

Decision 12-05-006 May 10, 2012

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Consider the Annual Revenue Requirement Determination of the California Department of Water Resources and related issues.

Rulemaking 11-03-006
(Filed March 10, 2011)

**DECISION ADOPTING SETTLEMENT ON ALLOCATION OF THE
CONTINENTAL FORGE SETTLEMENT DISCOUNT AND THE SEMPRA
LONG-TERM CONTRACT REFUND**

Summary

By this decision, the Commission approves a Settlement Agreement (Attachment A) entered into by Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), and San Diego Gas & Electric Company (SDG&E). The Settlement Agreement which we adopt herein includes: 1) a revised allocation of the Continental Forge Settlement Discount for the period from September 2010 through October 2011; and 2) use of the Fixed Percentage Allocators (consistent with the allocation method adopted in Decision 11-12-005), to allocate the Sempra Long-Term Contract Refund and any accrued interest thereon. We also adopt the California Department of Water Resources (CDWR) proposed amortization of the funds resolved in the Settlement Agreement (Attachment B), with a start date of June 2012. The Settlement Agreement does not change CDWR's authorized 2012 Revenue Requirement Determination, but instead is a redistribution of previously authorized amounts allocated among PG&E, SCE, and SDG&E.

2. Background

The California Department of Water Resources (CDWR) submitted its 2012 revenue requirement determination to the Commission on August 4, 2011. This submission consisted of the August 4, 2011 *Determination of Revenue Requirements for the Period January 1, 2012 Through December 31, 2012* and *Notice of Determination of Revenue Requirements*, as well as an August 4, 2011 memorandum from John Pacheco of CDWR to President Michael R. Peevey of the Commission. The memorandum notified the Commission of CDWR's 2012 revenue requirement determination, and requested "that the Commission calculate, revise and impose Bond Charges in accordance with Article V of the Rate Agreement..." and "that the Commission calculates, revise and impose Power Charges in accordance with Article VI of the Rate Agreement..."¹

On August 25, 2011, Pacific Gas and Electric Company (PG&E) and Southern California Edison Company (SCE) filed Prehearing Conference Statements regarding issues of interest to each of them. On September 1, 2011, the Commission held a prehearing conference (PHC) to discuss the processing of CDWR's 2012 revenue requirement determination. In addition to the determination of a 2012 revenue requirement, parties raised other related issues in their PHC statements and at the PHC, including the following issues regarding two separate allocations of funds:

¹ The terms "Bond Charge" and "Power Charges" are defined in Article I of the Rate Agreement that was adopted in Decision (D.) 02-02-051.

1. **Sempra Long-Term (LT) Contract Refund:**² SCE raised the issue of how to allocate approximately \$130 million of the funds paid to CDWR by Sempra for the 2010 global settlement, which resolved the 2000-2001 California Energy Crisis claims by the California Parties³ against RBS Sempra Commodities (Sempra).⁴ In particular, the Sempra Settlement resolved claims related to the long-term energy delivery contract between Sempra Generation and CDWR, which was administered by SCE. SCE proposes that these funds should be allocated to the California Parties using a two-step process. The first step of SCE's proposal would be to determine a rate (dollar amount) per megawatt-hour (MWh) contracted, by taking the total benefit amount (\$130 million) and dividing by the total number of MWhs stipulated throughout the life of the contract. The next step of SCE's proposal would be to determine the allocation of MWhs across the contract delivery period, which is complicated by differing cost allocation methodologies during different timeframes of the contract.⁵
2. **Continental Forge Settlement (CFS) Discount:**⁶ PG&E and SCE each raise the issue of how to allocate the discount funds addressed by the Sempra Continental Forge class

² See *Public Utilities Commission of the State of California v Sellers of Long-Term Contracts to the California Department of Water Resources, etc.*, FERC Docket Nos. EL02-60-009, EL02-62-008; and Order Approving Settlement, 133 FERC ¶61,245, December 21, 2010.

³ California Attorney General, CDWR (through the California Energy Resources Scheduling), the Commission, PG&E, SCE, and San Diego Gas & Electric Company (SDG&E).

⁴ For the remainder of this decision, this settlement is referred to as the Sempra settlement.

⁵ There are four time periods associated with the duration of the contract, which started in May 2001. For each time period, SCE believes refunds should be allocated among the three investor-owned utilities (IOUs) according to how costs were allocated.

⁶ The Settlement Agreement was approved on July 20, 2006 by the Superior Court of the State of California, County of San Diego, J.C.C.P. Nos. 4221, 4224, 4226, and 4228.

action settlement (Continental Forge funds) of approximately \$269 million. These funds represent amounts unrelated to the California Energy Crisis Claims concerning the Sempra contract discussed in Item 1 above. PG&E is concerned that CDWR has received but not distributed the Continental Forge funds for the period 2006-2011. PG&E proposes that these Continental Forge funds should be distributed to the IOU using the permanent allocation percentages authorized in D.08-11-056. SCE proposes that the parties meet to discuss how to resolve the allocation of Continental Forge funds.

