

**ATTACHMENT A**

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

Application of Pacific Gas And Electric  
Company (U 39-E) for Approval of a Power  
Purchase Agreement With Mariposa  
Energy, LLC.

Application No. 09-04-001

**SETTLEMENT AGREEMENT BETWEEN  
AND AMONG PACIFIC GAS AND ELECTRIC  
COMPANY, THE DIVISION OF RATEPAYER  
ADVOCATES, THE UTILITY REFORM NETWORK,  
CALIFORNIANS FOR RENEWABLE ENERGY, AND  
CALIFORNIA UNIONS FOR RELIABLE ENERGY**

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Date: September 3, 2009

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

Application of Pacific Gas And Electric  
Company (U 39-E) for Approval of a Power  
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CALIFORNIA UNIONS FOR RELIABLE ENERGY**

**I. INTRODUCTION**

In accordance with Rule 12.1 of the California Public Utilities Commission's (Commission) Rules of Practice and Procedure, Pacific Gas and Electric Company (PG&E) the Division of Ratepayer Advocates (DRA), the Utility Reform Network (TURN), Californians For Renewable Energy (CARE) and California Unions For Reliable Energy (CURE) (collectively referred to as "the Parties" or individually as a "Party"), hereby enter into this Settlement Agreement to resolve all issues raised in PG&E's Application for Approval of a Power Purchase Agreement with Mariposa Energy, LLC.

The Parties believe that this Settlement Agreement is in the public interest and represents a fair and equitable resolution of the issues in the proceeding and request that the Commission approve it without modification.

**II. RECITALS**

A. PG&E's April 1, 2008 Long-Term Request for Offers sought 800 – 1,200 MW of new dispatchable and operationally flexible resources to fill a regional capacity need identified by the Commission in *Opinion Adopting Pacific Gas and Electric Company's, Southern*

*California Edison Company's, and San Diego Gas & Electric Company's Long-Term Procurement Plans*, Decision (D.) 07-12-052 (LTPP Decision).

B. The Commission previously approved five Power Purchase Agreements (PPAs) arising from PG&E's 2004 LTRFO, two of which were subsequently terminated by the sellers.<sup>1/</sup> The two terminated PPAs represent 312 MW.<sup>2/</sup> As the Commission determined in the LTPP Decision, PG&E's procurement authority for these MW remains.<sup>3/</sup> Accordingly, PG&E is currently authorized by the Commission to obtain up to 1,512 MW of new long-term resources.

C. On April 1, 2009, PG&E filed Application No. 09-04-001 requesting approval of a PPA with Mariposa Energy, LLC (Mariposa). The Mariposa PPA is the first agreement to be submitted for approval from the 2008 LTRFO. PG&E's Prepared Testimony explained that the Mariposa PPA was executed and filed in advance of the other agreements arising out of the LTRFO for the following reasons:

1. The Mariposa Energy Project was on PG&E's shortlist as one of the offers that best met the evaluation criteria of the 2008 LTRFO. The project received a high ranking during the short listing process based on a number of factors, including project economics and compliance with PG&E's non-price terms and conditions.

2. The Mariposa Energy Project has an Expected Initial Delivery Date (EIDD) of July 1, 2012. The PPA must be approved by the Commission no later than November 20, 2009 to avoid a delay of the EIDD.

D. On April 27, 2009, CARE protested PG&E's Application and on May 6, 2009, DRA protested PG&E's Application. No other protests were filed. On May 18, 2009, PG&E

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<sup>1/</sup> *Application of Pacific Gas and Electric Company for Approval of Long-Term Request for Offer Results and for Adoption of Cost Recovery and Ratemaking Mechanisms*, D.06-11-048, (November 30, 2006) Ordering Paragraph (OP) 1.

<sup>2/</sup> *Id.*, p. 6.

<sup>3/</sup> LTPP Decision, pp. 105-106.

replied to the DRA and CARE protests.

E. On June 23, 2009, a prehearing conference was held by Administrative Law Judge (ALJ) Angela Minkin.

F. On July 9, 2009, Assigned Commissioner Michael R. Peevey and ALJ Minkin Issued a Scoping Memorandum which established a schedule for the proceeding.

G. On August 21, 2009, PG&E filed and served on the service list a notice of settlement conference for August 28, 2009 at PG&E's offices in San Francisco based on a settlement in principle that was previously reached between and among PG&E, TURN and DRA.

### **III. SETTLEMENT AGREEMENT**

As a compromise among their respective litigation positions, and subject to the recitals and reservations set forth in this Settlement Agreement, the Parties find that both the Mariposa PPA and PG&E's Application are reasonable under the following conditions.

