Decision 12-03-008 March 8, 2012

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company for Approval of a Power Purchase Agreement with Mariposa Energy, LLC. (U39E)	Application 09-04-001 (Filed April 1, 2009)

DECISION DENYING PETITION TO MODIFY DECISION 09-10-017

1. Summary

This decision denies the Petition to Modify Decision 09-10-017 wherein CAlifornians for Renewable Energy, Inc. seeks to rescind Pacific Gas and Electric Company's (PG&E) authority to procure 184 megawatts of new generation capacity from the Mariposa Energy Center project, revert the proceeding to its pre-settlement status, and impose fines and penalties on PG&E.

2. Background and Procedural History

Decision (D.) 07-12-052, the 2006 Long Term Procurement Planning Decision (LTPP), authorized Pacific Gas and Electric Company (PG&E) to procure 800 to 1,200 megawatts (MW) of new generation capacity by 2015. This amount was later increased to 1,112-1,512 MW to adjust for projects that failed after D.07-12-052 was issued.[1] To obtain the new capacity by 2015, PG&E held a competitive solicitation and brought before the Commission five contracts

[1] D.07-12-052 at 300, Ordering Paragraph (OP) 4, and D.10-07-042 at 17.

totaling 1,743 MW of new capacity from gas-fired combustion turbines for consideration. These five contracts are summarized below:

Application (A.)	Project Name	New Capacity (MW)	Decision
A.09-04-001	Mariposa	184	D.09-10-017
A.09-09-021	Marsh Landing	719	D.10-07-045
A.09-09-021	Oakley	586	D.10-07-045 D.10-12-050
A.09-10-022	GWF Tracy (Tracy)	145	D.10-07-042
A.09-10-034	Los Esteros Critical Energy Facility (LECEF)	109	D.10-07-042
Total (MW)		**1,743**[2]	

2.1. The Mariposa Power Purchase Agreement (Mariposa PPA)

The first project to be proposed by PG&E and approved by the Commission was the Mariposa PPA. PG&E filed A.09-04-001 on April 1, 2009, seeking an expedited order by November 2009 in order to ensure that the Mariposa Energy Center would be on line by 2012. CAlifornians for Renewable Energy, Inc. (CARE) and the Division of Ratepayer Advocates (DRA) timely filed protests. PG&E properly noticed and convened a settlement conference on April 28, 2009. PG&E, DRA, CARE, The Utility Reform Network, and California

[2] The above chart includes the original Oakley purchase and sale agreement that was brought before us in A.09-09-021 with an online date of 2014. That purchase and sale agreement was rejected in D.10-07-045, and, as discussed later in this decision, the total number of MWs approved towards PG&E's 2006-2015 need authorization was 1,157 MW.

Unions for Reliable Energy filed a motion for approval of a proposed all-party Settlement Agreement on September 3, 2009. No party contested the Mariposa Settlement Agreement (Settlement Agreement), and no evidentiary hearings were convened. The Commission approved the Settlement Agreement in D.09-10-017 without modification, which included several key conditions. The relevant conditions, Condition A and Condition B, that are the subject of CARE's petition for modification are as follows:

A. The total need to be procured from the 2008 Long-Term Request for Offers (LTRFO) will be limited to 1,512 MW under peak July conditions, inclusive of the 184 MW included in the Mariposa PPA.

B. The balance of PG&E's need authorization (1,328 MW) will be met, but not exceeded, by one application for approval of additional agreements resulting from PG&E's 2008 LTRFO.

2.2. Additional Procurement Pursuant to the 2006 LTPP

In D.10-07-042, the Commission rejected the PPAs for the Tracy and the LECEF upgrades (Upgrade PPAs) and explained that approval of these PPAs, along with approval of the Marsh Landing and Oakley projects requested in A.09-09-021, would result in procurement of more MWs than authorized by D.07-12-052 through 2015 and therefore would not comply with the 1,512 MW limit adopted in the Mariposa Settlement Agreement. Furthermore, D.10-07-042 found that the MWs attributable to the Upgrade PPAs should count toward the MWs specified in that settlement.[3] Therefore, D.10-07-042 granted PG&E permission to proceed with the second-ranked Tracy Project and LECEF Project

[3] D.10-07-042 at 53.

