Decision **PROPOSED DECISION OF ALJ BROWN** **(Mailed 10/6/2008)**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Integrate Procurement Policies and Consider Long-Term Procurement Plans. (U 39 E)	Rulemaking 06-02-013 (Filed February 16, 2006)

DECISION ON PETITIONS FOR MODIFICATION OF DECISION 07-12-052

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DECISION ON PETITIONS FOR MODIFICATION OF DECISION 07-12-052

1. Summary

Following the Commission's issuance of Decision (D.) 07-12-052 on December 20, 2007, seven Petitions for Modification (PFM) were filed. This decision grants in part, and denies in part, the requested modifications and clarifies some inconsistencies.

D.07-12-052 reviewed, critiqued and adopted, with modifications, the long-term procurement plans (LTPPs) of Pacific Gas and Electric Company, Southern California Edison Company and San Diego Gas & Electric Company (SDG&E) for the 10-year period 2007-2016. More than 30 intervenors provided insight and dissection of the LTPPs and provided guidance for our evaluation. The decision covered the history and background of energy procurement and its integration into California's developing environmental policies, included forecasts, resources and need determinations for the utilities, developed guidelines for the procurement process, and discussed how each LTPP interfaced with state energy policies.

There were seven PFM for D.07-12-052 filed and the modifications granted are as follows:

1. We authorize the investor-owned utilities (IOU) to recognize the effects of debt equivalence when comparing power purchase agreements (PPA) against PPAs in their bid evaluations, but not when a utility-owned generation (UOG) project is being considered;

2. We delete the exception of allowing the IOUs to choose UOG projects outside of a competitive solicitation based solely on the synergies associated with expansion of existing facilities;

3. We clarify the circumstances under which engineering, procurement and construction bids may be considered;

4. We authorize SDG&E to procure up to the 530 megawatts (MW) of new local capacity that was conditionally authorized in D.07-12-052, clarifying that applications for this procurement should be supported by updates of the status and projected on-line date of the Sunrise Powerlink project; and

5. We modify the circumstances under which an IOU must retain the services of an independent evaluator (IE) for requests for offers (RFO) that seek products two years or greater in duration. However, we still require that an IE be utilized whenever an affiliate or utility bidder participates in the RFO, regardless of contract duration.

2. Petitions for Modification

The following PFMs of D.07-12-052 were filed:

1. Southern California Edison Company (SCE) and SDG&E: January 23, 2008;
2. Pacific Gas and Electric Company (PG&E): January 28, 2008;
3. Independent Energy Producers Association (IEP): February 6, 2008;
4. Competitive Market Advocates (CMA): February 13, 2008;
5. Calpine Corporation (Calpine): March 25, 2008;
6. SDG&E: June 9, 2008; and
7. PG&E and SDG&E, June 13, 2008.

3. Overview

The electricity market crisis of 2000-2001 shifted the paradigm from the competitive process envisioned under the 1996 electricity restructuring system to a hybrid market that includes both regulated IOUs, as well as independent power producers (IPP). The Commission has signaled in numerous decisions its commitment to pursue policies and goals that promote competition and customer choice, while maintaining a viable and workable electricity generation

sector that assures reliable service at just and reasonable rates for bundled utility customers.

Maintaining a balance among the interests of the bundled ratepayers, the ratepayer funded IOUs, and the competitive market participants continues to be a challenging endeavor. We recently effectuated the appropriate balance in the most recent LTPP decision (D.07-12-052).

Not all parties agree with our outcomes, and many of the PFMs involve issues that are particularly germane to the hybrid market. In particular, some PFMs addressed how to ensure competitive solicitations, others focused on whether IOUs can submit utility-built projects into the solicitations and if so, how are they compared with those from IPPs, and other PFMs questioned whether and how the IOUs should propose resources identified outside of a competitive solicitation. This decision resolves all of the PFMs received to date for D.07-12-052. We believe that these modifications represent the best approach to resolving – in this same spirit of striking a fair balance amongst stakeholders in the hybrid market environment – the concerns raised.

4. Petitions for Modification of D.07-12-052

4.1. SCE and SDG&E's January 23, 2008 and PG&E's January 28, 2008 Petitions for Modification

The PFMs filed by SCE and SDG&E on January, 23, 2008 and PG&E on January, 28, 2008, address the treatment of debt equivalence (DE) in the evaluation of competitive bids in their solicitations. D.07-12-052 broke with the Commission's decision in the 2004 LTPP, D.04-12-048, and eliminated DE as a factor the IOUs could use in evaluating bids. The IOUs strongly urge the Commission to re-institute it as a bid evaluation factor.

SCE and SDG&E raise four points in support of their PFM. First, SCE and SDG&E suggest that DE is a real economic cost to the IOUs that should be considered in the bid evaluation process to avoid sub-optimal procurement contracting decisions. Furthermore, they argue that elimination of the use of DE adders in solicitations that include UOG bids does not address the identified problem with head-to-head competition. Their third point is that failure to consider DE in the contract selection process could potentially lead to a deterioration of an IOU's creditworthiness. Finally, they suggest that failure to consider DE with respect to the evaluation of replacement or repower contracts may violate state law [specifically, Pub. Util. Code § 454.5(c)].

PG&E raises three main points in its PFM in support of re-instituting DE as a bid evaluation tool: without the DE adder, there will be disparity in the bid evaluation process; eliminating consideration of DE violates Pub. Util. Code § 454.5(c); and there is no factual support for reversing past Commission decisions.

Two parties [IEP and the Cogeneration Association of California and the Energy Producers and Users Coalition (CAC-EPUC)] filed responses opposing SCE and SDG&E's PFM. Three parties filed responses opposing PG&E's PFM [IEP, the Western Power Trading Forum (WPTF) and CAC-EPUC], and SCE filed a response in support of PG&E's PFM.

Replies were filed by SCE and SDG&E and PG&E to the responses to their respective PFMs.

On May 20, 2008, the Administrative Law Judge (ALJ) issued a ruling requesting additional briefs and reply briefs to address five assumptions and six questions specifically related to DE. Opening briefs were filed June 20, 2008, and reply briefs were due July 18, 2008.

4.2. Independent Energy Producers Association's Petition for Modification

IEP's proposed modifications to D.07-12-052 seek to clarify the decision's discussion of UOG participation in head-to-head competition with privately-owned projects. IEP sees an inherent conflict in the IOU's "dual role of primary purchaser and potential supplier of electricity."[1] However, IEP offers some suggestions to improve the hybrid market and prevent abuses where the IOU is both a supplier and a procurer of electricity in the same solicitation.

