

ALJ/RWC/dc3
#12645 ([Rev. 1](#))

PROPOSED DECISION

Agenda ID

Ratesetting
[1/16/2014 Item 18](#)

Decision PROPOSED DECISION OF ALJ CLARK (Mailed 12/12/2013)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company for Compliance Review of Electric Energy Resource Recovery Account Entries, Contract Administration, Economic Dispatch of Electric Resources, and Utility Retained Generation Fuel Procurement Activities for the Period January 1 through December 31, 2011 (U39E).

Application 12-02-010
(Filed February 15, 2012)

(See Appendix for a List of Appearances)

DECISION APPROVING SETTLEMENT IN PACIFIC GAS AND ELECTRIC COMPANY 2011 ENERGY RESOURCE RECOVERY ACCOUNT COMPLIANCE REVIEW

TABLE OF CONTENTS

Title	Page
DECISION APPROVING SETTLEMENT IN PACIFIC GAS AND ELECTRIC COMPANY 2011 ENERGY RESOURCE RECOVERY ACCOUNT COMPLIANCE REVIEW	1
1. Summary	2
2. Energy Resource Recovery Account (ERRA) Compliance Review	2
3. Procedural History	3
4. PG&E’s Request.....	8
5. Settlement Agreement	8
6. Standard of Review for Settlement Agreement.....	12
6.1. Settlement Agreement is Reasonable in Light of the Whole Record	13
6.2. Settlement Agreement is Consistent with Law	13
6.3. Settlement Agreement is in the Public Interest	14
7. Other Procedural Matters	15
7.1. Change in Determination of Need for Hearings.....	15
7.2. Admittance of Testimony and Exhibits into Record	16
7.3. Motions for Confidential Treatment	16
7.3.1. PG&E.....	16
7.3.2. ORA	17
7.4. Compliance with the Authority Granted Herein.....	18
8. Comments on Proposed Decision.....	18
9. Assignment of Proceeding	18
Findings of Fact.....	18
Conclusions of Law	20
ORDER	21

DECISION (Rev. 1)**DECISION APPROVING SETTLEMENT IN PACIFIC GAS AND ELECTRIC COMPANY 2011 ENERGY RESOURCE RECOVERY ACCOUNT COMPLIANCE REVIEW****1. Summary**

By this decision, the California Public Utilities Commission approves the settlement between Pacific Gas and Electric Company (PG&E) and the Office of Ratepayer Advocates¹, regarding PG&E's 2011 Energy Resource Recovery Account compliance application, as discussed herein.

2. Energy Resource Recovery Account (ERRA) Compliance Review

The California Public Utilities Commission (Commission) established the ERRA balancing account mechanism in Decision (D.) 02-10-062 to track fuel and purchased power billed revenues against actual recorded costs of these items. In the same decision, the Commission required regulated electric utilities in California to establish a fuel and purchased power revenue requirement forecast, a trigger mechanism (to address balances exceeding certain benchmarks), and a schedule for semiannual ERRA applications. Subsequent decisions regarding the ERRA balancing account have adopted minimum standards of conduct that regulated energy utilities must follow in performing their procurement responsibilities and have required that the Commission perform a compliance review as opposed to a reasonableness review of these items.² Broadly stated, an

¹ The Division of Ratepayer Advocates was renamed the Office of Ratepayer Advocates effective September 26, 2013, pursuant to Senate Bill No. 96 (Budget Act of 2013: public resources), which was approved by the Governor on September 26, 2013.

² See D.05-01-054, D.05-04-036, and Public Utilities (Pub. Util.) Code [§Section](#) 454.5(d)(2).

DECISION (Rev. 1)

ERRA compliance review examines whether a utility has complied with all applicable rules, regulations, opinions, and laws in implementing the most recently approved applicable Long-Term Procurement Plan (LTPP), including prudently administering contracts, ensuring least-cost dispatch, and managing other procurement activities.³ This Decision resolves Pacific Gas and Electric Company's (PG&E's) 2011 ERRA compliance application.

3. Procedural History

Pub. Util. [Code](#) § 454.5(d)(2) provides for a procurement plan that would accomplish, among others, the following objective:

Eliminate the need for after-the-fact reasonableness reviews of an electrical corporation's actions in compliance with an approved procurement plan, including resulting electricity procurement contracts, practices, and related expenses. However, the commission may establish a regulatory process to verify and ensure that each contract was administered in accordance with the terms of the contract, and contract disputes that may arise are reasonably resolved.

³ Pub. Util. Code § 454.5(d)(2).

DECISION (Rev. 1)

In D.02-10-062, the Commission implemented Section 454.5(d) by establishing ERRA balancing accounts for PG&E and other utilities, requiring them to track fuel and purchased power revenues against actual recorded costs and to establish an annual ERRA compliance review for the previous year and an annual ERRA fuel and purchased power revenue requirement for the following year. The most recent Commission decision on a PG&E ERRA compliance application was D.13-10-041, for the 2010 Record Period.

On February 15, 2012, PG&E filed Application (A.)12-02-010 for compliance review of entries to its ERRA, its administration of power purchase contracts, its economic dispatch of electric generation resources and its fuel procurement for utility-owned generation (UOG) for the record period of January 1 through December 31, 2011 (Record Period). PG&E served prepared testimony with its application.