Pursuant to the assigned Administrative Law Judge's (ALJ) ruling dated October 18, 2011, a workshop was scheduled for November 21, 2011 to begin the process of resolving the three issues listed above, involving the allocation of the Sempra Settlement funds and the Continental Forge funds.

In D.11-12-005, the Commission allocated the CFS Discount to SCE on an interim basis, using the cost follows contract allocation methodology⁷ for the September 2010 through August 2011 timeframe and the Sempra LT Contract Refund using Fixed Percentage Allocators.⁸ In D.11-12-005, we deferred final determination of the allocation of the CFS Discount and Sempra LT Contract Refund to a subsequent decision.⁹

⁷ In D.08-11-056, the Commission adopted the Cost Follows Contract (CFC) allocation methodology to allocate all costs associated with CDWR contracts operated by an IOU to the ratepayers of that IOU (previously, the CFC method was used only to allocate avoidable/variable costs). CDWR contract costs that are incurred pursuant to a particular contract are wholly allocated to the utility managing that contract.

⁸ In D.05-06-060, the Commission adopted a fixed percentage allocation methodology to allocate unavoidable fixed CDWR costs to the utilities as follows: PG&E 42.2%; SCE 47.5%; and SDG&E 10.3%.

⁹ See D.11-12-005 at Ordering Paragraph 8.

On January 13, 2012, PG&E, SCE, and SDG&E¹⁰ jointly filed a status report on their progress towards settling these allocation issues, and on February 1, 2012, the Joint Parties noticed a formal settlement meeting to be held on February 8, 2012.

On February 10, 2012, the Joint Parties filed *Motion for Approval of Settlement Agreement by and Between Pacific Gas and Electric Company (U39E), Southern California Edison Company (U338E), and San Diego Gas & Electric Company (U902M)* (Motion).¹¹ No protests to this motion were filed.

On February 15, 2012, the CDWR sent, via electronic mail, a memorandum to all five Commissioners and the assigned ALJ regarding the February 10, 2012 joint motion, and electronically served the memorandum on the service list in the current rulemaking (see Attachment B). CDWR provided a table showing four different scenarios for amortizing the Settlement Agreement dollars through the end of the 2012 calendar year. Each scenario allows for a different effective date to provide the Commission with alternative amortization schedules, depending on how long it takes to issue a final decision regarding the Settlement Agreement.

3. The Settlement Agreement

The proposed Settlement Agreement resolves the remaining issues raised in the current proceeding regarding allocation of funds resulting from the CFS Discount and the Sempra LT Contract Refund. No protests were filed in response to the Motion. Comments were filed by PG&E in support of the motion

¹⁰ For the remainder of this decision, PG&E, SCE, and SDG&E will be referred to collectively as "Joint Parties."

¹¹ The settlement attached to this motion is referred to herein as Settlement Agreement.

and Settlement Agreement, stating that it had verified CDWR's computations regarding implementation of the Settlement Agreement. Rather than summarize every term of the Settlement Agreement attached to the Motion, we summarize the key portions of the Settlement Agreement as follows.

In accordance with Ordering Paragraph 8 of D.11-12-005, we required that items 1 and 2 listed in Section 2 above would be addressed in a subsequent decision. The Joint Parties met and conferred, and ultimately reached a settlement regarding allocation of the CFS Discount for the period from September 2010 through October 2011, and the Sempra LT Contract Refund, and any accrued interest thereon.

The Settlement Agreement addresses the allocation of the CFS Discount and the Sempra LT Contract Refund in CDWR's 2012 revenue requirement. Additionally, because of the way CDWR prepares its annual revenue requirement,¹² some of these funds will be included in CDWR's 2013 revenue requirement instead of CDWR's 2012 revenue requirement. The specific allocation agreed upon by the Settling Parties is as follows:

1. The CFS Discount provided by Sempra to CDWR for the period between September 2010 through August 2011 (which is \$94,837,570.79), will be allocated as follows: \$51,297,435.30 for PG&E's customers, \$35,176,069.52 for SCE's customers, and \$8,364,065.96 for SDG&E's customers.
2. The CFS Discount provided by Sempra to CDWR for the period September 2011 through October 2011 will be allocated in accordance with the Fixed Percentage Allocators. The Joint Parties acknowledge that the CFS Discount for this period will equal \$15,825,086.89,

¹² See D.11-12-005 at 16-17, Ordering Paragraph 8 note 4 text.

which is the amount actually received by CDWR. CDWR plans to include this actual amount in its 2013 Revenue Requirement determination.

3. The Sempra LT Contract Refund and any interest accrued thereon will be allocated in accordance with the Fixed Percentage Allocators (consistent with the allocation adopted in D.11-12-005).
4. The Joint Parties acknowledge that CDWR has already remitted some of the CFS Discount in accordance with D.11-12-005. Accordingly, as of the effective date of the Settlement Agreement adopted herein, and through the end of 2012 (the Remaining Period), each Joint Party will receive the difference between the amount of the CFS Discount to which such Joint Party is entitled to, pursuant to the Settlement Agreement, adopted herein minus the amount such Joint Party has received as of the effective date, amortized over the Remaining Period. The Joint Parties will work together to seek Commission modification of the 2012 revenue requirement allocation and remittance rates to be implemented for the Remaining Period, within the current rulemaking.

