Decision 06-06-035 June 15, 2006

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company for Approval of an Agreement Concerning Certain Generation Assets Known as "Contra Costa 8" Pursuant to a Settlement and Release of Claims Agreement Approved by the Commission on January 14, 2005, for Authority to Recommence Construction, and for Adoption of Cost Recovery and Ratemaking Mechanisms Related to the Acquisition, Completion and Operation of the Assets. (U 39 E)	Application 05-06-029 (Filed June 17, 2005)

OPINION ADOPTING JOINT SETTLEMENT AGREEMENT, AS MODIFIED, FOR CONTRA COSTA 8

Summary

This decision adopts all provisions of the Joint Settlement Agreement (Settlement Agreement/Settlement)[1] concerning an application for a Certificate of Public Convenience and Necessity (CPCN) by Pacific Gas and Electric Company (PG&E) to accept, complete construction of, and operate the Contra Costa 8 (CC8) generating facility, except for the Nonbypassable Charge (NBC) provision contained in Paragraph 11. The Settling Parties propose an NBC for

[1] The Settling Parties include PG&E, Division of Ratepayer Advocates (DRA), The Utility Reform Network (TURN), and California Unions for Reliable Energy (CURE). A copy of the Settlement Agreement is attached to this decision as Attachment A.

CC8 for the 30-year life of the project. We do not approve that provision, but instead adopt a 10-year NBC, consistent with Decision (D.) 04-12-048.

Background

On June 17, 2005, PG&E filed an application seeking Commission authorization for approval of an Asset Transfer Agreement (ATA) for a new combined cycle, 530 megawatt (MW) electric generating facility known as CC8. PG&E wants to accept, complete construction of, and operate CC8 and requests funding and cost recovery mechanisms to accomplish this. CC8 is available to PG&E pursuant to a settlement agreement approved by the Commission on January 14, 2005, regarding the resolution of matters and claims related to Mirant Delta LLC (Mirant).

At the initial prehearing conference (PHC), it was evident that there was little opposition to the CC8 project, but some protesting parties had concerns over other related issues, including the recovery of stranded costs from an NBC. PG&E was requesting authorization for an NBC for 30 years to parallel the 30-year amortization schedule proposed for cost recovery of the project. CCSF and MID protested the proposed 30-year NBC. The Independent Energy Producers (IEP) and Californians for Renewable Energy, Inc. (CARE) protested other aspects of the CC8 project that are discussed further in this decision.

Following the PHC, PG&E, DRA, TURN, and CURE stipulated that the scope of the proceeding could focus solely on whether the 10-year NBC approved in D.04-12-048 should be extended to 30 years for CC8. Evidentiary hearings on the length of the NBC were scheduled for December 5, 2005.

In preparation for the December 5, 2005 hearings, DRA, MID, CCSF and CARE served testimony. During this same time frame, PG&E, DRA, CURE and TURN engaged in settlement discussions. On November 28, 2005, pursuant to

Rule 51.1(b) of the Commission's Rules of Practice and Procedure,[2] PG&E filed a Notice of Settlement Conference for December 5, 2005. On December 2, 2005, a Settlement Agreement was circulated to the service list.

On December 5, 2005, the Commission opened and suspended the evidentiary hearings and set dates for comments and reply comments to the Settlement Agreement. The non-settling parties met with the settling parties, but no other parties joined in the Settlement. Following the comment cycle it was evident that there was just one factual issue in dispute: whether the 10-year NBC established in previous Commission decisions should be extended to 30 years.

Evidentiary hearings were rescheduled and were held on March 1 and 2, 2006. Before the hearings commenced, the Energy Producers and Users Coalition (EPUC) filed a motion to intervene in the proceeding so it could participate in the hearings. The only issue developed during the hearings was the Settlement Agreement and whether the proposed 30-year NBC should be adopted by the Commission.

Settlement Agreement

DRA, CURE, and TURN agree that the Commission should grant PG&E a CPCN for PG&E to accept, complete construction of, and operate CC8, and make the necessary findings for PG&E to recover the reasonable costs of the project. PG&E submitted the Settlement Agreement for Commission approval. The Settlement contains Paragraph 11 that authorizes PG&E to recover any above-market costs for CC8 for the 30-year life of the project through an NBC, the details of which are to be determined in another proceeding.

