

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Implement the  
Commission's Procurement Incentive  
Framework and to Examine the Integration of  
Greenhouse Gas Emissions Standards into  
Procurement Policies.

Rulemaking 06-04-009

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**OPENING COMMENTS OF PACIFIC GAS AND  
ELECTRIC COMPANY (U 39 E) ON PROPOSED  
DECISION OF PRESIDENT PEEVEY AND ALJ  
GOTTSTEIN**

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Dated: January 2, 2007

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**I. INTRODUCTION**

Pursuant to Rule 14.3 of the Commission's Rules of Practice and Procedure (Rules), Pacific Gas and Electric Company (PG&E) provides these opening comments on the Proposed Decision of President Peevey and ALJ Gottstein (PD) to adopt a greenhouse gases (GHG) emission performance standard (EPS) in this proceeding.

As discussed below, PG&E requests that the Commission provide two critically needed clarifications regarding the application of the EPS. With these clarifications, PG&E supports the EPS proposed by the PD and urges the Commission to adopt and implement it expeditiously so that California can continue to lead the nation in efforts to address global climate change and reduce global warming. PG&E also requests that the PD ensure that the "gateway" demonstration of compliance under the EPS be applied consistently to all load serving entities (LSEs) so that every LSE is required to provide an up-front, not after-the-fact, documentation of compliance under the rule.

The first clarification would permit limited amounts of substitute energy to be used to "firm" transactions covered by the EPS. Under PG&E's clarification, substitute energy,

including that used to “firm” new renewable energy contracts covered by the EPS, would be permitted if the substitute energy is limited to no more than 15 percent of the forecast or intended energy deliveries of the contract as defined over a contractually specified time period.

The second clarification would specify that the calculation of the designed and intended GHG emissions rate under the EPS is performed using standard, generally accepted International Organization for Standardization (ISO) measurement protocols for stationary source emissions, which take into account and adjust for climate, elevation and other ambient conditions relating to the location of the generating unit itself.

## **II. THE PD IS WORKABLE, GOOD POLICY, LAWFUL AND CONSISTENT WITH THE REQUIREMENTS OF SB 1368**

PG&E has been an active participant in this proceeding since its outset, and has engaged in the full discussions among the interested parties, the ALJ, and the Commission staff on all significant details regarding the proposed EPS. In addition, PG&E actively participated in and supported the enactment of Senate Bill (SB) 1368 in the California Legislature, which the PD proposes to implement. During various phases of this proceeding, PG&E has requested certain changes to the proposed EPS in order to make it more commercially practicable and effective. Some of PG&E’s changes have been included in the PD; others have not. However, on the whole, PG&E believes the PD represents a faithful, workable, lawful and effective implementation of the EPS enacted by SB 1368. With the clarifications proposed below regarding unspecified resources and ISO protocols, PG&E believes that the PD should be adopted and implemented immediately, so that all interested parties can move forward with this key element of California’s global warming solutions.

### **III. THE PD SHOULD CLARIFY THAT UNSPECIFIED SUBSTITUTE ENERGY MAY BE USED TO “FIRM” RENEWABLE ENERGY CONTRACTS AND FOR OTHER LIMITED PURPOSES THAT BENEFIT THE RESOURCE PORTFOLIOS OF INVESTOR-OWNED UTILITIES**

The PD proposes to overturn the Commission staff’s recommendation that unspecified resources be permitted to be procured under the EPS based on calculation of an “imputed” emissions factor applied to the resources. Instead, the PD proposes that all unspecified resources be prohibited because such resources cannot be demonstrated to comply with the EPS. (PD, pp. 117- 24.) Likewise, the PD proposes to overturn Commission staff’s recommendation that the emissions of renewable energy contracts that use unspecified resources for “firming” purposes be “blended” to determine compliance with the EPS. Instead, the PD proposes to prohibit all such “firmed” renewable contracts because the resources used to “firm” the renewables products under the contracts cannot be demonstrated to comply with the EPS. (PD, pp. 70- 74.)

In support of its position, the PD cites the following “general guidance” in SB 1368 on how to deal with unspecified contracts:

“In developing and implementing the greenhouse gases emission performance standard, the commission shall address long-term purchases of electricity from unspecified sources in a manner consistent with this chapter.”

(PD, p. 117, citing Public Utilities Code section 8341(d)(7).)

