

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company to Recover Costs Recorded in the Catastrophic Event Memorandum Account Pursuant to Public Utilities Code Section 454.9 Associated with Certain Declared Disasters Between August 2009 and March 2011 (U39E).

Application 11-09-014
(Filed September 21, 2011)

DECISION AUTHORIZING PACIFIC GAS AND ELECTRIC COMPANY TO RECOVER COSTS RECORDED IN THE CATASTROPHIC EVENT MEMORANDUM ACCOUNT RELATED TO CERTAIN DISASTERS

1. Summary

Today's decision approves a settlement agreement entered into by the Pacific Gas and Electric Company, The Division of Ratepayer Advocates of the California Public Utilities Commission, and The Utility Reform Network. As approved, the settlement agreement provides for a total Catastrophic Event Memorandum Account revenue requirement of \$26.537 million.

2. Background

On September 21, 2011, Pacific Gas and Electric Company (PG&E) filed an application requesting authorization to recover incremental disaster-related electrical costs recorded in its Catastrophic Event Memorandum Account (CEMA) and incurred in responding to seven Southern California events. Specifically, PG&E requests authorization to recover \$32.4 million in electric

revenue requirements associated with an alleged \$48.9 million in CEMA-eligible incremental costs.¹ The Division of Ratepayer Advocates of the California Public Utilities Commission (DRA) and The Utility Reform Network (TURN) filed protests to PG&E's application on October 31, 2011.

TURN notes that the vast majority of PG&E's \$48.949 million in CEMA-eligible incremental costs are classified as electrical distribution expenditures, and that over \$30 million of these costs are due to a single storm. TURN goes on to question whether PG&E's allocation of special orders to eligible counties for purposes of calculating "CEMA-eligible" costs is reasonable, whether PG&E's calculation of "incremental" costs beyond those included in rates is reasonable, whether the declarations of disaster relied upon by PG&E meet the applicable legal standards, and whether PG&E's allocation of insurance proceeds to affected counties is reasonable.

In addition to questioning PG&E's accounting and recovery methods, DRA questions whether there was an official disaster declaration for each event, whether PG&E complied with CEMA claim requirements, whether the costs at issue were proximately caused by the events PG&E identifies, and whether the total CEMA-eligible costs are reasonable and justified.

A prehearing conference was held on January 31, 2012, and a Scoping Memo issued in this proceeding on April 16, 2012. On May 1, 2012, DRA served its "Report on the Results of Examination for Pacific Gas and Electric Company's Catastrophic Event Memorandum Account Regarding Events Occurring from August 2009 to March 2011" (DRA Report). As shown in Table 1 below, DRA

¹ See Attachments A and C.

argues that: (1) Straight-time labor was wrongly included in PG&E's expense request. As a result DRA recommends a disallowance of \$4.1 million in PG&E's electric distribution expenses and \$0.8 million in PG&E customer contact center expenses; (2) Straight-time labor was wrongly included in PG&E's capital request. As a result DRA recommends a disallowance of \$5.3 million in PG&E's capital request.

Table 1
PG&E's Request versus DRA's Recommended Reductions
(In Millions of Dollars)

	PG&E Requested	DRA Recommended	Difference
Straight-Time Labor - Expense	\$4.1	\$0	\$4.1
Straight-Time Labor – Capital	\$5.3	\$0	\$5.3
Straight-Time Labor – Contract	\$0.8	\$0	\$0.8
Total	\$10.2	\$0	\$10.2

On June 14, 2012, TURN served the "Testimony of John Sugar in Pacific Gas and Electric 2011 Catastrophic Event Memorandum Account" (TURN Testimony). As shown in Table 2 below, the TURN Testimony focused on PG&E's CEMA expenses and concluded that only \$16 million of the \$22.8 million in CEMA-eligible expenses requested by PG&E is reimbursable.² TURN's recommended reduction was based on disallowing "non-incremental straight-time labor, non-incremental customer contact overtime, and non-incremental telephone service and contract expenses."

² See also Attachment B.

Table 2: Electric Distribution/Hydro Labor Expenses

<u>Event</u>	<u>TURN Recommended</u>	<u>PG&E Requested</u>
August 2009 Fires	\$52,000	\$212,000
October 2009	\$774,000	\$1,253,000
January 2010 Earthquake	\$151,000	\$231,000
January 2010 Winter Storm	\$337,000	\$536,000
November 2010	\$1,403,000	\$1,863,000
December 2010/January 2011	\$890,000	\$1,577,000
March 2011 Storm	\$6,850,000	\$11,072,000
Total Qualifying Incremental Labor:	\$10,457,000	\$16,744,000
Non-Incr. Cost: Employee Benefits:	(\$919,889)	(\$1,473,000)
Other Employee-Related Costs:	\$694,000	\$694,000
Net Elec. Dist./Hydro CEMA Labor:	\$10,231,000	\$15,965,000