[2] Unless otherwise indicated, references to Rules refer to the Commission's Rules of Practice and Procedure and references to Code Sections refer to the California Public Utilities Code.

The non-settling parties are IEP, CARE, MID, EPUC, and CCSF. IEP opposes the Settlement because it does not address the issues that are of concern to IEP. In light of the Commission's directive in D.04-12-048 that competitive solicitations are the preferred method for selection of new energy resources, IEP questions whether it is appropriate that PG&E submitted the CC8 project to the Commission outside of such a solicitation. On August 16, 2005, Commissioner Peevey issued a Scoping Memo advising IEP that"[t]his proceeding was not the proper forum for clarification of the Commission's policies on utility procurement, and the directives set forth in D.04-12-048 will stand on their own."[3] Therefore, we do not address IEP's issue here. This issue may be considered in the 2006 Rulemaking on the utilities' Long-term Procurement Plans (LTPP), R.06-02-013, or in another appropriate proceeding.

CARE's request that the Commission conduct a CEQA review before approving the project is discussed below.

MID, EPUC, and CCSF oppose the Settlement because the 30-year cost recovery provision (Paragraph 11) is well beyond the 10-year time period authorized in D.04-12-048 and would negatively impact the customers of MID, EPUC, and CCSF.

Rule 51.1(e) directs that the Commission will not approve stipulations or settlements, whether contested or uncontested, unless the stipulation or settlement is reasonable in light of the whole record, consistent with law, and in the public interest.

[3] Scoping Memo, WEB Published Rulings, p. 3.

Parties Positions

The Settling Parties

PG&E, DRA, TURN and CURE

The settling parties urge the Commission to expeditiously approve the CPCN for CC8 on the grounds that the facility is in the public interest since it will provide lower rates for PG&E customers as well as provide a source of reliable energy supply. PG&E's estimates of the plant's completion costs and initial revenue requirements have decreased since PG&E filed the application and the purchase price for the facility is below market since it is the result of the settlement with Mirant. Mirant already obtained the necessary permits and partially completed construction. PG&E customers will be the beneficiaries of this economic asset.

The Settling Parties propose amortizing the cost of this generation asset over 30 years and seek to have all utility customers indifferent over this 30-year period to changing customer loads. Specifically, PG&E, along with DRA, TURN and CURE, suggest that all customers who benefit from the completion of the plant pay for it for 30 years—including departing load customers. The Settling Parties' concern is that if CC8 has any above-market costs during its 30-year life and all current customers are not responsible for these above-market costs, then PG&E's bundled ratepayers alone will bear the financial burden. Therefore, the settlement proposes that PG&E be authorized to recover any above-market costs of CC8 through an NBC for any departing load customers for the 30-year life of the project.

Paragraph 11 of the Settlement Agreement addresses this basic issue. The Settling Parties defer all other issues including, but not limited to the calculation,

application and allocation of the NBC to another appropriate proceeding, possibly R.02-01-011.

CCSF

CCSF's argument against Paragraph 11 is that CC8 is a relatively low-cost and low-risk project, a "good economic deal" that "should not be uneconomic."[4] CCSF believes that the Commission previously determined that a 10-year NBC was reasonable in regards to other similarly situated utility projects, such as Mountainview, Palomar, and Ramco, and was reasonable generically to all future utility projects as specified in D.04-12-048. While D.04-12-048 did permit a utility to justify an extended time for stranded cost recovery, CCSF argues that this justification is not presented in this record. First, CC8 should be economic, and therefore there should not be any "above-market" costs. Second, CC8 is a tried and true product, not a risky experimental project that conceivably could justify a longer NBC. And finally, under the 10-year default NBC, PG&E will have ample opportunity to adjust its procurement plans to changing customer loads. With a hybrid portfolio of different fuel types, different ownership forms and varied contract lengths, PG&E can adjust its procurement portfolio to match changing customer profiles.

MID

In principal, MID argues against any NBC as being anti-competitive. However, recognizing that an NBC might be imposed for CC8, Modesto, and Merced Irrigation Districts argue that the 30-year period set forth in Paragraph 11 of the Settlement is too vague, uncertain and anti-competitive to be reasonable or in the public interest. In particular, Paragraph 11 only authorizes

[4] Transcript (Tr.), p. 191 (PG&E/Wan).

