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

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

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

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**MOTION OF PACIFIC GAS AND ELECTRIC COMPANY, SAN DIEGO GAS
AND ELECTRIC COMPANY, SOUTHERN CALIFORNIA GAS COMPANY,
AND THE NATURAL RESOURCES DEFENSE COUNCIL FOR APPROVAL OF
SETTLEMENT AGREEMENT**

Pacific Gas and Electric Company
LISE H. JORDAN
CHONDA J. NWAMU
Law Department
77 Beale Street, B30A
San Francisco, CA 94105
Telephone: (415) 973-0675
E-mail: lhj2@pge.com

Southern California Gas Company
STEVEN D. PATRICK
555 West Fifth Street, Ste. 1400
Los Angeles, CA 90013-1011
Telephone: (213) 244-2954
E-mail: spatrick@sempra.com

San Diego Gas & Electric Company
STEVEN D. PATRICK
555 West Fifth Street, Ste. 1400
Los Angeles, CA 90013-1011
Telephone: (213) 244-2954
E-mail: spatrick@sempra.com

Natural Resources Defense Council
AUDREY CHANG
111 Sutter Street, 20th floor
San Francisco, CA 94104
Telephone: (415) 875-6100
E-mail: achang@nrdc.org

Dated: May 21, 2009

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I. INTRODUCTION

In an effort to settle the remaining Energy Efficiency Incentive Claim issues associated with the 2006-2008 Program Cycle, Pacific Gas and Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E), Southern California Gas Company (SoCal Gas), and the Natural Resources Defense Council (NRDC) (together, the Settling Parties) hereby request that the Commission approve the Settlement Agreement (Settlement) set forth in Attachment A to this Motion. This Motion and Settlement are filed in conformance with Rule 12 of the California Public Utilities Commission (Commission) Rules of Practice and Procedure, and the Assigned Commissioner's and Administrative Law Judge's April 14, 2009, Ruling Providing Schedule and Scoping Memo (ACR).

1.1 Legal Standard

1.1.1 Commission Policy Generally Favors Settlements

Commission decisions express the strong public policy favoring settlement of disputes if they are fair and reasonable in light of the whole record.^{1/} This policy supports many worthwhile goals, including reducing litigation expenses, conserving scarce Commission resources, and allowing parties to reduce the risk that litigation will produce unacceptable results.^{2/} This strong public policy favoring settlements weighs in favor of the Commission resisting the temptation to alter the results of the negotiation process. As long as a settlement taken as a whole is reasonable in light of the record, consistent with the law, and in the public interest, it should be adopted.^{3/} Each portion of the Settlement is dependent upon the other portions of the Settlement. Consequently, changes to one portion of the Settlement would alter the balance of interests and the mutually agreed upon compromises and outcomes which are contained in the Settlement. The Settling Parties request that the Commission adopt the Settlement as a whole, without modification.

1.1.2 Both the Assigned Commissioner and the Assigned Administrative Law Judge Strongly Encouraged Parties to Settle The 2006-2008 Incentive Claims

As early as the first Administrative Law Judges' Ruling Setting a Prehearing Conference (March 13, 2009), parties were ordered to "be prepared to present proposals for a procedural schedule to discuss the prospects for the use of mediation or settlement conferences to seek agreement on a revised framework, particularly for the interim review of 2008 energy efficiency activities and the final review of 2006 through 2008 energy efficiency activities." (Ruling p. 5) At the April 7, 2009, prehearing conference,

1/ D.05-03-022, mimeo, pp. 7-8, citing D.88-12-083 (30 CPUC 2d 189, 221-223) and D.91-05-029 (40 CPUC 2d 301, 326.)

2/ D.05-03-022, mimeo, p. 8, citing D.92-12-019, (46 CPUC 2d 538, 553).

3/ See generally D.05-03-022, mimeo, pp. 7-12.

both Commissioner Bohn and ALJ Pulsifer indicated their desire to encourage settlement. (Tr. 6:9-15 and 31:23-28 to 32:1-5.)

Similar encouragement was provided in Commissioner Bohn's Ruling issued after the prehearing conference, which states, "There is the possibility of a partial settlement that could be offered for comment and possibly hearings. Given the circumstances at issue here, we conclude that the use of the settlement process provides the most expedient alternative for resolving 2006-2008 program cycle issues." (ACR, p. 5) The Ruling required parties to convene a settlement conference, and set forth a schedule for settling the 2006-2008 Program Cycle issues. (ACR, p. 6)

1.1.3 The Settling Parties Demonstrate in This Motion that the Settlement Is Reasonable In Light Of The Record, Consistent With Law, And In The Public Interest.

The general criteria for Commission approval of settlements are stated in Rule 12.1(d), as follows:

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.

Given the direction provided by the Assigned Commissioner and the ALJ and in keeping with Rule 12, this Motion's primary purpose is to clearly and comprehensively describe the factual basis for the Settlement and set forth the justifications for reaching the settled outcomes, so the Commission can determine that the Settlement conforms to Rule 12 and results in a just result for ratepayers, utilities, and California in general.

1.1.3.1 The Settlement Applies Much of What The Commission Originally Intended In Its Adoption of the RRIM, and Is Thus A Just Result For Ratepayers

The Settling Parties took to heart the direction from the Commission to address the deficiencies that manifested themselves last year in processing the 2006-2007 interim claim. The Settlement takes the framework that the Commission adopted in 2007, which the Commission deemed to be in the best interests of ratepayers, and makes adjustments

based on the lessons learned from the process last year. The result will be an improvement over the existing CPUC-approved RRIM process.

1.1.3.2 The Settlement is Consistent with Law and Existing Commission Precedent

As stated above, the Settlement applies an existing RRIM framework with necessary modifications to avoid process breakdowns that occurred in the 2006-2007 interim claim process. The modifications rectify deficiencies or incomplete analyses that were applied in the 2006-2007 interim claim process in an effort to arrive at a reasoned process for resolving the remaining 2006-2008 incentive claims.