To begin, IEP discusses the fact that the Commission does not allow UOG projects to participate in competitive solicitations because the Commission has not developed "a fair, publicly-vetted comparison methodology."[2] IEP then finds it inconsistent that the Decision does allow purchase and sales agreements (PSA) and EPCs to compete against IPP PPAs. IEP recommends that the Decision be modified to remove these inconsistencies. In addition, IEP finds that allowing EPCs and PSAs to compete against PPAs does not promote a hybrid market between the IOUs and the IPPs. IPPs are in the business of building, owning and operating power plants. However, under PSA and EPC models, outside companies build the plants, but then the IOU owns and operates the facilities. IEP questions whether the competitive solicitation process, when PSAs and EPCs are allowed to bid against PPAs, is merely a mechanism to select the construction contractor for IOU power plants.

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[1] IEP's PTM, February 6, 2008, p. 2.

[2] IEP, p. 4.

IEP proposes removing the exception that allows for EPC contracts and PSA agreements. IEP offers to work with the Commission to develop a fair, publicly-vetted comparison methodology for making evaluations between IPP bids and UOG proposals (which from IEP's perspective includes PSAs and EPCs).

4.3. Competitive Market Advocates' Petition for Modification

CMA is concerned with the development of a competitive wholesale market structure for electricity. The focus of CMA's PFM is on modifying the decision so that new ratepayer funded UOG projects do not fill all of the IOUs' resource needs and unnecessarily complicate the transition to a competitive market. CMA suggests changing the following three conclusions in the decision regarding UOG projects:

1. The decision allows for head-to-head competition between bids for PPAs and bids for PSA or engineering, procurement and construction (EPC) contracts without fully explaining how a fair evaluation and comparison of bids for privately-owned and utility-owned resources can be made;

2. The decision allows for UOG projects outside of a solicitation if the utility believes the project is needed for reliability, but CMA is concerned that this could compromise the integrity of the resource adequacy (RA) requirements; and

3. The decision allows for UOG projects outside of a solicitation if the UOG project would expand an existing facility.

In summary, CMA fears that if these conclusions remain in the LTPP decision, IPPs will not have any interest in investing in California's generation resources and only the utilities, with ratepayer funding, will invest in new

generation projects. According to CMA, that could be the end of the competitive market. To cure this deficiency, CMA asks the Commission to do the following:

1. Either eliminate the IOUs' ability to solicit any UOG (including PSAs and EPCs) in their solicitations[3] or develop transparent evaluation criteria for comparing UOG and PPA bids; and

2. Eliminate the two new categories of circumstances under which the utilities may propose UOG projects, reliability and facility expansion, or clarify that these exceptions are only permitted in extraordinary circumstances.

SCE filed a response to CMA's PFM addressing the request to eliminate the two new categories for proposing UOG projects. SCE states that the authorization to the utilities to submit applications for approval of UOG projects, outside of a head-to-head solicitation, to address reliability concerns or to expand on existing facilities is well-reasoned, supported by the record, and good public policy for California. Specifically, SCE argues that allowing applications for UOG projects that address unique reliability issues is not a blank check to subvert the Commission's RA policies, and allowing applications for projects that expand existing facilities may promote the state putting forth innovative proposals that encourage reliability and protect the environment. In fact, SCE reminds parties that the decision requires the IOU to file an application for a UOG project, justify in the application why a competitive solicitation is not feasible and support the unique circumstances that justify this request. All interested parties have an opportunity to raise opposition to the application and

[3] Joint Response to CMA's PTM, March 14, 2008, p. 2.

to urge the Commission to deny the application if the new resource is not in the ratepayer and/or public interest.

PG&E, SDG&E, Division of Ratepayer Advocates (DRA) and The Utility Reform Network (TURN) (Joint Parties) filed a joint response to both CMA's PFM and IEP's PFM. In regards to CMA's request to eliminate PSAs and EPCs from competing in solicitations, Joint Parties argue that to grant this would be a complete reversal of the Commission's policy of encouraging a hybrid market until there is a competitive market. From the Joint Parties perspective, if CMA's requests were granted and UOG alternatives were eliminated from future solicitations, PPAs would be competing just against one another, without the "discipline that utility-owned cost-of-service-based projects can exert in such solicitations." Joint Parties believe that more competition, not less, will bring new resources and benefit ratepayers. As the Joint Parties suggest, there is no evidence that the hybrid market as currently designed is failing. In fact, Joint Parties reference the recent PG&E and SDG&E solicitations and discuss how many PPAs bid into the solicitations, creating a "robust" competitive process.

Code of Conduct

Both CMA and IEP discuss a "code of conduct" referenced in the Decision that would govern the relationships among employees within the utility as a precondition for the participation of UOG in competitive solicitations. CMA suggests that eliminating the IOUs ability to consider any type of UOG bid in their solicitations, including PSAs and EPCs, would remove any problems or inconsistencies with the code of conduct.

IEP, on the other hand, suggests developing the code of conduct in a public process subject to Commission approval. IEP notes that while the code of conduct is discussed in the decision, it is not included in the Findings of Fact

(FOF), Conclusions of Law (COL) or Ordering Paragraphs (OP). IEP suggests in its PFM that this omission be addressed.

Joint Parties urge the Commission to defer the topic to the 2008 LTPP, R.08-02-007, and not "bog down the development of a code of conduct with additional process or to reopen the issue of the code of conduct now. . ."[4] SCE urges the Commission to outright reject IEP's suggestions vis-à-vis a code of conduct, especially the suggestion that there could be a "one size fits all" code for all three utilities.[5] SCE paraphrases the language from the Decision, and clarifies that the intent was that if a utility should choose to conduct a head-to-head solicitation, prior to launching it, the utility must develop an internal procedure for complying with the requirement that the utility not share information between employees involved with the development of the bid and the choosing of the bids.

SCE argues that there is no need for a uniform code of conduct universal to all IOUs, especially since (1) some utilities may not choose to allow head-to-head competition between UOG and IPP bids in their solicitations, and (2) some utilities already have their own code in place. Furthermore, SCE argues that if a code is needed, it would need to be tailored to each utility, and waiting until a code of conduct was in place could delay the process, to the disadvantage of ratepayers. Finally, even if a code was developed, SCE questions whether a public forum is the best way to accomplish the goal.

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[4] Joint Parties Response, March 14, 2008, p. 2.

[5] SCE Response, March 7, 2008, p. 2.

In summary, SCE asks the Commission to reject any amendments to D.07-12-052 on the code of conduct issue since (1) the utilities are not government entities subject to public review of their internal processes; (2) D.07-12-052 did not improperly delegate to the Energy Division (ED) review of the utilities internal processes; and (3) Rulemaking (R.) 08-02-007 has already signaled that it will give all interested parties an opportunity to propose refinements to the bid evaluation process.

4.4. Calpine Corporation's Petition for Modification

Calpine's PFM focuses on modifying and clarifying the language of D.07-12-052 to emphasize that the IOUs are not to exclude existing generation resources from IOU resource solicitations.