PG&E to recover the above-market costs of CC8 for 30 years, but defers implementation and all the pertinent details to another case. MID contends that it would be more appropriate to defer all aspects of an NBC in excess of 10 years to another case, rather than approving the 30 years in this case—with all pertinent details to be determined later. For example, MID is concerned that if there are above-market costs in a particular year that are collected by way of an NBC, but yet in another year CC8 is below-market, there should be provisions for returning money to the NBC payers.

The Commission has already determined that a 10-year period for an NBC is reasonable in D.04-0-12-048, and MID claims that PG&E presented no evidence to support a revision of this provision. Finally, MID asks that if the Commission does impose an NBC, that it be for no more than 10 years, that it be applicable only to customers who depart on/after the date CC8 commences commercial operations and that it should not apply to "new" load, i.e., customers who have never been served by the utility.

EPUC

EPUC is concerned with customer-generated departing load (CGDL) and opposes the 30-year NBC because it would discourage co-generation (co-gen) and distributed generation (DG) at a time when the state and the Commission are promoting such alternative resources. EPUC argues that PG&E has the ability to anticipate changes in its customer base and should use prudent planning to shape its procurement plans to changing customer profiles rather than seek to collect above-market costs from departing load.

Discussion

The Commission is being asked to determine now, which customers should be responsible for any above-market costs that the CC8 facility might

have over the 30-year useful life of the plant. Should it be PG&E's bundled customers or should PG&E customers who are ineligible for direct access at the time the plant goes into operation, but who subsequently leave PG&E's service, share in the cost of the plant by way of an NBC?

Many of the factors that inform our decision on this cost-sharing issue are hard to predict. For example, expectations are that CC8 will be economic for its 30-year plant life, but PG&E can not guarantee that in light of possible shifts in its customer base, including customers leaving for direct access (DA), municipalization or Community Choice Aggregation (CCA). In addition to customer migration, there could also be changes in customer usage through conservation, energy efficiency, advanced metering, DG, and renewables.

We are mindful of these factors as we consider Settling Parties' proposal to have any above-market costs for CC8 borne by all customers who benefit from the facility's commercial operation for its 30-year life and cost amortization--including departing load customers. Before it makes the commitment for CC8, PG&E wants to ensure that its bundled customers will be indifferent to future departing loads. DRA and TURN support this 30-year NBC because it will protect bundled ratepayers of PG&E from being responsible for any above-market costs if there is a significant migration of customers to competing energy providers in PG&E's service territory.

However, we are also aware of the potential logistical difficulties such a 30-year NBC could have in terms of the calculation, application, and allocation of the charge. Although Settling Parties propose deferring those issues, and any other related NBC issues, to another proceeding, we must be cognizant about the full panoply of concerns authorizing such a lengthy NBC could have, not just on PG&E's departing load customers, but for the other utilities as well.

We faced these same possible customer migration and cost-sharing issues when we considered SCE's Mountainview facility and SDG&E's Palomar and Ramco plants, and when we established policies for the investor owned utilities' (IOUs) long-term procurement plans. In all three instances, we approved a cost-recovery mechanism for a 10-year period.

In Mountainview, we found ". . . in order to not over-burden ratepayers in the early years of the contract, we adopt TURN's proposal that all customers of Edison that are currently ineligible for direct access be obligated to pay for stranded costs for the first 10 years of Mountainview's life."[5] In the Decision approving Palomar and Ramco as new electric resources for SDG&E, we adopted "the same mechanism that we did in the Edison/Mountainview decision, D.03-12-059 whereby all customers of SDG&E that are currently ineligible for direct access are obligated to pay for the stranded costs of any new generation for the next ten years. This will insure that neither the utility, nor its bundled customers, will be forced to pay stranded costs for these generation assets in the event that new direct access is permitted."[6]

D.04-12-048 was directed at approving the long-term procurement plans for all three IOUs. In the discussion on recovery of stranded costs, we reviewed our policy as set forth in D.03-12-059 and D.04-06-011 and specified that "this decision adopts the same standards for fossil-fueled resources acquired by the utilities either directly or through contract. The utilities should be allowed to recover stranded costs for these resources from departing load over either the life of the contract or 10 years, whichever is less. The 10-year recovery period will

[5] D.03-12-059, Findings of Fact 22., *mimeo.*, p. 60.

