

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA



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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)

**PROTEST OF THE DIVISION OF RATEPAYER ADVOCATES TO  
APPLICATION OF PACIFIC GAS AND ELECTRIC COMPANY FOR  
APPROVAL OF AMENDED PURCHASE AND SALE AGREEMENT WITH  
CONTRA COSTA GENERATION STATION LLC**

**I. INTRODUCTION**

Pursuant to Rule 2.6 of the California Public Utilities Commission's ("Commission") Rules of Practice and Procedure ("Rules"), the Division of Ratepayer Advocates ("DRA") files this protest to Pacific Gas and Electric Company's ("PG&E") Application 12-03-026 (the "Application") for approval of the Amended Purchase and Sale Agreement ("PSA") between PG&E and Contra Costa Generating Station, also known as the Oakley project. DRA represents the interests of ratepayers who would pay higher rates and bills if the Commission were to approve PG&E's Utility Owned Generation ("UOG") Oakley project. DRA files this protest pursuant to its statutory mission to obtain the lowest possible rates for service consistent with reliable and safe service levels.

In an unusual filing, PG&E submitted the Application without concurrently serving any direct testimony. PG&E proposed to serve its testimony in support of the Application on May 16, 2012—after the deadline for protests.<sup>1</sup> PG&E's failure to provide supporting testimony with the Application has limited DRA's ability to identify all issues that may arise in the course of this proceeding. For example, the Application does not state the total cost or revenue requirement of the proposed project or provide a copy of

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<sup>1</sup> Application 12-03-026, p.23.

the Amended PSA. Further, while PG&E has touted the numerous alleged benefits of the Oakley project, PG&E fails to identify any need for this 586 MW of capacity from any traditional Long-Term Procurement Plan (“LTPP”) process.

Indeed, even while this is PG&E’s *third* shot at submitting the Oakley project for Commission approval, the Application contains only a vague, qualitative discussion of need. The Application is completely devoid of any quantitative showing that the 586 MW of capacity provided by Oakley is needed, such as a general load and resource balance analysis or power flow studies of PG&E’s service territory. Further, while PG&E cites ongoing California Independent System Operator (“CAISO”) studies, the CAISO studies have not been adopted or endorsed by the Commission and will be subject to ongoing refinement through litigation in the 2012 LTPP proceeding. In fact, the Commission has not to date adopted any procurement obligations for flexible capacity. Instead of submitting evidence of a need for Oakley, PG&E’s Application focuses on claimed “benefits” of the Oakley project. But approving the Oakley project based on such unsubstantiated benefits alone, without a showing of need and without balancing the costs with such benefits, is inconsistent with the Commission’s statutory obligation to provide for just and reasonable rates.

To the extent PG&E submits testimony with specific claims of need, costs, or other points, DRA believes that other issues will come to light that may affect the scope of issues necessary to consider in this proceeding. Nevertheless, PG&E’s Application raises several issues that require further investigation by the Commission, which are identified below. At this time, DRA believes that hearings will be necessary to resolve the issues raised by PG&E’s application.

DRA recommends the following questions be incorporated into the Scoping Ruling:

1. Whether PG&E has any existing authority to procure any new generation, including the Oakley project.
2. Whether PG&E has proven that it has met requirements for resubmitting of the Oakley project in an Application, pursuant to Decision (D.) 10-07-045.
3. DRA contends that it is not appropriate for the Commission to engage in a determination of need for the Oakley project outside of

the current 2012 Long Term Procurement Planning proceeding, R.12-03-014. If the Commission disagrees, however, an issue for this proceeding is whether PG&E has proven a need for the Oakley project.

4. Whether PG&E's application complies with Commission requirements for proposals for Utility Owned Generation, including whether PG&E is required to seek a Certificate of Public Convenience and Necessity as a precondition for project approval, whether PG&E has accurately accounted for the cost to purchase, maintain, and operate the Oakley project, and whether additional potential risks to ratepayers associated with the proposed Utility Owned Generation.
5. Whether the partial settlement on cost recovery entered in Application (A.) 09-09-012 has any relevance or application to the instant proceeding.
6. Whether the proposed PSA cost is just and reasonable, including based on considerations of: the total costs of the instant Project in light of current competitive prices for similar resources, the length of time since the Request for Offers (RFO) in which Oakley was submitted, and the possibility that Oakley will operate for up to 2 years as merchant generation prior to PG&E's taking ownership of the plant.