Pursuant to the schedule set forth in the Scoping Memo, hearings were to be held on July 25 and 26 of 2012. By e-mail dated June 29, 2012, PG&E, on behalf of all parties to the proceeding, requested the proceeding schedule be suspended so as to provide additional time for settlement negotiations. By ruling dated July 3, 2012, the assigned Administrative Law Judge (ALJ) granted the parties' request and directed them to provide a status update approximately 30 days later. On July 23, 2012, PG&E on behalf of all parties to the proceeding requested another extension of time to continue settlement discussions. By e-mail dated July 24, 2012, the ALJ granted the further extension and directed the parties to provide another status report on or before August 24, 2012. On August 24, 2012, PG&E on behalf of all parties to the proceeding informed the presiding ALJ that a settlement in principle had been reached and a formal settlement agreement would be filed with the Commission as soon as practical. On October 31, 2012, the "All-Party Motion of Pacific Gas and Electric Company, The Division of Ratepayer Advocates, and The Utility Reform Network for Approval and Adoption of the Settlement Agreement" was filed.

3. Discussion

3.1. The CEMA Events

The CEMA events referenced in PG&E's Application are as follows:

3.1.1. The August 2009 Fires

In August 2009, multiple wild land fires started in northern and central California. Specifically:

- On August 14, 2009, a wildfire started in Yuba County. On August 20, 2009, Governor Arnold Schwarzenegger issued a State of Emergency proclamation for Yuba County.
- On August 26, 2009, a wildfire started in the Big Meadow area of Mariposa County. On August 29, 2009, Lieutenant Governor John Garamendi as Acting Governor issued a State of Emergency proclamation for Mariposa County.
- On August 27, 2009, the "Gloria" wildfire started in Monterey County. On August 28, 2009, Governor Schwarzenegger issued a State of Emergency proclamation for Monterey County.
- On August 30, 2009, the "49er" wildfire started in Placer County. On August 30, 2009, Governor Schwarzenegger issued a State of Emergency proclamation for Placer County.
- On September 15, 2009, PG&E submitted a letter to the Commission's Executive Director providing notice that costs associated with the restoration of service following the series of wildland fires in Yuba, Mariposa, Monterey, and Placer Counties were being recorded in its CEMA.

3.1.2. The October 2009 Storm

From October 12, 2009, through October 14, 2009, Santa Cruz County experienced high winds and significant rainfall in an area that had burned during the summer wildfires. The severe weather caused mudslides and flooding in and around these areas. On November 20, 2009,

Governor Schwarzenegger issued a State of Emergency proclamation for Santa Cruz County. On December 4, 2009, PG&E submitted a letter to the Commission's Executive Director providing notice that costs associated with the restoration of service following severe weather in Santa Cruz County were being recorded in its CEMA.

3.1.3. The January 2010 Earthquake

On January 9, 2010, a 6.5 magnitude earthquake struck the northern coast of California (hereafter, the Ferndale earthquake). The Ferndale earthquake damaged electric and gas facilities in PG&E's Humboldt Division, which encompasses the County of Humboldt. On January 12, 2010, Governor Schwarzenegger issued a State of Emergency proclamation for Humboldt County. On February 5, 2010, PG&E submitted a letter to the Commission's Executive Director providing notice that costs associated with the restoration of service following the Ferndale earthquake were being recorded in its CEMA.

3.1.4. The January 2010 Storms

On January 17, 2010, a series of winter storms began in California, bringing high winds and significant amounts of precipitation statewide. On January 21, 2010, Attorney General Edmund G. Brown, Jr. as Acting Governor issued a State of Emergency proclamation for Los Angeles, Orange, Riverside, San Francisco, and Siskiyou Counties. On January 27, 2010, Governor Schwarzenegger issued a State of Emergency proclamation for Calaveras and Imperial Counties. On February 12, 2010, PG&E submitted a letter to the Commission's Executive Director providing notice that costs associated with the restoration of service

following the winter storms that began on January 17, 2010, were being recorded in its CEMA.

3.1.5. The November 2010 Storm

On November 20 and 21, 2010, a series of winter storms swept through Calaveras and Tuolumne Counties, respectively, bringing high winds and significant amounts of precipitation. On November 30 and December 9, 2010, Governor Schwarzenegger issued State of Emergency proclamations for Tuolumne and Calaveras Counties, respectively. On December 30, 2010, PG&E submitted a letter to the Commission's Executive Director providing notice that costs associated with the restoration of service following a series of winter storms that began on November 20, 2010, were being recorded in its CEMA.