On March 19, 2012, Office of Ratepayer Advocates (ORA) filed a Protest to the Application.

PG&E filed its Reply to ORA's Protest on March 29, 2012.

A prehearing conference was held on May 14, 2012.

DECISION (Rev. 1)

On June 18, 2012, PG&E and ORA participated in a workshop at the Commission on PG&E's responses to ORA's Master Data Request (MDR), a set of 121 questions covering areas including UOG, Least Cost Dispatch (LCD), contract administration, the ERRRA balancing account, and internal auditing. The Administrative Law Judge (ALJ) requested the workshop. PG&E provided the ALJ with PG&E's responses to the MDR and informed the ALJ that, as of that point in time, PG&E had responded to additional sets of discovery and had met with ORA on several occasions to discuss issues relating to the application.

The Assigned Commissioner's Ruling and Scoping Memo (Scoping Memo) was issued on July 16, 2012. The Scoping Memo identified the issues listed below as appropriate for this proceeding:

- Issue 1. Whether PG&E administered and managed its own generation facilities prudently.
- Issue 2. Whether Standard of Conduct 4 is the appropriate standard for measuring the reasonableness of PG&E's administration and management of its generation facilities.
- Issue 3. Whether PG&E administered and managed its qualifying facility (QF) and non-QF contracts in accordance with the contract provisions and otherwise followed Commission guidelines relating to those contracts.
- Issue 4. Whether PG&E achieved LCD of its energy resources.
- Issue 5. Whether the entries in the ERRRA balancing account for 2011 are reasonable.
- Issue 6. Whether the entries in the Renewable Portfolio Standard Cost Memorandum Account (RPSCMA) are reasonable.

DECISION (Rev. 1)

On August 2, 2012, ~~Office of Ratepayer Advocates (ORA)~~ORA filed a motion for reconsideration and modification of the scoping memo's issues by removing issue 2 (ORA Motion). PG&E filed a response to ORA's Motion on August 14, 2012. The assigned Commissioner denied ORA's Motion on September 7, 2012.

ORA served testimony on August 10, 2012. In its Testimony, ORA concluded:

- **UOG:** After reviewing PGE's filing and ORA's extensive discovery, ORA does not recommend any disallowance associated with PG&E's avoidance or mitigation of outages at its UOG.
- **QF Contract Management:** ORA does not object to PG&E's administration and management of its QF Power Purchase Agreements (PPAs) for the Record Period, and does not oppose the request for recovery of QF related expenses.
- **Non-QF Contract Management:** ORA does not object to PG&E's administration and management of its non-QF contracts for the Record Period, and does not oppose the utility's request for recovery of non-QF contract related expenses.
- **LCD:** ORA does not object to PG&E's claim that it dispatched resources in a least-cost manner consistent with relevant Commission decisions and standards.
- **Balancing accounts review:** ORA's review did not note any items of a material nature requiring adjustments to PG&E's ERRAs balancing account and ~~RPSCHA~~RPSCMA. ORA noted no exceptions to the recovery requirements adopted by the Commission for these accounts.

ORA made eight (8) recommendations in its Report. Five (5) recommendations were regarding PG&E's internal auditing, two (2) recommendations were

DECISION (Rev. 1)

regarding PG&E's LCD process and one (1) recommendation was regarding PG&E's UOG. The recommendations were:

- Internal Auditing Recommendation 1 - The Commission should order PG&E to complete a comprehensive audit of Helms Pumped Storage Hydroelectric facility (all three units) by the end of 2013.
- Internal Auditing Recommendation 2 - The Commission should order PG&E to continue to provide ORA a reasonable time, of no less than 30 days, to review and comment upon PG&E's draft audit plans, including Helms, and give due consideration to any comments provided by ORA on that plan, before final approval of any such plan.
- Internal Auditing Recommendation 3 - The Commission should order PG&E to conduct periodic internal audits of its LCD process to ensure compliance with its LCD policies and procedures.
- Internal Auditing Recommendation 4 - The Commission should order PG&E's Internal Audit Department to perform audits of the ERRA balancing account every three years to test the reliability and integrity of the account's recorded transactions and balances.
- Internal Auditing Recommendation 5 - The Commission should require PG&E to maintain a formal communication loop with ORA by having PG&E formally respond to any recommendations ORA makes so that ORA will understand how its expectations were addressed in the final audit plan.
- LCD Recommendation 1 - The Commission should order PG&E to properly document and justify modifications to schedules and/or bids for its hydro resources.
- LCD Recommendation 2 - The Commission should order PG&E to continue to review its LCD decisions,

DECISION (Rev. 1)

and document and justify all changes to its LCD models and business processes to ensure it uses the most cost effective mix of resources to serve customers.

- UOG Recommendation 1 - The Commission should order PG&E to directly address UOG outages and associated fuel costs in PG&E's ERRA compliance application and prepared testimony in all future ERRA compliance filings.

PG&E served rebuttal testimony on September 7, 2012.

On September 21, 2012, the Settling Parties notified the ALJ that they had reached a settlement in principle.