only if future circumstances created an unfilled need for the new capacity authorized by D.07-12-052. If the first-ranked Oakley or Marsh Landing projects were rejected by the Commission, D.10-07-042 directed PG&E to proceed immediately with both the Tracy Project and the LECEF Project by filing a Tier 1 compliance advice letter.[4]

In D.10-07-045, issued in A.09-09-021, the Commission approved the 719 MW PPA for the Marsh Landing project but rejected the 586 MW PPA for the Oakley Project.[5] Therefore, as ordered by D.10-07-042, PG&E filed Advice Letter 3711-E on August 4, 2010, to proceed immediately with the Tracy and LECEF Projects. The Tier 1 advice letter was approved by the Energy Division on September 1, 2010. Thus, out of a total of 1,743 MW requested by PG&E, the Commission had approved 1,157 MW in new generation procurement (184 MW approved in the Mariposa Settlement Agreement in D.09-10-017, 245 MW approved by Advice Letter 3711-E, and 719 MW approved in D.10-07-045). On August 23, 2010, PG&E filed a petition to modify D.10-07-045 in which PG&E requested approval of the 586 MW PPA for Oakley Project with a new online date of 2016. The original on-line date was 2014. The Commission approved the Oakley Project in D.10-12-050 for the period 2016 and beyond.[6]

---

[4] D.10-07-042, OP 2.

[5] D.10-07-045 at 55, OP 3.

[6] D.10-12-050 denied PG&E's petition to modify D.10-07-045, but treated, *sua sponte*, the petition as an application and approved the Oakley Project for the period of 2016 and beyond. In D.11-05-049, the Commission modified D.10-12-050 and denied rehearing of D.10-12-050, as modified. Several typographical and clerical errors in D.11-05-049 were corrected by D.11-06-003.

3. CARE's Petition to Modify D.09-10-017

On October 11, 2010, CARE filed a petition for modification of D.09-10-017 claiming that PG&E has violated two key provisions of the Settlement Agreement. Responses to CARE's protest were timely filed by PG&E and DRA. At the time of filing of CARE's petition for modification, D.10-12-050, approving the Oakley Project with a new online date of 2016, had not yet been approved. On January 7, 2011, after approval of the Oakley project in D.10-12-050, then-assigned Administrative Law Judge (ALJ) Angela K. Minkin issued a ruling directing parties to comment on the impact of D.10-12-050 on CARE's petition for modification in this proceeding. CARE, DRA, and PG&E filed concurrent opening comments in response to the ALJ ruling on January 28, 2011, and the same three entities filed reply comments on February 18, 2011.

On October 18, 2011, assigned Commissioner Mark J. Ferron issued a ruling opening a new phase in this proceeding, preliminarily categorizing the proceeding as adjudicatory, setting a prehearing conference (PHC) for November 9, 2011, and requesting PHC statements from parties. Parties CARE and PG&E timely filed PHC statements on November 4, 2011; however, DRA did not file a PHC statement. In addition, Alliance for Retail Energy Markets, Communities for a Better Environment, and the Independent Energy Producers Association also filed PHC statements.[7] On November 4, 2011,

[7] Commissioner Ferron granted party status to Alliance for Retail Energy Markets, Communities for a Better Environment, and the Independent Energy Producers Association on November 8, 2011. Mariposa Energy, LLC served a PHC statement on the service list on November 4, 2011 but failed to file a motion for party status; therefore, Mariposa Energy's PHC statement was rejected and is not part of the record in this case.

assigned ALJ Semcer sent an email to the service list canceling the PHC scheduled for November 9, 2011, and Commissioner Ferron issued a second Assigned Commissioner's Ruling on November 8, 2011 terminating the second phase in this proceeding, affirming the original categorization of ratesetting, and submitting the case as of November 4, 2011.