3.1.6. The December 2010 through January 2011 Storms

Beginning on December 18, 2010 through January 4, 2011, a series of severe winter storms swept through California, bringing high winds and significant amounts of precipitation. On December 21, 23, 24 and 30, 2010 and January 27, 2011, Governor Schwarzenegger, Lieutenant Governor Abel Maldonado as Acting Governor, and Governor Edmund G. Brown Jr. issued State of Emergency proclamations for Inyo, Kern, Kings, Los Angeles, Madera, Mariposa, Orange, Riverside, San Bernardino, San Diego, San Luis Obispo, Santa Barbara, and Tulare Counties. On December 30, 2010, January 20 and 28, and February 25, 2011, PG&E submitted letters to the Commission's Executive Director providing notice that costs associated with the restoration of service following a series of winter storms that began on December 18, 2010 were being recorded in its CEMA.

3.1.7. The March 2011 Storms

Between March 15 and 27, 2011, a series of severe winter storms swept across California, bringing high winds and excessive precipitation and flooding. On April 15, 2011, Governor Brown issued a State of Emergency proclamation for Alameda, Amador, Butte, Contra Costa, Del Norte, Humboldt, Madera, Mariposa, Mendocino, Monterey, San Luis Obispo, Santa Barbara, Santa Cruz, Sierra, Stanislaus, Sutter, Trinity, Tuolumne, and Ventura Counties. On July 13, 2011, Governor Brown issued a State of Emergency proclamation for Marin County.

On May 13, 2011, PG&E submitted a letter to the Commission's Executive Director providing notice that costs associated with the restoration of service following a series of winter storms that occurred in 19 California counties between March 14 and 27, 2011, were being recorded in its CEMA. On August 4, 2011, PG&E submitted a supplemental letter to the Commission's Executive Director providing notice that costs associated with the restoration of service following a series of winter storms that occurred in Marin County between March 14 and 27, 2011, were also being recorded in its CEMA.

3.2. The Joint Motion for Approval of Settlement Agreement

3.2.1. The Settlement Agreement

In addition to the general terms and conditions, the Settling Parties agreed to the following substantive compromises of their litigation positions as part of the Settlement Agreement:

- PG&E's CEMA-related expense request shall be reduced by \$5.0 million from \$22.844 million to \$17.844 million. This includes a \$1.331 million reduction in PG&E's CEMA-related customer care expenses.

- PG&E's CEMA-related capital request shall be reduced by \$2.5 million from \$26.104 million to \$23.604 million.
- PG&E may include the \$23.604 million above in Rate Base in its 2014 General Rate Case.
- PG&E's total CEMA-related incremental costs shall be \$41.448 million.
- In its next CEMA application PG&E must account for all labor costs at the applicable straight-time, double-time, overtime, or other pay rates.
- PG&E's 2013 CEMA revenue requirement shall be \$26.537 million.
- PG&E's CEMA revenue requirement shall be recovered but not re-litigated through base revenues in PG&E's 2014 General Rate Case until such time as the Commission determines otherwise.

3.2.2. The Reasonableness of the Settlement

The Settlement Agreement addresses all the major issues in the proceeding and approves rate recovery of a level of costs acceptable to PG&E, TURN, and DRA. Consistent with Rule 12.1(d) and Decision (D.) 95-05-042, a settlement must be reasonable before it can be adopted by the Commission.³ The Settling Parties assert that the settlement is reasonable in that it is a fair compromise of strongly held views. Consistent with this assertion, the settlement agreement represents a reasonable compromise between the litigation positions of PG&E and the two ratepayer groups, with the settlement figures falling closer to the

³ Rule 12.1(d) provides: "The Commission will not approve settlements, whether contested or uncontested, unless the settlement is reasonable in light of the whole record, consistent with law, and in the public interest." See also, D.95-05-042, CPUC2d 779, 788.

ratepayer advocates recommended disallowances than to PG&E's original request.

3.2.3. Consistency with the Law

A settlement must also be consistent with law in order for the Commission to adopt it.⁴ We see nothing to suggest, and no party claims, that a statutory provision or prior Commission decision would be contravened or compromised by the Settlement Agreement. We therefore conclude that the Settlement Agreement is consistent with the applicable law.

3.2.4. The Public Interest

Finally, the public interest and the interests of ratepayers must be considered before the Commission approves a settlement.⁵ Consistent with D.88-12-083, the settlement will spare the Commission and the parties the time, effort, and costs required to litigate the disputed issues. Moreover, this settlement represents an agreement among all parties in a proceeding wherein the majority of parties represent the public interest. Accordingly, taken as a whole, the Settlement Agreement is in the public interest.

3.3. Testimony and Exhibits

By motion dated October 31, 2012, PG&E, TURN, and DRA offered several exhibits into the record, which are received herein.