1.1.3.3 The Settlement Provides an Expedient And Fair Resolution To All Remaining Issues Associated with the 2006-2008 RRIM Claims, and is Thus in the Public Interest

Parties in this proceeding are faced with a well-intentioned, but dysfunctional process for resolving the RRIM claims for the 2006-2008 program cycle. Indeed, the separate track in this rulemaking proceeding is intended to take a fresh look at how to structure a shareholder incentive mechanism going forward such that utilities are appropriately incented to invest in energy efficiency, and the process for evaluating performance does not suffer the pitfalls that have plagued the existing RRIM. The Settlement resolves all remaining RRIM claims for the 2006-2008 period by applying the RRIM framework with important modifications to the incentive claims and establishing a clear path to completion of the 2006-2008 RRIM process. Rather than plow forward with the RRIM process as written, and spend Commission and utility resources in litigation, the Settlement reaches a reasonable compromise that resolves the 2009 interim claim based on well-reasoned analysis, and sets forth a clear, workable process for establishing the 2010 true-up claim. The Commission should find the Settlement to be in the public interest.

1.2 Procedural History

The Risk/Reward Incentive Mechanism (RRIM) applicable to the 2006-2008 Program Cycle was adopted in D.07-09-043. In that decision, the Commission set forth the process and procedure for addressing the 2006-2007 interim incentive claim, the 2008 interim claim, and the 2006-2008 final true-up claim.

In January 2008, the Commission modified the process for evaluating the interim claims by eliminating “claw back,”⁴ increasing the holdback from 30% to 35%, and requiring an “ex ante update” that required utilities to apply updated Database for Energy Efficient Resources (DEER) studies to their savings calculations.

As part of the RRIM adopted in D.07-09-043, the Energy Division was required to produce verification reports of utility energy efficiency costs and installations and services completed. D.08-01-042 expanded the subject of these reports to include updated DEER studies to be applied to the interim claims. These reports were to serve as the basis for interim and final incentive payments to the utilities for 2006-2008, if warranted. In response to delays past the date as originally intended by D.07-09-043 and controversies surrounding the first verification report, however, the utilities filed a Petition for Modification in August 2008 of D.07-09-043 and D.08-01-042. In December 2008, the Commission issued D.08-12-059 which modified D.07-09-043 and D.08-01-042. D.08-12-059 noted the controversy surrounding the first verification report, which in draft form, recommended that the utilities receive little or no interim incentive payment for 2006 and 2007. D.08-12-059 determined that timeliness and consistency considerations should allow the utilities to receive 35% of their incentive claims, with 65% held back for further review. (See discussion in ACR, p. 3)

In January 2009, the Commission initiated the instant Rulemaking proceeding to resolve the 2008 interim claim as well as the 2006-2008 final true-up claim. On April 7,

⁴ “Claw back” refers to the requirement that utilities return interim payments at the final true-up if *ex post* results indicate that portfolio performance is within the deadband range or higher. (D.08-01-042, p. 4.)

2009, the Commission held a Prehearing Conference to determine the procedural schedule for addressing both the 2006-2008 Program Cycle incentive claims as well as the development of the 2009-2011 incentive mechanism. In the April 14 ACR, the Assigned Commissioner ordered parties to convene a settlement conference for May 6-8, 2009, and to file Pre-Settlement Position Papers one week earlier, on April 29.

A settlement conference was convened in San Francisco on May 6 at which the Division of Ratepayer Advocates (DRA) and The Utility Reform Network (TURN) attended, as well as the Settling Parties. The Settlement presented in this Motion reflects many days and hours of negotiations among the Settling Parties, which resulted in reasonable and appropriate compromises among all parties, while attempting to achieve the Commission's desire to resolve all 2006-2008 Program Cycle issues through the settlement process.

II. SETTLEMENT TERMS

The Settling Parties understand the Commission's desire to address what had become a broken process last year when the 2006-2007 interim claim was considered. The Settlement reflects an effort to: (1) reasonably apply the components of the interim claim process for the 2009 claim, and (2) allow the true-up process in 2010 to run its course, while applying process changes that will avoid the bases for the controversy experienced last year. The intent is to preserve as much of the Commission's intended process to verify savings and modify those aspects of the process that failed to work as intended, so that the result is a process that will be successful, objective, and transparent, in contrast to the results of the 2006-07 verification report process which so troubles the Commission.

An additional issue that this Settlement addresses is the need for timely disposition of the outstanding claims. The Commission recognizes that "regular and timely issuance of incentive payments is critical to the ability of the RRIM in creating a meaningful linkage between utility investments in energy efficiency and utility earnings."

(D.08-12-059, FOF 3, p. 25) In order to ensure that incentive claims are resolved within the timeframe specified by the Commission (i.e., the 2008 interim claim resolved by the end of 2009 and the 2006-2008 true-up claim resolved by the end of 2010), the Settlement includes dates by which certain activities must be completed in order for the process to be successful.

In an effort to preserve the intent and purpose of the RRIM process that was adopted in D.07-09-043 and D.08-01-042 (the “Decisions”), there will be two claims for each IOU. The first claim to be determined in 2009 will continue to be an interim claim covering the utilities’ performance in 2006-2008 and will start from the utilities’ pre-settlement position, incorporate 2008 DEER assumptions with some exceptions, and then hold back 35% of the interim claim for consideration in the 2010 true-up process.⁵ The second (and final) claim in 2010 (the true-up) will be based on impact evaluation studies of 2006-08 programs to address the remaining 35% of the claim.

The provisions of the two claims are laid out below:

1.3 2009 Claim

Consistent with the Commission’s decision (D.07-09-043), the 2009 claim will continue to be an interim claim. The Commission will continue with the process to issue a final, vetted impact evaluation report based on the utilities’ 2006-08 programs in 2010.

Consistent with the Commission’s decision (D.08-01-042), 35% of the 2009 claim will be at risk for the 2010 true-up claim.

In addition, the 2009 claim incorporates the latest Commission updates to ex ante values as contained in the 2008 DEER update. The 2008 DEER changed significantly the way savings assumptions are quantified. Though the Settling Parties recognize that parties have not had a chance to fully vet the 2008 DEER, in the interest of settlement,

⁵ PG&E, SDG&E, and SoCal Gas incorporate by reference their Pre-Settlement Position Papers that were filed on April 29, 2009.

the Settling Parties agree that the utilities will utilize the 2008 DEER in the calculation of the 2009 claim, except for the limited circumstances described below:

1.3.1 Net-To-Gross

The Settling Parties agree and maintain that net-to-gross (NTG) ratios are a subjective measurement and do not change the energy savings actually delivered by the IOUs. Therefore, NTG assumptions will not be updated during the 2006-2008 program cycle for incentive mechanism calculations. Accordingly, the NTG values used for the purposes of this settlement will be the adopted 2005 DEER values that served as a basis for the 2006-2008 applications (except that all of the IOUs will incorporate the NTG adjustments made by SCE as discussed in its pre-settlement position paper).⁶

1.3.2 Expected Useful Life

Consistent with the Commission's decisions (D.05-04-051, D.05-09-043, D.07-09-043), the Expected Useful Life (EUL) values will not be updated during the program cycle for incentive mechanism calculations. The Settling Parties understand that the Commission decided to update EULs in D.08-01-042. However, that decision does so without discussion and without recognition of past Commission precedent. The EUL values used will be the values contained in the adopted 2005 DEER which served as a basis for the 2006-2008 applications.

