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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Examine
the Commission's Energy Efficiency
Risk/Reward Incentive Mechanism.

Rulemaking 09-01-019
(Filed January 29, 2009)

**MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT
BETWEEN AND AMONG THE OFFICE OF RATEPAYER ADVOCATES,
THE UTILITY REFORM NETWORK AND PACIFIC GAS
AND ELECTRIC COMPANY (U 39-M)**

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I. INTRODUCTION

Pursuant to Rule 12.1 (a) of the California Public Utilities Commission's ("Commission") Rules of Practice and Procedure, the Office of Ratepayer Advocates ("ORA"), the Utility Reform Network ("TURN") and Pacific Gas and Electric Company ("PG&E") (collectively referred to herein as the "Joint Parties") respectfully file this *Motion for Approval of Settlement Agreement Between and Among the Office of Ratepayer Advocates, The Utility Reform Network and Pacific Gas and Electric Company*. The Settlement Agreement represents a balance of the parties' interests in the litigation. Consistent with Rule 12.1 of the Commission's Rules of Practice and Procedure, the Joint Parties provide a statement of the factual and legal considerations that are addressed in the Settlement Agreement and demonstrate that the Settlement Agreement is reasonable in light of the whole record, consistent with law, and in the public interest. For these reasons, the Joint Parties respectfully request that the Settlement Agreement be approved by the Commission without modification.^{1/}

^{1/} Each of the Joint Parties expressly reserves its rights to take positions contrary to the positions taken and arguments made in this motion if the Commission does not approve the Settlement Agreement without modification.

II. BACKGROUND

This proceeding was reopened to examine three decisions involving the investor-owned utilities ("IOUs") energy efficiency shareholder incentive awards for their 2006-2008 energy efficiency portfolios.

In September 2007, the Commission approved the Risk Reward Incentive Mechanism ("RRIM") under which the IOUs were awarded shareholder incentives for their energy efficiency savings achieved in 2006-2009.^{2/} PG&E received \$104.1 million in incentives for savings achieved during 2006-2008 under the RRIM. The Commission replaced the RRIM for the IOUs' energy efficiency portfolios beginning in 2010 due to the significant controversies regarding the RRIM.^{3/}

The Commission subsequently modified the RRIM several times. In January 2008, the Commission changed the mechanism to require the two interim earnings claims to be based on 2008 and 2009 Database for Energy Efficient Resources (DEER) savings values and parameters.^{4/} It also clarified that as long as a utility continues to exceed savings goals by 65% for each individual metric on an *ex-post*^{5/} basis, it would not be required to refund interim incentives payments.^{6/} This decision was not re-opened.

The RRIM was next modified in a December 2008 decision that also granted in part and denied in part the IOUs' joint petition to modify two prior RRIM decisions due to a delay in the issuance of the Energy Division verification report that would be used to calculate the IOUs' savings and incentives. This decision also approved the IOUs' first interim awards based on the IOUs' claims using *ex-ante* data^{7/} ORA and TURN applied for rehearing of this decision in February 2009, which the IOUs opposed.

^{2/} Decision 07-09-043.

^{3/} Decision 12-12-032, pp. 3, 8.

^{4/} *Id.*, pp. 14-16.

^{5/} *Ex post* in this case means post-installation.

^{6/} *Id.*, p. 28, OP 2 j.

^{7/} *Ex ante* in this case means pre- installation.

In December 2009, the Commission approved the second interim awards based on *ex-ante* values verified by Energy Division in a Verification Report dated October 15, 2009.^{8/} The Commission recognized that certain interactive effects^{9/} were not reflected in the originally adopted goals and, accordingly, reduced gas therm savings goals by 11% for PG&E and San Diego Gas & Electric Company (SDG&E).^{10/} It also adjusted earnings shown in the Verification Report to exclude 2004-2005 cumulative savings goals, and applied a 12% shared savings rate.^{11/} TURN applied for rehearing of this decision in January 2010, which the IOUs opposed.

In late 2009, the Energy Division issued approximately 13 draft *ex-post* evaluation reports for comment.^{12/} The Energy Division subsequently published a draft 2006-2008 Energy Efficiency Evaluation Report ("Evaluation Report") that incorporated the results of the *ex-post* evaluation reports. The draft Evaluation Report reduced the savings from the *ex-ante* values used to plan and operate PG&E's energy efficiency portfolio by more than fifty percent.