Based on this “consistency” requirement in SB 1368, the PD reasons that both “imputed” emissions rates and “firming” of renewables contracts with unspecified resources are inconsistent with the goals of SB 1368, because neither permit the Commission to determine whether the unspecified resources are consistent with SB 1368’s and the Commission’s goals of preventing long-term commitments with high-GHG emitting baseload resources during the transition to a statewide GHG emissions cap. (PD, pp. 3, 73- 74, 117, 120, 124.)

PG&E believes that the PD’s reading of SB 1368 should be clarified to ensure that it

would not bar the use of “substitute energy,” which is commonly permitted in both non-renewables and renewables contracts. Without the clarification PG&E describes below, the PD may actually lead to results contrary to the overall goals and intent of the legislation.<sup>1/</sup>

Unit specific transactions often contain contract provisions whereby some portion of the energy delivered would not necessarily come from the specific unit (“substitute energy” provisions). Such provisions can exist for short and long term energy transactions. PG&E proposes that the PD be clarified to maintain a limited measure of contracting flexibility over a contractually specified time period for the use of substitute energy to support contracts covered by the EPS, but to impose contract restrictions as outlined in the table below (Table A) and to permit the use of substitute energy over the contractually specified time period only if the conditions noted in the table and paragraphs following the table are met.

**Table A – Restrictions for Substitute Energy in Energy Transactions Covered by the EPS**

<u>Transaction Type</u>	<u>In-Area</u>	<u>Imports</u>
<b>Renewable and Non-Renewable</b> (Unit Specific, RPS eligible if renewable)	Substitute energy limited to 15% of forecast energy production if either Condition A or Condition B is met	Substitute energy limited to 15% of forecast energy production if either Condition A or Condition B is met
<b>Non-Unit Specific or System Energy<sup>2/</sup></b>	Cannot do these transactions	Cannot do these transactions

<sup>1/</sup> PG&E believes that the PD’s legal interpretation of SB 1368 is overly prescriptive and would render Public Utilities Code section 8341(d)(7) as meaningless. The PD interprets section 8341(d)(7) as requiring the Commission to apply the numerical EPS to all covered resources, whether specified or unspecified, on the grounds that the word “consistent” prohibits the Commission from applying any exception or flexibility to its treatment of unspecified resources. But this reading of the statute would render section 8341(d)(7) as meaningless, because the same argument regarding lack of flexibility would apply to SB 1368 in the absence of section 8341(d)(7). Such an interpretation also would negate the flexibility in statutory construction and implementation that the PD would allow in other aspects of the EPS. These include adoption of a 50 MW threshold for application of the EPS to renovations of “deemed compliant” CCGTs (PD, p.52); authority of the Energy Commission to consider “unique circumstances” applicable to publicly owned utilities when applying the EPS to such utilities in a manner “consistent” with the CPUC’s EPS (PD, p. 122, fn. 153); and the availability of exemptions from the EPS for reliability reasons or in “extraordinary circumstances” (PD, pp. 87, 90).

<sup>2/</sup> System energy is the same as energy from non specified resources.

**Condition A:** A contract that permits the seller to provide system energy under a unit specific contract when the unit is unavailable due to a forced outage, scheduled maintenance, or other temporary unavailability for operational or efficiency reasons.

**Condition B:** A contract that permits the seller to provide system energy under a unit specific contract to meet operating conditions required under the contract, such as provisions for number of start-ups, ramp rates, minimum number of operating hours, etc.

The ability for a seller to substitute energy from the marketplace on a short-term basis is an important feature in a contract, often to enable better managing of operating and financial risk. Payments to sellers and performance by the seller can be affected by: 1) exclusive reliance on specified unit availability; or 2) exclusive use of units to provide desired operating flexibility. From a buyer's perspective, allowing energy substitution in a unit specific contract provides greater performance assurance at a likely more moderate price. It can be a win-win for buyer, seller and the environment because: 1) the energy product can be better absorbed into the buyer's overall portfolio; 2) the seller is better able to manage performance risk; 3) contract costs may be lower given the improved allocation of risk; and 4) the greater certainty associated with the energy contract may actually decrease the amount of system energy with unspecified environmental attributes that the buyer will rely on downstream to meet the needs of its overall portfolio.

Provisions for substitute energy are condition driven, that is, based on events or conditions whereby substitute energy can be provided over defined periods. The use of "substitute energy" for these events is very unlikely to result in intentionally sourcing energy from high carbon intensive baseload resources, particularly because substitute energy events are often unpredictable. Capping substitute energy at 15% of the forecast generation from the unit specific resource should provide adequate flexibility in longer-term contracts such that the majority of commercial contracting is not detrimentally affected and overall will result in an

insignificant or minimal increase in procurement costs. No new high-carbon generation will be built solely to provide substitute energy at the 15% level.