The testimony is identified as follows and is received into evidence:

⁴ *Id.*

⁵ *Id.*

- Exhibit #1: Pacific Gas and Electric Company's 2011 Catastrophic Event Memorandum Account Prepared Testimony (sponsored by David P. Bayless, Angelina M. Gibson, Vincent F. Inocencio, Nielson D. Jones, Stephen J. Koenig, and Justin M. Tomljanovic, and submitted on September 21, 2011).
- Exhibit #2: DRA's Report on the Results of Examination for Pacific Gas and Electric Company's Catastrophic Event Memorandum Account Regarding Events Occurring from August 2009 to March 2011 (sponsored by L. Mark Waterworth and Joyce Lee, and submitted on May 1, 2012).
- Exhibit #3: TURN's Testimony of John Sugar on Pacific Gas and Electric 2011 Catastrophic Event Memorandum Account (sponsored by John Sugar and dated June 14, 2012).

3.4. Conclusion

For the reasons set forth above, we find the settlement complies with Rule 12.1(d) and we will approve the Settlement Agreement affixed hereto as Attachment D.

4. Categorization and Need for Hearing

In Resolution ALJ 176-3282 dated October 6, 2011, the Commission preliminarily categorized this application Ratesetting, and preliminarily determined that hearings were necessary. Because the parties settled their dispute, no hearings are required. Therefore, the hearings determination is changed to state that no evidentiary hearings are necessary.

5. Waiver of Comment Period

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to § 311(g)(2) of the Pub. Util. Code and

Rule 14.6(c)(2) of the Commission's Rules of Practice and Procedure, the otherwise applicable 30-day period for public review and comment is waived.

6. Assignment of Proceeding

The assigned Commissioner is Mark J. Ferron and the assigned ALJ is Darwin E. Farrar.

Finding of Facts

1. On September 21, 2011, PG&E requested authorization to recover \$32.4 million in electric revenue requirements associated with an alleged \$48.9 million in CEMA-eligible incremental costs.
2. DRA and TURN filed protests to PG&E's application on October 31, 2011.
3. On August 14, 2009, a wildfire started in Yuba County.
4. On August 20, 2009, Governor Arnold Schwarzenegger issued a State of Emergency proclamation for Yuba County.
5. On August 26, 2009, a wildfire started in the Big Meadow area of Mariposa County.
6. On August 29, 2009, Lieutenant Governor John Garamendi as Acting Governor issued a State of Emergency proclamation for Mariposa County.
7. On August 27, 2009, the "Gloria" wildfire started in Monterey County.
8. On August 28, 2009, Governor Schwarzenegger issued a State of Emergency proclamation for Monterey County.
9. On August 30, 2009, the "49er" wildfire started in Placer County.
10. On August 30, 2009, Governor Schwarzenegger issued a State of Emergency proclamation for Placer County.
11. On November 20, 2009, Governor Schwarzenegger issued a State of Emergency proclamation for Santa Cruz County.

12. On January 9, 2010, a 6.5 magnitude earthquake struck the northern coast of California.

13. On January 12, 2010, Governor Schwarzenegger issued a State of Emergency proclamation for Humboldt County.

14. On January 21, 2010, Attorney General Edmund G. Brown, Jr. as Acting Governor issued a State of Emergency proclamation for Los Angeles, Orange, Riverside, San Francisco, and Siskiyou Counties.

15. On January 27, 2010, Governor Schwarzenegger issued a State of Emergency proclamation for Calaveras and Imperial Counties.

16. On November 30 and December 9, 2010, Governor Schwarzenegger issued State of Emergency proclamations for Tuolumne and Calaveras Counties, respectively.

17. On December 21, 23, 24 and 30, 2010 and January 27, 2011, Governor Schwarzenegger, Lieutenant Governor Abel Maldonado as Acting Governor, and Governor Edmund G. Brown Jr. issued State of Emergency proclamations for Inyo, Kern, Kings, Los Angeles, Madera, Mariposa, Orange, Riverside, San Bernardino, San Diego, San Luis Obispo, Santa Barbara, and Tulare Counties.

18. On April 15, 2011, Governor Brown issued a State of Emergency proclamation for Alameda, Amador, Butte, Contra Costa, Del Norte, Humboldt, Madera, Mariposa, Mendocino, Monterey, San Luis Obispo, Santa Barbara, Santa Cruz, Sierra, Stanislaus, Sutter, Trinity, Tuolumne, and Ventura Counties.

19. Between March 15 and 27, 2011, a series of severe winter storms swept across California, bringing high winds and excessive precipitation and flooding. On April 15, 2011, Governor Brown issued a State of Emergency proclamation for Alameda, Amador, Butte, Contra Costa, Del Norte, Humboldt, Madera,

Mariposa, Mendocino, Monterey, San Luis Obispo, Santa Barbara, Santa Cruz, Sierra, Stanislaus, Sutter, Trinity, Tuolumne, and Ventura Counties.

