

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA



**FILED**

08-14-12

09:39 AM

Application of Pacific Gas and Electric Company (U 39 E) for Approval of Amended Purchase and Sale Agreement Between Pacific Gas and Electric Company and Contra Costa Generating Station LLC and for Adoption of Cost Recovery and Ratemaking Mechanisms.

Application 12-03-026  
(Filed March 30, 2012)

**MOTION OF THE DIVISION OF RATEPAYER ADVOCATES  
TO STRIKE PORTIONS OF THE PREPARED AND REBUTTAL TESTIMONY  
OF PACIFIC GAS AND ELECTRIC COMPANY**

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August 14, 2012

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**I. MOTION**

Pursuant to Rule 11.1 of the Commission’s Rules of Practice and Procedure (the “Rules”), the Division of Ratepayer Advocates (“DRA”) moves to strike identified portions of:

- the Prepared Testimony of Pacific Gas and Electric Company (“PG&E”) served on May 21, 2012 identified in Table 1 below,
- the Rebuttal Testimony of PG&E served on August 3, 2012 identified in Table 2 below, and
- submissions in intervenor testimony that present the same or derivative evidence, of studies by the California Independent System Operator (CAISO) to the extent that striking such evidence is both consistent with the Commission’s ruling on the instant motion to strike and is not admissible on other grounds (e.g. as impeachment evidence).

DRA moves to strike portions of PG&E’s Prepared and Rebuttal Testimonies on the grounds that the identified portions are submissions of hearsay or double hearsay statements by representatives of the California Independent System Operation (CAISO), which have been submitted to prove the truth of the matter asserted therein: namely, that new system resources

are needed to support system-wide operational flexibility needs beginning in 2017-2018. Their admission into the record would be highly prejudicial to intervenors and thus violate Rule 13.6.

DRA additionally moves to strike Attachments B, C, D, E, and F to PG&E’s Rebuttal Testimony and witness statements referencing the attachments on the grounds that PG&E’s submission violates Rule 13.8(b) by seeking to admit direct testimony in addition to the prepared testimony it previously served without good cause shown.

DRA additionally moves to strike the testimony identified in rows 5, 18, and 21 on the basis that the testimony as submitted present mischaracterizations of fact and therefore violate Rule 1.1 as stated in footnotes 1, 2, and 3 below.

**Table 1 – Portions of PG&E’s Prepared Testimony that DRA Moves to Strike**

<b>Item No.</b>	<b>Page:Lines</b>	<b>Item or Quotation from PG&amp;E’s Prepared Testimony (specific text to be stricken shown in bold)</b>	<b>Reason to Strike</b>
<b>1</b>	<b>Chapter 5, Attachment 1</b>	Declaration of Mark A. Rothleder. Submission made by the CAISO into the Federal Energy Regulatory Commission (FERC) Docket No. ER12-897-000, in support of the document referenced in PG&E’s Prepared Testimony as the “Sutter Waiver Request,” (which PG&E submitted as Attachment B to its August 3, 2012 Rebuttal Testimony).	Hearsay. Declarant: CAISO Staff Mark Rothleder
<b>2</b>	<b>Chapter 5, Attachment 2</b>	Letter from Steve Berberich, President and Chief Executive Officer (CEO) of the CAISO, to President Peevey and the CPUC Commissioners.	Hearsay. Declarant: CAISO CEO Steve Berberich
<b>3</b>	5-1:13-20	Since completing the 2010 Long-Term Procurement Plan (LTPP) proceeding California Public Utilities Commission (CPUC or Commission) (Rulemaking 10-05-006) study in July 2011, <b>the CAISO has consistently and repeatedly raised in various forums California’s need for additional operating flexibility to maintain reliability on the CAISO-controlled grid with the higher levels of wind and solar generation to meet California’s 33 percent Renewable Portfolio Standard (RPS) goal, as well as additional distributed generation.</b>	Hearsay. Declarant: “the CAISO” as specified in the following quotations supporting PG&E’s position.
<b>4</b>	5-1:29 – 5-2:1 & FN 1	Since completing the 2010 LTPP studies last year, <b>the CAISO has repeatedly raised the need for additional operating flexibility to maintain reliability with the higher levels of wind and solar generation to meet California’s 33 percent renewables goal.<sup>1</sup></b>	Hearsay. Declarant: CAISO Vice President Keith Casey.