[6] D.04-06-011, *mimeo.*, p. 42.

also apply to any utility-owned generation acquired as a result of the procurement process, commencing once the resource begins commercial operation."[7]

Commission decisional precedent supports the ten-year stranded cost recovery. While we did permit a utility to justify requesting a cost recovery period of longer than ten years, neither PG&E, nor the Settling Parties, presents such justification. All of the uncertainties surrounding migrating customer bases and potential changes in customer electricity use are the same for PG&E's CC8, as they were for SCE's Mountainview and SDG&E's, Ramco, and Palomar facilities. We previously found that the 10-year cost recovery was a balanced compromise so as to not shift the cost burden of an uneconomic asset to a utility's bundled customers. We find nothing in the record of the CC8 proceeding that justifies changing the length of time for the cost recovery provision.

In addition, Paragraph 11 of the Settlement Agreement did not provide the Commission with sufficient information to understand the impact of implementing the 30-year NBC.

Therefore, we have determined that the record supports adopting the Settlement Agreement, with a 10-year NBC. This is consistent with Commission decisional precedent and will protect PG&E's bundled ratepayers from bearing the entirety of any above-market costs during this period.

Settlement Agreement

After reviewing the Settlement Agreement in its entirety and taking into consideration arguments presented by IEP, CARE, EPUC, MID, and CCSF, we

[7] D.04-12-048, *mimeo.*, p. 60.

find that the Settlement Agreement as a whole, but for the 30-year cost recovery provision of Paragraph 11, is reasonable in light of the whole record, consistent with law, and in the public interest.

The record supports CC8 as a low-cost and low-risk project that meets PG&E's long-term procurement needs and that will provide an additional 530 MW of electricity that will contribute to grid reliability. The Settlement, but for the 30-year NBC, meets the requirements of Rule 51 et al.

In its application, PG&E demonstrated that the capital cost per kilowatt of the CC8 plant compares very favorably to Southern California Edison Company's Mountainview Project, Sempra's Palomar Project, and the market price referent used by the Commission to implement the Renewable Portfolio Standard (RPS). (PG&E Application, p. 1-3.) PG&E also notes that the project furthers the Long-Term Procurement Plan adopted for PG&E in 2004, which found that new capacity is needed in northern California in 2008 and 2010. PG&E states that "because the facility is already substantially permitted and partially completed, CC8 could provide northern California with an additional 530 MW of generation as soon as summer 2008." (PG&E Application, p. 1-4.) Finally, PG&E points out that " [t]his close-in Bay Area location is beneficial for serving the heavy load concentration in the Bay Area." (PG&E Application, p. 1-2.)

No party disputed these facts.

As discussed above, the 30-year NBC is not consistent with Commission decisional precedent and the record does not support extending the NBC beyond the established 10-year period. We therefore modify Paragraph 11 to allow for a 10-year NBC. We base this modification on the entire record, including the evidentiary record developed in this case.

In addition, the record supports a finding that the Settling Parties do not wish to delay approval of the CC8 facility. The record indicates that CC8 is a beneficial for ratepayers, but that any delay that extends the resumption of construction past September 2006 will significantly increase the cost of the project. After September, PG&E's cost estimates increase almost $1 million a month, and PG&E's revenue requirement will correspondingly increase by $250,000 per month. Delays and increased costs are not in the interest of the ratepayers.

The Settlement Agreement also proposes cost recovery and ratemaking mechanisms related to the acquisition, completion, and operation of CC8. No party presented any opposition to these proposals. We find that the cost recovery and ratemaking mechanisms are reasonable in light of the record as a whole, consistent with law, and in the public interest and we adopt them.

Motions

CARE'S Motion for California Environmental Quality Act (CEQA) Review of CC8

CARE filed a motion asking the Commission to determine whether the CEQA was applicable to the CC8 project. CC8 comes to the Commission with a CEQA history. The California Energy Commission (CEC) reviewed CC8 under CEQA and approved Mirant's Application for Certification (AFC) in 2001. CARE acknowledges that, but questions whether the CC8 plant still complies with applicable regulations since there has been a five-year lapse in time since the CEC approval. Specifically, CARE asks whether CC8 complies with current state Best Available Control Technology (BACT) requirements, Federal Lowest Achievable Emission Requirements (LAER) and Bay Area Air Quality Management District (BAAQMD) regulations for emissions of air pollution from

the plant. CARE argues that these requirements have all changed substantially since the AFC was first issued, and it would be appropriate for the Commission to conduct a new CEQA review. In addition, CARE claims that the CEQA review would be appropriate since there is a fundamental change in ownership and operators, from Mirant, a private owner/operator, to PG&E, a public utility owner/operator, and other changed circumstances.