3.1. Summary of CARE's Petition to Modify D.09-10-017

In its petition for modification, CARE contends that PG&E has violated the Mariposa Settlement Agreement approved in D.09-10-017 because PG&E signed contracts to procure a total of 1,743 MW in new capacity from the 2008 LTRFO process. CARE explains that PG&E filed A.09-10-022 and A.09-10-034 seeking approval of 254 MW in upgraded PPAs and also filed A.09-09-021, in which PG&E sought approval of 1,305 MW from the Marsh Landing and Oakley PPAs. CARE therefore contends that PG&E knowingly violated D.09-10-017. CARE requests the Commission stay or suspend PG&E's PPA with Mariposa LLC, return this proceeding to its pre-settlement status, and provide sanctions or penalties against PG&E for violation of the Mariposa Settlement Agreement. In both its response to ALJ Minkin's January 7, 2011 ruling directing parties to comment on the impact of D.10-12-050 on CARE's petition for modification and its November 4, 2011 PHC statement, CARE maintains the above positions.

3.2. Responses to CARE's Petition

In its response, PG&E explains that it filed A.09-09-021, in which it requested approval of four PPAs from the 2008 LTRFO. The total new general resource MWs proposed in A.09-09-021 was 1,305 MW. At about the same time, PG&E filed A.09-10-022 and A.09-10-034, requesting approval of the Tracy and LECEF transactions. Both of these transactions included new PPAs for upgrades to the GWF Tracy Facility and the LECEF. PG&E maintains that the Upgrade

PPAs at issue in A.09-10-022 and A.09-10-034 were not winning offers in the 2008 LTRFO process, but instead were proposed by PG&E as part of an overall approach to novation of contracts with the Department of Water Resources.

PG&E states that CARE raised the Mariposa Settlement in protests to both A.09-09-021 and A.09-10-022 (subsequently consolidated with A.09-10-034), but did not seek to reopen the Mariposa Settlement Agreement approved in D.09-10-017. PG&E contends that the petition for modification is untimely, is not based on new facts, and is prejudicial to both the Mariposa Energy Project and PG&E, since the developer has proceeded with the Mariposa Project. Moreover, PG&E maintains that it complied with the Mariposa Settlement Agreement because it filed a single application requesting approval of 1,305 MW of new generation related to the 2008 LTRFO process, and PG&E states that the 254 MW at issue in the Tracy and LECEF projects were not offered to meet the need identified in D.07-12-052, the LTPP decision. PG&E upholds these positions in all subsequent filings.

In it is initial response, DRA concurred with CARE in that PG&E had violated Condition B of the Mariposa Agreement because PG&E requested approval of a total of 1,743 MW in new generation, rather than the 1,512 MW approved in D.09-10-017, by the submission of three separate applications (A.09-09-021, A.09-10-022, and A.09-10-034). However, DRA explained that CARE's request for sanctions was premature, since, at that time, the Commission had approved only 1,157 MW in new generation related to the 2008 LTRFO process. In response to ALJ Minkin's January 7, 2011 ruling, DRA states that, while PG&E had clearly violated Condition B of the Mariposa Settlement Agreement, approval of the Oakley Project in D.10-12-050 results in PG&E violating Condition A by exceeding the maximum amount of resources

PG&E was required to procure under the Mariposa Settlement Agreement. Therefore, DRA recommends the Commission impose severe sanctions against PG&E for violating the Mariposa Settlement Agreement including staying or suspending approval of the Mariposa PPA.

4. Discussion

The central issue raised by CARE's petition is whether PG&E violated the Mariposa Settlement Agreement, and if so, what remedies should be invoked. After careful consideration of CARE's petition, we make the following findings:

1. CARE's petition for modification is timely filed and is not prejudicial.
2. PG&E has not violated Condition A of the Mariposa Settlement Agreement.
3. PG&E has violated Condition B of the Mariposa Settlement Agreement.
4. An adjudicatory inquiry into monetary fines or penalties is not warranted here. However, certain future conditions are imposed on PG&E, as discussed below.

4.1. CARE's Petition for Modification is Timely Filed and is not Prejudicial

PG&E in its filings several times argues that CARE's petition for modification is untimely and prejudicial. PG&E asserts that the appropriate place to raise issue with the Marsh Landing, Oakley, Tracy, and LECEF Projects was in those respective proceedings. Furthermore, PG&E argues that because CARE waited so long to file a petition for modification of the Mariposa Settlement Agreement, the filing is prejudicial because both PG&E and Mariposa, LLC have expended time and resources and incurred costs in proceeding with the development of the Mariposa Project.