Item No.	Page:Lines	Item or Quotation from PG&E's Prepared Testimony (specific text to be stricken shown in bold)	Reason to Strike
		FN 1: August 18, 2011 Briefing on Renewable Integration to CAISO Board of Governors by Keith Casey, Vice President (VP), Market and Infrastructure Development. [PG&E submitted as Exhibit 1 to Attachment B submitted with its August 3, 2012 Rebuttal Testimony]	
5	5-2:6-10 & FN 2	<p>In its comments, <b>the CAISO noted that its 33 percent RPS studies had preliminarily indicated a potential renewable integration capacity need of 4,600 megawatt (MW) for upward balancing flexibility and 800 MW for downward balancing flexibility.</b><sup>2</sup></p> <p>FN 2: Opening Brief of the California Independent System Operator on Track I Issues, filed September 16, 2011 in R.10-05-006, Exhibit 1 at p. 2. [PG&amp;E submitted as Attachment D to its August 3, 2012 Rebuttal Testimony]</p>	<p>Rule 1.1 violation,<sup>1</sup> (document does not reasonably support the testimony).</p> <p>Hearsay. Declarant: CAISO Attorney Judith Sanders.</p>
6	5-2:21-25	<p><b>Specifically, the CAISO identified a need for new flexible generation capacity resources in 2017-2018 in order to integrate intermittent renewable resources. "[T]he [CAISO's] 2017/2018 analysis identified a 2,535 MW deficiency in flexible capacity requirements, resulting in an estimated 3,750 MW of additional capacity needs."</b><sup>3</sup></p> <p>FN 3: Sutter Waiver Request at p. 28. [PG&amp;E submitted as Attachment B to its August 3, 2012 Rebuttal Testimony].</p>	<p>Hearsay.</p> <p>Declarant: Sean A. Atkins, Alston &amp; Bird LLP (Outside Counsel for the CAISO).</p>
7	5-2:28 – 5-3:2 & FN 4	<p>As I will explain, <b>the ISO's analysis concludes that, under an analysis using the assumptions described above consistent with good utility practice, there will be a shortage or gap of 3,570 MW for meeting system-wide needs in California by the end of 2017.</b><sup>4</sup></p> <p>FN 4: [Sutter Waiver Request], Declaration of Mark Rothleder at p. 30 (emphasis added). [<b>Attachment 1 to Ch. 5</b>].</p>	<p>Hearsay.</p> <p>Declarants: (1) Sean A. Atkins (Alston &amp; Bird LLP), (2) Mark Rothleder (CAISO).</p>
8	5-3:11-14 & FN 7	<p>Finally, the Sutter Waiver Request also referenced the Oakley Project and indicated that, even with the Oakley Project, <b>there would be shortfalls in flexible generating</b></p>	<p>Double hearsay. First declarant: Sean A. Atkins (Alston &amp; Bird</p>

<sup>1</sup> DRA asserts a violation of Rule 1.1 as the basis to strike the identified testimony because it is a false statement of fact. Specifically, the cited document, which is the CAISO's Opening Brief in on Track I Issues filed in R.10-05-006, does not appear to offer any support whatsoever for the quoted statement on the page indicated, nor on any other pages as far as DRA could ascertain.