PG&E's position is that CEQA does not apply to the CC8 application. PG&E argues that under the California Legislature's direction, CEQA review is to be done by the CEC of applications to construct new thermal powerplants with over 50 MW of generating capacity. CC8 has a capacity of 530 MW, and therefore, under both Public Resources Code Section 25500 and Public Utilities Code Section 1002(b), the CEQA review of CC8 was conducted by the CEC. In May 2001, the CEC issued a Decision (P800-01-18) on PG&E's Application for Certification (00-AFC-1). Furthermore, PG&E argues that the CEC's certificate shall be conclusive as to all matters determined by it. After conducting a full environmental review, the CEC determined that "the conditions of certification it imposed will ensure protection of environmental quality and assure reasonably safe and reliable operation of the facility, and will also assure that the project will neither result in, nor contribute substantially to, any significant direct, indirect, or cumulative adverse environmental impacts."[8]

In addition, PG&E argues that under Legislative direction, and the code sections, the CEC is the lead agency for any further review necessitated by amendments to the license it already issued. Since the CEC is the lead agency, this Commission has no independent responsibility to conduct further

[8] CEC Decision, May 2001, p. 191.

environmental reviews, and that is consistent with the position taken in Commission decisions on other facilities already certified by the CEC.[9]

However, the Commission is a responsible agency and under some circumstances, we have the authority to issue supplements to the lead agency's EIR. (Pub. Res. Code Section 21166.) A responsible agency may choose to do a supplemental EIR if (1) there are substantial changes to the proposed project; (2) substantial changes to the project's environmental effects; or (3) new information is known that goes to the project's effects, mitigation measures or alternatives. (Pub. Res. Code Section 21166 and CEQA Guidelines Section 15163.)

While CARE's motion enumerates reasons, set forth above, why it believes a supplemental EIR is necessary, none of those concerns detail a substantially changed project or project effect, nor are they new information that goes to effects, mitigations or alternatives. In summary, CARE's arguments go to the validity of the EIR and as such are properly addressed to a reviewing court of law, not the Commission as a responsible agency.

SCE's Mountainview application (A.03-07-032) presented the Commission with an analogous situation. In Mountainview, Sequoia Generating Company, LLC. (Sequoia), the previous owner of the facility, filed an AFC with the CEC for the 1,580 MW facility. The CEC conducted a CEQA review of the project and issued a decision in March 2001 granting the certificate. Some parties to the Mountainview proceeding questioned whether the passage of time since the CEC certification and the change of ownership from Sequoia to SCE should trigger a CEQA review by this Commission. In that decision we determined "[w]hile this

[9] D.03-12-059, p. 61, D.04-04-019, p. 5, Commission's Rules of Practice and Procedure 17.1(c), and General Order 131-D (VII).

Commission takes its responsibilities under CEQA seriously and is not reticent to perform environmental reviews, under the CEC licensing provisions, the CEC functions as the lead agency under CEQA. This Commission has no independent responsibility to conduct further environmental reviews. We have determined that the CEC's AFC process exempts projects, in this case Mountainview, from the requirements of CEQA. We therefore determine that no further CEQA review is triggered by Edison's application."[10]

CARE also argues that despite the CEC's previous CEQA review of CC8, we must conduct CEQA review of the ratemaking aspects of CC8. PG&E believes that the Legislature specifically exempts ratemaking from CEQA review and the Commission itself has held that CEQA does not apply to ratemaking.

Based on Legislative direction, the Public Resources Code, the Public Utilities Code, the Commission's Rules of Practice and Procedure, Rule 17.1(c), General Order 131-D(VII), and Commission decisional precedent, we determine that we do not have concurrent responsibility with the CEC to conduct CEQA review of CC8, including its ratemaking aspects, and on that basis deny CARE's motion.

Other Motions

Other motions filed during the course of this proceeding that have not already been ruled on or are not addressed in this decision are deemed denied.