The PD's outright prohibition on unspecified resources used for substitute energy under these circumstances, especially those used for firming long-term renewables, would actually exacerbate the problems SB 1368 and the Commission are trying to address with the EPS. This is obvious in the case of "firmed" renewables: Many new renewable resources cannot by themselves meet the energy profile needs of load-serving entities, without having backup access to flexible and firm resources.

In PG&E's case, as the Commission knows, we are exploring long-term development and contractual commitments to bring wind resources from British Columbia to our Northern California customers. (See CPUC Docket A.06-08-011.) It is possible, if not probable, that any commitments for such resources will require commitments of substitute energy to "firm" the wind resources in order to ensure reliable access to the renewable resources themselves and efficient use of new transmission. The PD's prohibition on substitute energy could exclude these new renewable resources from California, probably leading to substitution of more carbon-intensive resources to serve PG&E's load, contrary to the intent of SB 1368 and possibly making it more costly for PG&E to comply with future regulations implementing AB 32.

Similarly, although PG&E has no intent to procure long-term unspecified resources for system power purposes over the next couple years, we remain open to substitute energy arrangements over the longer run, especially from hydro resources from the Northwest, under our recent long-term procurement plan for the period 2007- 2016. Not only do such resources provide overall flexibility in PG&E's procurement plans, but the availability of such resources in California power markets will enhance the liquidity of such markets and provide less opportunity

for sellers and buyers in markets outside California to divert the resources to other markets, requiring further near-term substitution of more carbon-intensive gas-fired resources to serve California.

PG&E believes that the PD can achieve the intent of SB 1368 regarding unspecified resources without outright prohibition. Specifically, PG&E recommends that the EPS be clarified to permit substitute energy to be used in the limited circumstances and subject to the express conditions listed in Table A above, where it is clear that use of the unspecified resources will not “open the floodgates” to high-emitting resources contrary to SB 1368. This clarification would inject some needed flexibility and practicality into the EPS, without creating a “loophole” or exception that could “swallow up” the rule. More importantly, this clarification would ensure that the EPS as implemented does not preclude the types of long-term commitments for new renewable energy resources, firmed in a limited way by substitute energy arrangements, that will enhance rather than detract from California’s transition to a low carbon energy future.

#### **IV. THE PD SHOULD CLARIFY THAT THE EMISSION RATE UNDER THE EPS WILL BE CALCULATED UNDER STANDARD, GENERALLY ACCEPTED INTERNATIONAL ORGANIZATION FOR STANDARDS (ISO) CONDITIONS**

The International Organization for Standardization (ISO) publishes generally accepted standards and protocols for measurement and calculation of widely-accepted international standards, such as gaseous emissions rates from stationary and mobile sources.<sup>3/</sup> The emission rates of a combined cycle plant vary with operating conditions, and thus the ISO standards for measurement of gaseous emissions include factors that take into account climate, elevation and other ambient conditions. Given that electric generating units subject to the EPS in this proceeding are located in a wide variety of climates and terrains throughout California and the

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<sup>3/</sup> The website of the ISO can be found at <http://www.iso.org/iso/en/ISOOnline.frontpage>.



West, ranging from coastal locations at low elevations and under relatively cool conditions, to desert or higher inland locations under warmer conditions, it is important that the PD clarify that measurement of the 1,000 pounds CO<sub>2</sub> per MWh standard be conducted using ISO standards and protocols, which take into account such differences, including climatological and terrain differences. Therefore, PG&E requests that the PD be revised to specify that the EPS will be calculated in accordance with generally accepted ISO standards such as ISO 3977-2:1997, which provides standard reference conditions and ratings for gas turbines.

**V. THE EPS SHOULD BE APPLIED UP-FRONT AND WITH THE SAME DOCUMENTATION REQUIREMENTS TO ALL COVERED TRANSACTIONS BY LOAD SERVING ENTITIES, NOT BEFORE-THE-FACT TO INVESTOR-OWNED UTILITIES AND AFTER-THE-FACT TO ELECTRIC SERVICE PROVIDERS**

The PD proposes that investor-owned utilities demonstrate compliance with the EPS through the Commission's up-front review and approval of their specific procurement transactions and contracts. (PD, pp. 126- 128.) PG&E supports this approach and believes it is administratively feasible and efficient. However, for other LSEs, such as electric service providers (ESPs) who do not routinely submit their contracts to the Commission for up-front approval, the PD proposes only an annual, after-the-fact "certification" filing, which would not contain similar documentation as the IOUs would provide, and would not require Commission review of any of the facts behind the certification. (PD, pp. 132- 134.)