Item No.	Page:Lines	Item or Quotation from PG&E’s Prepared Testimony (specific text to be stricken shown in bold)	Reason to Strike
		<p><b>capacity needed by 2018.</b><sup>7</sup></p> <p>FN 7: [Sutter Waiver Request] at p. 31</p>	LLP), asserting truth of statement by second declarant, Mark Rothleder (CAISO).
9	5-3:22 – 5-4:1 & FN 8	<p>In a Straw Proposal issued March 7, 2012, regarding the procurement of flexible capacity, the CAISO described all of the Renewable Integration Studies that it has undertaken and completed to date, as well as ongoing work, <b>and concluded that “[w]hile the energy production of [existing] conventional resources is being displaced by intermittent resources, the ISO will need even more of the flexible capacity that many conventional resources provide in order to maintain grid reliability under the 33 percent RPS.”</b><sup>8</sup></p> <p>FN 8: See <a href="http://www.caiso.com/Documents/StrawProposal-FlexibleCapacityProcurement.pdf">http://www.caiso.com/Documents/StrawProposal-FlexibleCapacityProcurement.pdf</a> (“CAISO Flexible Capacity Proposal”) at pp. 7-8. [PG&amp;E submitted as Attachment E to its August 3, 2012 Rebuttal Testimony].</p>	Hearsay Declarant: CAISO “M&ID / KMeeusen” (author).
10	5-4:3-15 & FN 9	<p>In 2011, the ISO undertook a number of studies to quantify the flexible capacity needed to reliably integrate the 33 percent RPS. Using assumptions provided by the CPUC, the ISO analyzed if a projected future generation fleet will be able to reliably integrate a 33 percent RPS. <b>The study results indicate downward load following shortfalls in excess of 500 MWs in two of the CPUC’s four priority scenarios. Additionally, the ISO studies found a shortfall of 4,600 MW of upward load following in the “High Load, Trajectory Scenario.”</b> This “High Load, Trajectory Scenario” was constructed to demonstrate the implications of under-forecasting load by 10 percent and demand side management under-achieving the stated goals. <b>The ISO believes this scenario is the reasonably prudent scenario to use in planning operational capacity needs.</b><sup>9</sup></p> <p>FN 9: [CAISO Flexible Capacity Proposal] at pp. 8-9. [PG&amp;E submitted as Attachment E to its August 3, 2012 Rebuttal Testimony].</p>	Double hearsay.  First declarant: CAISO “M&ID / KMeeusen” (paper author), asserting truth of statement by second declarant, Mark Rothleder, in July 1, 2011 Testimony served in the CPUC’s LTPP Proceedings.
11	5-4:19-26 & FN 10	<b>While California has adequate capacity at this time, in the next five years there is a potential for a shortfall of flexible resources that can help maintain reliability by quickly ramping up or down to compensate fluctuations</b>	Hearsay.  Declarant: CAISO CEO Steve Berberich

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		<p><b>in wind and solar power. The amount of shortfall is highly affected by the potential retirements of coastal gas-fired plants required to comply with a new once through cooling regulation. Under most likely scenarios, the system is still likely to be short several thousand megawatts of ramping capacity.<sup>10</sup></b></p> <p>FN 10: See <a href="http://www.aiso.com/Documents/CEORReport-MemoMar2012.pdf">http://www.aiso.com/Documents/CEORReport-MemoMar2012.pdf</a> ("CEO Report") at p. 2. [Entire excerpt is quoted from the "CEO Report", referenced document not submitted with testimony].</p>	
12	5-12:10-25 & FN 24	<p><b>As Mr. Rothleder explains</b>, the ISO is aware of one planned resource, the Oakley unit, which was not included in the LTPP planning assumptions and therefore was not included in the ISO's analysis. This planned resource has now satisfied additional regulatory milestones and appears to be likely to add 623 MW by 2016. <b>However, based on study results, 623 MW would not be sufficient to eliminate the need for Sutter based on the observed shortfalls in the 2018 scenario. Moreover, the additional generation anticipated from the Oakley unit is more than offset by greater amounts of generation that were included in the [2010 LTPP] Scoping Memo but are now expected to be unavailable by 2018. Specifically, the Scoping Memo assumed additions of the Avenal unit (600 MW) and potentially the Victorville Hybrid unit (563 MW), which have subsequently been determined to likely be unavailable by then. Therefore, the 2018 case actually assumed more generation than is now anticipated to be available by 2018.</b></p> <p>FN 24: Sutter Waiver Request at p. 31 [Entire excerpt is quoted from the Sutter Waiver Request].</p>	<p>Double hearsay.</p> <p>First declarant: Sean A. Atkins (Alston &amp; Bird LLP), asserting truth of statement by second declarant: Mark Rothleder (CAISO).</p>
13	5:13:25-29	<p>On May 9, 2012, Steve Berberich, President and Chief Executive Officer of the CAISO, sent a letter to the CPUC Commissioners regarding the Oakley Project.[FN26]. <b>The letter concludes that the development of resources such as the Oakley Project is important to maintain reliability and can help meet the system's flexible capacity requirements.</b></p> <p>FN 26: A copy of this letter is included as Attachment 2 to this chapter of testimony.</p>	<p>Hearsay.</p> <p>Declarant: CAISO CEO Steve Berberich</p>