1.3.3 Interactive Effects

The Settling Parties do not contest that interactive effects exist. However, due to the policy argument that some interactive effects contained in the 2008 DEER update were not included at all in the potential studies underlying the 2006-08 goals, interactive effects included in the DEER 2008 update that were not originally in the potential studies

⁶ SCE made eight key adjustments to the NTG and/or realization rates for the 2006-2008 energy savings estimates in the following programs as a result of final program evaluations released from prior program periods: Appliance Recycling, Residential Lighting, Multifamily Energy Efficiency, Comprehensive Packaged Air Conditioning Systems, Industrial Energy Efficiency, Agricultural Energy Efficiency, Savings By Design, and Business Incentives & Services. SCE discusses these in its pre-settlement position paper filed April 29, 2009.

will be excluded from the 2009 claim. Thus under the Settlement, no adjustment will be made to commercial positive interactive effects that were in the original potential studies underlying the 2006-2008 goals, and there will be no inclusion of commercial negative interactive effects or residential positive or negative interactive effects.

1.3.4 Additional Unvetted Studies

The Settling Parties acknowledge that parties to this proceeding did not have the opportunity to fully vet the 2008 DEER update or the 2006-2007 Verification Report. In spite of that, the Settling Parties agree that the utilities will accept the remainder of the 2008 DEER update. However, there are two impactful assumptions that Energy Division included in the 2006-2007 Verification Report that should be removed from the 2009 claim since their adjustments are not based on completed studies: (1) the assumptions underlying the CFL Split between residential and non-residential customers; and (2) In-Service Rates for CFLs. Moreover, they are related to ongoing studies that are not yet but are intended to be completed for Energy Division's 2010 report. These studies should be allowed to progress and be incorporated in the 2010 claim, subject to the process requirements as described below in the 2010 Claim section.

1.3.4.1 CFL Split Between Residential and Non-Residential Customers

The 90/10 Residential/Non-Residential split currently employed is based on a vetted, final study. Energy Division used a 95/5 split assumption in its 2008 report. This assumption was not based on a reviewed and fully vetted report. Accordingly, the 90/10 Residential/Non-Residential split should be maintained for the 2009 Claim, but the related studies should be allowed to progress and be incorporated into the 2010 true-up claim subject to the restrictions described below.

1.3.4.2 In-Service Rate for CFLs

The Energy Division utilizes a study that concludes only 2 out of every 3 (or 0.67) CFLs are being installed. However, that study has not been reviewed or fully vetted

among parties. Accordingly, the ex ante values of 0.9 for residential and 0.92 for non-residential should be maintained for the 2009 Claim, but the related studies should be allowed to progress and be incorporated into the 2010 true-up claim subject to the restrictions described below.

1.3.5 No Interim Verification Report for 2008 Claims Need Be Issued

The utilities did not receive any disallowances as a result of the financial audit and received less than 1 percent reduction for “items never installed” in the 2006-07 Verification Report. Therefore, for purposes of calculating the 2009 claim, Settling Parties find it reasonable to forego waiting for the 2009 Report to be fully vetted and propose a final 2009 claim based on no cost disallowance, and a 1% reduction across all utilities’ portfolios for “items never installed.” The 1% reduction for installations reflects a conservative response to foregoing the use of a 2009 audit of installations, which is likely to result in less than 1% reduction for all of the utilities (based on experience from the 2008 audit). This will allow all parties, including Energy Division, to focus their efforts on completing and vetting an expected March 2010 true-up Report based on final impact evaluations. Therefore, Energy Division need not prepare a 2009 interim report as it will be shortly updated thereafter in early 2010 for incorporation in the final true-up. In the event that Energy Division issues a Verification Report in 2009, the Settling Parties agree that the Report will not be used for purposes of the 2009 claim.

1.4 2010 Claim

In order to ensure that the final true-up claim process progresses smoothly, with minimal controversy, the Settling Parties propose applying the lessons learned from last year to fix the process flaws that caused the process to break. As parties learned from last year, reports need to be issued on time, and reviews need to be completed on schedule, if the claims are to be resolved within the intended year. The final true-up is even more complicated than the interim claim process, because once the updated DEER assumptions are adopted, the IOUs need time to calculate the claims using the new assumptions.

Thus, given the complexity of the impact evaluation reports, and the delays experienced in 2008, it is imperative that a realistic schedule be established, and strictly followed. If the schedule slips, and Energy Division does not release a Final Verification and Performance Basis Report by April 15, 2009, and a decision to adopt a final evaluation report cannot be issued by September 15, 2010, the Settlement provides that the 2010 claim will be calculated using the same assumptions as used for the 2009 claim, as set forth in the Settlement.

The following elements of the 2010 true-up claim process are critical to the success of achieving a final true-up claim that all parties can support:

- For the 2010 True-Up Claim, the Final 2009 verification of installations and costs will be used.
- Consistent with the Commission's decision (D.07-09-043), impact evaluations (or ex post) will be allowed to move forward toward completion.
- Consistent with the Commission's decisions (D.07-09-043, D.08-12-059), the Energy Division's Final Verification and Performance Basis Report will continue to be released by Energy Division through a draft resolution in March 2010, consistent with D.08-12-059 and the schedule in D.07-09-043 (Attachment 6). All parties will be given a chance to fully vet the studies in a public process.
- All underlying information, studies, and models used to complete the Energy Division Report must be made available to parties upon issuance of the Final Verification and Performance Basis Report and based on fully vetted information, studies, and models.
- If the Energy Division's Final Verification and Performance Basis Report is not issued by April 15, 2010, which is necessary to allow sufficient time for vetting of the results, then the 2010 claim will be based on the same inputs used to determine the 2009 claim, as stated in the Settlement.