SDG&E and the Joint Parties [PG&E, TURN, SCE and DRA] filed responses. SDG&E argues that Calpine's PFM should be denied for the following reasons: the IOUs need new generation in their service territories and the utilities need flexibility in their RFOs to meet this need; the RA proceeding is addressing Calpine's concerns for just and reasonable compensation for existing energy and capacity; there is no compelling reason to ask the Commission to deviate from its current policy that allows the IOUs to tailor their RFOs; and D.07-12-052 provides safeguards to ensure that RFOs are fairly designed and conducted properly.

Joint Parties also urge the Commission to deny Calpine's PFM on the following grounds: the utilities need flexibility in designing their RFOs to meet specific needs; Calpine has made the same arguments before that the Commission rejected; there are procedural safeguards in place to ensure that the RFOs are properly designed; and generators will have ample opportunity to

contract with utilities for energy and capacity and to be compensated. Joint Parties do not want the Commission to require that existing generation be allowed to participate in all RFOs.

4.5. SDG&E's June 9th, 2008 Petition for Modification

SDG&E's June 9th, 2008 PFM requests clarification of two issues: (1) what is the timing on SDG&E's authorization to procure additional local capacity resources (LCR) to address any local area reliability shortfalls between the time when the Sunrise Powerlink project (Sunrise) is approved (if it is approved) and when it is operational, and (2) whether an Independent Evaluator (IE) is required for short-term solicitations for RA capacity.

D.07-12-052 authorizes 530 MW of new local capacity, that includes 130 MW of already approved peakers, with the remaining 400 MW conditioned upon whether Sunrise is approved or not. If Sunrise is approved, D.07-12-052 found that SDG&E does not need the additional 400 MW. However, given the lag time between when a project is approved and the date it becomes operational, SDG&E is concerned that it may face a shortage of local area capacity in that time period that was unaccounted for in D.07-12-052.

Therefore, in this PFM, SDG&E requests authorization for up to 322 additional MWs (the amount of local capacity needed without Sunrise) beyond the 130 MW already approved to meet local reliability needs during the period between approval and the on-line date of Sunrise. SDG&E further states that any long-term contracts signed to meet this need will come before the Commission, thus the Commission will be able to ensure that only needed new capacity is being added.

SDG&E also requests clarification on the use of an IE for short-term RA capacity solicitations when an affiliate may be present among the bidders. D.07-12-052 requires that an IE be retained for all RFOs seeking products of more than three months in duration. SDG&E states that short-term RA capacity solicitations involve "standard local or system RA products where only a very limited set of factors is involved (local or system RA, amount, location and price),[6] thus, minimal negotiation is involved and is based mostly upon these standard factors. Furthermore, all transactions are reported in the quarterly compliance filings, and if an affiliate is selected, the deal would be evaluated under affiliate transaction reporting. SDG&E therefore requests that short-term (from one month to one year) RA capacity transactions be exempt from the IE requirement even if an affiliate submits a bid.

There were no responses filed on SDG&E's PFM.

4.6. PG&E and SDG&E's June 13th, 2008 Joint Petition for Modification

PG&E and SDG&E request in their joint PFM that the IE requirements in D.07-12-052 be changed from requiring the retention of an IE for all RFOs that seek products greater than three months duration to all RFOs that seek products of two years or more in duration, using the definition of duration adopted in D.07-12-052. In solicitations where affiliate, IOU-built or IOU-turnkey bidders are present, an IE would be required regardless of the length of the contract term.

[6] SDG&E June 9, 2008 PFM of D.07-12-052.

PG&E and SDG&E state that while the Commission's goal of ensuring an impartial bidding process is appreciated, the administrative burden and excess costs associated with retaining an IE for all products greater than three months, regardless of the presence of affiliate, IOU-built or IOU-turnkey bidders, is disadvantageous to the ratepayer. Furthermore, all RFOs with a product term greater than three months are reviewed by the procurement review group (PRG) and are reported in the quarterly compliance filings, thus non-market participants and Commission Staff have the opportunity to ensure the transparency and impartiality of the selection process.

SCE and WPTF filed responses. SCE generally supports PG&E and SDG&E's PFM; however, SCE offers two additional refinements: (1) SCE suggests that an IE requirement should be eliminated for all RFOs, regardless of product duration, if no affiliate products are sought, and (2) for RFOs that seek products of less than two years' duration, an IE should not be required unless and until the IE receives notice that an affiliate intends to participate.

WPTF opposes adoption of the PFM on the following grounds: (1) the PFM ignores the intent of the Commission to ensure a fair, competitive procurement process free of real or perceived conflicts of interest, (2) much of utility procurement, including summer peaking procurement, falls into the three month to two year category, and the use of an IE is likely to reduce processing time, including litigation, and (3) the proposal is premature given that all parties have not had sufficient time utilizing the new standards to draw definitive conclusions about price increases and time delays caused by the retention of an IE for shorter-term solicitations.

5. Discussion

5.1. Debt Equivalence

Debt Equivalence (DE) is the term used by credit rating agencies for long-term fixed obligations, such as PPAs, that are included in their financial risk analyses for the IOUs. We have been considering the appropriate role for DE in the LTPP process since the 2004 LTPP proceeding.

D.04-12-048 found that the costs associated with rebalancing an IOU's portfolio to counter the effects of DE should be considered in an IOU's cost of capital (COC) proceeding, but not in the LTPP proceeding. D.04-12-048 also found that IOUs may impute a DE of 20% to the fixed cost component of PPA bids as an evaluation tool in comparing bids in a competitive solicitation. However, that decision also indicated that DE was a "subjective factor based on the credit agencies' perceived risk associated with PPAs, that the credit agencies' views are "not static and can change with respect to a particular PPA during the term of the PPA," and that "the imputed costs for existing PPAs will be reduced as the regulatory climate in California improves."[7]

In the 2006 LTPP proceeding, the IPP trade associations urged us to eliminate DE as a bid evaluation tool for the IOUs. In D.07-12-052, we reviewed and reanalyzed the use of DE in the evaluation of bids and found that while the cumulative impact of DE associated with the PPAs in an IOU's portfolio could potentially impact its credit rating, the IOU's COC proceeding is the appropriate forum to address this potential impact. Consequently, D.07-12-052 determined

[7] D.04-12-048, pp. 129-133.

that the IOUs could no longer use the DE adder for the evaluation of individual bids in RFOs.

PG&E, SCE and SDG&E all filed PFMs asking us to revisit this finding, and in response we issued a ruling on May 20, 2008, asking parties to respond to several assumptions and questions related to the DE issue. The arguments set forth in the initial PFMs, the responses and replies to the PFMs, and the additional requested briefs and reply briefs have provided a wealth of additional information for our consideration on this topic. Following careful deliberation of the competing positions we revise our opinion in several areas, as described below.