**Table 2 – Portions of PG&E’s Rebuttal Testimony that DRA Moves to Strike**

<b>Item No.</b>	<b>Page:Lines</b>	<b>Item or citation to page and line items to be stricken</b>	<b>Reason to Strike</b>
<b>14</b>	<b>Attachment B</b>	“Sutter Waiver Request” referenced in, but not submitted with, PG&E’s Prepared Testimony. CAISO Petition filed in FERC Docket No. ER12-897-000.	Hearsay; improper direct testimony (Rule 13.8(b)).
<b>15</b>	<b>Attachment C</b>	Testimony of Mark Rothleder on Behalf of the CAISO, May 23, 2012, submitted in R.12-03-014.	Hearsay.
<b>16(a)</b>	<b>Attachment D</b>	Opening Brief of the California Independent System Operator Corporation on Track I Issues, R.10-05-006, Sept. 16, 2011, p. 4.	Hearsay; improper direct testimony (Rule 13.8(b)).
<b>16(b)</b>	<b>Exhibit 1 to Attachment D</b>	Memorandum from Keith Casey, CAISO VP, to CAISO Board of Governors, August 18, 2011.  [DRA takes separate note of these two items although they are submitted together in Attachment B because they are different documents.]	Hearsay; improper direct testimony (Rule 13.8(b)).
<b>17</b>	<b>Attachment E</b>	[*DRA moves to strike this only if the text identified in Rows 9 & 10 of Table 1 are stricken.]  Excerpted pages from the CAISO’s March 7 2012 Flexible Capacity Procurement Straw Proposal.	Hearsay; improper direct testimony (Rule 13.8(b)).
<b>18</b>	<b>Attachment F</b>	2013 Flexible Capacity Procurement Requirement: Supplemental Information to Proposal, Issued by the CAISO, March 2, 2012	Hearsay; improper direct testimony (Rule 13.8(b)), Rule 1.1 violation, <sup>2</sup> (document was not cited in PG&E’s Prepared Testimony as claimed).

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<sup>2</sup> DRA asserts a violation of Rule 1.1 as the basis to strike the identified testimony because it is a false statement of fact. PG&E’s witness testifies in Question and Answer 61 that PG&E “described” ongoing CAISO statements that “continued to affirm [the CAISO’s] conclusion that there will be a capacity gap by the end of 2017 for flexible resources” in pages 5-3 to 5-4 of PG&E’s Initial Testimony. PG&E further cites in footnote 75 to the materials provided in Attachment F (the Supplemental Information to Proposal). But PG&E’s Initial Testimony did **not** reference the materials provided in Attachment F on the referenced pages, nor on any other pages as far as DRA can ascertain. (PG&E did reference the materials provided in Attachment E in its Initial Testimony.) Thus, in addition to improperly submitting the document as direct testimony without good cause shown, to the extent PG&E claims that admission of Attachment F is justified because it has referenced the document in its Initial Testimony on p. 5-3 or 5-4, such a claim would be false and misleading.