- Only adjustments that are based on a fully vetted and public process will be included in the adopted Final Verification and Performance Basis Report.
- In an effort to ensure support for the claim calculation, a process needs to be put in place that allows stakeholders to vet the Final Verification and Performance Basis Report:
 - March 31 to May 17: Stakeholders file discovery on Report and Energy Division responds within 5 business days of request. Consultants must be made available for up to 5 days of workshops during this period. These workshops will be recorded.
 - May 17: Parties file opening comments on Report
 - June 1: Parties file reply comments on Report
 - May 17 to June 15: An Independent Reviewer, hired by the Commission and reporting to the ALJ, will review Energy Division's report to ensure compliance with Commission direction and will provide information to help the Commission resolve disputed issues. The scope of the Review would be for the Independent Reviewer to examine the conclusions of the Final Report, the bases therefore, all challenges thereto raised by parties and the bases therefore, summarize the disputes, and provide its professional opinion and advice to assist the ALJ in resolution of the disputes using the most accepted and reliable standards of review available. The Independent Reviewer would submit such Review to the Presiding ALJ (and copy the service list) by June 15.
 - July 15: ALJ issues Proposed Decision (PD) resolving the Final Verification and Basis Report with the Independent Reviewer's Review.
 - August 4: Opening comments on the PD

- August 11: Reply comments on the PD
- A Final Report will be adopted by the Commission through a decision issued by September 15, 2010. If a decision to adopt the final evaluation report is not issued by September 15, 2010, the Settlement provides that the 2010 claim will be based on the same inputs used to determine the 2009 claim as stated herein.
- Upon adoption of a decision on the Final Report, the IOUs will submit compliance filings based on the final decision. These compliance filings will only be subject to protests for the purposes of calculation errors and will not re-litigate matters addressed in the final decision. The compliance filings will be considered approved on the 15th day after filing, unless a protest is received alleging calculation error. In the event that a calculation error is alleged, the ALJ, Energy Division, and the IOU will resolve that matter and the IOU will supplement that compliance filing with the corrected amount. A final amount for the 2010 true up claim will be adopted by the first Commission meeting in December, 2010. If the final amount for the 2010 claim is not adopted by the first Commission meeting in December, 2010, the Settlement provides that the 2010 claim will be based on the same inputs used to determine the 2009 claim as stated herein.
- As explained under the ‘2009 Claim’ heading, Interactive Effects that were not originally in the potential studies underlying the 2006-08 goals will not be considered as a part of the 2010 true up claims; likewise, EUL and NTG will not be updated, except that NTG values used in the 2010 claim should incorporate SCE’s adjustments, as made in the 2009 claim by the IOUs.
- The 2010 update will not include adjustments for factors that were not included in the adopted goals and program applications. Factors that were

part of the adopted goals and applications could be updated based on vetted studies as provided for above.

- Consistent with the Commission's decision (D.08-12-059), the 35% holdback from the 2006-08 cycle claims is at risk subject to the outcome of the CPUC's final decision.

At this time, PG&E, SDG&E, and SoCal Gas are not able to present the actual claim adjustments using the utilities' actual performance data for the 2009 claim as described in this Settlement. The effort to apply 2008 DEER assumptions to the utilities' ex ante claims will take approximately three to four weeks, due to the significant changes that have occurred between the 2005 DEER (upon which the ex ante claims are based) and the 2008 DEER.⁷ However, since the terms of the Settlement set forth the process and assumptions that would be used to perform the ultimate calculations, the actual calculation results are not necessary for adoption of the Settlement. Once the calculations are complete, Appendix A to the Settlement will set forth each of the utilities' Pre-settlement positions, the relevant adjustments agreed to in this Settlement, and the holdback for the 2009 claim. A final 2010 claim cannot be calculated ahead of time, as it will depend on the true-up process laid out in this Settlement.

III. CONCLUSION

Settling Parties took to heart the Assigned Commissioner's and ALJ's request to resolve the remaining incentive claims for the 2006-2008 Program Cycle. Settling Parties worked within the process that was adopted by the Commission at the outset, and applied the lessons learned from last year when the 2006-2007 interim claim was processed. Clearly the process did not function as intended last year, and the Settling Parties have proposed a workable compromise that (1) applies the Commission's adopted RRIM framework that was to apply to the 2006-2008 Program Cycle; (2) makes

⁷ The reason for the delay is that the utilities would need to rerun the numbers through the E3 calculator with the 2008 DEER assumptions.

appropriate changes to the process to address the deficiencies from last year; and (3) proposes a fair and just result for ratepayers as well as utilities. In addition, this Settlement will demonstrate to the rest of the nation that California's Energy Efficiency Program is working, and will continue to improve through experience.

The Settling Parties request that the Commission's decision:

1. Find that the Settlement is reasonable in light of the whole record, consistent with law, and in the public interest;
2. Approve each and every term of the Settlement, without modification;
3. Grant such additional relief as the Commission may deem proper.

Dated this 21st day of May, 2009 at San Francisco, California.

Respectfully submitted,

LISE H. JORDAN
CHONDA J. NWAMU

By:

/s/

LISE H. JORDAN

Law Department
PACIFIC GAS AND ELECTRIC COMPANY
Post Office Box 7442
San Francisco, California 94120
Telephone: (415) 973-6965
Fax: (415) 973-5520

Attorney for
PACIFIC GAS AND ELECTRIC COMPANY

ATTACHMENT A

**SETTLEMENT AGREEMENT AMONG PACIFIC GAS AND ELECTRIC COMPANY,
SOUTHERN CALIFORNIA GAS COMPANY, SAN DIEGO GAS AND ELECTRIC
COMPANY, THE NATURAL RESOURCES DEFENSE COUNCIL**

SETTLEMENT AGREEMENT

1. As a compromise among their respective litigation positions, and subject to the Settlement Conditions set forth in Section 3 of this Agreement, the parties to this Settlement (Settling Parties) agree on a mutually acceptable outcome to all issues associated with the Energy Efficiency Incentive Mechanism for the 2006-2008 Program Cycle, in Rulemaking 09-01-019, Order Instituting Rulemaking to Examine the Commission's Energy Efficiency Risk/Reward Incentive Mechanism. The Settlement is presented to the Commission pursuant to Rule 12 of the Commission's Rules of Practice and Procedure.

SETTLING PARTIES

2. The Settling Parties are as follows: Pacific Gas and Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E), Southern California Gas Company (SoCal Gas), and the Natural Resources Defense Council (NRDC).