On September 24, 2012, PG&E provided a notice of a settlement conference to the service list pursuant to Rule 12.1(b). The settlement conference was conducted on Monday, October 1, 2012.

On November 1, 2012, PG&E and ORA filed and served a Joint Motion to Offer Prepared Testimony and Appendices Into Evidence and a Joint Motion to Seal a Portion of the Evidentiary Record.

Also on November 1, 2012, PG&E and ORA also filed a joint *Motion of the Pacific Gas and Electric Company and the Office of Ratepayer Advocates' for Approval of Proposed Settlement*, with the Settlement Agreement attached.

On September 12, 2013 the ALJ issued an electronic ruling directing PG&E and ORA to answer questions relating to direct auditing of the ERRA balancing account, direct auditing of PG&E's LCD mechanisms and the two Parties' differing interpretations of Standard of Conduct 4 and its applicability to UOG. PG&E and ORA filed a joint response to these questions on September 30, 2013. No reply to the joint PG&E-ORA response was filed.

DECISION (Rev. 1)**4. PG&E's Request**

PG&E states that its application sets forth PG&E's procurement-related operations for January 1 through December 31, 2011 (Record Period). PG&E requests that the Commission find that during the Record Period:

1. PG&E make appropriate entries to its ERRA;
2. PG&E complied with the recovery requirements of RPSCMA adopted by the Commission and should be allowed to recover the RPSCMA balance in this ERRA proceeding; and,
3. PG&E complied with its Conformed 2006 LTPP in the areas of fuel procurement for utility retained generation, administration and power purchase contracts, and least cost dispatch of electric generation resources.

5. Settlement Agreement

The proposed Settlement Agreement, a copy of which is attached hereto as Attachment A, resolves all scoped and contested issues, is signed by both active parties, PG&E and ORA. The key portions of the Settlement Agreement are summarized below.

With regard to the 2011 Record Period at issue in this Application, the Settling Parties have agreed that PG&E made appropriate entries in the ERRA and the ~~other~~ Renewable Portfolio Standard Memorandum Account and complied with the recovery requirements for these accounts. In addition, the Settling Parties have agreed that PG&E complied with its Conformed 2006 LTPP in the areas of: (1) fuel procurement for UOG and third-party contracts for energy and/or capacity, QF contracts, and other PPAs for which PG&E provides fuel procurement; (2) administration of PPAs; and (3) LCD of UOG and PPA resources.

DECISION (Rev. 1)

The Settlement also addresses prospective actions recommended by ORA in its Testimony⁴. Specifically, the Settling Parties have agreed that:

- **Internal Auditing:** PG&E's Internal Auditing Department shall provide ORA its draft audit plan in or about November of each year following the date this Settlement is approved by the Commission. PG&E and ORA shall meet at a mutually agreeable time to review the draft Internal Audit plan as it relates to the ERRA subject matter. After reviewing the draft audit plan, ORA may provide suggestions regarding that plan. At any time during the year, the ORA may provide such comments and suggestions on the plan because the plan can be amended during the audit year. However, ORA may not exert any management control of PG&E's internal auditing program.
- **LCD Documentation:** PG&E will continue to review its LCD decisions and document material changes to its business processes beginning in 2013 for the 2013 ERRA Compliance proceeding that covers the January 1, 2013 to December 31, 2013 record period. In addition, PG&E will document the results of its review and justify changes to its LCD models beginning in 2013 as part of its application in the 2013 ERRA Compliance proceeding.
- **Auditing the ERRA Balancing Account:** PG&E agrees to an accounting audit of the ERRA balancing account at least once every four (4) years with the first audit to commence in 2014 for the 2013 ERRA Compliance proceeding that

⁴ This Decision follows PG&E's February 28, 2013 filing of its 2012 ERRA compliance application, A.13-02-023 by several months. We note that the prospective actions identified in the Settlement Agreement, are not included in the scope of A.13-02-023 because this proceeding had not yet concluded. As this Decision approves the Settlement Agreement in full, PG&E shall begin full compliance with the prospective actions identified in the Settlement Agreement, or other LCD enhancements as indicated in this Decision, in its April 2014 filing for the 2013 ERRA compliance record period.

DECISION (Rev. 1)

covers the January 1, 2013 to December 31, 2013 record period. PG&E and ORA clarified, in their September 30, 2013 Joint Response to ALJ's Questions that "This audit will include both the balancing account itself and the internal controls applicable to the balancing account."⁵

- **Showing Regarding UOG Outages:** PG&E will address UOG outages and associated fuel costs, if applicable, in PG&E's ERRA compliance application and prepared testimony in all future ERRA compliance proceedings. PG&E and ORA clarified, in their September 30, 2013 Joint Response to ALJ's Questions that, due to the inclusion of this provision in the settlement agreement, "the dispute between the parties regarding whether Standard ~~Offer Contract~~ of Conduct 4 includes review of the operation of UOG facilities is now moot for the purposes of this proceeding."⁶
- **Helms Audit:** In its Testimony, ORA requested that PG&E conduct a comprehensive audit of Helms by the end of 2013. The Settling Parties recognize that the issue of an audit of Helms is currently before the Commission in the 2010 ERRA Compliance proceeding Application 11-02-011. The Settling Parties agree that whatever the outcome in the 2010 ERRA Compliance proceeding with regard to an audit of Helms may apply prospectively to future ERRA Compliance proceedings: In that proceeding, ORA and PG&E ultimately reached agreement on a risk-based management approach and consideration to be given to future audit recommendations by ORA.⁷

⁵ PG&E and ORA September 30, 2013 Joint Response to ALJ Questions at 2.