## II. DISCUSSION OF ISSUES

### 1. **PG&E lacks Commission authorization to procure any additional new generation including the Oakley power plant.**

A key threshold issue in this proceeding is whether PG&E has any existing procurement authorization to procure new generation like the Oakley power plant. PG&E has already fully satisfied the procurement authorization granted by the Commission as a result of the 2006 LTPP, and no subsequent Commission decision has authorized additional procurement of new generation by PG&E.

In D.10-07-045, the Commission denied the Oakley Project on the grounds that it was not needed at the time. That logic still holds as it relates to procurement authorization coming from the 2006 LTPP.

Decision 07-12-052 concluded the 2006 LTPP proceeding<sup>2</sup> and granted PG&E authority to procure between 800 and 1,200 MW of new generation. Need for an additional 312 MW arose from project cancellations.<sup>3</sup> PG&E fulfilled this need through Commission-approved contracts with the Mariposa facility (184 MW), GWF Tracy (145 MW), Calpine Los Esteros (109 MW) and Mirant Marsh Landing (719 MW).<sup>4</sup> These facilities, totaling 1,157 MW of generation, satisfied PG&E's procurement need resulting from the Commission's 2006 LTPP. Further, the Commission actually denied the GWF Tracy and Calpine Los Esteros projects unless the Commission rejected the Oakley facility or Marsh Landing, and granted permission for those projects to proceed based on the original decision rejecting Oakley.<sup>5</sup> PG&E should not be found to have any remaining procurement authorization from the 2006 LTPP given the plethora of new generation capacity already funded by PG&E's ratepayers. Further, electricity demand (load) forecasts dropped following the 2006 LTPP in the wake of the economic recession, increasing the risk that PG&E will be over-procured with the addition of the Oakley UOG project to its rate base.

PG&E has not requested, and the Commission has not approved, any additional authorization to procure new generation since the 2006 LTPP process. By contrast, the Commission recently concluded the 2010 LTPP and issued D.12-04-046 without finding any need for PG&E to procure new generation. Rather, the Decision approved a settlement agreement in which PG&E (and other parties) agreed to defer a determination on its future need for additional generation to the next LTPP proceeding.<sup>6</sup> Accordingly, DRA contends that PG&E does not have any current procurement authorization to support its procurement of the Oakley project.

**2. PG&E has not met the Commission's conditions for re-submitting the Oakley project via application.**

When the Commission rejected PG&E's request to purchase the Oakley project in D. 10-07-045, it imposed three conditions under which PG&E could re-submit the

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<sup>2</sup> R.06-02-013.

<sup>3</sup> D.10-07-045, p.5.

<sup>4</sup> See D.10-07-042.

<sup>5</sup> See D.10-07-042.

<sup>6</sup> D.12-04-046, p.6.

Oakley project for consideration via application.<sup>7</sup> Although Oakley was subsequently approved by D.10-12-050 (with a later online date in 2016, rather than 2014), the decision was annulled by the Court of Appeal of the State of California.<sup>8</sup> Accordingly, PG&E must meet the prior Commission-imposed conditions for resubmitting the project. These three conditions are:

1. A project fails creating an open need;
2. PG&E is able to retire a Once Through Cooling (OTC) plant of comparable size at least 3 years ahead of schedule (other than Contra Costa 6 & 7), or
3. The final results from the CAISO Renewable Integration Study demonstrate that, even with the projects approved by the Commission, there are significant negative reliability risks from integrating a 33% Renewables Portfolio Standard.<sup>9</sup>

PG&E's application does not claim, allege, or attempt to substantiate any facts that would show that it has met any of these conditions.<sup>10</sup> But PG&E's demonstration on at least one of the conditions is necessary to support the instant Application. Accordingly, assuming that PG&E's forthcoming testimony will contend that some or all of these pre-conditions for re-filing an application are met, DRA will conduct discovery and may present facts to rebut PG&E's arguments.