SETTLEMENT CONDITIONS

3. The Settling Parties agree to the following general conditions:
- A. This Settlement resolves all remaining issues associated with the Energy Efficiency Incentive Mechanism for the 2006-2008 Program cycle.
 - B. This Settlement embodies the entire understanding and agreement of the Settling Parties with respect to the matters described, and it supersedes prior oral or written agreements, principles, negotiations, statements, representations, or understandings among the Settling Parties with respect to those matters.

- C. Following Rule 12.5, the Settling Parties agree that this Settlement should not constitute precedent regarding any principle or issue in this proceeding or in any future proceeding.
- D. The Settling Parties agree that this Settlement is reasonable in light of the entire record, consistent with law, and in the public interest.
- E. This Settlement may be amended or changed only by a written agreement signed by the Settling Parties.
- F. The Settling Parties shall jointly request Commission approval of this Settlement and shall actively support prompt approval of the Settlement.
- G. The Settling Parties intend the Settlement to be interpreted and treated as a unified, integrated agreement. In the event the Commission rejects or modifies this Settlement, the Settling Parties reserve their rights under Rule 12.6.
- H. This document may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- I. This Settlement shall become effective among the Settling Parties on the date the last Party executes the Settlement as indicated below.
- J. In witness whereof, intending to be legally bound, the Settling Parties hereto have duly executed this Settlement on behalf of the Settling Parties they represent.

SETTLEMENT TERMS

4. For purposes of this settlement, in an effort to preserve the risk/reward incentive mechanism (RRIM) process that was adopted in D.07-09-043 and D.08-01-042, there will be two incentive claims. The first claim to be determined in 2009 will continue to be an interim claim and will start from the utilities' pre-settlement position, incorporate 2008 Database for Energy Efficient Resources (DEER) assumptions with some exceptions, and then hold back 35% of the

interim claim for consideration in the 2010 true-up process.¹ The second (and final) claim in 2010 (the true-up) will be based on impact evaluation studies of 2006-08 programs to address the remaining 35% of the claim.

5. The provisions for the 2009 claim are as follows:

- a) The 2009 claim incorporates the latest Commission updates to ex ante values as contained in the 2008 DEER update. Though the Settling Parties recognize that parties have not had a chance to fully vet the 2008 DEER, in the interest of settlement, Settling Parties agree that the IOUs will utilize the 2008 DEER in the calculation of their 2009 claim, except for the limited circumstances described below:
- b) The Settling Parties agree and maintain that net-to-gross (NTG) ratios are a subjective measurement and do not change the energy savings actually delivered by the IOUs. Therefore, NTG assumptions will not be updated during the 2006-2008 program cycle for incentive mechanism calculations. Accordingly, the NTG values used for the purposes of this settlement will be the adopted 2005 DEER values that served as a basis for the 2006-2008 applications (except that all of the IOUs will incorporate the NTG adjustments made by SCE as discussed in its pre-settlement position paper).²
- c) Settling Parties agree that the Expected Useful Life (EUL) values will not be updated

¹ PG&E, SDG&E, and SoCal Gas incorporate by reference their Pre-Settlement Position Papers that were filed on April 29, 2009.

² SCE made eight key adjustments to the NTG and/or realization rates for the 2006-2008 energy savings estimates in the following programs as a result of final program evaluations released from prior program periods: Appliance Recycling, Residential Lighting, Multifamily Energy Efficiency, Comprehensive Packaged Air Conditioning Systems, Industrial Energy Efficiency, Agricultural Energy Efficiency, Savings By Design, and Business Incentives & Services. SCE discusses these in its pre-settlement position paper filed April 29, 2009.

during the program cycle. The EUL values used will be the values contained in the adopted 2005 DEER which served as a basis for the 2006-2008 applications.

d) Settling Parties agree that Interactive Effects included in the DEER 2008 update that were not originally in the potential studies used to determine the 2006-2008 goals will be excluded from the 2009 claim. Thus, no adjustment will be made to commercial positive interactive effects that were in the potential studies, and there will be no inclusion of commercial negative interactive effects or of residential positive or negative interactive effects.

e) Settling Parties agree that the following two items that appeared in the 2006-2007 Verification Report should be removed for purposes of calculating the 2009 claim:

i) CFL Split between Residential and Non-Residential Customers – The 90/10

Residential/Non-Residential split currently employed is based on a vetted, final study. Energy Division used a 95/5 split assumption in its 2008 report. This assumption was not based on a reviewed and fully vetted report. Accordingly, the 90/10 Residential/Non-Residential split should be maintained for the 2009 Claim.

ii) In-Service Rate for CFLs – The Energy Division utilizes a study that concludes only 2 out of every 3 (or 0.67) CFLs are being installed. However, that study has not been reviewed or fully vetted among parties. Accordingly, the ex ante values of 0.9 for residential and 0.92 for non-residential should be maintained for the 2009 Claim.

The studies of these two items should be allowed to progress and be incorporated in the

2010 claim, subject the constraints as described below in the 2010 Claim section.

- f) Rather than waiting for issuance of the 2009 Verification Report, the IOUs will use a proxy for the results of the financial audit and review of installations conducted in 2008 as a basis for calculating the 2009 claim. Thus, there will be no adjustments to the costs of installation (since there were no disallowances recommended in the 2006-2007 financial audits) and there should be a 1% reduction in energy savings for “items never installed.” As an efficiency matter and to reduce potential confusion, the Settling Parties agree that the Commission should suspend Energy Division’s preparation of a 2009 interim report as it will be shortly updated thereafter in early 2010. In the event that Energy Division does issue a Verification Report in 2009, the Settling Parties agree that the Report will not be used for purposes of the 2009 claim.
- g) 35% of the 2009 claim will be at risk for the 2010 true-up claim.

6. The Settling Parties agree that the provisions for the 2010 True-Up Claim are as follows:

- a) Final 2009 verification of installations and costs will be used.
- b) The Energy Division’s Final Verification and Performance Basis Report (Final Report) will be released by Energy Division through a draft resolution in March 2010, consistent with D.08-12-059 and the schedule in D.07-09-043 (Attachment 6), and all parties will be given a chance to fully vet the studies in an on-the-record public process.
- c) All underlying information, studies, and models used to complete the Energy Division

Report must be made available to parties upon issuance of the Final Verification and Performance Basis Report and based on fully vetted information, studies, and models.