Item No.	Page:Lines	Item or citation to page and line items to be stricken	Reason to Strike
19	17:21-23 (Q/A 36)	In particular, the CAISO has identified a “2,535 MW deficiency in flexible capacity requirements, resulting in an estimated 3,570 MW of additional capacity needs” by 2017-2018 [FN 38].  FN. 38: [Attachment B, “Sutter Waiver Petition”] p. 28.	Hearsay Declarant: Sean A. Atkins (Alston & Bird LLP)
20	18:1-4 (Q/A 36)	In March 2012, the CAISO’s [CEO] summarized the situation by concluding that “under the most likely scenarios” California will be short several thousand megawatts of ramping capacity within the next five years [FN 39].  FN. 39. [CAISO CEO’s Report, March 21, 2012, report not provided].	Hearsay. Declarant Steve Berberich (CAISO CEO).
21	18:6-12 (Q/A 37)	Without sufficient flexible capacity to integrate renewable resources and replacing the retiring OTC units, the CAISO has indicated that there are “significant impediments” to the reliable operation of the CAISO grid starting in 2017. [FN40] The CAISO has also stated that failure to consider reasonable study assumptions and incorporate those assumptions in procurement decision making could “lead to electricity outages caused by a shortfall of the flexible resources needed to operate the system reliably.” [FN. 41]  FNs. 40, 41. [Sutter Waiver Petition at p. 3, 6.]	Hearsay. Declarant Sean A. Atkins (Alston & Bird LLP), Rule 1.1 <sup>3</sup>
22	19:14-19 (Q/A 40)	...the CAISO estimated a 1,051 MW residual system shortage of upward load following resource. To cover this shortage, the CAISO estimated about 1,200 MW generic resources will be needed. [FN. 44]  FN 44. [Attachment C - Testimony of Mark Rothleder, served in R.12-03-014, May 23, 2012, p. 3-5.]	Hearsay. Declarant Mark Rothleder.
23	24:7-11 (Q/A 51)	... more recent CAISO studies have reached the exact same conclusion, i.e., that there are significant negative reliability risks from integrating 33 percent RPS resources.”	Hearsay. Declarant “the CAISO” as supported by the following statements.

<sup>3</sup> DRA asserts a violation of Rule 1.1 as the basis to strike the identified testimony because it is a false statement of fact. The statements that precede each set of quoted text, which are supported by footnotes 40 and 41, mischaracterize the statements that actually appear in the CASO’s filed Sutter Waiver Request/Sutter Waiver Petition in Attachment B of PG&E’s Rebuttal Testimony.

Item No.	Page:Lines	Item or citation to page and line items to be stricken	Reason to Strike
24	26:5-27:10 (Q/A 57, 58, 59)	[The entirety of Question and Answers 57, 58, and 59 Attachment D referenced in FN 67-71. The Q/A quote from and characterize the CAISO’s Opening Brief submitted in Track 1 of the 2010 LTPP proceeding on September 16, 2011 and “Exhibit 1” that was filed with the CAISO’s Track 1 brief.]	Double hearsay, improper direct testimony (Rule 13.8(b)).  First declarant: Judith B. Sanders, asserting truth of statement by second declarant: Keith Casey (CAISO).
25	27:17-20	Based on this additional analysis ... the CAISO concluded that there was “an estimated 3,570 MW capacity gap by the end of 2017.” [FN 74]  FN. 74. [Sutter Waiver Petition, pp. 15-16 ]	Double hearsay. First declarant Sean A. Atkins (Alston & Bird LLP), asserting truth of statement by second declarant: Mark Rothleder (CAISO).

## II. ARGUMENT

PG&E’s entire evidentiary showing of need for the 586 MW Oakley facility rests on hearsay statements by CAISO declarants that are quoted in or attached to PG&E’s Prepared and Rebuttal Testimony. PG&E has not submitted any other direct or indirect evidence to corroborate a need for additional flexible system resources in 2017-2018 planning horizon. But intervenors cannot cross-examine the CAISO declarants directly about these statements and study results because the CAISO has declined to participate as a party in this proceeding.<sup>4</sup> The inability of intervenors to cross examine the CAISO declarants, coupled with the lack of corroborating evidence of system need, renders it infeasible for the Commission to develop a complete and balanced record to support a decision on system needs in this proceeding.

The CAISO hearsay statements relied upon by PG&E should therefore be stricken from PG&E’s testimony and excluded from the record. The confluence of two critical factors—the unavailability of the CAISO declarants for cross-examination with the lack of any corroborating evidence establishing need—means that there is no realistic way to preserve the substantial rights

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<sup>4</sup> See PG&E Prepared Testimony Chapter 5, Attachment 2.

of the intervenors in this proceeding while admitting the CAISO hearsay statements. Thus, while the Commission may (and routinely does) admit hearsay into the record of Commission proceedings, this case presents the extreme situation in which admitting the CAISO hearsay in the absence of any alternative corroborating evidence would violate Rule 13.6.