⁶ *Ibid.* at 5.

⁷ D.13-10-014 at 34-35.

DECISION (Rev. 1)

The settlement does not specify who should perform the audit of PG&E's ERRA balancing accounts. Consequently, we direct that the audit ordered here is to be performed by either an internal auditing division of PG&E with appropriate protections against conflicts of interest, or by an outside contractor with the requisite qualifications, selected by PG&E. PG&E shall develop an audit scope and work with the Director of ORA and appropriate Commission staff to ensure that the scope meets our expectations and standard auditing practices. The audit results shall be submitted to Commission staff, including ORA, Energy Division and the Division of Water and Audits.

The settlement does not fully resolve ORA's recommendation that the Commission should order PG&E to conduct periodic internal audits of its LCD process to ensure compliance with its LCD policies and procedures. However, separately, and since the filing of the proposed Settlement Agreement in this proceeding, in D.13-10-041 the Commission directed that the following actions be taken in order to enhance the LCD component of PG&E's ERRA Compliance Review, both for the 2010 Record Period and on an ongoing basis:

1. Within 90 days of the issuance of D.13-10-041, the Commission's Energy Division shall facilitate a workshop where PG&E and other interested parties shall develop proposed criteria that should be used to determine what constitutes least-cost dispatch compliance, and the resulting methodology PG&E should follow to assemble a showing to meet its burden to prove such compliance;
2. Within 30 days following the workshop, PG&E shall prepare a report summarizing the outcome, and file and

DECISION (Rev. 1)

serve the report in the 2010 ERRA review docket⁸ for the Commission's consideration; and

3. PG&E shall quantify the degree to which it achieved, or did not achieve, least-cost dispatch during the 2014 Record Period and include that showing in its ERRA compliance application in 2015.⁹

We note that the Commission also ordered Southern California Edison (SCE) to conduct a workshop addressing the same substantive question: the criteria, within today's market structure, for a utility to make a showing of compliance with least-cost dispatch.¹⁰ These workshops are likely to lead to the development of a methodology for PG&E and other utilities to prove their LCD compliance on the basis of forecasting and true-up activities employed today, which may comport with or advance beyond PG&E's agreed-to LCD enhancements set out in the Settlement Agreement in this proceeding.

On that basis and to the extent practicable, the specific LCD-related enhancements agreed to by PG&E in the proposed Settlement Agreement and ordered by this Decision shall be considered and incorporated into the workshop addressing least-cost dispatch compliance to be undertaken by PG&E and Energy Division pursuant to D.13-10-041. Similarly, the LCD-related enhancements ordered here shall be considered and incorporated to the extent practicable in the resulting methodology established for PG&E to assemble a showing to meet its burden to prove such compliance in its 2014 Record Period ERRA compliance

⁸ A.11-02-011.

⁹ D.13-10-041, Ordering Paragraphs 1-3.

¹⁰ D.13-11-005, Ordering Paragraph 1.

DECISION (Rev. 1)

filing. However, in the event of conflicting criteria and/or methodologies, the LCD related enhancements ordered by this Decision shall be superseded by the methodology adopted by the Commission pursuant to the undertaking required by D.13-10-041.

6. Standard of Review for Settlement Agreement

We review this settlement pursuant to Rule 12.1(d) of the Commission's Rules of Practice and Procedure (Rule), which provides that, prior to approval, the Commission must find a settlement "reasonable in light of the whole record, consistent with the law, and in the public interest." We find the Settlement Agreement meets the Rule 12.1(d) criteria, and discuss each of the three criteria below.

6.1. Settlement Agreement is Reasonable in Light of the Whole Record

The Settlement Agreement is signed by the only two active parties to this proceeding. PG&E and ORA reached a Settlement Agreement after discovery, careful analysis of the issues, and serving of testimony by PG&E and ORA. These two parties represent two distinct and affected interests, namely, PG&E, which is responsible for procuring power to serve all of its customers, and ORA, the Commission's independent ratepayer advocacy office. The record also shows that the Settlement Agreement was reached after substantial give-and-take between the parties, which occurred during settlement conferences. This give-and-take is demonstrated by the positions initially taken by the parties, and the final positions agreed upon in the Settlement Agreement. The Settlement Agreement thus represents a reasonable compromise between the principles and legal theories of the adverse parties.

DECISION (Rev. 1)

The Settlement Agreement is also consistent with Commission decisions on settlements, which express the strong public policy favoring settlement of disputes if they are fair and reasonable in light of the whole record. This policy supports many worthwhile goals, including reducing the expense of litigation, conserving scarce Commission resources, and allowing parties to reduce the risk that litigation will produce unacceptable results. Here, the Settlement Agreement resolves all disputes between ORA and PG&E, which avoids further litigation in this matter. Thus, we conclude that the Settlement Agreement is reasonable.