5.1.1. The DE Adder as a Bid Evaluation Criterion

Because the DE associated with a PPA is a factor considered by rating agencies and is a factor the Commission evaluates when it determines an IOU's return on equity in the IOU's COC proceeding, we find it is appropriate in some cases for the IOUs to recognize the effects of DE in their bid evaluation processes.

Specifically, we find that it is appropriate to consider DE in cases in which the bids included in the solicitation are sufficiently similar that a comparison of relative DE-effects would not in turn suggest the need to consider other, potentially countervailing risk-related effects of selecting one bid over another. Consequently, we will allow the use of the 20% DE adder in head-to-head competition between PPAs where no UOG projects (including EPC or PSA bids) are being considered. We empower the utilities to develop in their bid evaluation protocols, in consultation with their IEs and PRGs, to ensure that in head-to-head competition, the use of the DE adder does not disadvantage bids for renewable and innovative low-carbon resources that may have higher capital costs than traditional gas-fired generation.

As pointed out by IEP, though, there are a number of both risk-creating and risk-mitigating effects associated with an IOU signing a PPA rather than building UOG, as indicated by the following lists compiled by a Standard and Poor's representative:

Benefits of PPAs

- Construction risk is borne by the supplier
- Operating risk is typically shifted to the supplier if certain threshold availability and/or heat rate targets are not met
- Recovery of costs may be simplified through the use of a power cost adjustment mechanism
- Avoid taking a long view of the market
- Asset diversity
- Temper exposure to technology risk

Risks of PPAs

- Forego rate base treatment and the opportunity to earn a return
- Debt imputation is viewed as increasing operating leverage for analytical purposes, which can erode the financial metrics used to measure creditworthiness
- Potential need to provide collateral to the supplier[8]

The complexity of the risk-related pros and cons associated with PPA versus UOG ownership suggested by these two lists (and the fact that, presumably, neither list is exhaustive) suggests that it would be inappropriate to single out and consider only one specific risk-related effect (i.e., the risk associated with the additional DE within a particular regulatory framework) of a

[8] David Bodek, "Standard & Poor's Imputed Debt Calculations for Power Purchase Agreements," Society of Utility and Regulatory Financial Analysts, April 19, 2007, Slides 5 and 6. This slide presentation is available at <http://www.surfa.com/ppres.php> under "2007 Forum Presentations." (Cited in IEP's Opening Brief on Debt Equivalence Issues, June 20, 2008, p. 7.)

PPA bid on the potential impact to an IOU's credit ratings when comparing PPA and UOG bids. Consequently, we will continue to prohibit the use of the DE adder in solicitations that include both PPA and UOG (including PSA or EPC) bids.

5.1.2. The DE Adder and Pub. Util. Code § 454.6

The IOUs also requested reconsideration of the DE adder issue in solicitations that include contracts for repowering in order to ensure that they could adhere to the requirements of Public Utilities (Pub. Util.) Code Section 454.6. Pub.Util. Code § 454.6 states that a contract for a repowering or replacement that meets the criteria established in Pub. Util. Code § 454.5(b) shall be recoverable in rates, "taking into account any…debt equivalence associated with the contract…." In the event that an IOU submits an application for a replacement or repowering project that requires Pub. Util. Code § 454.6 rate recovery treatment, the IOU should certainly include the DE associated with this contract in its COC proceeding filings such that the Commission can include this DE in its consideration regarding adjustments to the IOU's debt/equity ratio and/or return on equity. Nothing in D.07-12-052 or this decision should be construed to suggest otherwise. We find no merit, though, in the IOUs' position that Pub. Util. Code § 454.6 requires that DE costs also be taken into account in the IOUs' bid evaluation process for these repower projects.

5.2. Head-to-Head Competition Between PPAs and UOG

In the 2006 LTPP proceeding, IEP and CMA raised some important and valid concerns regarding the challenges associated with IOU solicitations that include UOG and IPP bids, and in response to their arguments:

- D.07-12-052 placed a ban on direct utility bids in IOU RFOs; and

- R.08-02-007, the 2008 LTPP, will consider whether and how a level playing field can be achieved (or approached) for head-to-head competition between all types of UOG and PPA bids.

IEP and CMA are still concerned that allowing PPAs to compete against PSAs, and in some circumstances EPCs, will interfere with moving towards a truly competitive market, and their PFM asks us to make further modifications to D.07-12-052 related to UOG bids. As discussed below, we are not persuaded to make any modifications to D.07-12-052 on this topic.

As noted in D.07-12-052, we initially proposed in the proposed decision (PD) a complete ban on UOG bids. However, in their comments on the PD, DRA and TURN so cogently argued in favor of permitting head-to-head competition, that we changed the final decision and elected to continue to permit head-to-head competition between PPA and PSA (and under appropriate circumstance EPC) bids under the current hybrid market paradigm, while we await the development of a more complete record on this issue in the 2008 LTPP proceeding. Nothing in CMA or IEP's PFMs leads us to modify our conclusions on this interim compromise. We are still gathering data on various aspects of this process, and allowing one more round of RFOs with PSA and PPA bids will be useful and instructive in our assessment of head-to-head competition evaluation methodologies in the 2008 LTPP. We also note that in continuing to allow this limited head-to-head competition, we are not "limiting competition to construction," as IEP's PFM states, since PPAs are still in the RFO mix.

One point raised by the Petitioners in this context that requires additional clarification is D.07-12-052's inclusion of EPC bids "under appropriate circumstances." The purpose of allowing EPC bids is in no way intended to provide the IOUs with a broad loophole that allows for what are essentially

direct utility build projects, as suggested by the Petitioners. The purpose of this inclusion is to acknowledge that certain extraordinary circumstances that are unpredictable in advance may necessitate utility ownership of generation at a particular site. The point we are making in including EPCs in the head-to-head competition discussion is that even under these circumstances, our preference is for an open solicitation by the IOU for the contract for this project, rather than the selection of a construction contractor by the IOU via an internal, less transparent process.

While extraordinary circumstances are by definition difficult to identify a priori, our intention is to set a high bar for an "appropriate circumstance" for an IOU to circumvent the potential for private ownership by soliciting EPC bids. Simply owning land on which generation could be built does not meet this test. Requesting EPC bids in general in an RFO as an alternative to PSAs and PPAs certainly does not satisfy this requirement either.

5.3. Exceptions to RFO Solicitations

The Commission has repeatedly stated its desire to develop a functional competitive energy market in California, and as explained in the Decision, we are in the process of implementing a number of programs and safety mechanisms in support of this end state. In the interim, we are operating in an evolving "hybrid market," and the issue of whether and under what circumstances an IOU can propose utility owned generation outside of a competitive solicitation represents one of the challenges posed by such a market. As we stated in the Decision, we continue to believe in a "competitive market first" approach. As such we believe that all long-term procurement should occur via competitive procurements, rather than through preemptive actions by the IOU, <u>except in truly extraordinary circumstances</u>.