- d) If the Energy Division's Final Verification and Performance Basis Report is not issued by April 15, 2010, then the 2010 claim will be based on the same inputs used to determine the 2009 claim as stated herein.
- e) Only adjustments that are based on a fully vetted and public process will be included in the adopted Final Verification and Performance Basis Report.
- f) In an effort to ensure support for the claim calculation, a process needs to be put in place that allows stakeholders to vet the Final Verification and Performance Basis Report:
 - i) March 31 to May 17: Stakeholders file discovery on Report and Energy Division responds within 5 business days of request. Consultants must be made available for up to 5 days of workshops during this period. These workshops will be recorded.
 - ii) May 17: Parties file opening comments on Report
 - iii) June 1: Parties file reply comments on Report
 - iv) May 17 to June 15: An Independent Reviewer, hired by the Commission and reporting to the ALJ, will review Energy Division's Report to ensure compliance with Commission direction and will provide information to help the Commission resolve disputed issues. The scope of the Review would be for the Independent Reviewer to examine the conclusions of the Final Report, the bases therefore, all challenges

thereto raised by parties and the bases therefore, summarize the disputes, and provide its professional opinion and advice to assist the ALJ in resolution of the disputes using the most accepted and reliable standards of review available. The Independent Reviewer would submit such Review to the Presiding ALJ (and copy the service list) by June 15.

- v) July 15: ALJ issues Proposed Decision (PD) resolving the Final Verification and Basis Report with the Independent Reviewer's Review.
- vi) August 4: Opening comments on the PD
- vii) August 11: Reply comments on the PD
- g) A Final Report will be adopted by the Commission through a decision issued by September 15, 2010. If a decision to adopt the final evaluation report is not issued by September 15, 2010, Settling Parties agree that the 2010 claim will be based on the same inputs used to determine the 2009 claim as stated herein.
- h) Upon adoption of a decision on the Final Report, the IOUs will submit compliance filings based on that final decision. These compliance filings will only be subject to protests for the purposes of calculation errors and will not re-litigate matters addressed in the Commission's decision on the Final Report. These compliance filings will be considered approved on the 15th day after the filing, unless a protest is received alleging calculation error. In the event that a calculation error is alleged, the ALJ, Energy Division, and the IOU will resolve that matter and the IOU will supplement that compliance filing with the corrected amount. A final amount for the 2010 true-up claim will be adopted by the first

Commission meeting in December, 2010. If the final amount for the 2010 claim is not adopted by the first Commission meeting in December, 2010, Settling Parties agree that the 2010 claim will be based on the same inputs used to determine the 2009 claim as stated herein.

- i) Just as in the 2009 claims as stated herein, interactive effects that were not originally in the potential studies underlying the 2006-08 goals will not be considered as a part of the 2010 true up claims; likewise, EUL and NTG will not be updated, except that NTG values used in the 2010 claim should incorporate SCE's adjustments, as done in the 2009 interim claim.
- j) The 2010 update will not include adjustments for factors that were not included for in the adopted goals and program applications. Factors that were part of the adopted goals and applications could be updated based on vetted studies as provided for above.
- k) The 35% holdback from the 2006-08 cycle claims is at risk subject to the outcome of the CPUC's final decision in 2010.

7. At this time, PG&E, SDG&E, and SoCal Gas are not able to present the actual claim adjustments using the utilities' actual performance data for the 2009 claim as described in this Settlement Agreement. The effort to apply 2008 DEER assumptions to the utilities' ex ante claims will take approximately three to four weeks, due to the significant changes that have occurred between the 2005 DEER (upon which the ex ante claims are based) and the

2008 DEER.³ Once the calculations are complete, Appendix A to the Settlement Agreement will set forth each of the utilities' Pre-settlement positions, the relevant adjustments agreed to in this Settlement Agreement, and the holdback for the 2009 claim. A final 2010 claim cannot be calculated ahead of time, as it will depend on the true-up process laid out in this Settlement Agreement.

³ The reason for the delay is that the utilities would need to rerun the numbers through the E3 calculator with the 2008 DEER assumptions. .

PACIFIC GAS AND ELECTRIC COMPANY

By: /s/ Brian K. Cherry

Name: BRIAN K. CHERRY

Date: May 21, 2009

NATURAL RESOURCES DEFENSE
COUNCIL

By: /s/ Audrey Chang

Name: AUDREY CHANG

Date: May 21, 2009

SOUTHERN CALIFORNIA GAS
COMPANY

By: /s/ H. D. Snyder

Name: HAL D. SNYDER

Date: May 21, 2009

SAN DIEGO GAS AND ELECTRIC
COMPANY

By: /s/ H. D. Snyder

Name: HAL D. SNYDER

Date: May 21, 2009

SETTLEMENT AGREEMENT APPENDICES

<u>APPENDIX</u>	<u>TITLE</u>	<u>PAGE</u>
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A

CERTIFICATE OF SERVICE BY ELECTRONIC MAIL OR U.S. MAIL

I, the undersigned, state that I am a citizen of the United States and am employed in the City and County of San Francisco; that I am over the age of eighteen (18) years and not a party to the within cause; and that my business address is Pacific Gas and Electric Company, Law Department B30A, 77 Beale Street, San Francisco, California 94105.

I am readily familiar with the business practice of Pacific Gas and Electric Company for collection and processing of correspondence for mailing with the United States Postal Service. In the ordinary course of business, correspondence is deposited with the United States Postal Service the same day it is submitted for mailing.

On May 21, 2009, I served a true copy of:

MOTION OF PACIFIC GAS AND ELECTRIC COMPANY, SAN DIEGO GAS AND ELECTRIC COMPANY, SOUTHERN CALIFORNIA GAS COMPANY, AND THE NATURAL RESOURCES DEFENSE COUNCIL FOR APPROVAL OF SETTLEMENT AGREEMENT

[XX] By Electronic Mail – serving the enclosed via e-mail transmission to each of the parties listed on the official service list for R. 09-01-019 with an e-mail address.

[XX] By U.S. Mail – by placing it for collection and mailing, in the course of ordinary business practice, with other correspondence of Pacific Gas and Electric Company, enclosed in a sealed envelope, with postage fully prepaid, addressed to all parties of record on the service lists for R. 09-01-019 who do not have an email address.

I certify and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed in San Francisco, California on May 21, 2009.