**A. The CAISO statements are hearsay (or double hearsay) submissions offered by PG&E to establish the truth of the matter asserted therein.**

The statements identified in Tables 1 and 2 are each hearsay (or double hearsay) submissions. "Hearsay evidence" is evidence of a statement that was made other than by a witness while testifying at the hearing and that is offered to prove the truth of the matter stated.<sup>5</sup> Each of the items identified in Tables 1 and 2 are PG&E testimony that characterizes or quotes from, and cites as its source material, out-of-court statements made by various CAISO representatives. Each item is offered to establish the truth of, by giving the only evidentiary support for, PG&E's claims that new conventional system resources are in fact needed by 2018 to support renewable integration.

PG&E submits the CAISO statements to establish, that the CAISO has determined there is a need for additional flexible capacity resources exists by 2018. PG&E then relies on the CAISO's alleged determination of need to justify Commission approval of the Oakley project. As PG&E claims, "the Oakley Project is the only project of its kind that can likely provide new flexible capacity to meet the need identified by CAISO for 2018."<sup>6</sup> The CAISO's alleged calls for "additional operating flexibility" are the only evidence PG&E submitted to meet its burden of proof that the Oakley project is needed.<sup>7</sup>

Accordingly, each of the items in Tables 1 and 2 above, including the identified attachments to PG&E's Prepared and Rebuttal Testimony, are hearsay or double hearsay.

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<sup>5</sup> Cal. Evid. Cod § 1200(a).

<sup>6</sup> PG&E Prepared Testimony at 5-19 (emphasis added).

<sup>7</sup> Table 1, Item 3.

(Indeed, some of the quotes are from briefs and FERC filings authored by CAISO’s counsel—these are simply the arguments and should be stricken for that additional reason).

**B. The due process rights of intervenors will not be preserved in this proceeding if the CAISO’s hearsay statements on flexibility needs are admitted through PG&E’s testimony.**

The Commission should strike the testimony identified in Tables 1 and 2, in which PG&E’s witnesses are simply acting as a conduit for the hearsay opinions given by CAISO staff, attorneys, and management submitted in various other fora. Hearsay evidence is generally inadmissible in civil proceedings, except as provided by law.<sup>8</sup> Exceptions include, for example, party-admissions,<sup>9</sup> declarations against interest when the declarant is unavailable,<sup>10</sup> or prior inconsistent statement by a testifying witness.<sup>11</sup> Thus, although the Commission may and often does admit hearsay, it often would be admissible evening a civil proceeding pursuant to a statutory exception. For example, DRA and other intervenors have attached PG&E responses to Data Requests to its testimony, but such responses are a party admission and hence are admissible under California’s rules of evidence.<sup>12</sup> None of the recognized exceptions to the inadmissibility of hearsay would apply to the CAISO statements offered in PG&E’s testimony.

In Commission hearings and proceedings, “the technical rules of evidence need not be applied,” but “substantial rights of the parties shall be preserved.”<sup>13</sup> Thus, when admitted, the Commission accords reduced weight to hearsay evidence in order to preserve the “substantial rights of the parties.” In *Re Landmark Communications, Inc.*, the Commission explained:

[H]earsay evidence is given less weight by the Commission than other evidence. If the evidence is objectionable on the grounds of

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<sup>8</sup> Cal. Evid. Code § 1200(b).

<sup>9</sup> Cal. Evid. Code § 1220.

<sup>10</sup> Cal. Evid. Code § 1230.

<sup>11</sup> Cal. Evid. Code § 1235.

<sup>12</sup> Cal. Evid. Code § 1220.

<sup>13</sup> Rule 13.6 (Evidence), see also Public Utilities Code Sec. 1701(a).

hearsay, the Commission weighs it accordingly when all of the evidence in the case is reviewed.<sup>14</sup>

Intervenors who oppose Oakley on the grounds that it is not needed must have a sufficient opportunity to cross-examine the CAISO directly on this issue, particularly given the absence of any other evidence of system needs. Admitting the CAISO hearsay statements without such opportunity effectively reverses the burden of proof on need from PG&E to intervenors—placing them in a situation in which they cannot effectively confront and question the only evidence submitted against them on this issue.

1. Admitting CAISO hearsay statements on the need for new resources is extremely prejudicial to intervenors because the results have not been fully vetted in any Commission proceeding to date.