However, as noted by several parties throughout this proceeding, unique circumstances could arise that dictate a need for UOG outside of a competitive RFO. D.07-12-052 divided the unique circumstances warranting some form of utility ownership into five categories and noted that the categories were not to be considered permanent but that they may change based on continued experience with procurement processes.[9] We repeat the five unique circumstances here for purposes of addressing the PFM:

- Market Power Mitigation – the IOU must make a strong showing that as a result of some attribute of the desired resource, a private owner would have the ability to exert significant influence over the price of its development or of the price and quantity of its output (energy, capacity, or ancillary services);

- Preferred Resources – while we continue to rely on markets to deliver efficiently priced products for ratepayers, we see no reason to limit our options and intend to continue to deploy all resources available to us, including utility development and ownership, to meet California's vital environmental policy objectives;

- Expansion of Existing Facilities – we can envision certain unique circumstances in which ratepayers would benefit from development on or expansion of an existing IOU asset that would not lend itself to the PPA project structure, but the IOU would need to make a strong showing that such development were clearly preferable to a resource that could be obtained via a competitive solicitation that would not necessarily result in utility ownership;

[9] In addition, D.07-12-052 stated that the IOU must demonstrate, as part of its application that holding an RFO is infeasible.

- Unique Opportunity – an attractively priced resource resulting from a settlement or bankruptcy proceeding (we anticipate that these opportunities will diminish over time); and
- Reliability - resources needed to meet specific, unique reliability issues (particularly under circumstances in which it becomes evident that reliability may be compromised if new resources are not developed, and the only means of developing new resources in sufficient time is via UOG.

CMA argues in its PFM that the exception for reliability could be considered redundant, since the Commission has the authority to order UOG for "emergency reliability" purposes. CMA is, in fact, correct. The Commission has the authority to execute a number of decisions in order to ensure reliability. CMA also argues that this exception could "undermine the effectiveness of the planning metrics used to develop RA requirements." We disagree with CMA's assertions. Allowing a certain exception to the RFO requirement is in no way intended to impact or alter the RA requirements – including load forecasting conventions, the planning reserve margin, or resource counting conventions. The RA requirements are not the subject of this proceeding and they remain squarely in a separate proceeding.[10] This exception merely provides clarity surrounding how procurement to address reliability issues - as dictated by the RA requirements - may occur. We find that the exception for reliability is well founded and should remain in D.07-12-052. We continue to identify this exception for purposes of clarity, transparency and completeness.

[10] R.05-12-013, or its successor; R.08-01-025, or its successor; R.08-04-012, or its successor.

We do, however, agree that D.07-12-052 should be modified to eliminate the "Expansion of Existing Facilities" exception. The arguments presented by CMA and IEP on the due process issue are compelling, and that alone is sufficient to support the modification. We also agree that the language used in the decision may create some uncertainty, and for this reason also modify the Decision. We note that in removing this exception based on due process concerns, we do so without prejudice, and we do not preclude the expansion of existing facilities for UOG projects approved via one of the remaining four exceptions to the competitive RFO requirement.

We continue to look unfavorably upon any procurement option selected outside of a competitive solicitation but we also realize that in certain instances this may be the optimal method for meeting the needs of California's ratepayers.

5.4. Code of Conduct

IEP presents strong arguments supporting the development of a code of conduct for ensuring that when a utility is competing head-to-head as a seller of a product with other sellers, and the utility is the buyer, that there are bans on preferential access to information within the divisions of the utility. We agree, and in fact, language in D.07-12-052 addressed that very point. What we are not prepared to do at this time, however, is to develop, in a public forum, a universal code of conduct for all three utilities to be used in all solicitations where there is head-to-head competition. D.07-12-052 only permits bids that result in utility ownership that are developed by independent parties – direct utility-build bids are prohibited – and given this limitation we conclude that the current system whereby each utility develops its own code of conduct, in consultation with its IE, PRG and the ED staff, adequately protects ratepayers and ensures the integrity of the solicitation process.

However, we recognize that the procedure, as established, does not provide potential RFO participants (i.e., the bidders) any certainty that a code of conduct exists. Therefore, we shall require that any RFO that seeks any form of utility ownership options must include this code of conduct in the RFO bid documents when they are issued.

Phase II of the 2008 LTPP, R.08-02-007 is scoped to evaluate "whether and how refinements can be made to the bid evaluation process to ensure fair competition between power purchase agreements and utility-owned generation bids and alternatives to the competitive market approach where competition cannot be used to reach equitable and efficient outcomes."[11] Therefore, we are not going to adopt changes requested in the PFMs to modify D.07-12-052 but rather will focus the Commission's attention on the 2008 Rulemaking and make changes and modifications to the process, as warranted, in the next LTPP decision.

5.5. Solicitations and Existing Generation

Calpine's request to modify D.07-12-052 to require the IOUs to request bids from existing generation in all RFOs is denied. Existing generation is assumed by the utilities and the regulators to be available to IOUs when their net-short positions are calculated. Therefore, recontracting with these resources is not sufficient to meet new generation requirements.

The Decision allowed IOUs the ability to tailor RFOs to meet specific requirements (i.e., address system reliability needs and therefore limit the solicitation to new or repowered generation or RA requirements – system, zonal,

[11] OIR, February 14, 2008, p. 11.

or local). In support of this position, the Commission agreed with the IOUs that all parties benefit from this practice. The Commission believes that IPPs actually benefit from this practice in that they are properly discouraged from utilizing their resources to develop bids for products not needed by the IOU.

We continue to expect RFO product descriptions to be based on each utility's operational needs and not create false barriers to participation or otherwise limit the competitive process.

5.6. SDG&E's Need Authorization

In its PFM, SDG&E asks the Commission for procurement authority to meet its anticipated need in the time between the Commission's anticipated approval of Sunrise and the point in time when the new line is operational. In D.07-12-052, we bifurcated SDG&E's procurement authority into 530 MW [130 MW already approved peakers plus 400 MW of additional power] if Sunrise was not approved, and 130 MW [0 MW of additional power] if it was approved. SDG&E is concerned that even if Sunrise is approved, in the time period between approval and operation, SDG&E will face a shortage of local area capacity.