20. On July 13, 2011, Governor Brown issued a State of Emergency proclamation for Marin County.

21. DRA Report recommended disallowing \$4.9 million in expenses and \$5.3 million in capital expenditures, which would result in a revenue requirement of approximately \$25.6 million.

22. The TURN Testimony focused on PG&E's CEMA expenses and concluded that only \$16 million of the \$22.8 million in CEMA-eligible expenses requested by PG&E is reimbursable.

23. On October 31, 2012, the "All-Party Motion of Pacific Gas and Electric Company, The Division of Ratepayer Advocates, and The Utility Reform Network for Approval and Adoption of the Settlement Agreement" was filed.

24. This settlement represents an agreement among all parties in a proceeding wherein the majority of parties represent the public interest.

Conclusions of Law

1. PG&E's 2013 CEMA revenue requirement should be \$26.537 million.
2. PG&E's future CEMA applications should account for all labor costs at the applicable straight-time, double-time, overtime, or other pay rates.
3. The Settlement Agreement represents a reasonable compromise between the litigation positions of PG&E and the two ratepayer groups that are parties in this proceeding.
4. The Settlement Agreement does not contravene or compromise any statutory provision or prior Commission decision.

5. The Settlement Agreement represents a fair compromise of the parties' positions, will spare the Commission and the parties the time, effort, and costs required to litigate the disputed issues, and is in the public interest.

6. The Settlement Agreement meets the Rule 12.1(d) requirements and should be approved.

7. Hearings are not necessary.

O R D E R

IT IS ORDERED that:

1. The settlement between Pacific Gas and Electric Company, The Division of Ratepayer Advocates, and The Utility Reform Network, which is affixed hereto as Attachment A, is approved.

2. Pacific Gas and Electric Company's (PG&E) Catastrophic Event Memorandum Account (CEMA) related expense request shall be reduced by \$5.0 million from \$22.844 million to \$17.844 million. This includes a \$1.331 million reduction in PG&E's CEMA related customer care expenses.

3. Pacific Gas and Electric Company's Catastrophic Event Memorandum Account related capital request shall be reduced by \$2.5 million from \$26.104 million to \$23.604 million.

4. Pacific Gas and Electric Company may include \$23.604 million in its Catastrophic Event Memorandum Account costs in rate base in its 2014 General Rate Case.

5. Pacific Gas and Electric Company's total Catastrophic Event Memorandum Account related incremental costs shall be \$41.448 million.

6. In its next Catastrophic Event Memorandum Account application Pacific Gas and Electric Company must account for all labor costs at the applicable straight-time, double-time, overtime, or other pay rates.

7. Pacific Gas and Electric Company's \$26.537 million Catastrophic Event Memorandum Account revenue requirement shall be recovered but not re-litigated through base revenues in Pacific Gas and Electric Company's 2014 General Rate Case until such time as the Commission determines otherwise.

8. Exhibits 1, 2, and 3 are received into evidence.

9. The hearing determination is changed to no hearings necessary.

10. Application 11-09-014 is closed.

Dated _____, at San Francisco, California.

ATTACHMENT A

**PACIFIC GAS AND ELECTRIC COMPANY'S
SUMMARY OF AUGUST 2009 – JULY 2011 CEMA COSTS
(IN THOUSANDS OF DOLLARS)**

	System-Wide Costs	CEMA-Eligible Costs	CEMA-Eligible Incremental Costs
Electric Distribution			
<u>Event</u>			
August 2009 Fires	\$2,136	\$892	\$801
October 2009 Storm	27,067	2,988	2,706
January 2010 Earthquake	306	306	277
January 2010 Storms	61,144	2,592	2,394
November 2010 Storm	28,758	6,503	6,223
December 2010 Through			
January 2011 Storms	19,622	2,974	2,775
March 2011 Storms	62,798	31,945	30,996
Total Electric Distribution	\$201,831	\$48,200	\$46,173
Hydroelectric Generation			
<u>Event</u>			
January 2010 Storms	\$200	\$ -	\$ -
December 2010 Through			
January 2011 Storms	1,263	\$483	\$437
March 2011 Storms	11,846	1,095	1,008
Total Hydroelectric Generation	\$13,309	\$1,578	\$1,445
Electric Distribution and Hydroelectric Generation			
Subtotal	\$215,140	\$49,777	\$47,618
Customer Contact Center			
Total Customer Contact Center	\$10,123	\$1,331	\$1,331
Total	\$225,263	\$51,108	\$48,949

(END OF ATTACHMENT A)

ATTACHMENT B

**PACIFIC GAS AND ELECTRIC COMPANY'S
SUMMARY OF CEMA-ELIGIBLE INCREMENTAL COSTS (CAPITAL AND EXPENSES)
(IN THOUSANDS OF DOLLARS)**