- 3. Assuming PG&E attempts to demonstrate a current procurement need for new generation to justify Oakley, that issue should not be included within the scope of this proceeding.**

Beyond any attempted showing on the conditions imposed by D.10-07-045, the Commission should not allow PG&E to re-litigate whether there is a need for the Oakley power plant outside of the current LTPP. The Commission recently commenced the 2012

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<sup>7</sup> D.10-07-045 Conclusions of law No. 13, 14 and Section 3.5.6.

<sup>8</sup> See *TURN v. California Public Utilities Commission*, Case No. A132439.

<sup>9</sup> See D.10-07-045, pp. 40-41.

<sup>10</sup> PG&E's application alludes to the fact that the Oakley project *could* displace energy provided by OTC facilities and accelerate retirements – but it has not specifically identified any one such plant nor claimed that retirement would occur 3 years ahead of the schedule imposed by the State Water Resource Control Board. Application at p. 19.

LTPP proceeding and expects a final decision by the end of this year.<sup>11</sup> Thus, even if PG&E's forthcoming testimony attempts to make a quantitative showing of current need for the Oakley plant, the Commission should reject any attempt to litigate the issue of need in this proceeding.

Rather, 2012 LTPP proceeding is the appropriate forum for parties to determine whether any new procurement need has arisen for PG&E since the 2006 LTPP. Whether new resources are needed for local and/or system resource adequacy, to support renewable integration, or for utility bundled procurement plans are issues that are all scoped into the 2012 LTPP.<sup>12</sup> The 2012 LTPP thus will rule on critical issues that are necessary to examine when deciding if there is a need for the Oakley project. Examples of overlapping issues include:

- What are the appropriate updated standardized planning assumptions to use for long-term planning purposes? A ruling on planning assumptions will determine what the appropriate forecasts (or range of forecasts) for future load are, amounts of preferred resources (including distributed generation, energy efficiency, demand response, combined heat and power facilities), and imports that should be assumed to be available to meet PG&E's future electricity demands.<sup>13</sup> These values, in turn, are critical for deciding if there is any residual need to be met through conventional fossil-fuel resources such as the Oakley gas-fired power plant. Indeed, the Energy Division staff just yesterday issued a Straw Proposal for LTPP Planning Standards; this proposal will be vetted and litigated by parties prior to a Commission ruling on the currently-applicable standardized planning assumptions to be used to inform resource authorization decisions.<sup>14</sup>
- PG&E's forthcoming testimony may attempt to expand on the Application's vague claim that "the Oakley Project has locational benefits"<sup>15</sup> by claiming

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<sup>11</sup> Order Instituting Rulemaking 12-03-014, p.14.

<sup>12</sup> See Order Instituting Rulemaking, issued on March 27, 2012, p. 5 in R.12-03-014.

<sup>13</sup> Just yesterday the Energy Division staff issued a 2012 Energy Division Straw Proposal on LTPP Planning Standards, R.12-03-014, May 10, 2012.

<sup>14</sup> 2012 Energy Division Straw Proposal on LTPP Planning Standards, R.12-03-014, May 10, 2012, p. vi.

<sup>15</sup> Application 12-03-026, p.20.

that Oakley is needed to meet local capacity requirements. The need for additional generation to meet local capacity requirements is being considered in the 2012 LTPP. While some issues regarding local needs are specific to each utility's service area, there are also numerous overlapping issues. For example, a critical issue is how to evaluate the CAISO's long-term studies on local capacity requirements in light of potential retirements of Once-Through-Cooling (OTC) resources given the CAISO's failure to fully account for contributions from preferred resources to meet local capacity needs.

- The 2012 LTPP will also develop a record on the amount of flexible capacity needed to support renewable integration and possibly the specific operational characteristics of resources that should be procured. This is a critical threshold issue for determining whether there is sufficient evidence to support a finding of need for the 586 MW Oakley plant based on renewable integration needs.

Making a determination on these issues in multiple proceedings will waste Commission resources and could lead to inconsistent or contradictory outcomes on planning and procurement for PG&E relative to the other Investor-Owned Utilities.