Whether or not to approve the SDG&E's application for a certificate of public convenience and necessity for the Sunrise Powerlink transmission project is the subject of Application 06-08-010 and we do not prejudge that matter here. The Commission's goal in conditioning the need authorization on the outcome of the Sunrise project was to minimize the amount of local area resources SDG&E procures in the event that the Sunrise project is approved and obviates the need for some or all of these resources at this time. However, history has taught us that there is a significant degree of uncertainty surrounding the approval and timing of transmission projects. Adding to this the recent challenges and delays a number of local generation resources have faced in SDG&E's territory, we

share SDG&E's concerns regarding the potential for significant local area capacity shortfalls and do not find it prudent to attempt to "finesse" the timing of this procurement.

Consequently, we authorize SDG&E to procure up to the 530 MWs of new local capacity authorized in D.07-12-052, with the stipulation that applications for this procurement should be supported by updates of the status and projected on-line date of the Sunrise Powerlink project. Subtracting the 133 MWs of resources already approved by the Commission, this results in an additional 400 MWs of authorization for local area resources through 2015.

All of the requirements associated with the types of resources and process requirements identified in D.07-12-052 remain in full force.

5.7. Independent Evaluator

In D.07-12-052, the Commission required the use of an IE for all RFOs seeking products greater than three months duration. The intent behind this directive was to ensure a transparent and fair bid selection process that was beneficial to ratepayers, especially in cases where affiliates or utilities are bidding into the solicitation. Our requirement that the utilities utilize IEs for short- and medium-term products, rather than just long-term (greater than five years), is to ensure that RFOs where affiliate or utility bids may be present are conducted in an impartial and transparent manner regardless of contract duration while also addressing the fact that an IOU may not know whether an affiliate would bid into the solicitation prior to bid evaluation and selection. However, the Commission recognizes that there are RFOs for many different types of products, including standard and non-standard products, and RFOs may happen in a matter of hours or days, making the selection and retention of an IE in some cases burdensome, costly, and ultimately unnecessary. While we appreciate

WPTF's point that sufficient time has not lapsed to make such a call, we seek to adequately balance the realities of procurement and the cost of the IE program with the need for fairness and impartiality. Given that solicitations for products of three months or more in duration require consultation with the PRG, of which DRA and ED staff are members, we believe that robust systems are in place to ensure impartiality without unnecessarily impeding the procurement process.

With the goal of protecting the interests of ratepayers, the logical demarcation for retention of an IE [in addition to when an affiliate or a utility is a bidder in the solicitation] would depend upon the complexity of the product sought (e.g., standard products would be considered non-complex products and therefore may not require the use of an IE); however, the record does not establish a clear breaking point for complex versus non-complex products. Given that product complexity is often directly correlated with product duration, we find it prudent to adopt the Joint Parties' PFM allowing for the retention of an IE for products greater than two years duration.

We uphold the requirement that IOUs employ an IE whenever an affiliate or utility bidder is present, regardless of contract duration. To ensure that an IE is retained in such cases, we require that an IOU address the possibility of affiliate or utility bids by designating at the outset of an RFO whether such bidders are allowed to participate. If the IOU does not wish to make such a determination up front, the IOU could require that all parties that intend to participate in an RFO submit a notice of intent early in the RFO process such that an IE can be retained before bids are received. However, the IOU assumes a risk in adopting this approach. One of the requirements of the IE is to ensure that an RFO has not been designed in a manner that unfairly favors some bidders over others. Consequently, if an affiliate bids into an RFO for which no IE was

contracted a priori, the IOU runs the risk of having its RFO nullified in the middle of the process if an IE makes a finding of this kind.

Further, we do not adopt SCE's suggestion that an IE only be retained for solicitations where an affiliate bidder is present, regardless of contract duration. While the initial intent of the IE was to ensure fairness of RFOs where an affiliate may be among the bidders, our experience has shown us that sources of bias, or perceived sources of bias, whether intentional or not, may become present during complex solicitations with or without affiliate participation. We maintain that the ultimate goal of the IE is to ensure a fair and competitive solicitation process, and retaining an IE for more complex solicitations is a prudent step toward achieving this objective.

The portion of SDG&E's June 9th, 2008 PFM requesting that short-term (from one month to one year) RA capacity transactions be exempt from the IE requirement is denied. While short-term RA capacity RFOs may involve a somewhat standard evaluation process, no such formal standard RA products are currently in place; thus the possibility for additional evaluation criteria beyond standard criteria could be necessary. Therefore, the Commission requires, as stated above, that an IE be retained for all RFOs where an affiliate or utility bidder participates into the solicitation. At such time as the California Independent System Operator designates standard RA products, this requirement could be revisited. As stated in D.04-12-048 and upheld in D.07-12-052, the IE process may be changed or updated in a later proceeding based upon experience and lessons learned under the current rules and regulations.

5.8. Conclusions

The Commission understands that the hybrid market, by its very nature, presents many challenges to establishing a fair and open solicitation process in which all participants compete on a level playing field. Until there is a different model for developing new resources, however, we will continue to function under the IOU/IPP hybrid-model and take all reasonable steps to ensure that the integrity of the solicitation process is not compromised and that ratepayers are protected. To that end, we find that only the following requested modifications to D.07-12-052 are granted;

1. We authorize the IOUs to recognize the effects of DE when comparing PPAs against PPAs in their bid evaluations but not when a UOG project is being considered;

2. We grant the request to delete the exception of allowing IOUs to chose UOG projects outside of a competitive solicitation based solely on the synergies associated with the expansion of existing facilities;

3. We clarify the circumstances under which EPC bids may be considered;

4. We authorize SDG&E to procure up to the 530 MW of new local capacity that was conditionally authorized in D.07-12-052, clarifying that applications for this procurement should be supported by updates of the status and projected on-line date of the Sunrise Powerlink project;

5. We modify the circumstances under which an IOU must retain the services of an IE to RFOs that seek products two years or greater in duration. However, we still require that an IE be utilized whenever an affiliate or utility bidder participates in the RFO, regardless of contract duration.

The other changes requested in the PFMs are denied.

5.9. Further Modifications to D.07-12-052

For clarification, we made the following changes to D.07-12-052, to incorporate the modifications we grant today and to correct typographical errors:

- Conclusion of Law 30 contains an extraneous word "for" after evaluating, we remove the word "for."

- Eliminating bias in the RFO process: we replace the word "impartiality" with "bias" on page 208 of the Decision.

- Page 140, we clarify that an IE must be utilized for all competitive RFOs that seek products of two years or more in duration. We specify that the contract duration clock begins: (1) at the time the contract resources begin delivery or the product is made available, if delivery or availability of the product occurs within one year of contract execution; or (2) at the time of contract execution if delivery or availability does not begin within one year of contract execution.

- Pages 207-208, we clarify that we are allowing four [not five] categories of unique circumstances, and we are deleting the following: "Expansion of Existing Facilities – we envision certain unique circumstances in which ratepayers would benefit from development on or expansion of an existing IOU asset that would not lend itself to the PPA project structure, but the IOU would need to make a strong showing that such development was clearly preferable to a resource that could be obtained via a competitive solicitation that would not necessarily result in utility ownership."