	CEMA-Eligible Incremental Costs	Capital	Expense
Electric Distribution			
<u>Event</u>			
August 2009 Fires	\$801	\$591	\$210
October 2009 Storm	2,706	1,454	1,252
January 2010 Earthquake	277	60	217
January 2010 Storms	2,394	1,464	930
November 2010 Storm	6,223	3,450	2,773
December 2010 Through January 2011 Storms	2,775	1,529	1,246
March 2011 Storms	30,996	16,606	14,390
Total Electric Distribution	\$46,173	\$25,154	\$21,019
Hydroelectric Generation			
<u>Event</u>			
January 2010 Storms	\$ -	\$ -	\$ -
December 2010 Through January 2011 Storms	\$437	\$ -	\$437
March 2011 Storms	1,008	950	58
Total Hydroelectric Generation	\$1,445	\$950	\$495
Electric Distribution and Hydroelectric Generation Subtotal	\$47,618	\$26,104	\$21,514
Customer Contact Center			
Total Customer Contact Center	\$1,331	\$ -	\$1,331
Total	\$48,949	\$26,104	\$22,844

(END OF ATTACHMENT B)

ATTACHMENT C

**PACIFIC GAS AND ELECTRIC COMPANY'S
2009 – 2013 REVENUE REQUIREMENTS BY CEMA EVENT
(IN THOUSANDS OF DOLLARS)**

CEMA Event	2009	2010	2011	2012	2013	Total
August 2009 Fires	\$292	\$100	\$91	\$90	\$87	\$661
October 2009 Storm	1,335	255	232	229	220	2,271
January 2010 Earthquake		263	10	10	9	292
January 2010 Storms		1,279	230	227	223	1,959
November 2010 Storm		2,398	920	452	448	4,217
December 2010 Through January 2011 Storms		1,146	885	199	199	2,429
March 2011 Storms			17,036	1,747	1,832	20,615
Total	\$1,627	\$5,441	\$19,404	\$2,954	\$3,018	\$32,444

(END OF ATTACHMENT C)

ATTACHMENT D
BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company (U 39 E) to Recover Costs Recorded in the Catastrophic Event Memorandum Account Pursuant to Public Utilities Code Section 454.9 Associated with Certain Declared Disasters Between August 2009 and March 2011.

Application (A.)11-09-014
(filed September 21, 2011)

ALL PARTY SETTLEMENT AGREEMENT AMONG PACIFIC GAS AND ELECTRIC COMPANY, DIVISION OF RATEPAYER ADVOCATES, AND THE UTILITY REFORM NETWORK

1. INTRODUCTION

In accordance with Article 12 of the Rules of Practice and Procedure (Rule) of the California Public Utilities Commission (CPUC or Commission), the Settling Parties (as defined in section 2 below) mutually accept the terms and conditions stated herein and enter into this Settlement Agreement (Settlement) to resolve all disputed issues in this matter without the need for an evidentiary hearing before the Commission.

2. DEFINITIONS

- 2.1. The term “PG&E” means the Pacific Gas and Electric Company;
- 2.2. The term “DRA” means the Division of Ratepayer Advocates;
- 2.3. The term “TURN” means The Utility Reform Network; and
- 2.4. The term “Settling Parties” means collectively PG&E, DRA, and TURN.

3. BACKGROUND

On September 21, 2011, PG&E filed Application (A.) 11-09-014 to recover incremental electric costs recorded in its Catastrophic Event Memorandum Account (CEMA) that were incurred while responding to the following seven declared disasters (CEMA Events):

- August 2009 Fires;
- October 2009 Storm;
- January 2010 Earthquake;
- January 2010 Storms;
- November 2010 Storm;
- December 2010 thru January 2011 Storms; and
- March 2011 Storms.

PG&E's A.11-09-014 requested authorization to recover \$32.4 million in electric distribution and generation revenue requirements associated with \$48.95 million in CEMA-eligible incremental costs incurred in responding to the CEMA Events. Further, as a result of the CEMA Events, PG&E incurred damages across its service territory that cost system-wide a total of \$225.3 million. In accordance with Commission Decision (D.) 07-07-041, however, PG&E sought cost recovery only for those damages incurred in counties that were officially declared a state of emergency by a competent state or federal authority. Consistent with past CEMA applications and Commission Decisions, PG&E adjusted its CEMA-eligible costs as follows: (1) to exclude employee benefits associated with labor expense and capitalized Administrative and General (A&G) costs charged to capital orders, and (2) to reflect any insurance claim proceeds.¹

On October 31, 2011, DRA and TURN severally protested A.11-09-014. Administrative Law Judge (ALJ) Farrar held a prehearing conference on January 31, 2012, at which

¹ PG&E Appl. at 2; PG&E Testimony at 1-2 to 1-3, *PG&E*, A.11-09-014 (filed Sept. 21, 2011).

representatives for PG&E, DRA, and TURN were present. On April 16, 2012, the Scoping Memo and Ruling of Assigned Commissioner was issued, setting forth the scope of the proceeding and establishing the proceeding's schedule.