The following table summarizes the proposed settlement of the subject allocations:

**Settled Allocation of the
CFS Discount and Sempra Long-Term Contract Refund**

CFS Discount Period	PG&E	SCE	SDG&E	Total
August 2008 to December 2008*	\$12,872,566.20	\$14,489,262.91	\$3,141,882.27	\$30,503,711.38
January 2009 to August 2010**	\$0.00	\$158,027,897.70	\$0.00	\$158,027,897.70
September 2010 to August 2011***	\$51,297,435.30	\$35,176,069.52	\$8,364,065.96	\$94,837,570.79
September 2011 to October 2011*	\$6,678,186.67	\$7,516,916.27	\$1,629,983.95	\$15,825,086.89
Total CFS Discount	\$70,848,188.17	\$215,210,146.40	\$13,135,932.18	\$299,194,266.76
Sempra LT Contract Refund*	\$54,914,148.15	\$61,810,948.75	\$13,403,216.25	\$130,128,313.15
Total Settlement Allocation	\$125,762,336.32	\$277,021,095.15	\$26,539,148.43	\$429,322,579.91¹³

Notes:

- * Allocated using the Fixed Percentage Allocators (PG&E 42.2%, SCE 47.5%, and SDG&E 10.3%).
- ** Allocated using CFC Allocation (SCE 100%).
- *** Negotiated allocation pursuant to settlement discussions.

¹³ Approximately \$399 million of the \$429 million in total discounts and refunds remain to be allocated to PG&E, SCE, and SDG&E. Of the approximately \$429 million in funds to be allocated through the Settlement Agreement, approximately \$30 million has already been remitted to PG&E, SCE, and SDG&E, leaving approximately \$399 million to be allocated.

In the Settlement Agreement, the Joint Parties state that the CFS Discount amount of \$15,882,854.73 for the period September 2011 to October 2011 is approximate. In their Opening Comments to the proposed decision (filed subsequent to the Settlement Agreement), the Joint Parties provide an updated figure for the September 2011 to October 2011 CFS Discount of \$15,825,086.89 (see table above) as well as an updated allocation of those funds. Therefore, when addressing the Settlement Agreement in Attachment A to this decision, we substitute the Joint Parties revised figure of \$15,825,086.89 and associated allocation, at pages four and five of the Settlement Agreement for the original figure of \$15,882,854.73.

4. Discussion

4.1. Standard of Review

We review this uncontested settlement pursuant to Rule 12.1(d) of the Commissions Rules of Practice and Procedure,¹⁴ 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.

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

Initially, we note the circumstances of the Settlement Agreement, particularly its endorsement by the parties affected by the issues addressed in the Settlement Agreement, and that no parties protested or commented on the Settlement Agreement. In addition to CDWR’s 2012 Revenue Requirement

determination,¹⁵ the Joint Parties filed individual prehearing conference statements and briefs, and participated in discussions at the workshop. Thus, the Joint Parties reached a Settlement Agreement was reached after careful analysis of the issues by each party representing a broad array of affected interests. The record also shows that the Settlement Agreement was reached after substantial give-and-take between the parties which occurred at the workshop and during settlement conferences. This give-and-take is demonstrated by the positions initially taken by parties and the final positions agreed upon in the Settlement Agreement.

The Settlement Agreement does not change CDWR's authorized 2012 Revenue Requirement Determination, but instead is a redistribution of amounts allocated among PG&E, SCE, and SDG&E. The Settlement Agreement results in a reasonable compromise between the otherwise irreconcilable principles and legal theories of the adverse parties and, further, results in the distribution of the amounts in controversy among the ratepayers of all of the utilities in a manner roughly approximate to the differences between their original positions.

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.¹⁶ This policy supports many worthwhile goals, including reducing the

¹⁴ All references are to the Commission's Rules of Practice and Procedure, unless otherwise noted.

¹⁵ See Attachment B to Administrative Law Judge's Ruling Setting a Prehearing Conference and Inviting Prehearing Conference Statement on the Allocation Issues, dated August 15, 2011.

¹⁶ See D.05-03-022 at 9.

expense of litigation, conserving scarce Commission resources, and allowing parties to reduce the risk that litigation will produce unacceptable results.¹⁷

Thus, we conclude the Settlement Agreement is reasonable.

4.3. Settlement Agreement is Consistent with Law

The Joint Parties believe that the terms of the Settlement Agreement comply with all applicable statutes. These 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.

4.4. Settlement Agreement is in the Public Interest

The Settlement Agreement is in the public interest and in the interest of the Joint Parties' customers. The agreed-upon allocations in the Settlement Agreement resolve the unresolved allocation issues in the current proceeding.

Approval of the Settlement Agreement avoids the cost of further litigation, and reduces the use of valuable resources of the Commission and the parties. Finally, we note that the settling parties comprise the majority of the active parties in this proceeding, and we do not know of any party who contests the Settlement Agreement. Thus, the Settlement Agreement commands the unanimous sponsorship of the affected parties who fairly represent the interests

¹⁷ See D.05-03-022 at 9.

affected by the Settlement Agreement. We find that the evidentiary record as well as D.11-12-005, 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. For all these reasons, we approve the Settlement Agreement as proposed.