/s/
MARY B. SPEARMAN

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achang@nrdc.org; aeo@cpuc.ca.gov; Allen.Lee@cadmusgroup.com; awp@cpuc.ca.gov; bfinkelstein@turn.org; bill@jbsenergy.com; bob.ramirez@itron.com; brbarkovich@earthlink.net; cadickerson@cadconsulting.biz; Cassandra.sweet@dowjones.com; cbe@cpuc.ca.gov; cem@newsdata.com; CentralFiles@semprautilities.com; cf1@cpuc.ca.gov; cjn3@pge.com; cln@cpuc.ca.gov; css@cpuc.ca.gov; cxc@cpuc.ca.gov; darren.hanway@sce.com; ddavis@cecmail.org; dgilligan@naseco.org; dil@cpuc.ca.gov; don.arambula@sce.com; dwang@nrdc.org; erik@erikpage.com; filings@aklaw.com; FSmith@swater.org; fstern@summitblue.com; gandhi.nikhil@verizon.net; grover@portland.econw.com; jbf@cpuc.ca.gov; jeanne.sole@sfgov.org; Jeff.Hirsch@DOE2.com; jennifer.shigekawa@sce.com; jerickson@summitblue.com; jl2@cpuc.ca.gov; jmaxwell@ers-inc.com; jnc@cpuc.ca.gov; john.stoops@rlw.com; jst@cpuc.ca.gov; jyamagata@semprautilities.com; keh@cpuc.ca.gov; kwz@cpuc.ca.gov; larry.cope@sce.com; ldri@pge.com; lettenson@nrdc.org; lhj2@pge.com; liddell@energyattorney.com; lp1@cpuc.ca.gov; M1ke@pge.com; Michael.Rufo@itron.com; mjaske@energy.state.ca.us; mkh@cpuc.ca.gov; mmw@cpuc.ca.gov; monica.ghattas@sce.com; mramirez@swater.org; nes@aklaw.com; nlong@nrdc.org; pcf@cpuc.ca.gov; pmiller@nrdc.org; ppl@cpuc.ca.gov; pvillegas@semprautilities.com; pw1@cpuc.ca.gov; RegRelCPUCCases@pge.com; rhh@cpuc.ca.gov; rliebert@cfbf.com; rmurray@us.kema.com; rsridge@comcast.net; sberlin@mccarthy.com; Scott.Dimetrosky@cadmusgroup.com; sdhilton@stoel.com; sephra.ninow@energycenter.org; slda@pge.com; sls@aklaw.com; spatrick@sempra.com; SRH1@pge.com; srm@cpuc.ca.gov; SRRd@pge.com; stevek@kromer.com; tam.hunt@gmail.com; tburke@swater.org; tcr@cpuc.ca.gov; tcx@cpuc.ca.gov; tory.weber@sce.com; trp@cpuc.ca.gov; vprabhakaran@goodinmacbride.com; wbooth@booth-law.com; wem@igc.org; yxg4@pge.com; zap@cpuc.ca.gov; ztc@cpuc.ca.gov;

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA SERVICE LIST

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Total number of addressees: 92

CASE COORDINATION
PACIFIC GAS AND ELECTRIC COMPANY
PO BOX 770000 MC B9A
SAN FRANCISCO CA 94177
Email: RegRelCPUCcases@pge.com
Status: INFORMATION

STEVEN R. HAERTLE
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE ST, MC B9A
SAN FRANCISCO CA 94105
Email: SRH1@pge.com
Status: INFORMATION

CHONDA J. NWAMU ATTORNEY
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE ST, B30A
SAN FRANCISCO CA 94105
FOR: Pacific Gas and Electric Company
Email: cjn3@pge.com
Status: INFORMATION

LAUREN ROHDE
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE ST, B9A
SAN FRANCISCO CA 94105
Email: ldri@pge.com
Status: INFORMATION

MICHAEL R. KLOTZ
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE ST, MSB30A, RM 3105B
SAN FRANCISCO CA 94120
FOR: PG&E
Email: M1ke@pge.com
Status: PARTY

Jordana Cammarata
CALIF PUBLIC UTILITIES COMMISSION
ENERGY DIVISION
505 VAN NESS AVE AREA 4-A
SAN FRANCISCO CA 94102-3214
Email: jnc@cpuc.ca.gov
Status: STATE-SERVICE

Jeanne Clinton
CALIF PUBLIC UTILITIES COMMISSION
ENERGY DIVISION
505 VAN NESS AVE RM 4008
SAN FRANCISCO CA 94102-3214
Email: cln@cpuc.ca.gov
Status: STATE-SERVICE

JENNY GLUZGOLD
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE ST MCB9A
SAN FRANCISCO CA 94105
Email: yxg4@pge.com
Status: INFORMATION

SANDY LOWRIE
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE ST; MC B9A
SAN FRANCISCO CA 94177
Email: slda@pge.com
Status: INFORMATION

SHILPA RAMAIYA
PACIFIC GAS & ELECTRIC COMPANY
245 MARKET ST, MAIL CODE N3C
SAN FRANCISCO CA 94105
Email: SRRd@pge.com
Status: INFORMATION

LISE H. JORDAN ATTORNEY
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE ST, B30A
SAN FRANCISCO CA 94105
FOR: Pacific Gas and Electric Co.
Email: lhj2@pge.com
Status: PARTY

Carmen Best
CALIF PUBLIC UTILITIES COMMISSION
ENERGY DIVISION
505 VAN NESS AVE AREA
SAN FRANCISCO CA 94102-3214
Email: cbe@cpuc.ca.gov
Status: STATE-SERVICE

Theresa Cho
CALIF PUBLIC UTILITIES COMMISSION
EXECUTIVE DIVISION
505 VAN NESS AVE RM 5207
SAN FRANCISCO CA 94102-3214
Email: tcx@cpuc.ca.gov
Status: STATE-SERVICE

Tim G. Drew
CALIF PUBLIC UTILITIES COMMISSION
ENERGY DIVISION
505 VAN NESS AVE AREA 4-A
SAN FRANCISCO CA 94102-3214
Email: zap@cpuc.ca.gov
Status: STATE-SERVICE

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Cathleen A. Fogel
CALIF PUBLIC UTILITIES COMMISSION
ENERGY DIVISION
505 VAN NESS AVE AREA 4-A
SAN FRANCISCO CA 94102-3214
Email: cf1@cpuc.ca.gov
Status: STATE-SERVICE