PG&E believes this "after-the-fact" process is inconsistent with the compliance process required of IOUs, and would discriminate based on the status of the entity subject to the EPS, which is irrelevant to the compliance obligations established by SB 1368. PG&E recommends that if the Commission is applying an "up-front" review process for IOUs, it should apply the same "up-front" review process for other LSEs subject to the EPS. This can be done simply by requiring that ESPs provide documentation of compliance through an application before they

enter into transactions or begin deliveries covered by the EPS.

## **VI. CONCLUSION**

PG&E has attached proposed redline revisions to the “Interim EPS Rules” in Attachment 7 of the PD to accomplish the clarifications recommended above. PG&E commends the Commission for moving forward expeditiously with this vital and ambitious proceeding, and looks forward to continuing to work with the Commission, the CARB, the Climate Action Team, and other key agencies and stakeholders to make the implementation of SB 1368, AB 32 and other climate action initiatives a success, and a model for national and international action. PG&E respectfully requests that our recommended clarifications be adopted as part of the final decision in this proceeding, and that the PD be adopted as revised.

Respectfully Submitted,

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By: \_\_\_\_\_/s/\_\_\_\_\_  
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**Attachment A - PG&E's Proposed Revisions to  
Proposed Decision, R.06-04-009 Attachment 7 –  
“Adopted Interim Rules for Greenhouse Gas Emissions Performance Standard  
(Adopted Interim EPS Rules)”**

Paragraph 3 – “Covered Procurements”

Revise to add a new paragraph at the end as follows:

“Under (1) and (2), above, substitute energy which supports a renewable or non-renewable contract will not need to demonstrate compliance if, and only if, it meets the conditions in the following table:

<u>Transaction Type</u>	<u>In-Area</u>	<u>Imports</u>
<b>Renewable and Non-Renewable</b> (Unit Specific, RPS eligible if renewable)	Substitute energy limited to 15% of forecast energy production if either Condition A or Condition B is met	Substitute energy limited to 15% of forecast energy production if either Condition A or Condition B is met
<b>Non-Unit Specific or System Energy<sup>4/</sup></b>	Cannot do these transactions	Cannot do these transactions

**Condition A:** A contract that permits the seller to provide system energy under a unit specific contract when the unit is unavailable due to a forced outage, scheduled maintenance, or other temporary unavailability for operational reasons.

**Condition B:** A contract that permits the seller to provide system energy under a unit specific contract to meet operating conditions required under the contract, such as revisions on number of start-ups, ramp rates, minimum number of operating hours, etc.

Paragraph 6 – “Calculation of Net Emissions Rates”

Revise the second sentence of the second paragraph to read as follows:

“Capacity factors, heat rates and corresponding emission rate shall reflect the actual, expected operations of the plant **using International Organization for Standardization (ISO) measurement standards that take into account climate, elevation and other ambient conditions.**”

Paragraph 7 – “Application of EPS to Covered Procurements”

Revise the fourth sentence of the final paragraph to read as follows:

“If it is, then the commitment is screened **by filing at the Commission for review prior to deliveries or operation** to ensure that the associated GHG emissions rate does not exceed the adopted EPS performance level.”

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<sup>4/</sup> System energy is the same as energy from non specified resources.

## CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of **“OPENING COMMENTS OF PACIFIC GAS AND ELECTRIC COMPANY (U 39 E) ON PROPOSED DECISION OF PRESIDENT PEEVEY AND ALJ GOTTSTEIN”** on the parties listed below and the parties listed in the official service list for R.04-04-009 by

- transmitting an e-mail message with the document attached to each party on the official service list providing an email address; or
- by first-class mail, postage prepaid, to each party on the official service list not providing an email address.

Executed on January 2, 2007, at San Francisco, California.

\_\_\_\_\_  
/s/  
MARTIE L. WAY

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# THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA SERVICE LIST

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## CPUC DOCKET NO. R0604009 CPUC REV 12-29-06

Total number of addressees: 260

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## CPUC DOCKET NO. R0604009 CPUC REV 12-29-06

Total number of addressees: 260

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# THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA SERVICE LIST

Downloaded January 2, 2007, last updated on December 29, 2006

Commissioner Assigned: Michael R. Peevey on April 17, 2006; ALJ Assigned: Charlotte TerKeurst on September 19, 2006

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Total number of addressees: 260

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