4.5. CDWR Proposed Amortization Schedules

CDWR has developed an amortization schedule, based on the allocations set out in the Settlement Agreement. By this amortization, ratepayers will receive the funds due them. We adopt CDWR's amortization option that begins in June 2012, as shown in Attachment B to this decision.

SCE plans on implementing a rate change to account for the amortization of the allocations as of June 1, 2012, which results in seven months of allocations amortized over seven months. PG&E and SDG&E, on the other hand, plan to implement their rate changes to account for the amortization of the allocations as of July 1, 2012, which results in seven months of allocations amortized over six months. The Joint Utilities' allocation plans both complete this amortization by the end of 2012, result in the same amounts being amortized whether over six or seven months. The Joint Utilities allocation plans are reasonable and we adopt them herein.

5. Rehearing and Judicial Review

This decision construes, applies, implements, and interprets the provisions of Assembly Bill (AB) 1X (Chapter 4 of the Statutes of 2001-2002 First Extraordinary Session), and relates to the implementation of CDWR's revenue requirement and the establishment and implementation of the Bond Charge and Power Charges necessary to recover that revenue requirement. Therefore, pursuant to Pub. Util. Code § 1731(c), any application for rehearing of this

decision is due within 10 days after the date of issuance of this decision. The procedures contained in Pub. Util. Code § 1768 apply to the judicial review of a Commission order or decision that interprets, implements, or applies the provisions of AB 1X.

6. Comments on Proposed Decision

The proposed decision of ALJ Seaneen M. Wilson in this matter was mailed to the parties in accordance with Pub. Util. Code § 311 and comments were allowed pursuant to Rule 14.3. Opening comments were filed by the Joint Utilities on April 12, 2012.

7. Assignment of Proceeding

Michel Peter Florio is the assigned Commissioner and Seaneen M. Wilson is the assigned ALJ in this proceeding.

Findings of Fact

1. In D.11-12-005, the Commission allocated the CFS Discount to SCE on an interim basis, using the cost follows contract allocation methodology for the September 2010 through August 2011 timeframe and allocated the Sempra LT Contract Refunds using Fixed Percentage Allocators. However, D.11-12-005 deferred final determination of the allocation of the CFS Discount and Sempra LT Contract Refund to a subsequent decision.
2. The Settlement Agreement does not change CDWR's authorized 2012 Revenue Requirement Determination, but instead is a redistribution of previously authorized amounts allocated among PG&E, SCE, and SDG&E.
3. On February 10, 2012, the Joint Parties filed a Joint Motion requesting the Commission adopt a Settlement Agreement that addressed the allocation of the CFS Discount and the Sempra LT Contract Refund.

4. All remaining issues regarding the allocation of the CFS Discount and the Sempra LT Contract Refund are encompassed by, and resolved in, the Settlement Agreement.

5. The parties to the Settlement Agreement consist of those parties affected by the issues encompassed by the Settlement Agreement.

6. No party protested the Settlement Agreement.

7. In the Settlement Agreement, the Joint Parties state that the CFS Discount amount of \$15,882,854.73 for the period September 2011 to October 2011 is approximate. In their Opening Comments to the proposed decision (filed subsequent to the Settlement Agreement), the Joint Parties provide an updated figure for the September 2011 to October 2011 CFS Discount of \$15,825,086.89, as well as an updated allocation of those funds.

8. The parties are fairly reflective of the affected interests.

9. No term of the Settlement Agreement contravenes statutory provisions or prior Commission decisions.

10. The Settlement Agreement conveys to the Commission sufficient information to permit it to discharge its future regulatory obligations with respect to the parties and their interests.

11. The Settlement Agreement is reasonable in light of the record, is consistent with law, and is in the public interest.

12. The disposition of funds set forth in the Settlement Agreement is reasonable.

Conclusions of Law

1. We should replace the September 2011 to October 2011 CFS Discount of \$15,882, 854.73 at pages four and five of the Settlement Agreement in Attachment

A to this decision with the updated figure of \$15,825,086.89 and updated allocation of those funds.

2. Because the Settlement Agreement (Attachment A) as revised in Ordering Paragraph 2 of this decision is reasonable in light of the whole record, consistent with law, and in the public interest, it should be approved.

3. CDWR's amortization option of the Settlement Agreement that begins in June 2012, as shown in Attachment B to this decision, should be adopted.

4. SCE should implement a rate change to account for the amortization of the allocations as of June 1, 2012, which results in seven months of allocations amortized over seven months.

5. PG&E and SDG&E should implement their rate changes to account for the amortization of the allocations as of July 1, 2012, which results in seven months of allocations amortized over six months.

6. This decision should be effective today so that the Settlement Agreement may be implemented expeditiously.

7. Rulemaking 11-03-006 should remain open.

O R D E R

IT IS ORDERED that:

1. *The Settlement Agreement (Attachment A) by and between Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company, as set forth in the Attachment to the Motion for Approval of Settlement Agreement by and Between Pacific Gas and Electric Company (U39E), Southern California Edison Company (U338E), and San Diego Gas & Electric Company (U902M) as revised by Ordering Paragraph 2 of this decision, is approved.*

2. We replace the September 2011 to October 2011 Continental Forge Settlement Discount of \$15,882, 854.73 at pages four and five of the Settlement Agreement in Attachment A to this decision with the updated figure of \$15,825,086.89 and the updated allocation of those funds.