6.2. Settlement Agreement is Consistent with Law

The Parties believe that the terms of the Settlement Agreement comply with all applicable statutes, including the prospective actions that PG&E will take in future ERRA compliance review proceedings. Applicable statutes include, e.g., Pub. Util. Code § 451, which requires that utility rates must be just and reasonable, and Pub. Util. Code § 454, which prevents a change in public utility rates unless the Commission finds such an increase justified. We agree that the required showings under Pub. Util. Code §§ 451 and 454 have been made. Further, nothing in the Settlement Agreement contravenes statute or prior Commission decisions.

With respect to the prospective actions to be undertaken by PG&E in future ERRA proceedings, we note that the Commission has authorized similar prospective actions to those in the Settlement Agreement in earlier ERRA proceedings. For example, in D.09-12-002 and D.11-07-039, the Commission ordered PG&E to confer with and receive comments from ORA regarding an internal audit in a future ERRA compliance proceeding. In D.10-02-018, the Commission ordered San Diego Gas and Electric Company (SDG&E) to perform a

DECISION (Rev. 1)

complete audit of its ERRA every four years. In D.13-11-005 and D.13-10-041 the Commission ordered SCE and PG&E to each quantify the degree to which each achieved, or did not achieve least-cost dispatch during the 2014 Record Period and include that showing in each of their ERRA compliance applications in 2015.

6.3. Settlement Agreement is in the Public Interest

The Settlement Agreement is in the public interest and in the interest of PG&E's customers. For example, pursuant to the Settlement Agreement, PG&E has agreed to provide ORA with an annual internal audit plan in November of each year and will accept ORA's suggestions on the audit plan. Additionally, PG&E will conduct an accounting audit of its ERRA balancing account and its internal controls every four years, starting in 2014 for the 2013 record period. The results of this audit will be reviewed by ORA and the Commission in future PG&E ERRA compliance proceedings. These two components of the Settlement Agreement represent an improved level of auditing for PG&E, are consistent with that required by the Commission of other utilities, and contribute to protection of PG&E's customers.

Finally, the Settlement Agreement resolves all scoped issues in the current application.

Approval of the Settlement Agreement is thus in the public interest because it avoids the cost of further litigation, and reduces the use of valuable resources of the Commission and the parties. We find that the evidentiary record of A.12-02-010 contains sufficient information for us to determine the reasonableness of the Settlement Agreement and for us to discharge any future

DECISION (Rev. 1)

regulatory obligations with respect to this matter. For all these reasons, we approve the Settlement Agreement as proposed.

7. Other Procedural Matters**7.1. Change in Determination of Need for Hearings**

In Resolution ALJ 176-3290, dated March 8, 2012, the Commission preliminarily categorized A.12-02-010 as ratesetting, and preliminarily determined that hearings were necessary. In the Scoping Memo, the assigned Commissioner scheduled evidentiary hearings, though eventually it was determined that hearings were not necessary. Given that no hearings were held in the current proceeding, we change our preliminary and Scoping Memo determination regarding hearings, to no hearings necessary.

7.2. Admittance of Testimony and Exhibits into Record

Since evidentiary hearings were not held in A.12-02-010, there was no opportunity to enter prepared testimony and exhibits into the record. In order to fairly assess the record, it is necessary to include all testimony and exhibits served by PG&E and ORA.

In their joint motion of November 1, 2012, PG&E and ORA requested, pursuant to Rule 13.8, that the Commission receive the public and confidential versions of its Exhibits PG&E-1, -2, -3, -4 and ORA-1 into the record of A.12-02-010. Therefore, we identify the public and confidential versions of

DECISION (Rev. 1)

PG&E's supporting testimony to its Application as Exhibits PG&E-1, -2, -3;¹¹ and its rebuttal testimony as Exhibit PG&E-4¹² and ORA testimony and recommendations as Exhibits ORA-1. PG&E and ORA's testimony are relevant to our assessment of the proposals put forth and the Settlement Agreement, and we admit into evidence the public and confidential versions of PG&E's Exhibits PG&E-1 through PG&E-4 and ORA's Exhibit ORA-1.

7.3. Motions for Confidential Treatment**7.3.1. PG&E**

Pursuant to D.06-06-066, General Order (GO) 66-C, and Rule 11.5, PG&E requests leave to seal portions of the evidentiary record and to treat as confidential its Exhibit PG&E-1C. PG&E states that these documents contain information that is market-sensitive, and listed in D.06-06-066 as data that should be treated confidentially.

Rule 11.5 addresses sealing all or part of an evidentiary record; and D.06-06-066 addresses our practices regarding confidential information, such as electric procurement data (that may be market-sensitive) submitted to the Commission.

A similar request was granted in PG&E's last ERRA recovery decision, D.13-10-041. We agree that the information contained in these exhibits is market-sensitive electric procurement-related information. Therefore, pursuant

¹¹ Exhibit PG&E-1 - "Prepared Testimony" and attached appendix; Exhibit PG&E 2 - "Testimony Errata, Chapter 9"; Exhibit PG&E-3 - "Testimony Errata, Chapter 3."

¹² Exhibit PG&E-4 - "PG&E Rebuttal Testimony."