Comments on Proposed Decision

The proposed decision of ALJ Brown in this matter was mailed to the parties in accordance with Public Utilities Code Section 311(d) and Rule 77.1 of the Rules of Practice and Procedure.

[10] D.03-12-059, *mimeo.*, p. 58.

Comments were received on May 30, 2006 from CPUC, MID, and PG&E on behalf of the Settling Parties.

EPUC urged the Commission to approve the DD, with the 10-year and not the 30-year NBC, because the record does not indicate that the CC8 facility has any extra-ordinary benefits, or risks, that would justify departing from the 10-year default NBC.

MID also supports the PD, but suggest some clarifying modifications. In particular, MID does not believe that the economics of CC8 justify an NBC of any length, and if the Commission is going to consider an NBC, R.06-02-013 is the appropriate proceeding. If the Commission does adopt an NBC for CC8, MID asks that the decision reflect the fact that it is without prejudice to issues concerning NBCs in R.06-02-013.

MID also thinks the Commission should order PG&E to collect all CC8 costs, not just stranded costs, in 10 years. Most importantly for MID, however, is the fact that MID does not think it is appropriate for MID customers to pay for CC8 at all for a number of reasons. To begin, Settling Parties admitted in post-hearing briefs that CC8 will be "operate[d] for the benefit of [PG&E's] customers . . ."[11] Second, new MID customers may be in a position of taking power from a location never before served by any utility, so it would not be any benefit to those customers for PG&E to add CC8 as a resource. Finally, an MID customer who either never takes power from CC8, or leaves after CC8 goes into commercial service, benefits from CC8. Therefore, MID customers should not have to pay for CC8.

[11] MID comments, p. 5, quoting Settling Parties Opening Brief, dated March 30, 2006, p. 2.

Settling Parties argue again that the PD does not come to "grip with the fundamental unfairness to bundled ratepayers of an NBC limited to 10 years."[12] PG&E, on behalf of the Settling Parties again argues that Commission precedent from D.04-12-048 allows utilities on a case-by-case basis to argue for an NBC of longer than ten years. PG&E asks the Commission to examine the evidence for a 30-year for CC8.

On June 5, 2006, reply comments were received from CARE, EPUC, CCSF, and MID. In addition, Baykeeper,[13] a member of the public, submitted comments through the Commission's Public Advisor's Office.

CARE and Baykeeper are both concerned that the CEQA review done by the CEC in 2001 is no longer timely. They both argue that circumstances surrounding the plant and the environment have changed due to the passage of time, and that it would be appropriate to conduct a supplemental EIR. In particular, both CARE and Baykeeper ask the Commission to waive its claim of exemption and update the environmental review to include an analysis of the impacts of the project on the delta and longfin smelt populations. CARE also raises again its claim that CARE and its members are being denied their civil and constitutional rights to a comprehensive CEQA review of the project. Without addressing the merits of the claims raised by CARE and Baykeeper, we confirm our finding that we do not have concurrent responsibility with the CEC to conduct a CEQA review of CC8.

MID, EPUC, and CCSF all support the PD and its determination that a 10-year, and not a 30-year, NBC is appropriate. Each one individually replies to

[12] Joint Comments, p. 2.

[13] Baykeeper refers to Baykeeper, Baykeeper's Deltakeeper Chapter and the California Coastkeeper Alliance.

Settling Parties' comments, but there is a theme through each reply: PG&E did not make a record that supports a longer NBC.

In order to address Settling Parties' arguments that the PD is incorrect, the Commission again reviewed the record to see if PG&E had presented any evidentiary basis for reaching a different decision. We did not find any. It is particularly telling that Settling Parties did not refer to any evidence in their comments, except to "Tr., pp. 177 et seq." This reference in the transcript is to PG&E's witness Wan. The Commission agrees with MID, CCSF, and EPUC that these pages do not present any real evidence to justify a longer NBC.

What is in the record is that CC8 is a "fantastic deal" that "should not be uneconomic."[14] And what is also in the record is PG&E's concern that uneconomic costs should not be borne by its bundled ratepayers alone. But, PG&E did not present any evidence supporting any customer migration issues that are unique or different from those facing all three IOUs. We understand that in today's regulatory climate, the IOUs do not have certainty as to their customer bases and that the IOUs do not want their bundled customers bearing an unjust burden of paying for new generation. As we stated in the PD, this is why we adopted the 10-year NBC for SDG&E and Edison for their new resources and created the 10-year default provision in D.04-12-048. It is appropriate that we follow Commission precedent in the absence of a record justifying a different NBC term.