As PG&E acknowledges in its filings, while CARE filed its petition for modification just short of a year from the approval of the Mariposa Settlement Agreement, CARE did indeed file within the one year timeframe allowed for under Rule 16.4. Therefore, while PG&E would have preferred for CARE to file its petition for modification earlier, CARE's petition for modification is timely. Furthermore, by exercising the due process afforded it under Rule 16.4, CARE's filing cannot be seen as prejudicial despite the outlay of time, resources and money by PG&E and Mariposa LLC.

4.2. PG&E has not Violated Condition A of the Mariposa Settlement Agreement

Condition A of the Mariposa Settlement Agreement states:

> The total need to be procured from the 2008 Long-Term Request for Offers will be limited to 1,512 MW under peak July conditions, inclusive of the 184 MW included in the Mariposa Power Purchase Agreement (PPA).

Consistent with previous Commission decisions, we find that PG&E has not violated Condition A of the Mariposa Settlement Agreement because this Commission approved less than 1,512 MW of new generation in PG&E's service territory in the 2006-2015 timeframe. CARE points to D.10-07-042 to support its argument that, by requesting approval for more than 1,512 MW, PG&E has violated the Mariposa Settlement Agreement. D.10-07-042 finds:

> PG&E has signed contracts to procure a total of 1,743 MW of new capacity from the 2008 LTRFO (254 MW from the Upgrade PPAs, 1305 MW from the Marsh Landing and Oakley projects, and 184 MW from the Mariposa project). Consequently, we conclude the Upgrade PPAs do not comply

> with the Mariposa Settlement Agreement and D.09-10-017.[8] Conclusion of Law # 2 further states: "(t)he Upgrade PPAs do not comply at this time with D.07-12-052, D.09-10-017, and the Mariposa Settlement Agreement."

However, in D.10-07-042, the Commission did not approve the Upgrade PPAs and in fact rejected them in part because approval would have resulted in a violation of the Mariposa Settlement Agreement and D.07-12-052. PG&E could proceed with the Upgrade PPAs only if the Commission rejected either the Marsh Landing or the Oakley projects, resulting in approval of fewer than 1,512 MW. By rejecting the Oakley Project in D.10-07-045 and allowing the approval of the Upgrade PPAs through Advice Letter 3711-E, the total MW approved by this Commission prior to the approval of D.10-12-050 was 1,157 MW; below the total need authorization granted to PG&E of 1,512 MW.

4.2.1. The Oakley PPA

In D.10-12-050, as modified by D.11-05-049, the Commission approved the Oakley Project. Both CARE and DRA argue that by approving the Oakley PPA, the Commission has approved more than the 1,512 MW of new generation authorized to PG&E in D.07-12-052. However, as PG&E notes in its response, the amended Oakley Project as approved in D.10-12-050 has an online date of 2016. In D.11-07-012, we found that the Oakley project, with an amended online date in 2016, did not exceed the new capacity authorized in the 2006 LTPP:

[8] D.10-07-042 at 55.

> Importantly, the new capacity approved by D.10-12-050 will not come online until 2016, which is after the 2015 timeframe for the new capacity authorized by D.07-12-052. Consequently, the Commission's approval of the Oakley Project, in addition to the (other projects approved), does not cause PG&E to exceed the new capacity authorized by D.07-12-052.[9]

In fact, D.10-12-050, as modified by D.11-05-049 explicitly acknowledges that, from time to time, the Commission has approved projects prior to the need determination in an LTPP.[10] Therefore, because we have only authorized PG&E to procure 1,157 MW of new generation pursuant to its authority under D.07-12-052, PG&E has not violated Condition A of the Mariposa Settlement Agreement.

4.3. PG&E has Violated Condition B of the Mariposa Settlement Agreement

Condition B of the Mariposa Settlement Agreement states:

> The balance of PG&E's need authorization (1,328 MW) will be met, but not exceeded, by one application for approval of additional agreements resulting from PG&E's 2008 Long-Term Request for Offers.

The principle question before us in finding a violation of Condition B is whether the Upgrade PPAs resulted from PG&E's 2008 LTRFO. Both CARE and DRA argue that, by requesting approval of the Marsh Landing and Oakley PPAs in A.09-09-021 followed by PG&E's request for approval of the Upgrade PPAs in A.09-10-022 and A.09-10-034, PG&E has violated Condition B of the Mariposa

[9] D.11-07-012 at 5.