On May 1, 2012, DRA served the other Settling Parties its "Report on the Results of Examination for Pacific Gas and Electric Company's Catastrophic Event Memorandum Account Regarding Events Occurring from August 2009 to March 2011" (DRA Report). The DRA Report recommended disallowing \$4.9 million expenses and \$5.3 million in capital expenditures, which would result in a revenue requirement of approximately \$25.6 million, a 21% decrease in PG&E's proposed recovery of \$32.4 million. Basically, DRA's recommendations were based on the following: (1) straight-time labor was included in PG&E's expense request, resulting in a recommended disallowance of \$4.1 million in PG&E's electric distribution expenses and \$0.8 million in PG&E's customer contact center expenses; and (2) straight-time labor was included in PG&E's capital request, resulting in a recommended disallowance of \$5.3 million of PG&E's capital request.²

On June 14, 2012, TURN served the other Settling Parties its "Testimony of John Sugar in Pacific Gas and Electric 2011 Catastrophic Event Memorandum Account" (TURN Testimony). Mr. Sugar focused on PG&E's CEMA expenses; did not review PG&E's capital request; and concluded that \$16 million of the \$22.8 million CEMA-eligible expenses requested by PG&E are reimbursable, which was a difference of \$6.8 million.³ TURN's adjustment was based on disallowing "non-incremental straight-time labor, non-incremental customer contact overtime, and non-incremental telephone service and contract expenses."⁴

On June 29, 2012, Counsel for PG&E on behalf of the Settling Parties e-mailed ALJ Farrar to request a suspension of the proceeding's schedule to pursue settlement discussions and proposed to provide on July 25, 2012, a status report by e-mail. ALJ Farrar granted the requests by e-mail dated July 3, 2012.

² DRA Rept. 1-2.

³ TURN Testimony at 2, A.11-09-014 (Sept. 21, 2011)

⁴ *Id.*

On July 23, 2012, Counsel for PG&E on behalf of the Settling Parties requested via e-mail another extension of time to continue settlement discussions. In an e-mail dated July 24, 2012, ALJ Farrar granted the further extension and directed the parties to provide a settlement status report by e-mail on or before August 24, 2012. He also directed that if the August 24 status report does not indicate a settlement was reached, the Settling Parties must provide a joint schedule for submitting further testimonies within 30 days, hearings, and briefing.

On August 24, 2012, Counsel for PG&E on behalf of the Settling Parties informed ALJ Farrar that they had reached a settlement in principle of all disputed issues, and a formal settlement agreement would be filed with the Commission as soon as practical.

4. SETTLEMENT TERMS AND CONDITIONS

- 4.1. The Settling Parties agree that PG&E's CEMA-related expense request shall be reduced by \$5.0 million from \$22.844 to \$17.844 million. This includes a reduction in Customer Care costs of 1.331 Million.
- 4.2. The Settling Parties agree that PG&E's CEMA-related capital request shall be reduced by \$2.5 million from \$26.104 to \$23.604 million, and that PG&E may include these \$23.604 million costs in Rate Base in its 2014 General Rate Case.
- 4.3. The Settling Parties agree that PG&E's total CEMA-related incremental costs shall be \$41.448 million.
- 4.4. The Settling Parties agree that in its next CEMA application, PG&E must account for all labor costs at the applicable straight-time, double-time, overtime, or other pay rates.
- 4.5. The Settling Parties agree that PG&E's 2013 CEMA revenue requirement shall be \$26.537 million. PG&E's CEMA revenue requirement for 2014 onward shall be recovered but not re-litigated through base revenues via PG&E's General Rate Case.

5. OTHER TERMS AND CONDITIONS

- 5.1. *Commission's Primary Jurisdiction.* The Settling Parties agree that the Commission

has primary jurisdiction over any interpretation, enforcement, or remedies regarding this Settlement. None of the Settling Parties may bring an action regarding this Settlement in any State or Federal court or before another administrative agency without having first exhausted its administrative remedies at the Commission.