We therefore do not change our decision and the term of the NBC remains at ten years. We did make a few minor corrections and clarifying modifications

[14] CCSF's Reply comments, p. 2, citing TR., pp. 166,191.

to the decision in response to the comments, and did include a complete copy of the Settlement Agreement as an Attachment to the decision.

Assignment of Proceeding

Commissioner Michael R. Peevey is the Assigned Commissioner and Carol A. Brown is the assigned ALJ in this proceeding.

Findings of Fact

1. PG&E, DRA, TURN, and CURE presented the Commission with a Joint Settlement Agreement concerning the acquisition, completion, and operation of CC8, including cost recovery and ratemaking mechanisms related thereto.

2. The Settlement Agreement contains Paragraph 11 that proposes a 30-year NBC for the project.

3. Protests to the Settlement Agreement were filed by MID, CCSF, and IEP but only to Paragraph 11.

4. IEP protested PG&E's presentation of the CC8 project to the Commission outside of a competitive solicitation process as established by D.04-12-048 and requested clarification on the Commission's preferred procurement policies. This issue was not within the scope of this proceeding, and we do not address it in this decision.

5. Following submission of the Settlement Agreement to the Commission, the scope of the proceeding was limited to a determination as to whether the Settlement, and especially Paragraph 11, is reasonable in light of the record as a whole, consistent with law, and in the public interest.

6. Previously in regards to specific projects for other IOUs, and in the Long-term Procurement decision, D.04-12-048, in regards to IOU projects in general, the Commission authorized a 10-year NBC for above-market costs for departing load.

7. The Settlement Agreement proposes a 30-year NBC, but defers all other issues, including the calculation, application and allocation of the NBC to another proceeding.

8. We find that the proposed 30-year NBC, with all of the implementation details left inchoate, is not reasonable in light of the record in this proceeding, is not consistent with law, and is not in the public interest.

9. We find it reasonable to modify the NBC to a 10-year period that will start when the plant begins commercial operations.

10. We find that CC8 is a low-cost and low-risk project that meets PG&E's long-term procurement needs and that will provide an additional 530 MW of electricity that will contribute to grid reliability.

11. The capital cost of the CC8 project compares very favorably with other projects recently approved by the Commission.

12. CC8 will provide needed capacity in northern California.

13. CC8's location near the heavy load concentration in the Bay Area is beneficial.

14. We find the Settlement Agreement, including the cost recovery and ratemaking mechanisms, for the acquisition, completion and operation of CC8, with the NBC amended to a 10-year period, to be reasonable in light of the record, consistent with law, and in the public interest.

Conclusions of Law

1. The Settlement Agreement, as modified to include a 10-year NBC, meets the requirements of Rule 51.1 of the Commission's Rules of Practice and Procedure, and is adopted by the Commission.

2. The Settlement Agreement, with a 30-year NBC, is not reasonable in light of the record, is not consistent with law, and is not in the public interest.

3. Based on Legislative direction, the Public Resources Code, the Public Utilities Code, the Commission's Rules of Practice and Procedure, and Commission decisional precedent, we determine that we do not have concurrent responsibility with the CEC to conduct a CEQA review of the project.

O R D E R

IT IS ORDERED that:

1. The Settlement Agreement, with Paragraph 11 modified to impose a 10-year nonbypassable charge for departing load customers that will start when the plant begins commercial operations, is adopted.
2. Pacific Gas and Electric Company is granted a Certificate of Public Convenience and Necessity for the acquisition, completion, and operation of the Contra Costa 8 facility, including the cost recovery and ratemaking mechanisms related thereto, under the terms set forth in the attached Settlement Agreement, as modified by today's decision.
3. Californians for Renewable Energy, Inc.'s motion for the Commission to conduct a supplemental Environmental Impact Report under the California Environmental Quality Act is denied.
4. Application 05-06-029 is closed.

This order is effective today.

Dated June 15, 2006, at San Francisco, California.

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
DIAN M. GRUENEICH

JOHN A. BOHN
RACHELLE B. CHONG
Commissioners