- Finding of Fact 62, we change "greater than three months in length" to "two years or more in duration." In addition, we add that the contract duration clock begins: (1) at the time the contract resources begin delivery or the product is made available, if delivery or availability of the product occurs within one year of contract execution; or (2) at the time of contract

execution if delivery or availability does not begin within one year of contract execution.

- Finding of Fact 96, we delete "expansion of existing facilities."

- Ordering Paragraph 9, we change "greater than three months in length" to "two years or more in duration." We add that the contract duration clock begins: (1) at the time the contract resources begin delivery or the product is made available, if delivery or availability of the product occurs within one year of contract execution; or (2) at the time of contract execution if delivery or availability does not begin within one year of contract execution.

- Ordering Paragraph 31, we delete "expansion of existing facilities."

- Ordering Paragraph 13, we modify to read as follows: Such costs, if any, shall not exceed a total annual amount of $400,000, and the total shall be paid by PG&E, SCE and SDG&E on a pro rata basis (i.e., 33.3% to each IOU) unless the contractor(s) perform work related to only a specific utility.

6. Comments on Proposed Decision

Comments on the proposed decision (PD) were received from Calpine, CMA, DRA, IEP, NRG, Energy (NRG), PG&E, SCE, SDG&E and TURN. Reply comments were received from IEP and PG&E.

SCE generally supports the PD, but asks for some clarifying language on the modification that deletes the exception allowing IOUs to choose UOG projects outside of a competitive solicitation for expansion of existing facilities. SCE requests that we specify in the decision that this deletion is without prejudice and that a utility is not precluded from seeking authorization for a UOG project that happens to involve the expansion of an existing facility. We

agree with SCE and incorporate these suggestions in the decision. TURN also asks for similar consideration in its comments to the PD and in particular argues that expansion of an existing IOU asset does not lend itself to a PPA project structure. TURN asks the Commission to clarify the PD so that parties know a solicitation of EPC bids for the expansion of existing facilities is permissible in a competitive RFO that also seeks PPAs and PSAs. As discussed above, this assumption is subsumed in our discussion that a utility may tailor its RFO to meet its needs and our preference is for all resources to be chosen via competitive solicitations.

SDG&E again requests that it be granted additional resources, and NRG and IEP support this request. We have reconsidered our findings in the PD and revised the decision to increase SDG&E's need for new resources up to 530 MW and we ask SDG&E to update the status of the Sunrise project in any application for new procurement. SDG&E also argues that we should keep the expansion of existing facilities exception and not try to limit the circumstances for a utility to solicit an EPC bid. We did qualify the exception for existing facility expansion as discussed above, and are not going to further address the EPC bid issue in this decision. NRG's comments focus on giving SDG&E the additional authority to procure local area capacity, and we granted SDG&E's request.

Calpine asks the Commission to prohibit the IOUs from excluding existing generation from their long-term RFOs since without the long-term contracts, these facilities can not recover the full cost of their equity investment. IEP also argues in favor of the same modification. We have considered this request and we again decline to establish such an edict. The PD includes a discussion and analysis of our findings on this topic.

DE continues to be a contentious topic. PG&E specifically urges the Commission to allow the IOUs to consider DE in all RFOs that include PPAs, including those that also have UOG resources. PG&E states that DE is a real cost and a utility should consider all real costs in evaluating bids in a RFO. IEP opposes this suggestion and argues that DE is not a cost, but an element of financial risk that must be balanced with other risks and benefits in determining a utility's cost of capital. Most certainly, IEP argues that DE should not be used in solicitations that compare UOG and PPAs. In the alternative, IEP asks that we remove the endorsement of use of a 20% DE adder when there is no UOG participating in the RFO or to at least reduce the DE to no more than 16.7%. This proposal merits consideration in a future LTPP, but has not been fully vetted enough for us to address in this decision.

IEP also raised an issue in its comments that was not addressed in the PD and that is that allowing the use of DE could overstate the cost of PPA capacity payments and could conflict with other policy objectives, such as promoting renewables. As IEP states, RPS-eligible renewable generation facilities are frequently characterized by high capital costs and low variable costs, whereas gas-fired resources can be the opposite. Therefore, using a DE adder in PPA competition could favor fossil-fuel technologies, and disfavor renewables or other technologies likely to reduce GHG emissions. IEP asks us to modify the PD so as to address this disparity in technologies. We considered IEP's arguments and modified the PD to ensure that we are promoting the state's policy directives towards renewables and reduced GHG emissions. We made the following change to the text of the decision:

> We empower the utilities to develop in their bid evaluation protocols, in consultation with their IEs and PRGs, to ensure that in head-to-head competition, the

> use of the DE adder does not disadvantage bids for renewable and innovative low-carbon resources that may have higher capital costs than traditional gas-fired generation.

We decline to make any other modifications to the DE section of the decision, but may want to consider DE again in the next LTPP proceeding. As we have mentioned, it is the Commission's intent to move towards a competitive market, and as we make further inroads in that direction, we may better understand how to ensure that utilities and independent power producers are competing on a level field in solicitations for new resources.

IEP also requests in its comments a number of other changes to the PD including imposing limits on PSAs bidding into RFOs, requiring the development of a code of conduct for the IOUs, affirming that the IOUs should not exclude existing generation from bidding into RFOs, and granting SDG&E the additional generation it requested. DRA argues in its comments against the PSA limitations, the code of conduct and no limits on existing generation. We grant SDG&E the additional generation, but are not making the other requested changes to the PD since they are issues we carefully considered in drafting the PD and we are not convinced that the changes are warranted at this time.

7. Assignment of Proceeding

President Michael R. Peevey is the assigned Commissioner and Carol A. Brown is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. Petitions for Modification of D.07-12-052 were filed by SCE and SDG&E; PG&E; IEP; CMA; Calpine; SDG&E; and PG&E and SDG&E.

2. The requested modifications to D.07-12-052 are granted in part, and denied in part.

3. The modifications adopted by the Commission are set forth herein and as set forth below:

a. We authorize the IOUs to recognize the effects of DE when comparing PPAs against PPAs in their bid evaluations, but not when a UOG project is being considered.

b. We delete the exception of allowing the IOUs to chose UOG projects outside of a competitive solicitation for expansion of existing facilities.

c. We clarify the circumstances under which EPC bids may be considered.

d. We authorize SDG&E to procure up to the 530 MW of new local capacity that was conditionally authorized in D.07-12-052, and require that applications for this procurement be supported by updates of the status and projected on-line date of the Sunrise Powerlink project.

e. We modify the circumstances under which an IOU must retain the services of an IE to RFOs that seek products two years or greater in duration. However, we still require that an IE be utilized whenever an affiliate or utility bidder is present, regardless of contract duration.