DECISION (Rev. 1)

to D.06-06-066 and Rule 11.5, we grant PG&E's request to treat as confidential and seal those portions of the evidentiary record consisting of PG&E's Exhibit PG&E-1C as detailed in the ordering paragraphs of this decision. The confidential version of each of these exhibits will be denoted by a "C" after the number of the exhibit. As the Application without the associated testimony does not contain confidential information, we do not grant it confidential treatment and do not seal it.

7.3.2. ORA

On August 10, 2012, ORA served public and confidential versions of its Testimony and Recommendations to the Commission after reviewing PG&E's ERRR Compliance application. ORA's Testimony and Recommendations contain information identified by PG&E as confidential per D.06-06-066 and GO 66-C, and that is therefore not subject to public disclosure.

On November 1, 2012, ORA filed a Motion to Seal the Evidentiary Record seeking an order to seal the parts of the evidentiary record containing information identified by PG&E as confidential per D.06-06-066 and GO 66-C and therefore not subject to public disclosure.

Rule 11.5 addresses sealing all or part of an evidentiary record; and D.06-06-066 addresses our practices regarding confidential information, such as electric procurement data (that may be market sensitive) submitted to the Commission. Since ORA's request addresses information that we have deemed confidential in Section 4.3.1 above and in compliance with applicable rules, general orders, and decisions, we grant ORA's request to seal the confidential version of its Exhibit ORA-1C.

DECISION (Rev. 1)**7.4. Compliance with the Authority Granted Herein**

~~In order to implement the authority granted herein, PG&E must submit a Tier 1 Advice Letter within 30 days of the date of this decision. The tariff sheets submitted in these Advice Letters shall be effective on or after the date submitted subject to Energy Division determining they are in compliance with this decision.~~

8. Comments on Proposed Decision

The proposed decision of the ALJ in this matter was mailed to the parties in accordance with Pub. Util. Code § 311 and comments were allowed under Rule 14.3. Opening comments were filed on January 7, 2014 by PG&E. ~~Reply~~No reply comments were filed on January 13, 2014. Comments have been incorporated herein by removing the requirement for PG&E to implement this decision via advice letter filing.

9. Assignment of Proceeding

Michel P. Florio is the assigned Commissioner and Richard W. Clark is the assigned ALJ in this proceeding.

Findings of Fact

1. On November 1, 2012, PG&E and ORA filed a *Joint Motion of the Pacific Gas and Electric Company and the Office of Ratepayer Advocates' for Approval of Proposed Settlement* in this proceeding, with the Settlement Agreement attached.

2. The Settlement Agreement resolves all scoped and contested issues.

3. The Commission has authorized similar prospective actions to those in the Settlement Agreement in previous ERRA proceedings. In D.09-12-002 and D.11-07-039, the Commission ordered PG&E to confer with and receive comments from ORA regarding an internal audit in a future ERRA compliance proceeding. In D.10-02-018, the Commission ordered SDG&E to perform a complete audit of

DECISION (Rev. 1)

its ERRAs every four years. In D.13-11-005 and D.13-10-041, the Commission ordered SCE and PG&E respectively to quantify the degree to which each achieved, or did not achieve, least-cost dispatch during the 2014 Record Period and include that showing in each of their ERRA compliance applications in 2015.

4. The evidentiary record of A.12-02-010, including the Settlement Agreement, contains sufficient information for us to determine the reasonableness of the Settlement Agreement and for us to discharge any future regulatory obligations with respect to this matter.

5. Rule 12.1(d) provides that, prior to approval, the Commission must find a settlement “reasonable in light of the whole record, consistent with the law, and in the public interest.”

6. PG&E and ORA reached a Settlement Agreement after discovery, careful analysis of the issues, serving of testimony by PG&E and ORA, and substantial give-and-take between the parties which occurred during settlement conferences.

7. The settling parties are the only parties in this proceeding.

8. In Resolution ALJ 176-3290, dated March 8, 2012, the Commission preliminarily categorized A.12-02-010 as ratesetting, and preliminarily determined that hearings were necessary.

9. In the Scoping Memo, the assigned Commissioner scheduled evidentiary hearings, though eventually it was determined that hearings were not necessary.

10. Rule 11.5 addresses sealing all or part of an evidentiary record.

11. D.06-06-066 addresses our practices regarding confidential information, such as electric procurement data (that may be market sensitive) submitted to the Commission.

DECISION (Rev. 1)

12. Rule 11.4 addresses a request to seal documents that have been filed.

Conclusions of Law

1. The Joint Motion and Settlement Agreement proposed by PG&E and ORA should be approved.

2. Approval of the Settlement Agreement is reasonable in light of the record, is consistent with law, is in the public interest, and is in the interest of PG&E's customers.

3. The Settlement Agreement is consistent with Commission decisions on settlements, which express the strong public policy favoring settlement of disputes if they are fair and reasonable in light of the whole record.

4. The terms of the Settlement Agreement comply with all applicable statutes, and do not contravene statute or prior Commission decisions.

5. Approval of the Settlement Agreement avoids the cost of further litigation, and reduces the use of valuable resources of the Commission and the parties.