- 5.2. **Further Actions.** The Settling Parties acknowledge that this Settlement is subject to approval by the Commission. As soon as practicable after all the Settling Parties have signed the Settlement, the Settling Parties through their respective attorneys will prepare and file the Settlement Motion. The Settling Parties will furnish such additional information, documents, or testimonies as the Commission may require for purposes of granting the Settlement Motion and approving and adopting the Settlement.
- 5.3. **No Personal Liability.** None of the Settling Parties, or their respective employees, attorneys, or any other individual representative or agent, assumes any personal liability as a result of the Settling Parties signing this Settlement.
- 5.4. **Non-Severability.** The provisions of this Settlement are non-severable. If any of the Settling Parties fails to perform its respective obligations under this Settlement, the Settlement will be regarded as rescinded.
- 5.5. **Voluntary and Knowing Acceptance.** Each of the Settling Parties hereto acknowledges and stipulates that it is agreeing to this Settlement freely, voluntarily, and without any fraud, duress, or undue influence by any other Settling Party. Each Settling Party has read and fully understands its rights, privileges, and duties under this Settlement, including its right to discuss this Settlement with its legal counsel, which has been exercised to the extent deemed necessary.
- 5.6. **No Modification.** This Settlement constitutes the entire understanding and agreement of the Settling Parties regarding the matters set forth herein, which may not be altered, amended, or modified in any respect except in writing and with the express written and signed consent of all the Settling Parties hereto. All prior oral or written agreements, settlements, principles, negotiations, statements, representations, or

understandings whether oral or in writing and regarding any matter set forth in this Settlement, are expressly waived and have no further force or effect.

- 5.7. **No Reliance.** None of the Settling Parties has relied or presently relies on any statement, promise, or representation by any other Settling Party, whether oral or written, except as specifically set forth in this Settlement. Each Settling Party expressly assumes the risk of any mistake of law or fact made by such Settling Party or its authorized representative.
- 5.8. **Counterparts.** This Settlement may be executed in separate counterparts by the different Settling Parties hereto and all so executed will be binding and have the same effect as if all the Settling Parties had signed one and the same document. All such counterparts will be deemed to be an original and together constitute one and the same Settlement, notwithstanding that the signatures of all the Settling Parties and/or of a Settling Party's attorney or other representative do not appear on the same page of this Settlement.
- 5.9. **Binding upon Full Execution.** This Settlement will become effective and binding on each of the Settling Parties as of the date when it is fully executed. It will also be binding upon each of the Settling Parties' respective successors, subsidiaries, affiliates, representatives, agents, officers, directors, employees, and personal representatives, whether past, present, or future.
- 5.10. **Commission Adoption Not Precedential.** In accordance with Rule 12.5, the Settling Parties agree and acknowledge that unless the Commission expressly provides otherwise, Commission approval and adoption of this Settlement does not constitute approval of or precedent regarding any principle or issue of law or fact in this or any other current or future proceeding.
- 5.11. **Enforceability.** The Settling Parties agree and acknowledge that after issuance of a Commission decision approving and adopting this Settlement, the Commission may reassert jurisdiction and reopen this proceeding to enforce the terms and conditions of this Settlement.

- 5.12. **Finality.** Once fully executed by the Settling Parties and adopted and approved by a Commission Decision, this Settlement fully and finally settles any and all disputes among and between the Settling Parties in this proceeding, unless otherwise specifically provided in the Settlement.
- 5.13. **No Admission.** Nothing in this Settlement or related negotiations may be construed as an admission of any law or fact by any of the Settling Parties, or as precedential or binding on any of the Settling Parties in any other proceeding whether before the Commission, in any court, or in any other state or federal administrative agency. Further, unless expressly stated herein this Settlement does not constitute an acknowledgement, admission, or acceptance by any of the Settling Parties regarding any issue of law or fact in this matter, or the validity or invalidity of any particular method, theory, or principle of ratemaking or regulation in this or any other proceeding.
- 5.14. **Authority to Sign.** Each Settling Party executing this Settlement represents and warrants to the other Settling Parties that the individual signing this Settlement and the related Settlement Motion has the legal authority to do so on behalf of the Settling Party.
- 5.15. **Limited Admissibility.** Each Settling Party signing this Settlement agrees and acknowledges that this Settlement will be admissible in any subsequent Commission proceeding for the sole purpose of enforcing the Terms and Conditions of this Settlement.
- 5.16. **Estoppel or Waiver.** Unless expressly stated herein, the Settling Parties' execution of this Settlement is not intended to provide any of the Settling Parties in any manner a basis of estoppel or waiver in this or any other proceeding.
- 5.17. **Rescission.** If the Commission, any court, or any other state or federal administrative agency, rejects or materially alters any provision of the Settlement, it will be deemed rescinded by the Settling Parties and of no legal effect as of the date of issuance of the decision by Commission, any court, or any state or federal

administrative agency. The Settling Parties may negotiate in good faith regarding whether they want to accept the changes described above and resubmit a revised Settlement to the Commission.

6. CONCLUSION

6.1. Each of the Settling Parties has executed this Settlement as of the date appearing below their respective signature.

[signatures page follows next]