[10] D.11-05-049 at OP 1d.

Settlement Agreement by submitting three additional applications for approval of MWs from PG&E's 2008 LTRFO. We agree with CARE and DRA and reject PG&E's argument that the Upgrade PPAs, which resulted from the novation of certain existing Department of Water Resources PPAs, somehow fell outside of the 2008 LTRFO process and therefore were not subject to Condition B of the Mariposa Settlement Agreement. In D.10-07-042 at 53, we rejected a similar argument made by Calpine in regards to the LECEF Upgrade project. In that decision we stated:

> The LECEF Upgrade was bid into the 2008 LTRFO by Calpine, was evaluated extensively by PG&E during the 2008 LTRFO process, and was placed on PG&E's shortlist of offers from the 2008 LTRFO. Given the provenance of the LECEF Upgrade, we conclude that it is subject to the Mariposa [S]ettlement's limit on procurement from the 2008 LTRFO.

While the language in D.10-07-042 is focused primarily on the number of MWs resulting from the 2008 LTRFO process, which we address above, and not the number of applications filed, it demonstrates that we previously rejected the argument that the Upgrade PPAs were evaluated outside the 2008 LTRFO process. Thus PG&E, by filing three separate additional applications for resources evaluated as part of its 2008 LTRFO process, has violated Condition B of the Mariposa Settlement Agreement, which required the filing of only one additional application for approval of additional agreements resulting from PG&E's 2008 LTRFO.

PG&E argues that, in D.10-12-063 at 7, which denies CARE's request for rehearing of D.10-07-042, we acknowledge that the Upgrade PPAs were not winning bids in PG&E's LTRFO. Although PG&E brought the Upgrade PPAs before the Commission as novation contracts, the fact remains that the Upgrade

PPAs were evaluated as part of the 2008 LTRFO process. In that same decision, we acknowledge that the Upgrade PPAs were "the next best offers after the Mariposa, Marsh Landing, and Oakley Projects."[11] We therefore find that the Upgrade PPAs were evaluated as part of PG&E's 2008 LTRFO process and are subject to the limitations imposed by Condition B of the Mariposa Settlement Agreement.

5. Remedies

Settlement agreements play a very important role in our policy development at the Commission. When found to be reasonable in light of the whole record, consistent with the law, and in the public interest, settlements provide us with an alternate vehicle to often lengthy and costly litigation. Settlement agreements enable us to examine and to consider adoption of more creative and/or more streamlined solutions than may be readily available in a standard litigation process. We value the settlement process and support the good faith effort as well as time and resources that parties put into developing settlement agreements. The inherent value of a settlement is greatly diminished to the extent that the settling parties do not seek to uphold the letter and spirit of the agreement.

While we find that PG&E did violate Condition B of the Mariposa Settlement Agreement, we acknowledge that the filing of multiple applications, aside from requiring a consolidation process and coordination among Commission staff, did not hinder our ability to perform a thorough evaluation of each application on its own merits and together as part of our overall evaluation

[11] D.10-12-063 at 7.

of PG&E's actions to fulfill its 2006 LTPP need authorization. Nothing presented in this petition suggests that our evaluation of these projects was short of thorough or complete and that our approval was not in the ratepayer interest. Therefore, we decline to open an adjudicatory phase in this proceeding to determine whether it is appropriate to penalize or fine PG&E at this time.

We note that as a result of PG&E's filing of three applications, parties intervening in our proceedings had to expend a significant outlay of time and resources that could have been avoided. Furthermore, this Commission has a strong preference for a simple and streamlined application process to "support decisional consistency and discourage parsing of projects into different applications as a means to circumvent our rulings…"[12] Thus, while we decline to open an adjudicatory phase in this proceeding, it is reasonable to impose certain conditions on PG&E to avoid unnecessary outlay of parties' resources and to align with our preference for a streamlined procurement process. In the future, we strongly encourage PG&E to file the minimum number of applications possible to meet any future LTPP need authorization. However, we acknowledge that, in certain cases, there is value in bringing forth an application for approval of a particular PPA before PG&E has concluded negotiations of all PPAs resulting from a request for offers process. Therefore, in the event that multiple applications must be filed, PG&E is directed to cross-reference all other projects not included in a particular application, including referencing future applications that PG&E intends to file.