4. We also make the following clarifications to D.07-12-052:

a. Conclusion of Law 30, contains an extraneous word "for" after evaluating, we are removing the word "for."

b. Eliminating bias in the RFO process: we are replacing the word "impartiality" with "bias" on page 208 of the Decision.

c. Page 140, we clarify that an IE must be utilized for all competitive RFOs that seek products of two years or more in duration. We specify that the contract duration clock begins: (1) at the time the contract resources begin delivery or the product is made available, if delivery or availability of the product occurs within one year of contract execution; or (2) at the time of contract execution if delivery or availability does not begin within one year of contract execution.

d. Pages 207-208, we clarify that we are allowing four [not five] categories of unique circumstances, and we are deleting the following: Expansion of Existing Facilities – we envision certain unique circumstances in which ratepayers would benefit from development on or expansion of an existing IOU asset that would not lend itself to the PPA project structure, but the IOU would need to make a strong showing that such development was clearly preferable to a resource that could be obtained via a competitive solicitation that would not necessarily result in utility ownership.

e. Finding of Fact 62, we change "greater than three months in length" to " two years or more in duration." We add that the contract duration clock begins: (1) at the time the contract resources begin delivery or the product is made available, if delivery or availability of the product occurs within one year of contract execution; or (2) at the time of contract execution if delivery or availability does not begin within one year of contract execution.

f. Finding of Fact 96, we delete "expansion of existing facilities."

g. Ordering Paragraph 9, we change "greater than three months in length" to " two years or more in duration." We add that the contract duration clock begins: (1) at the time the contract resources begin delivery or the product is made available, if delivery or availability of the product occurs within one year of contract execution; or (2) at the time of contract execution if

delivery or availability does not begin within one year of contract execution.

h. Ordering Paragraph 31, we delete "expansion of existing facilities."

i. Ordering Paragraph 13, we modify to read as follows: Such costs, if any, shall not exceed a total annual amount of $400,000, and the total shall be paid by PG&E, SCE and SDG&E on a pro rata basis (i.e., 33.3% to each IOU) unless the contractor(s) perform work related to only a specific utility.

5. Requests for capital structure adjustments related to PPAs are appropriate in a utility's COC proceeding, not in an advice letter/application for the PPA.

Conclusions of Law

1. As set forth herein, it is reasonable to grant in part, and deny in part, the modifications requested to D.07-12-052.

2. All other requested changes or modifications requested in the PFM that have not been explicitly granted are deemed denied.

O R D E R

IT IS ORDERED that:

1. The following modifications requested in the Petitions for Modification (PFM) to Decision (D.) 07-12-052 are granted:

a. We authorize the investor-owned utilities (IOUs) to recognize the effects of debt equivalence (DE) when comparing power purchase agreements (PPA) against PPAs in their bid evaluations, but not when a utility-owned generation (UOG) project is being considered.

b. We grant the request to delete the exception of allowing IOUs to chose UOG projects outside of a competitive solicitation for expansion of existing facilities.

c. We specify the circumstances under which engineering, procuring and construction (EPC) bids are appropriate as follows:
(1) The purpose of allowing EPC bids is in no way intended to provide the IOUs with a broad loophole that allows for what are essentially direct utility build projects, as suggested by the Petitioners – the purpose is simply to acknowledge that certain extraordinary circumstances that are unpredictable in advance may necessitate utility ownership of generation at a particular site; (2) While extraordinary circumstances are by definition difficult to identify a priori, our intention is to set a high bar for an "appropriate circumstance" for an IOU to circumvent the potential for private ownership by soliciting EPC bids. (3) Simply owning land on which generation could be built or requesting EPC bids in general in an RFO as an alternative to PSAs and PPAs does not satisfy this requirement.

d. We authorize San Diego Gas & Electric Company (SDG&E) to procure a total of up to 530 megawatts (MW) of new local capacity that was conditionally authorized in D.07-12-052 and require that applications for this procurement be supported by updates of the status and projected on-line date of the Sunrise Powerlink project.

e. We modify the circumstances under which an IOU must retain the services of an Independent Evaluator (IE) to requests for offers (RFO) that seek products two years or greater in duration is granted. However, we still require that an IE be utilized whenever an affiliate or utility bidder participates in the RFO, regardless of contract duration.

2. We also make the following clarifications to D.07-12-052:

- Conclusion of Law 30, contains an extraneous word "for" after evaluating, we are removing the word "for."

- On page 208 of the Decision in the section on eliminating bias in the RFO process, we are replacing the word "impartiality" with "bias."

- On page 140, we clarify that an IE must be utilized for all competitive RFOs that seek products of two years or more in duration. We specify that the contract duration clock begins: (1) at the time the contract resources begin delivery or the product is made available, if delivery or availability of the product occurs within one year of contract execution; or (2) at the time of contract execution if delivery or availability does not begin within one year of contract execution.

- On pages 207-208, we clarify that we are allowing four [not five] categories of unique circumstances, and we are deleting the following: "Expansion of Existing Facilities – we envision certain unique circumstances in which ratepayers would benefit from development on or expansion of an existing IOU asset that would not lend itself to the power purchase agreement (PPA) project structure, but the IOU would need to make a strong showing that such development were clearly preferable to a resource that could be obtained via a competitive solicitation that would not necessarily result in utility ownership."

- Finding of Fact 62, we change "greater than three months in length" to " two years or more in duration." We also add that the contract duration clock begins: (1) at the time the contract resources begin delivery or the product is made available, if delivery or availability of the product occurs within one year of contract execution; or (2) at the time of contract execution if delivery or availability does not begin within one year of contract execution.

- For Finding of Fact 96, we delete "expansion of existing facilities."

- For Ordering Paragraph 9, we change "greater than three months in length" to " two years or more in duration." We also add that

the contract duration clock begins: (1) at the time the contract resources begin delivery or the product is made available, if delivery or availability of the product occurs within one year of contract execution; or (2) at the time of contract execution if delivery or availability does not begin within one year of contract execution.

- For Ordering Paragraph 31, we delete "expansion of existing facilities."

- We modify Ordering Paragraph 13 to read as follows: Such costs, if any, shall not exceed a total annual amount of $400,000, and the total shall be paid by Pacific Gas and Electric Company, Southern California Edison Company and San Diego Gas & Electric Company on a pro rata basis (i.e., 33.3% to each IOU) unless the contractor(s) perform work related to only a specific utility.

3. All other requested changes or modifications requested in the PFM that have not been explicitly granted are denied.

4. In all other respects, D.07-12-052 remains unchanged or modified.

5. Rulemaking 06-02-013 is closed.

This order is effective today.

Dated _____, at San Francisco, California.