In summary, determining if there is a need for Oakley in this proceeding will require simultaneous litigation of overlapping and duplicative issues that bear on the modeling inputs and methods for determining need. This duplication of effort also creates hardship for intervenors, who are already litigating some of these issues in multiple proceedings, including the 2012 LTPP as well as San Diego Gas & Electric's Application for approval of purchase power tolling agreements (A.11-05-023), the resource adequacy proceeding (regarding flexible capacity procurement obligations) and in the context of various CAISO stakeholder initiatives relating to transmission planning, local capacity requirements, and flexible capacity procurement. Accordingly, the Commission should not consider approving the Oakley power plant until a decision on need is issued in the 2012 LTPP.

Nevertheless, if the Commission decides to proceed with the Oakley Project in a separate application and on an aggressive timeline that coincides with the 2012 LTPP, a

key issue to consider will be whether there is any need for the Oakley Project. The Commission’s schedule and scoping memo should expressly allow for rulings and decisions on planning assumptions and methodologies for evaluating need from the 2012 LTPP to be incorporated into and reflected in any analyses presented in this proceeding.

**4. The Application does not meet Commission requirements for approving proposals for utility owned generation.**

PG&E’s Application does not once mention the term “Utility Owned Generation.” Yet, that is exactly what the proposal for Oakley is—a request for approval of an Amended Purchase and Sale Agreement in which PG&E will take ownership of the plant after it becomes commercially operational. Given the Commission’s longstanding preference for a “competitive market first” approach in California’s hybrid energy markets, and the Commission’s recent decisions on issues relating to utility ownership of resources from the 2010 LTPP, PG&E’s omission is glaring and surprising. Accordingly, the Commission must determine whether PG&E has met all Commission requirements for approving the Oakley project given that it is a proposal for utility owned generation.

Issues relevant to UOG proposals are described below:

The Commission determined in D.12-04-046, that the appropriate vehicle for considering a utility-owned generation (UOG) proposal is not a request for offers, but a CPCN:

[T]he utilities should continue to use RFOs for non-UOG procurement, consistent with prior Commission decisions, but UOG procurement will be done through the certificate of public convenience and necessity (CPCN) process.<sup>16</sup>

PG&E’s Application does not request a CPCN, and the Commission should consider whether the Application should be rejected for failure to comply with Commission conditions for approving UOG -projects.

The Commission should also determine whether PG&E has accurately and adequately presented the Oakley project’s costs. All of the project costs need to be considered in a UOG proposal:

In evaluating UOG proposals, the Commission should consider all of the project costs, and the utilities should

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<sup>16</sup> D.12-04-046, p.31.

include project development costs in their requests for acquiring UOG facilities, as well as for utility-constructed Ones.<sup>17</sup>

It is not clear if all of the costs of the project (including PG&E's administrative costs) are included in PG&E's ratemaking proposal or if PG&E has or intends to pass them on to ratepayers. An open question is also whether PG&E's administrative and litigation costs associated with A.09-09-021 (the previous Oakley proceeding) should be included in the total project costs. Assessing total project costs will be critical for the Commission to determine if PG&E's requested revenue requirements and ratemaking proposals for this UOG project (once they are known) are just and reasonable.

Finally, in D.12-04-046 the Commission found that it will require the following:

[T]he critical cost parameters of any UOG bid...be binding on the IOU for the first ten years of project operations. "Critical cost parameters" include initial capital costs, capital additions, fixed and variable O&M, and heat rates.<sup>18</sup>

The Commission must therefore determine if the Oakley UOG project meets the requirement that cost parameters be binding on the utility, or alternatively consider if additional risks exist for ratepayers associated with potential underperformance or higher than projected operations and maintenance costs for the Oakley project once it is in operation.

**5. The Commission must expressly consider PG&E's proposals for cost recovery, as the former cost recovery settlement cannot be relied on here.**

PG&E's Application asks that the ratemaking and cost recovery proposed in the settlement from the original application for approval of the Oakley project (A.09-09-021) also be adopted here.<sup>19</sup> DRA cannot yet comment fully on this request, but this is an issue that must be determined in the proceeding.

Further, as one of the signatories to the previous settlement, DRA believes that the settlement is not applicable to the current Application, and thus it would not be valid to bind parties to this proceeding to the prior settlement agreement as it relates to Oakley.

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<sup>17</sup> D.12-04-046, p.33.

<sup>18</sup> D.12-04-046, p.35.

<sup>19</sup> Application 12-03-026, p.21.