The Assigned Commissioner issued a ruling dated April 8, 2010 directing the Energy Division to calculate the IOUs' incentives under many different assumptions, which the Energy Division later accomplished through the issuance of a report entitled the *2006-2008 Energy Division Scenario Analysis Report*, dated July 9, 2010 ("SAR"). The SAR contained over 50 variations. All scenarios in the SAR that used *ex-post* values relied on the disputed values in the *ex-post* evaluation reports.

In December 2010, the Commission approved the final true-up payment for the 2006-2008 RRIM, based on the IOUs' *ex-ante* savings values rather than the values in the

^{8/} Decision 09-12-045. The Verification Report was approved in Resolution E-4272 (Oct. 15, 2009).

^{9/} "The interior building load reduction/increase due to a measure installation in a facility can interact with the heating, ventilating and air-conditioning (HVAC) system, resulting in changes in the consumption of electricity or gas. These HVAC interactive effects can result in positive or negative changes in consumption, and can cross fuel types and energy/demand categories." 2006 –2008 Verification Report, p.74. The possibility of a reduction in natural gas therm savings due to electric building load savings was not considered in setting therm savings goals.

^{10/} Decision 09-12-045, p. 63.

^{11/} *Id.*, p. 82, FOF 34.

^{12/} 2006-2008 Energy Efficiency Evaluation Report, Executive Summary, Table 3, p. xi.

ex-post reports summarized in Energy Division's Evaluation Report given controversies about the Evaluation Report. The Commission based its decision on Scenario 3 in the SAR, which relied on *ex-ante* data, with adjusted installation rates and additional modifications to address party comments.^{13/} The Commission reduced the savings rate to 7% to account for the reduced risk to the IOUs in substituting the *ex-post* values with the *ex-ante* values.^{14/} TURN and ORA applied for rehearing of this decision, which the IOUs opposed.

On November 19, 2014, TURN and ORA each petitioned to modify Decision 10-12-049 and requested the Commission to rescind the decision based on communications between PG&E and Commission President Peevey regarding pending proposed decisions for the third incentive award. ORA's petition for modification requested, in the alternative, the Commission to grant TURN and ORA's longstanding application for rehearing of Decision 10-12-049.

In September 2015, the Commission issued Decision 15-09-026 and reopened this proceeding to ensure that IOUs' incentive awards in Decision 08-12-059, Decision 09-12-045, and Decision 10-12-049 "are just and reasonable and based on calculations verified by the Commission, via its Energy Division, pursuant to the directives and process adopted in Rulemaking 06-04-010 and Rulemaking 09-10-019 as modified. The rehearing proceeding shall also consider whether refunds if any, of awards based on unverified claims are due and, if so, how such refunds, if any, shall be implemented."^{15/}

Pursuant to the Amended Scoping Memo, the IOUs, the Natural Resources Defense Council ("NRDC"), ORA, and TURN filed proposals to resolve the issues in dispute on March 18, 2016. The IOUs and NRDC proposed to allow the IOUs to retain the incentives awarded in Decisions 08-12-059, 09-12-045, and 10-12-049.

PG&E's March 18, 2016 proposal sought to retain its full incentive awards for 2006-2008 on the grounds that it was reasonable for the Commission's decision to use *ex-*

^{13/} Decision 10-12-049, p. 53.

^{14/} *Id.*, p. 70, FOF 19, 23; p. 72, COL 2; p. 74, OP 1 (b).

^{15/} *Id.*, p. 78, OP 6.

ante savings values instead of *ex-post* savings values, as was originally required in Decision 07-09-043. PG&E's proposal also sought to demonstrate that PG&E's total award was just and reasonable by including an alternate analysis which calculated the award on an *ex-post* basis, using proposed adjustments to a limited number of disputed measure savings parameters. PG&E's proposal further stated that, at a minimum, it was not in the penalty band for any single metric after errors and omissions in the calculation of its award were corrected, and that under the rules for the RRIM in Decisions 07-09-043 and 08-01-042, it was entitled to retain at least its first two interim awards. PG&E also asserted that pursuant to Decisions 07-09-043 and 08-01-042, any refund due to customers is required to be returned as an offset to future shareholder incentive awards.

ORA and TURN's March 18, 2016 proposal requested that the Commission calculate the IOUs' incentive awards based on the results of the *ex-post* evaluations for 2006-2008 consistent with Decisions 07-09-043 and 08-01-042 as represented by the Scenario 7, Tab 1 of the Energy Division Scenario Analysis Report ("SAR"). ORA and TURN requested that PG&E be ordered to refund the full amount of its shareholder incentives received for the 2006-2008 portfolio, which was approximately \$104.1 million, based in part on a particular scenario in the SAR which found PG&E to be slightly in the penalty range for the megawatt metric. On April 8, 2016, the IOUs, ORA, and TURN filed comments on the other parties' proposals.

