 Calpine 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 Calpine Transaction have been made available to non-market participants and the Commission. To the extent parties think these terms are unreasonable, or that the LECEF Upgrade is unneeded, parties can make those assertions in testimony and briefs. There is no need for an evidentiary hearing in this proceeding.

IV. CONCLUSION

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

Dated: December 17, 2009

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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 17th day of December 2009, I served a true copy of:

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

[XX] By Electronic Mail – serving the enclosed via e-mail transmission to each of the parties listed on the official service list A. 09-10-022 and A.09-10-034.

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 and A.09-10-034 without an e-mail address.

[XX] By Hand Delivery to:

President Michael Peevey
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

ALJ Timothy Kenney
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

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 17th day of December 2009 at San Francisco, California.

/S/

SHARON MORTZ

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA SERVICE LIST

Last Updated: December 16, 2009

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Total number of addressees: 47

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