6. All rulings made by the assigned Commissioner and/or the assigned ALJ should be affirmed.

7. The ~~Least Cost Dispatch~~ (LCD) related enhancements ordered here shall be considered and incorporated to the extent practicable in the resulting methodology established for PG&E to assemble a showing to meet its burden to prove such compliance in its 2014 Record Period ERRRA compliance filing. However, in the event of conflicting criteria and/or methodologies, the LCD related enhancements ordered by this Decision shall be superseded by the methodology adopted by the Commission pursuant to the undertaking required by D.13-10-041.

DECISION (Rev. 1)

~~8. In order to implement the authority granted herein, PG&E should submit a Tier 1 Advice Letter within 30 days of the date of this decision.~~

8. ~~9.~~ The prepared testimony of ORA and PG&E should be identified and received into evidence.

9. ~~10.~~ PG&E's request to seal the confidential versions of its testimony should be granted, as detailed herein.

10. ~~11.~~ ORA's request to seal the confidential version of its protest and testimony should be granted, as detailed herein.

O R D E R

IT IS ORDERED that:

1. The *Settlement Agreement Between the Pacific Gas and Electric Company and the Office of Ratepayer Advocates* attached to the *Joint Motion of the Pacific Gas and Electric Company and the Office of Ratepayer Advocates' for Approval of Proposed Settlement* is adopted.

2. The determination in Resolution Administrative Law Judge 176-3290 and the Assigned Commissioner's Scoping Memo and Ruling that hearings were necessary, is revised to hearings are not required.

3. All rulings made by the assigned Commissioner and/or the assigned Administrative Law Judge are affirmed.

4. ~~Pacific Gas and Electric Company shall submit a Tier 1 Advice Letter within 30 days of the date of this decision to implement the terms of the Settlement Agreement Between Pacific Gas and Electric Company and the~~ The audit of the Energy Resource Recovery Account Balancing Account shall be performed by either an internal auditing division of Pacific Gas & Electric Company (PG&E) with

DECISION (Rev. 1)

appropriate protections against conflicts of interest, or by an outside contractor with the requisite qualifications, selected by PG&E. PG&E shall develop an audit scope and work with the Director of Office of Ratepayer Advocates.~~The tariffs submitted in the Advice Letter shall become effective on or after the date submitted subject~~ (ORA) and appropriate Commission staff to ensure that the scope meets our expectations and standard auditing practices. The audit shall be submitted to Commission staff, including ORA, Energy Division ~~determining the tariffs are in compliance with this decision~~ and the Division of Water and Audits.

5. The Least Cost Dispatch (LCD) related enhancements ordered here shall be considered and incorporated to the extent practicable in the resulting methodology established for ~~PG&E~~ Pacific Gas & Electric Company to assemble a showing to meet its burden to prove such compliance in its 2014 Record Period ~~ERRA~~ Energy Resource Recovery Account compliance filing. However, in the event of conflicting criteria and/or methodologies, the LCD related enhancements ordered by this Decision shall be superseded by the methodology adopted by the Commission pursuant to the undertaking required by Decision 13-10-041.

6. The results of the accounting audit of the Energy Resource Recovery Account (ERRA) balancing account and internal controls to be conducted by Pacific Gas and Electric Company every four years, beginning in 2014, shall be included in each ERRA compliance application that immediately follows the completion of the audit.

7. The public and confidential versions of the prepared testimony of Pacific Gas and Electric Company (PG&E), specifically Exhibits PG&E-1 through -4, and PG&E-1C, are identified and received into evidence.

DECISION (Rev. 1)

8. The public and confidential versions of the prepared testimony of the Office of Ratepayer Advocates (ORA), specifically Exhibits ORA-1 and ORA-1C, are identified and received into evidence.

9. Pacific Gas and Electric Company's (PG&E) request to seal the confidential versions of its testimony, in particular, Exhibit PG&E-1C, is granted. The information will remain sealed and confidential for a period of three years after the date of this order. During this three-year period, this information may not be viewed by any person other than Commission Staff, the assigned Commissioner, the assigned Administrative Law Judge (ALJ), the Assistant Chief ALJ, or the Chief ALJ, except as agreed to in writing by PG&E, or as ordered by a court of competent jurisdiction. If PG&E believes that it is necessary for this information to remain under seal for longer than three years, PG&E may file a new motion at least 30 days before the expiration of this limited protective order.

10. The Office of Ratepayer Advocate's (ORA) request to seal the confidential version of its protest and testimony (Exhibit ORA-1) is granted. The information will remain sealed and confidential for a period of three years after the date of this order. During this three-year period, this information may not be viewed by any person other than Commission Staff, the assigned Commissioner, the assigned Administrative Law Judge (ALJ), the Assistant Chief ALJ, or the Chief ALJ, except as agreed to in writing by ORA, or as ordered by a court of competent jurisdiction. If ORA believes that it is necessary for this information to remain under seal for longer than three years, ORA may file a new motion at least 30 days before the expiration of this limited protective order.

11. Application 12-02-010 is closed.

This order is effective today.

DECISION (Rev. 1)

Dated _____, at San Francisco, California.