3. The California Department of Water Resources amortization option of the Settlement Agreement that begins in June 2012, as shown in Attachment B to this decision, is adopted.

4. Southern California Edison Company must implement a rate change as of June 1, 2012, to account for the amortization of the allocations of the Settlement Agreement, which results in seven months of allocations amortized over seven months.

5. Pacific Gas and Electric Company and San Diego Gas & Electric Company must implement rate change as of July 1, 2012, to account for the amortization of the allocations of the Settlement Agreement, which results in seven months of allocations amortized over six months.

6. Pursuant to the *Settlement Agreement* adopted Ordering Paragraph 1, the following table summarizes the allocations of the Continental Forge Settlement Discount and Sempra Long-Term Contract Refund to Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company.

Description	Pacific Gas and Electric Company	Southern California Edison Company	San Diego Gas & Electric Company	Total
Continental Forge Settlement Discount by Period				
August 2008 to December 2008	\$12,872,566.20	\$14,489,262.91	\$3,141,882.27	\$30,503,711.38
January 2009 to August 2010	\$0.00	\$158,027,897.70	\$0.00	\$158,027,897.70
September 2010 to August 2011	\$51,297,435.30	\$35,176,069.52	\$8,364,065.96	\$94,837,570.79
September 2011 to October 2011	\$6,678,186.67	\$7,516,916.27	\$1,629,983.95	\$15,825,086.89
<i>Total Continental Forge Settlement Discount</i>	\$70,848,188.17	\$215,210,146.40	\$13,135,932.18	\$299,194,266.76
Sempra Long-Term Contract Refund				
<i>Total Sempra Long-Term Contract Refund</i>	\$54,914,148.15	\$61,810,948.75	\$13,403,216.25	\$130,128,313.15
Total Settlement Allocation	\$125,762,336.32	\$277,021,095.15	\$26,539,148.43	\$429,322,579.91

7. Pursuant to the *Settlement Agreement* adopted in Ordering Paragraph 1, the following allocation methods are used to allocate the Continental Forge Settlement and the Sempra Long-Term Contract Refund:

- a. The Continental Forge Settlement for the periods August 2008 to December 2008 and September 2011 to October 2011 are allocated using the Fixed Percentage Allocators (Pacific Gas & Electric Company - 42.2%; Southern California Edison Company - 47.5%; and San Diego Gas & Electric Company - 10.3%).

- b. The Continental Forge Settlement for the period January 2009 to August 2010 is allocated using the Cost Follows Contract Method.
- c. The Continental Forge Settlement for the period September 2010 to August 2011 is allocated based on a negotiated allocation determined during settlement discussions.
- d. The Sempra Long-Term Contract Refund is allocated using the Fixed Percentage Allocators (Pacific Gas & Electric Company - 42.2%; Southern California Edison Company - 47.5%; and San Diego Gas & Electric Company - 10.3%).

8. Within 30 days of today's date, Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company must each file a Tier 1 advice letter with tariff changes and new rates. The tariffs shall become effective, subject to the Energy Division's determination that they are in compliance with this decision.

9. Public Utilities Code Section (Pub. Util. Code) § 1731(c) (applications for rehearing are due within 10 days after the date of issuance of the order or decision) and Pub. Util. Code § 1768 (procedures applicable to judicial review) are applicable to this decision.

10. Rulemaking 11-03-006 remains open.

This order is effective today.

Dated May 10, 2012, at Fresno, California.

MICHAEL R. PEEVEY
President
TIMOTHY ALAN SIMON
MICHEL PETER FLORIO
CATHERINE J.K. SANDOVAL
MARK J. FERRON
Commissioners

Attachment A Settlement Agreement

**SETTLEMENT AGREEMENT BY AND BETWEEN PACIFIC GAS AND ELECTRIC
COMPANY (U 39 E), SOUTHERN CALIFORNIA EDISON COMPANY (U 338 E), AND
SAN DIEGO GAS & ELECTRIC COMPANY (U 902 M)**

I.

INTRODUCTION AND SUMMARY

In accordance with Rule 12.1 of the California Public Utilities Commission's ("Commission's") Rules of Practice and Procedure, Pacific Gas and Electric Company ("PG&E"), Southern California Edison Company ("SCE"), and San Diego Gas & Electric Company ("SDG&E") (individually, a "Settling Party" and collectively, the "Settling Parties"), hereby enter into this Settlement Agreement resolving disputes over allocation of the CFS Discount and Sempra LT Contract Refund (herein defined) in the above-captioned proceeding.

The Settling Parties believe that this Settlement Agreement is in the public interest and represents a fair and equitable resolution of the disputes. This Settlement Agreement is mutually acceptable to the Settling Parties. Therefore, the Settling Parties request that the Commission approve the Settlement Agreement without modification.

II.