Admitting testimony in which PG&E characterizes the CAISO hearsay statements as proving a need for new flexible resources is extremely prejudicial because intervenors have never had a full and fair opportunity to cross-examine the CAISO about the Renewable Integration Study results in a Commission proceeding. Nor have intervenors had an opportunity to question CAISO staff on their opinions of when and how much conventional resources should be procured to support renewable integration, as opposed to other alternatives. Yet, the existence of CAISO actions and statements that contradict PG&E's assertions of need for the Oakley facility are indisputable. These include the CAISO's signing the 2010 LTPP Settlement Agreement that agreed to defer a determination on system flexibility needs and testimony elicited last week in the 2012 LTPP.

First, parties to the 2010 LTPP did not develop a complete record or cross examine any CAISO witnesses on system flexibility needs based on the 33% Renewable Integration Studies. As TURN's Witness Mr. Woodruff explained, most intervenors in the 2010 LTPP did not submit testimony critical of the results of the CAISO's renewable integration studies because the

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<sup>14</sup> D.99-01-029, 84 CPUC 2d 698, (Cal.P.U.C. January 20, 1999).

Settlement Agreement entered into by most of the parties, which the Commission approved, deferred the determination of system flexibility needs.<sup>15</sup>

Second, limited questioning of Mr. Rothleder in the Commission’s 2012 LTPP hearings just last week illustrates why it is critical for intervenors to have the opportunity to fully question the CAISO on the meaning of the 33% Renewables Integration Study results and not simply admit PG&E’s one-sided interpretations of the CAISO’s results. For example, Mr. Rothleder confirmed the CAISO’s commitment to the 2010 LTPP settlement and that the CAISO believes that additional time is needed to determine “residual system needs [for flexible resources] and look at what the alternatives are for that.”<sup>16</sup> Mr. Rothleder outright contradicted PG&E’s assertions that a “residual need” of 1,200 MW means that about 1,200 MW of generic resources would be needed.<sup>17</sup> Instead, Mr. Rothleder emphasized the need to “look to see if – what alternatives could be used to meet that residual system need.”<sup>18</sup> Mr. Rothleder explained the ongoing evolution of the renewable integration modeling and confirmed that “the new model or the evolved model ... may impact the amount of residual need, system need, when you account for those local resources” that may be added in Southern California.<sup>19</sup> Even such limited testimony illustrates why it is essential for intervenors in this proceeding to have an opportunity to cross-examine the CAISO declarants directly about the results of its renewable integration modeling, the meaning of the CAISO’s signature on the 2010 LTPP Settlement agreement, and whether the CAISO actually believes that any potential “residual” system need is appropriate to fill with the Oakley facility rather than alternatives to conventional generation.

Further, admitting the transcript into this proceeding of the limited cross examination of Mr. Rothleder elicited last week in R.12-03-014 would not cure the prejudice to intervenors of

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<sup>15</sup> Prepared Testimony of Kevin Woodruff, July 23, 2012, at 2-3.

<sup>16</sup> Attachment 1, Trx. Vol. 2 289:5-290:8, 310:15-25

<sup>17</sup> See Table 2, Item 22.

<sup>18</sup> Attachment 1, Trx. Vol. 2 290:19-27

<sup>19</sup> Attachment 1, Trx. Vol. 2 320:1 – 321:8.

admitting the CAISO hearsay statements. The determination of system flexibility needs is reserved for Track 2 of the 2012 LTPP, whereas the hearings last week addressed Track 1 of the 2012 LTPP (specifically the need for resources in local capacity areas). One party's cross examination of Mr. Rothleder on flexibility needs was limited by the Judge.<sup>20</sup> Thus, while intervenors touched on this issue with Mr. Rothleder, they were not given, nor would they have been expected, to fully explore the basis for PG&E's assertions that additional flexible resources are needed by 2018.

Unless intervenors are given a fair opportunity to cross examine each CAISO declarant about the submitted statements in this proceeding, the CAISO hearsay should be excluded. But in the event the CAISO statements are not stricken, DRA moves for admission of Attachment 1 to this motion (which is the complete transcript of Mr. Rothleder's cross examination) into the record of this proceeding. That alone would not preserve the substantial rights of intervenors because they could not question Mr. Rothleder on each of the statements by multiple hearsay declarants, including CAISO's attorneys, other staff, CEO, and Vice President. But at the very least it would enable the intervenors to shed some contradictory light on PG&E's testimony.