APPENDIX

***** SERVICE LIST *****
Last Updated on 12-DEC-2013 by: JVG
A1202010 LIST

***** PARTIES *****

Robert Haga
Legal Division
RM. 5137
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-2538
rwh@cpuc.ca.gov
For: ORA (formerly DRA)

Charles R. Middlekauff
Attorney
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE STREET, B30A-2467
SAN FRANCISCO CA 94105
(415) 973-6971
CRMd@pge.com
For: Pacific Gas & Electric Company

***** STATE EMPLOYEE *****

Claire Eustace
Project Coordinator - Ora
CALIFORNIA PUBLIC UTILITIES COMMISSION
EMAIL ONLY
EMAIL ONLY CA 00000
(415) 703-1889
CCE@cpuc.ca.gov

Michael Yeo
CALIFORNIA PUBLIC UTILITIES COMMISSION
EMAIL ONLY
EMAIL ONLY CA 00000
(415) 703-5248
MEY@cpuc.ca.gov

Richard Clark
Administrative Law Judge Division
RM. 5109
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 355-5506
rwc@cpuc.ca.gov

Luisa Elkins
Legal Division
RM. 4107
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-1219
le1@cpuc.ca.gov

Michele Kito
Energy Division
AREA 4-A
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-2197
mk1@cpuc.ca.gov

Donald J. Lafrenz
Energy Division
AREA 4-A
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-1063
dlf@cpuc.ca.gov

Matt Miley
Legal Division
RM. 5135
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-3066
mm2@cpuc.ca.gov

Ke Hao Ouyang
Safety and Enforcement Division
AREA 2-E
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-1235
kho@cpuc.ca.gov

Rachel Ann Peterson
Executive Division
RM. 5202
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-2872
rp1@cpuc.ca.gov

Mitchell Shapson
Legal Division
RM. 4107
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-2727
sha@cpuc.ca.gov

***** INFORMATION ONLY *****

***** SERVICE LIST *****
Last Updated on 12-DEC-2013 by: JVG
A1202010 LIST

Nora Sheriff
ALCANTAR & KAHL
33 NEW MONTGOMERY ST., STE. 1850
SAN FRANCISCO CA 94105
(415) 421-4143
nes@a-klaw.com

Karen Terranova
ALCANTAR & KAHL, LLP
33 NEW MONTGOMERY STREET, SUITE 1850
SAN FRANCISCO CA 94105
(415) 421-4143
filings@a-klaw.com

MRW & ASSOCIATES, LLC
EMAIL ONLY
EMAIL ONLY CA 00000
(510) 834-1999
mrw@mrwassoc.com

Case Coordination
PACIFIC GAS AND ELECTRIC COMPANY
EMAIL ONLY
EMAIL ONLY CA 00000
(415) 973-2776
RegRelCPUCcases@pge.com

Cory M. Mason
Attorney
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE STREET, MC B30A
SAN FRANCISCO CA 94105-1814
(415) 973-2320
cmmw@pge.com

Donna Barry
Energy Proceedings
PACIFIC GAS AND ELECTRIC COMPANY
PO BOX 770000, MC B9A
SAN FRANCISCO CA 94120-7442
(415) 973-5707
DLBF@pge.com

Thomas Jarman
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE ST., MAIL CODE B9A
SAN FRANCISCO CA 94105
TAJ8@pge.com

Shirley Amrany
Regulatory Case Admin.
SAN DIEGO GAS & ELECTRIC COMPANY
8330 CENTURY PARK COURT, CP-32D
SAN DIEGO CA 92123
(858) 650-6136
SAmrany@SempraUtilities.com

Case Administration
SOUTHERN CALIFORNIA EDISON COMPANY
2244 WALNUT GROVE AVE. / PO BOX 800
ROSEMEAD CA 91770
(626) 302-4875
case.admin@sce.com

Russell A. Archer
Sr. Attorney
SOUTHERN CALIFORNIA EDISON COMPANY
2244 WALNUT GROVE AVE. / PO BOX 800
ROSEMEAD CA 91770
(626) 302-2865
Russell.Archer@SCE.com

Jamie K. York
Regulatory Case Admin.
SAN DIEGO GAS & ELECTRIC COMPANY
8330 CENTURY PARK COURT, CP32D
SAN DIEGO CA 92123
(858) 654-1739
JYork@SempraUtilities.com

******* SERVICE LIST *******
Last Updated on 12-DEC-2013 by: JVG
A1202010 LIST

(END OF APPENDIX)

Document comparison by Workshare Compare on Tuesday, January 14, 2014
2:40:27 PM

Input:	
Document 1 ID	file:///d:/DC3/Desktop/REVISIONS/A1202010 Clark Comment Dec. 12-12-13.docx
Description	A1202010 Clark Comment Dec. 12-12-13
Document 2 ID	file:///d:/DC3/Desktop/Emails/Clark Agenda Dec. Approving Settlement in PGE 2011 Energy Resource Recovery Acct Compliance Review.docx
Description	Clark Agenda Dec. Approving Settlement in PGE 2011 Energy Resource Recovery Acct Compliance Review
Rendering set	Standard

Legend:	
Insertion	
Deletion	
Moved from	
<u>Moved to</u>	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	31
Deletions	24
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	55