RECITALS

During California's 2000-2001 energy crisis, Assembly Bill 1 from the First Extraordinary Session ("AB1X") authorized California Department of Water Resources ("CDWR") to enter into a series of contracts for the procurement of electric power to serve customers in the service territories of the investor-owned utilities ("IOUs") and to recover its costs through electric charges established by the Commission. In connection with these contracts, CDWR has collected settlement proceeds on behalf of the IOUs' customers.

Specifically, on January 4, 2006, Sempra Energy et al. and Continental Forge et al. executed a settlement (the "2006 CF Settlement") of a class action lawsuit claiming that Sempra Energy ("Sempra") and others had committed antitrust violations and engaged in unfair competition in the California natural gas markets, among other things. Pursuant to the 2006 CF Settlement, Sempra agreed to provide CDWR a discount under its electric power contract with CDWR (the "CFS Discount").

Likewise, in 2010, Sempra reached settlement for, among other things, claims related to a long-term energy delivery contract between Sempra Generation and CDWR (the "Sempra Long-Term Contract"). As a result of that settlement, approximately \$130 million in proceeds (the "Sempra LT Contract Refund") were refunded to CDWR.

This proceeding authorizes the collection of revenues from IOUs' customers for costs imposed on CDWR in 2012 related to these CDWR contracts. At the opening of this proceeding, PG&E requested that the Commission authorize the allocation of certain negative revenues for PG&E's customers in order to compensate them for an alleged error in prior-year allocations with respect to the CFS Discount. SCE objected to this request. SCE, SDG&E, and PG&E have also disagreed as to methodology for allocating the Sempra LT Contract Refund.

In Decision ("D.") 11-12-005, *Allocating the Revised 2012 Revenue Requirement Determination of the California Department of Water Resources*, which became effective as of December 1, 2011, the Commission allocated CDWR's 2012 revenue requirement between the customers of PG&E, SCE, and SDG&E. D.11-12-005 allocates the CFS Discount on an interim basis using the Commission's so called cost-follows-contract ("CFC") methodology. As a result, SCE's customers were allocated 100% of the CFS Discount included in CDWR's 2012 revenue requirement determination. Specifically, SCE's customers were allocated 100% of the \$94,837,570.79 of CFS Discount revenues received and recorded in the 12-month period of

September 2010 through August 2011, which are reflected in CDWR's 2012 revenue requirement determination.¹⁰

D.11-12-005 also allocates the Sempra LT Contract Refunds according to the so called Fixed Percentage Allocators (i.e., 42.2% to PG&E, 47.5% to SCE, and 10.3% to SDG&E), as shown in Table 1 below:

Table 1

<u>PG&E</u>	<u>SCE</u>	<u>SDG&E</u>	<u>Total</u>
\$54,914,148.15	\$61,810,948.75	\$13,403,216.25	\$130,128,313.15

SCE disputed the use of the Fixed Percentage Allocators for allocating the Sempra LT Contract Refunds because SCE believed the refunds were intended to compensate, in part, costs that SCE's customers exclusively incurred under the operation of the Sempra LT Contract. However, D.11-12-005 deferred final determination of the allocation of the CFS Discount and Sempra LT Contract Refund to a subsequent decision. (*See* D.11-12-005 at pp. 16-17, Ordering Paragraph 8).

Since D.11-12-005 was issued, the Settling Parties have agreed upon the terms of a Settlement Agreement resolving the aforementioned disputes, as set forth below.

III.

SETTLEMENT AGREEMENT

The Settling Parties hereby agree as follows:

1. **Revised Allocation of CFS Discount and Sempra LT Contract Refund.** The Settling Parties agree to the following revisions to the allocation of CFS Discount and the Sempra LT Contract Refund:

¹⁰ CDWR incorporates refunds and discounts in its revenue requirement determination on a realized basis. Because CDWR's revenue requirement determination is prepared in September of each year, discounts and refunds received by CDWR in the preceding 12-month period (i.e., September through August period) are included in the following calendar year revenue requirement determination.

- a. The CFS Discount provided by Sempra to CDWR for the period from September 2008 through December 2008 was allocated using the Fixed Percentage Allocators, and no further revision is required.
- b. The CFS Discount provided by Sempra to CDWR for the period from January 2009 through August 2010 was allocated 100% to SCE's customers pursuant to the CFC methodology; no further revision is required.
- c. The CFS Discount provided by Sempra to CDWR for the period between September 2010 through August 2011 (which is \$94,837,570.79), will be allocated as follows: \$51,297,435.30 for PG&E's customers, \$35,176,069.52 for SCE's customers, and \$8,364,065.96 for SDG&E's customers.
- d. The CFS Discount provided by Sempra to CDWR for the period September 2011 through October 2011 shall be allocated in accordance with the Fixed Percentage Allocators. The Settling Parties acknowledge that the CFS Discount for this period will equal the amount actually received by CDWR. The Settling Parties anticipate this amount to be approximately \$15,882,854.73, and expect CDWR to include the actual amounts in its 2013 Revenue Requirement determination.
- e. The Sempra LT Contract Refund and any interest accrued thereon shall be allocated in accordance with the Fixed Percentage Allocators (consistent with the allocation adopted in D.11-12-005).
- f. The following table summarizes the proposed settlement of the subject allocations:

SETTLED ALLOCATION OF THE CFS DISCOUNT AND SEMPRA LONG-TERM CONTRACT REFUND				
CFS Discount Period	PG&E	SCE	SDG&E	Total
<i>Aug-08 to Dec-08*</i>	\$12,872,566.20	\$14,489,262.91	\$3,141,882.27	\$30,503,711.38
<i>Jan-09 to Aug-10**</i>	\$0.00	\$158,027,897.70	\$0.00	\$158,027,897.70
<i>Sep-10 to Aug-11***</i>	\$51,297,435.30	\$35,176,069.52	\$8,364,065.96	\$94,837,570.79
<i>Sep-11 to Oct-11*</i>	\$6,702,564.70	\$7,544,356.00	\$1,635,934.04	\$15,882,854.73
Total CFS Discount	\$70,872,566.20	\$215,237,586.13	\$13,141,882.27	\$299,252,034.60
Sempra LT Contract Refund*	\$54,914,148.15	\$61,810,948.75	\$13,403,216.25	\$130,128,313.15
Total Settlement Allocation	\$125,786,714.35	\$277,048,534.87	\$26,545,098.53	\$429,380,347.75

Notes:

- * Allocated using the Fixed Percentage Allocators (42.2% PG&E, 47.5% SCE, and 10.3% SDG&E)
- ** Allocated using CFC (100% SCE)
- *** Negotiated allocation pursuant to settlement discussions

- g. The Settling Parties acknowledge that CDWR has already remitted some of the CFS Discount in accordance with D.11-12-005. Accordingly, as of the effective date of this Settlement Agreement and through the end of 2012 (the “Remaining Period”), each Settling Party will receive the difference between the amount of the CFS Discount to which such Settling Party is entitled pursuant to this Settlement Agreement minus the amount such Settling Party has received as of the effective date, amortized over the Remaining Period. The Settling Parties will work together to seek Commission modification of the 2012 revenue requirement allocation and remittance rates to be implemented for the Remaining Period.
2. **No Interest Owed.** No Settling Party will be required to pay interest to another Settling Party in order to effectuate this Settlement Agreement.
3. **Effective Date.** This Settlement Agreement shall become effective on the first calendar date of the month following the Commission meeting adopting a Final Commission Decision. A “Final Commission Decision” for purposes of this Settlement Agreement shall mean a Commission order or decision that approves the terms of this Settlement Agreement without

modifications, other than modifications deemed accepted or agreed to among the Settling Parties pursuant to Paragraph 4.

4. Modifications by Commission. Each Settling Party shall review any Commission orders or decisions regarding this Settlement Agreement to determine if the Commission has changed, modified, or severed any portion of the Settlement Agreement, deleted a term, or imposed a new term. If a Settling Party is unwilling to accept such change, modification, severance, deletion, or addition of a new term of the Settlement Agreement, that Settling Party shall so notify the other Settling Parties within ten (10) business days after issuance of any such Commission order or decision approving this Settlement Agreement (the "Notice Period"). The Settling Parties shall thereafter promptly discuss each change, modification, severance, deletion or new term found unacceptable and negotiate in good faith to achieve a resolution acceptable to all Settling Parties and promptly seek Commission approval of the resolution so achieved. Failure to resolve such change, modification, severance, deletion or new term to this Settlement Agreement to the satisfaction of all Settling Parties within thirty (30) calendar days of notification, and to obtain Commission approval of such resolution promptly thereafter, shall cause this Settlement Agreement to terminate. If no Settling Party provides notice within the Notice Period, the Settlement Agreement shall be deemed accepted.

5. General Terms and Conditions.

- a. The Settlement Agreement is intended to be a resolution among the Settling Parties of the CFS Discount and Semptra LT Contract Refund disputes.
- b. The Settling Parties agree to support the Settlement Agreement and perform diligently, and in good faith, all actions required or implied hereunder to obtain Commission approval of the Settlement Agreement, including without limitation, the preparation of written pleadings. No Settling Party will contest in this proceeding, or in any other forum or in any manner before this Commission, this Settlement Agreement.

- c. The Settling Parties agree by executing and submitting this Settlement Agreement that the relief requested herein is just, fair and reasonable, and in the public interest.
- d. The Settlement Agreement is not intended by the Settling Parties to be precedent regarding any principle or issue. The Settling Parties have assented to the terms of this Settlement Agreement only for the purpose of arriving at the compromise embodied in this Settlement. Each Settling Party expressly reserves its right to advocate, in current and future proceedings, positions, principles, assumptions, and arguments which may be different than those underlying this Settlement Agreement, and each Settling Party declares that this Settlement Agreement should not be considered as precedent for or against it.
- e. This Settlement Agreement embodies compromises of the Settling Parties' positions. No individual term of this Settlement Agreement is assented to by any Settling Party, except in consideration of the other Settling Parties' assent to all other terms. Thus, the Settlement Agreement is indivisible and each part is interdependent on each and all other parts.
- f. The terms and conditions of the Settlement Agreement may only be modified in writing subscribed to by the Settling Parties and approved by a Commission order.
- g. The Settling Parties have caused this Settlement Agreement to be executed by their authorized representatives. By signing this Settlement Agreement, the representatives of the Settling Parties warrant that they have the requisite authority to bind their respective principals.