The Commission repeatedly urged the parties to engage in settlement negotiations to resolve the disputes about the incentive awards.^{16/} The Joint Parties engaged in settlement negotiations throughout May 2016 and reached a tentative agreement, which was announced at the prehearing conference held on May 24, 2016. The Joint Parties noticed a Settlement Conference on June 15, 2016, which was held on June 23, 2016. On June 23, 2016, the Joint Parties subsequently signed the Settlement Agreement, which is attached to this Motion as Attachment A.

^{16/} Amended Scoping Memo, p. 4 (Jan. 22, 2016); Administrative Law Judge's Ruling Setting Prehearing Conference, p. 3 (May 6, 2016).

III. SUMMARY OF THE SETTLEMENT AGREEMENT

The Joint Parties agree to compromise this dispute, subject to Commission approval, through a return to ratepayers who fund the energy efficiency shareholder incentive of the entire incentive award approved in Decision 10-12-049, or \$29,115,011. PG&E will request its future awards for energy efficiency shareholder incentives filed pursuant to the Efficiency Savings and Performance Incentive ("ESPI") mechanism to be reduced by at least \$5,823,000 per year for five years until the offset is complete.^{17/} The offset against future shareholder earnings, is consistent with the RRIM mechanism's requirement for a refund obligation.^{18/} If the ESPI is replaced by a subsequent mechanism for energy efficiency shareholder incentives, PG&E will offset any remaining balance against an award earned under that subsequent mechanism.^{19/} The offset will begin with the first award following Commission approval of the Settlement Agreement without any changes or modifications unacceptable to any Party ("Settlement Agreement Effective Date.")^{20/}

If the total amount of \$29,115,011 has not been fully offset from shareholder incentive awards by the end of the five-year period following the Settlement Agreement Effective Date, PG&E will reduce electric and gas revenues in an amount equal to the remaining balance that PG&E had not previously requested to offset against energy efficiency shareholder incentive earnings. The revenue reduction will be administered as a credit to the Customer Energy Efficiency Incentive Adjustment Balancing Account ("CEEIA"),^{21/} a subaccount of the umbrella Customer Energy Efficiency Adjustment ("CEEA") mechanism, and shall be reflected in PG&E's annual electric and gas true-up advice letters that year. In this manner, the \$29.1 million will be fully returned to ratepayers even if PG&E's energy efficiency shareholder incentive awards were

^{17/} Settlement Agreement, III A 2.

^{18/} Decision 07-09-043, COL 16; Decision 08-01-042, OP 2.

^{19/} Settlement Agreement, ¶ III A 1.

^{20/} Settlement Agreement, ¶ III A 1.

^{21/} The CEEIA is the subaccount used to record amounts to be reflected in rates for any incentives earned or penalties incurred by PG&E as part of the shareholder incentive mechanism.

insufficient to offset the full amount during the five years following Settlement Agreement Effective Date.^{22/}

IV. DISCUSSION

A. The Settlement Agreement Is Reasonable and in the Public Interest

The Commission will approve a settlement if it finds the settlement “reasonable in light of the whole record, consistent with law, and in the public interest.”^{23/} The proposed Settlement Agreement meets these criteria. The Joint Parties negotiated in good faith, bargained aggressively, compromised, and agreed to the Settlement Agreement as an interrelated package; the resolution of any one issue cannot be assessed discretely. Factors that the Commission has considered in reviewing settlements include: (1) the risk, expense, complexity and likely duration of further litigation, (2) whether the settlement negotiations were at arms-length, (3) whether major issues were addressed, and (4) whether the parties were adequately represented.^{24/} The Settlement Agreement resolves complex and contentious litigation regarding three decisions presently before the Commission. The settlement negotiations were at arms-length and addressed all major issues regarding PG&E's 2006-2008 energy efficiency incentive awards. The amount of the offset, \$29.1 million, will benefit the same customer classes who fund the energy efficiency incentives.

B. The Settlement Agreement Is Consistent With Existing Law and State Policy

The Commission has a long-standing policy of supporting settlements.^{25/} “The Commission favors settlements because they generally support worthwhile goals, including reducing the expense of litigation, conserving scarce Commission resources, and allowing parties to reduce the risk that litigation will produce unacceptable

^{22/} Settlement Agreement, ¶ III A 6.