---

[12] D.10-07-045, Conclusion of Law (COL) #7.

Finally, while PG&E's actions did not cause any direct harm to our evaluation process, we note that PG&E's actions may result in parties being wary of entering into a future settlement agreements of this nature, thus reducing or eliminating an extremely effective tool available to parties in resolving proceedings before this Commission. This is not a result we take lightly, and we hope that PG&E will consider more thoroughly its ability to meet its settlement obligations before signing such agreements in the future.

5.1. The Mariposa PPA Will Remain in Effect

In its petition for modification, CARE asks that the Commission stay or suspend PG&E's PPA with Mariposa LLC and provide sanctions or penalties against PG&E for violation of the Mariposa Settlement Agreement. DRA, in its reply to the January 28, 2011 ALJ Ruling, echoes this request.

We decline to stay or suspend the Mariposa PPA at this time because the Mariposa PPA was approved on its own merit in D.09-10-017.[13] In fact, in making a finding that the Mariposa Settlement Agreement is in the public interest, we explicitly rely on the Independent Evaluator's determination that the Mariposa PPA "merits approval because the economics and general terms and conditions compare favorably to PPAs still under negotiations in the LTRFO solicitation."[14] A stay or suspension of the Mariposa PPA would unnecessarily and unfairly harm Mariposa LLC for subsequent actions taken by PG&E. Both CARE and DRA have failed to show that, by violating the Mariposa Settlement

[13] D.09-10-017 found that the Mariposa PPA is consistent with the requirements of D.07-12-052, including the preferred loading order and the need for dispatchable ramping resources. (COL # 4).

[14] D.09-10-017 at 11.

Agreement, the value of the Mariposa PPA has been diminished and a reopening of the evaluation process is warranted. On this point, the November 8, 2011 Assigned Commissioner's Ruling states:

> Each contract that comes before the Commission is considered on its own merits, and approved contracts are deemed to be in the public interest. Nothing in the record now before me suggests that the value to ratepayers of the projects approved in D.09-10-017, D.10-07-042, D.10-07-045, or in D.10-12-050 has changed.
>
> Therefore, we deny CARE's petition for modification of D.09-10-017.

6. Comments on Proposed Decision

The proposed decision (PD) of ALJ Semcer for this proceeding was mailed to parties in accordance with Pub. Util. Code § 311, and comments were allowed in accordance with Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on February 27, 2012 by CARE and PG&E as well as Communities for a Better Environment and the Independent Energy Producers Association. Reply comments were filed on March 5, 2012 by CARE and PG&E.

CARE filed both confidential and public versions of its reply comments along with a Motion for Leave to File Confidential Materials Cited in Reply Comments. All of the redacted material to which CARE cites is from the Direct Testimony of Kevin Woodruff in A.09-09-021 on behalf of TURN. We previously affirmed the confidential status of this material in the October 18, 2011 Assigned Commissioner's Ruling in this application and do so again here. By ruling issued on September 8, 2010 in A.09-09-021, ALJ Darwin E. Farrar allowed this material to be filed under seal and remain confidential for three years from the date of the Ruling. CARE's motion for leave to file under seal is granted;

however, the confidential material in question shall remain protected under the timeframe provided for in that Ruling, i.e., three years from September 8, 2010, the date the Ruling was issued.

In comments, parties largely reiterated arguments made in previous filings. All such arguments have been thoroughly addressed throughout this decision; therefore, we decline to change our conclusion. In response to the comments and replies, we have made several non-substantive revisions to correct minor errors and improve clarity.

7. Assignment of Proceeding

Mark J. Ferron is the assigned Commissioner and Melissa K. Semcer is the assigned ALJ in this proceeding.

Findings of Fact

1. CARE filed its petition for modification within the one year timeframe allowed for under Rule 16.4.

2. The Mariposa, Tracy, LECEF, and Marsh Landing Projects, totaling 1,157 MWs, are intended to fill PG&E's need for new capacity through 2015.