Critical aspects of the Oakley project have changed since the signing of the settlement on ratemaking and cost recovery in A.09-09-021, which renders the settlement no longer applicable to the project. The online date of the Oakley plant has changed from 2014 to 2016, and the application under which the settlement was negotiated and adopted has closed. DRA therefore believes that the prior settlement is not applicable to, nor can be binding upon, the parties to the new, present application.<sup>20</sup>

**6. Are the Amended PSA costs just and reasonable, given the lapse of time between PG&E's 2008 RFO and potential depreciation of value prior to PG&E's taking ownership?**

Although the Amended PSA and Original PSA were not provided along with the Application, an issue to determine in this proceeding is whether the contract amendments and the Amended PSA taken as a whole are just and reasonable.

First, the Oakley proposal was shortlisted as the result of a solicitation conducted four years ago. The results of that solicitation are now outdated. Further, Oakley was rejected by D.10-07-045, in part because of its lack of competitiveness compared to the other projects that were approved to meet PG&E's need. It is not clear whether this proposal is competitive today or consistent with the Commission's competitive market model and its stated preference for merchant generation in the hybrid market.<sup>21</sup> The Commission should consider evidence on current competitive prices for new generation.

In addition, the actual operational date of the Oakley plant could be as early as 2014, meaning the plant may be generating and selling power as a merchant generator (operated for its own benefit) prior to PG&E coming into possession of it in 2016. The Commission should consider whether the value of a plant that has been operated for two years should be discounted relative to the value and cost of a new plant. Issues DRA intends to explore include: whether the Amended PSA costs are reasonable considering that the plant may generate revenues from merchant sales prior to PG&E's taking ownership; whether and how to compensate PG&E ratepayers for the depreciation of the plant during the time before PG&E takes ownership; and whether the expected operations and maintenance costs will be affected by the plant's prior operations. Additional

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<sup>20</sup> Portions of the settlement that address facilities other than Oakley are still in effect.

specific questions relating to this issue will likely surface after DRA has examined PG&E's direct testimony and the Amended and Original PSAs.

### **III. PROPOSED SCHEDULE**

PG&E's proposed schedule is unrealistically aggressive and would afford intervenors no meaningful opportunity to conduct discovery on PG&E's testimony once it is served and prior to the deadline for intervenor testimony. In addition, two other proceedings—the LTPP and San Diego Gas & Electric Company's Application for approval of Tolling Purchase Power Agreements (A.11-05-023)—are simultaneously addressing many overlapping issues, as described more fully in Issue 3 above. Some of DRA's staff work on two or all three of these proceedings. Further, at a bare minimum, developments and rulings from LTPP proceeding should be allowed to inform and precede this Application, including rulings on standardized assumptions. Otherwise, parties will be simultaneously litigating basic questions such as assumptions of peak demand and expected contributions from demand response, energy efficiency, and distributed generation. DRA therefore requests that the Commission take the schedule of the 2012 LTPP and San Diego proceeding into consideration when it adopts a schedule for this proceeding.

Further, DRA expects that, if the Commission includes a determination of current need for new resources as an issue in this proceeding, substantial discovery may be required of the CAISO. Additional time will be needed to accommodate the CAISO's ability to provide responses to data requests on issues of need for resources in the PG&E service area and the need for flexible capacity. Time may also be needed to allow the CAISO to run updated studies or provide updated modeling results to evaluate the need for the Oakley project.

Finally, PG&E's claim that expeditious Commission action is needed *pre-supposes* that Oakley is, in fact, needed. The Commission should not, yet again, rush to approve the Oakley plant in a manner that creates hardship for parties that are required to litigate duplicative issues of need on multiple fronts and have insufficient time to conducting meaningful discovery prior to the deadline for submitting testimony.

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<sup>21</sup> D.07-12-052, pp. 200-201.

DRA therefore submits the following proposed schedule, which is based on the assumption that PG&E will serve its direct testimony on May 16, 2012 and consistent with the schedules proposed The Utility Reform Network and the Independent Energy Producers Association:

August 23, 2012	Testimony of Intervenors
September 24, 2012	Rebuttal testimony
October 22-24, 2012	Evidentiary hearings
November 19, 2012	Opening Briefs
December 3, 2012	Reply Briefs

Respectfully submitted,  
/s/ CANDACE MOREY

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