A. The Parties agree that the total need to be procured from the 2008 LTRFO will be limited to 1,512 MW under peak July conditions, inclusive of the Mariposa PPA (184 MW). The Parties support approval of the Mariposa PPA under the terms of this Settlement Agreement.

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

C. PG&E will meet and confer with the Parties in the event that Mariposa Energy requests a PPA amendment that seeks to increase the prices of the Mariposa PPA for capacity, fixed operations and maintenance rate (FOMR) and variable operations and maintenance costs rate (VOMR) listed on page 3-13 of PG&E's Prepared Testimony. In the event of an amendment to the Mariposa PPA, the capacity price, FOMR, and VOMR will not exceed the prices presented

on page 3-13 of PG&E's Prepared Testimony, unless: 1) the Parties concur with the amendment to these prices; or 2) PG&E has conducted a request for offers (RFO), evaluated market alternatives, and found the new prices proposed for the amendment to be competitive with the results of its RFO. The Parties reserve the right to oppose any such amendment.

To the extent there is intervenor participation in a Commission proceeding regarding the reasonableness of any amendment, PG&E will require as a condition of any amendment that Mariposa Energy reimburse PG&E for any CPUC-awarded intervenor compensation.

**D. Cost Recovery.**

PG&E shall recover the costs of all payments made pursuant to the Mariposa Energy PPA through the Energy Resources Recovery Account (ERRA). PG&E shall recover any stranded costs associated with the Mariposa PPA throughout the term of the Mariposa PPA as non-bypassable charges consistent with Commission Decisions 04-12-048 and 08-09-012.

**E. Commission Approval.**

This Settlement Agreement shall become effective on the mailing date of a final Commission decision approving the terms of this Settlement Agreement without modifications unacceptable to any Party. In order to expedite approval of the Mariposa PPA and to avoid a delay of the July 2012 EIDD, the Parties agree to waive the 30-day comment period on the Settlement Agreement in Rule 12.2. The Parties further agree that evidentiary hearings are not required as there are no unresolved factual issues.

**F. General Terms and Conditions.**

1. The Settlement Agreement is intended to be a resolution among the Parties of all issues raised in PG&E's Application A.09-04-001.

2. The Parties agree to support the Settlement Agreement and perform diligently, and in good faith, all actions required or implied hereunder to obtain Commission approval of the

Settlement Agreement, including without limitation, the preparation of written pleadings. No Party will contest in this proceeding, or in any other forum or in any manner before this Commission, this Settlement Agreement.

3. The Parties agree by executing and submitting this Settlement Agreement that the relief requested herein is just, fair and reasonable, and in the public interest.

4. The Settlement Agreement is not intended by the Parties to be precedent regarding any principle or issue. The Parties have assented to the terms of this Settlement Agreement only for the purpose of arriving at the compromise embodied in this Settlement. Each Party expressly reserves its right to advocate, in current and future proceedings, positions, principles, assumptions, and arguments which may be different than those underlying this Settlement Agreement and each Party declares that this Settlement Agreement should not be considered as precedent for or against it.

5. This Settlement Agreement embodies compromises of the Parties' positions. No individual term of this Settlement Agreement is assented to by any Party, except in consideration of the other Parties' assent to all other terms. Thus the Settlement Agreement is indivisible and each part is interdependent on each and all other parts. Any Party may withdraw from this Settlement Agreement if the Commission modifies, deletes from, or adds to the disposition of the matters stipulated herein. The Parties agree, however, to negotiate in good faith with regard to any Commission-ordered changes in order to restore the balance of benefits and burdens, and to exercise the right to withdraw only if such negotiations are unsuccessful.

6. The terms and conditions of the Settlement Agreement may only be modified in writing subscribed to by the Parties and approved by a Commission order.

The Parties have caused this Settlement Agreement to be executed by their authorized

representatives. By signing this Settlement Agreement, the representatives of the Parties warrant that they have the requisite authority to bind their respective principals.

DATED: September 3, 2009

**THE DIVISION OF RATEPAYER  
ADVOCATES**

BY: \_\_\_\_\_/s/  
DANA APPLING  
DIRECTOR

**THE UTILITY REFORM NETWORK**

BY: \_\_\_\_\_/s/  
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**PACIFIC GAS AND ELECTRIC  
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MARTIN HOMEC  
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**CALIFORNIA UNIONS FOR RELIABLE  
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MARC D. JOSEPH  
ATTORNEY

(END OF ATTACHMENT A)