2. The Commission cannot give "less weight" to the CAISO hearsay as a means to preserve the due process rights of intervenors because there is no other evidence to support PG&E's claimed need for Oakley.

The CAISO hearsay statements should also be stricken from PG&E's testimony because there is no corroborating evidence of system need other than the CAISO studies. While the Commission may and routinely does admit hearsay, hearsay is given less weight than other

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<sup>20</sup> Attachment 1, Trx. Vol. 2 324:1-24 (directing counsel for TURN to move on from line of questioning on the CAISO's "4600" MW result of need from the 2010 LTPP).

evidence.<sup>21</sup> Here, without even one other, study result showing need there is no way to give the CAISO hearsay “reduced weight” because there is simply no other evidence to weigh.

Thus, if the Commission finds a need for the Oakley facility it will have relied entirely and exclusively on the CAISO hearsay statements.

By contrast, the Commission has noted that its hesitation to rely on hearsay may be “somewhat mitigated” by the fact that opposing sides presented their own studies, where “the results of one study [could] be used to check against the credibility of its counterpart.”<sup>22</sup> In *In Re Competition for Local Exchange Service*, this Commission reviewed the significance of marketing studies offered by Pacific Bell and MCI, finding:

[B]oth the ConStat and the Gallup market studies have a number of limitations and caveats in terms of their evidentiary reliability. Both studies were offered only as hearsay evidence and accordingly carry less evidentiary weight than would be the case if a percipient witness had testified to the detailed statistical methodology and research techniques used to design, conduct, and interpret the results of the studies. To the extent we assign credibility to either of the studies, it is only in the form of broad corroboration of general trends regarding customer preferences. We do not rely upon the detailed statistical findings as precise measures of customer behavior.<sup>23</sup>

Here, with no other study results available other than the CAISO’s modeling of 33% Renewable Integration Studies, it is not possible to mitigate the prejudicial impacts of relying on the CAISO hearsay statements.

**C. Certain attachments to PG&E’s Rebuttal Testimony should be stricken as improper direct testimony under Rule 13.8(b).**

DRA separately moves to strike Attachments B, C, D, E, and F to PG&E’s Rebuttal Testimony and witness statements referencing the attachments on the grounds that PG&E’s

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<sup>21</sup> D.99-01-029 (emphasis added) (“[H]earsay evidence is given less weight by the Commission than other evidence. If the evidence is objectionable on the grounds of hearsay, the Commission weighs it accordingly when all of the evidence in the case is reviewed.”)

<sup>22</sup> D.96-04-052 at 13.

<sup>23</sup> *Id.*

submission violates Rule 13.8(b) by seeking to admit direct testimony in addition to the prepared testimony it previously served without good cause shown. Each of these attachments was available to PG&E prior to its service of Prepared Testimony on May 21, 2012, but it did not provide any of these attachments in its initial testimony. While PG&E cited to most of these attachments in the footnotes of its Prepared Testimony, admitting them in Rebuttal Testimony is unfair to intervenors. It would introduce a multitude of additional statements and data that intervenors did not anticipate would be submitted into the record and therefore have not had an opportunity to fully contest through testimony.

As just one example, PG&E seeks to introduce Exhibit 1 to Attachment D (identified as item 16(b) above), which is 9-page, single spaced Memorandum dated August 18, 2011 from Keith Casey (CAISO's Vice President of Market and Infrastructure Development) to the ISO Board of Governors. Following an executive summary, the memorandum presents numerous tables, figures, and an extensive discussion of the results from the CAISO's 33% renewable integration studies. While PG&E's Prepared Testimony generally referenced this memorandum (see item 4 in Table 1), it did not initially seek to admit the entire memorandum into evidence or cite to any specific portion of it.

Because PG&E has not shown good cause why any of these additional attachments could not have been served with the prepared testimony or should otherwise be admitted, the attachments should be stricken.

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**III. CONCLUSION**

For the reasons stated above, the Commission should grant DRA's motion to strike.

Respectfully submitted,

/s/ CANDANCE MOREY

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August 14, 2012