**PACIFIC GAS AND ELECTRIC
COMPANY**

BY: _____

ITS: _____

DATE: _____

**SOUTHERN CALIFORNIA EDISON
COMPANY**

BY: _____

ITS: _____

DATE: _____

**SAN DIEGO GAS & ELECTRIC
COMPANY**

BY: *Mimi S. Pfl*

ITS: *Attorney*

DATE: *February 9, 2012*

**PACIFIC GAS AND ELECTRIC
COMPANY**

BY: C. De

ITS: Attorney

DATE: Feb 9, 2017

**SOUTHERN CALIFORNIA EDISON
COMPANY**

BY: _____

ITS _____

DATE: _____

**SAN DIEGO GAS & ELECTRIC
COMPANY**

BY: _____

ITS _____

DATE: _____

9Error! Reference source not found.:

**PACIFIC GAS AND ELECTRIC
COMPANY**

BY: _____

ITS: _____

DATE: _____

**SOUTHERN CALIFORNIA EDISON
COMPANY**

BY: Arhar Jazayeri

ITS VICE PRESIDENT

DATE: 2/9/2012

**SAN DIEGO GAS & ELECTRIC
COMPANY**

BY: _____

ITS _____

DATE: _____

(END OF ATTACHMENT A)

Attachment B
California Department of
Water Resources
Amortization Scenarios

State of California

California Natural Resources Agency

Memorandum

Date: February 15, 2012

To: The Honorable Michael R. Peevey
President
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, California 94102

From: Department of Water Resources

Subject: R.11-03-006, IOUs' Settlement Agreement Requesting Re-Allocation of the Department of Water Resources Revised 2012 Revenue Requirement

The California Energy Resources Scheduling division of the Department of Water Resources (the "Department") submits this memorandum to assist the California Public Utilities Commission (the "Commission") in its decision making process regarding the Investor Owned Utilities' (the "IOUs") request to re-allocate the Department's Revised 2012 Revenue Requirement to implement the IOUs' Settlement Agreement resolving disputes over the CFS Discount and the Sempra LT Contract Refund (the "IOU Settlement Agreement").

The IOU Settlement Agreement does not change the Department's Revised 2012 Revenue Requirement Determination, but instead requests redistribution of amounts allocated among the three IOUs in the Commission's Decision 11-12-005. To assist the Commission, attached is a table showing four (4) different scenarios based on the effective date of the IOUs' Settlement Agreement. Each scenario allows for a different effective date over a four month period to allow the Commission sufficient time to prepare its decision. Depending on the effective date of the IOU Settlement Agreement, the amortization of the settlement through the end of this calendar year will change.

The Department has no comments or objections to the IOU Settlement Agreement filed with the Commission on February 10, 2012. Past distributions of the CFS Discount and the Sempra LT Contract Refund benefits were made using then-existing principles and allocation methods set forth in Commission's orders. The Department appreciates the opportunity to assist the Commission by providing the attached scenario table. If you have any questions or need additional information, please contact me at (916) 574-0311.



John Pacheco
Acting Deputy Director
California Energy Resources Scheduling

Attachment

The Honorable Michael R. Peevey
February 15, 2012
Page 2

cc: Honorable Michel Peter Florio, Commissioner
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, California 94102

Honorable Timothy Alan Simon, Commissioner
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, California 94102

Honorable Catherine J.K. Sandoval, Commissioner
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, California 94102

Honorable Mark J. Ferron, Commissioner
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, California 94102

Honorable Seaneen M. Wilson, Administrative Law Judge
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, California 94102

Mr. Paul Clanon, Executive Director
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, California 94102

Service List Rulemaking 11-03-006 (via electronic mail)

Attachment

Effective Date Scenario Table

IOU Settlement Summary

2012 Revenue Requirement Changes to Monthly Payments and Power Charges					
Start Month ¹		Apr-12	May-12	Jun-12	Jul-12
PG&E rate	(\$/MWh)	84.75	84.75	84.75	84.75
PG&E original pmt	(\$)	29,535,127	29,535,127	29,535,127	29,535,127
PG&E new pmt	(\$)	35,234,842	35,947,306	36,863,332	38,084,699
difference	(\$)	5,699,715	6,412,179	7,328,205	8,549,573
SCE original pmt	(\$)	36,764,253	36,764,253	36,764,253	36,764,253
SCE new pmt	(\$)	30,135,198	29,306,566	28,241,182	26,820,670
difference	(\$)	(6,629,056)	(7,457,688)	(8,523,072)	(9,943,584)
SDG&E original rate	(\$/MWh)	40.83	40.83	40.83	40.83
SDG&E new rate	(\$/MWh)	31.33	27.49	17.92	0.00
difference	(\$/MWh)	(9.50)	(13.33)	(22.91)	(40.83)

1 - Different implementation dates result in changes to Power Charges (for SDG&E) and monthly amounts returned to PG&E and SCE customers so that the aggregate 2012 Revenue Requirement remains unchanged

(End of Attachment B)