3. The Commission approved the Oakley Project in D.10-12-050 for the period 2016 and beyond.

4. PG&E filed three separate applications, A.09-09-021, A.09-10-022, and A.09-10-034, in addition to the Mariposa Settlement Agreement (A.09-04-001), for approval of contracts to meet its 2006 LTPP need authorization.

5. The Commission has a stated preference for a simple and streamlined long-term need authorization application process in order to support decisional consistency and discourage parsing of projects into different applications as a means to circumvent our rulings.

6. The Tracy and LECEF Projects were evaluated as part of PG&E's 2008 LTRFO process.

7. In determining which projects to approve to meet PG&E's 2006 LTPP need authorization, the Commission evaluated all applications filed by PG&E both individually and collectively.

8. The Mariposa PPA was approved on its own merits in D.09-10-017.

9. CARE's March 5, 2012 Motion for Leave to File Confidential Materials Cited in Reply Comments seeks confidential treatment for citations from the Direct Testimony of Kevin Woodruff on behalf of TURN in A.09-09-021. By ruling issued on September 8, 2010 in A.09-09-021, ALJ Darwin E. Farrar allowed this material to be filed under seal and remain confidential for three years from the date of the Ruling.

Conclusions of Law

1. CARE's petition for modification was timely filed and is therefore not prejudicial.

2. Approval of the Oakley Project by D.10-12-050, in addition to the Tracy, LECEF, Mariposa, and Marsh Landing Projects, does not result in PG&E procuring more new generation than authorized by D.07-12-052 or D.10-07-045 and does not result in a violation of Condition A of the Mariposa Settlement Agreement.

3. PG&E's filing of three separate applications, A.09-09-021, A.09-10-022, and A.09-10-034, in addition to the Mariposa Settlement Agreement (A.09-04-001), for approval of contracts resulting from its 2008 LTRFO process, exceeds the number of contracts (one) allowed for under Condition B of the Mariposa Settlement Agreement.

4. PG&E violated Condition B of the Mariposa Settlement Agreement.

5. The Commission was able to effectively evaluate all applications filed by PG&E to meet its 2006 LTPP authorization, both individually and collectively.

6. The act of filing multiple applications, while a violation of Condition B of the Mariposa Settlement Agreement, does not diminish or change our original finding in D.09-10-017 that the Mariposa PPA approved via the Mariposa Settlement Agreement is reasonable in light of the whole record, consistent with the law, and in the public interest.

7. A stay or suspension of the Mariposa PPA is unreasonable because it would unnecessarily and unfairly harm Mariposa LLC for subsequent actions taken by PG&E.

8. CARE's March 5, 2012 Motion for Leave to File Confidential Materials Cited in Reply Comments should be granted as set forth herein. The confidential material in question should remain protected under the timeframe provided for in ALJ Farrar's Ruling in A.09-09-021, i.e., three years from September 8, 2010, the date the Ruling was issued.

O R D E R

IT IS ORDERED that:

1. The October 11, 2010 Petition of CAlifornians for Renewable Energy, Inc. to Modify Decision 09-10-017 is denied.

2. Pacific Gas and Electric Company (PG&E) must file the minimum number of applications possible (recognizing that occasionally circumstances may warrant the filing of multiple applications) to meet any future long-term procurement need authorization. PG&E must adhere to the following rules

when filing multiple applications to meet future long-term procurement need authorizations:

a) PG&E must include a table in each application cross-referencing all other applications filed to meet a Commission approved long-term need authorization including application number, project names, project size, and anticipated project online date.

b) In the event that a filed application precedes future anticipated filings, PG&E must state that future applications will be filed along with an estimated filing date.

3. The March 5, 2012 Motion of CAlifornians for Renewable Energy for Leave to File Confidential Materials Cited in Reply Comments is granted. The confidential material in question shall remain protected for three years from September 8, 2010, the date the material was originally granted confidential status in Application 09-09-021 by assigned Administrative Law Judge Darwin E. Farrar.

4. Application 09-04-001 is closed.

This order is effective today.

Dated March 8, 2012, at San Francisco, California.

MICHAEL R. PEEVEY
President
TIMOTHY ALAN SIMON
CATHERINE J.K. SANDOVAL
MARK J. FERRON
Commissioners

I abstain.

/s/ MICHEL PETER FLORIO
Commissioner