^{23/} Rule 12.1(d); *see also* Decision 09-10-017 (applying Rule 12.1(d) criteria).

^{24/} *Re Pacific Gas & Electric Company*, 30 CPUC 2d 189, 222 (1988).

^{25/} Decision 05-03-022, pp. 7-8; Decision 10-06-031, p. 12.

results.”^{26/} In this proceeding, the Commission has encouraged the parties to settle outstanding disputes numerous times.^{27/}

The Settlement Agreement is a reasonable compromise of the issues. PG&E asserted in the litigation that the original awards were correct and justified, and that the determination by Energy Division that PG&E narrowly missed its MW target and thus was subject to penalties, was incorrect due to errors and omitted savings values in Energy Division's SAR. TURN and ORA asserted, by contrast, that the Commission erred by failing to follow the RRIM adopted in Decision 07-09-043 and modified in Decision 08-01-042, including by using *ex-ante* rather than *ex-post* data to true up the final incentive awards, and thus incentives were not warranted by the RRIM mechanism. The resolution of this dispute, by an offset of the entire amount of the third payment against future shareholder incentive earnings, is a reasonable resolution of these issues, and is consistent with rules the Commission adopted for the RRIM in Decision 07-09-043 and Decision 08-01-042. The Settlement Agreement effectively resolves pending disputes through a release by TURN and ORA of all claims arising from PG&E's 2006-2008 RRIM incentive awards.

The Settlement Agreement is clearly in the public interest. It resolves numerous pending applications and petitions as between the Joint Parties. The settlements of disputes benefit the public by reducing the costs and expense of litigation and conserving Commission resources.

C. The Joint Parties Complied With The Requirements Of Rule 12.1(B)

Commission Rule 12.1(b) requires parties to provide a notice of a settlement conference at least seven (7) days before a settlement is signed. On June 15, 2016, the Joint Parties notified all of the parties on the service list in this proceeding of a settlement conference and subsequently convened a telephonic settlement conference on June 23,

^{26/} Decision 10-06-031 at p. 12.

^{27/} Amended Scoping Memo, p. 4 (Jan. 22, 2016); Administrative Law Judge's Ruling Setting Prehearing Conference, p. 3 (May 6, 2016); Prehearing Conference, May 24, 2016.

2016 at 1:00 p.m. to describe and discuss the terms of the proposed Settlement Agreement. Representatives of the IOUs, NRDC, TURN and ORA participated in the settlement conference. After the settlement conference was concluded, the Settlement Agreement was finalized and executed on June 23, 2016.

D. Evidentiary Hearings Should Not Be Required

The Joint Parties respectfully request that the Commission approve the Settlement Agreement without evidentiary hearings as there are no disputed issues of material fact related to the Settlement Agreement that require hearings. In addition, hearings would prevent the expeditious approval of the Settlement Agreement. If the Commission determines that evidentiary hearings are necessary, the Joint Parties respectfully request that such hearings be held at the earliest opportunity, and concluded in a speedy and efficient manner.

The Joint Parties respectfully request the Commission expeditiously review and approve the Settlement Agreement. The Joint Parties respectfully request that the Commission approve the Settlement Agreement at its October 13, 2016 meeting so the offset will reduce PG&E's next shareholder incentive award. The Joint Parties also note that PG&E's participation in the Settlement Agreement is contingent on PG&E's ability to cease further litigation expenses relating the 2006-2008 shareholder incentive awards, other than as necessary to negotiate and obtain approval of this Settlement Agreement.^{28/} Approving the Settlement Agreement by October 13, 2016 would allow the Commission to move forward with the remaining unsettled issues relating to the 2006-2006 incentive awards for San Diego Gas & Electric Company, Southern California Gas Company, and Southern California Edison Company. It would also be consistent with the schedule proposed by the IOUs, NRDC, ORA and TURN on June 14, 2016^{29/} for resolving the remaining unsettled issues relating to the 2006-2006 incentive awards.

^{28/} Settlement Agreement, ¶ III A 9.

^{29/} The IOUs, the Natural Resources Defense Council, ORA and TURN served their proposed schedule on the service list for R.09-01-019 as directed by the June 6, 2016 direction from the assigned Administrative Law Judge.

V. CONCLUSION

As demonstrated above, the Settlement Agreement is reasonable in light of the whole record, consistent with law, and in the public interest. Thus, the Joint Parties respectfully request the Commission to approve the Settlement Agreement without modification.

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