Peter Franzese
CALIF PUBLIC UTILITIES COMMISSION
ENERGY DIVISION
505 VAN NESS AVE AREA 4-A
SAN FRANCISCO CA 94102-3214
Email: pcf@cpuc.ca.gov
Status: STATE-SERVICE

Katherine Hardy
CALIF PUBLIC UTILITIES COMMISSION
ENERGY DIVISION
505 VAN NESS AVE AREA 4-A
SAN FRANCISCO CA 94102-3214
Email: keh@cpuc.ca.gov
Status: STATE-SERVICE

Peter Lai
CALIF PUBLIC UTILITIES COMMISSION
ENERGY DIVISION
320 WEST 4TH ST STE 500
LOS ANGELES CA 90013
Email: ppl@cpuc.ca.gov
Status: STATE-SERVICE

Suman Mathews
CALIF PUBLIC UTILITIES COMMISSION
ENERGY PRICING AND CUSTOMER PROGRAMS
BRANCH
505 VAN NESS AVE RM 4104
SAN FRANCISCO CA 94102-3214
Email: srm@cpuc.ca.gov
Status: STATE-SERVICE

Lisa Paulo
CALIF PUBLIC UTILITIES COMMISSION
ENERGY DIVISION
505 VAN NESS AVE AREA 4-A
SAN FRANCISCO CA 94102-3214
Email: lp1@cpuc.ca.gov
Status: STATE-SERVICE

Thomas R. Pulsifer
CALIF PUBLIC UTILITIES COMMISSION
DIVISION OF ADMINISTRATIVE LAW JUDGES
505 VAN NESS AVE RM 5016
SAN FRANCISCO CA 94102-3214
Email: trp@cpuc.ca.gov
Status: STATE-SERVICE

Jamie Fordyce
CALIF PUBLIC UTILITIES COMMISSION
EXECUTIVE DIVISION
505 VAN NESS AVE RM 5303
SAN FRANCISCO CA 94102-3214
Email: jbf@cpuc.ca.gov
Status: STATE-SERVICE

Mikhail Haramati
CALIF PUBLIC UTILITIES COMMISSION
ENERGY DIVISION
505 VAN NESS AVE AREA 4-A
SAN FRANCISCO CA 94102-3214
Email: mkh@cpuc.ca.gov
Status: STATE-SERVICE

Risa Hernandez
CALIF PUBLIC UTILITIES COMMISSION
ENERGY PRICING AND CUSTOMER PROGRAMS
BRANCH
505 VAN NESS AVE RM 4209
SAN FRANCISCO CA 94102-3214
Email: rhh@cpuc.ca.gov
Status: STATE-SERVICE

Jean A. Lamming
CALIF PUBLIC UTILITIES COMMISSION
ENERGY DIVISION
505 VAN NESS AVE AREA 4-A
SAN FRANCISCO CA 94102-3214
Email: jl2@cpuc.ca.gov
Status: STATE-SERVICE

Ayat E. Osman
CALIF PUBLIC UTILITIES COMMISSION
ENERGY DIVISION
505 VAN NESS AVE AREA 4-A
SAN FRANCISCO CA 94102-3214
Email: aeo@cpuc.ca.gov
Status: STATE-SERVICE

Anne W. Premo
CALIF PUBLIC UTILITIES COMMISSION
ENERGY DIVISION
770 L ST, STE 1050
SACRAMENTO CA 95814
Email: awp@cpuc.ca.gov
Status: STATE-SERVICE

Curtis Seymour
CALIF PUBLIC UTILITIES COMMISSION
ENERGY DIVISION
505 VAN NESS AVE AREA 4-A
SAN FRANCISCO CA 94102-3214
Email: css@cpuc.ca.gov
Status: STATE-SERVICE

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George S. Tagnipes
CALIF PUBLIC UTILITIES COMMISSION
ENERGY DIVISION
505 VAN NESS AVE AREA 4-A
SAN FRANCISCO CA 94102-3214
Email: jst@cpuc.ca.gov
Status: STATE-SERVICE

Zenaida G. Tapawan-Conway
CALIF PUBLIC UTILITIES COMMISSION
ENERGY DIVISION
505 VAN NESS AVE AREA 4-A
SAN FRANCISCO CA 94102-3214
Email: ztc@cpuc.ca.gov
Status: STATE-SERVICE

Karen Watts-Zagha
CALIF PUBLIC UTILITIES COMMISSION
ENERGY PRICING AND CUSTOMER PROGRAMS
BRANCH
505 VAN NESS AVE RM 4104
SAN FRANCISCO CA 94102-3214
Email: kwz@cpuc.ca.gov
Status: STATE-SERVICE

Pamela Wellner
CALIF PUBLIC UTILITIES COMMISSION
ENERGY DIVISION
505 VAN NESS AVE AREA 4-A
SAN FRANCISCO CA 94102-3214
Email: pw1@cpuc.ca.gov
Status: STATE-SERVICE

Michael Wheeler
CALIF PUBLIC UTILITIES COMMISSION
ENERGY DIVISION
505 VAN NESS AVE AREA 4-A
SAN FRANCISCO CA 94102-3214
Email: mmw@cpuc.ca.gov
Status: STATE-SERVICE

NORA SHERIFF
ALCANTAR & KAHL
33 NEW MONTGOMERY ST, STE 1850
SAN FRANCISCO CA 94105
Email: nes@a-klaw.com
Status: INFORMATION

SEEMA SRINIVASAN
ALCANTAR & KAHL
33 NEW MONTGOMERY ST, STE 1850
SAN FRANCISCO CA 94105
Email: sls@a-klaw.com
Status: INFORMATION

KAREN TERRANOVA
ALCANTAR & KAHL
33 NEW MONTGOMERY ST, STE 1850
SAN FRANCISCO CA 94105
Email: filings@a-klaw.com
Status: INFORMATION

BARBARA R. BARKOVICH
BARKOVICH & YAP, INC.
44810 ROSEWOOD TERRACE
MENDOCINO CA 95460
Email: brbarkovich@earthlink.net
Status: INFORMATION

CHRIS ANN DICKERSON
CAD CONSULTING
720B CANYON OAKS DRIVE
OAKLAND CA 94605
Email: cadickerson@cadconsulting.biz
Status: INFORMATION

SEPHRA A. NINOW POLICY ANALYST
CALIFORNIA CENTER FOR SUSTAINABLE ENERGY
8690 BALBOA AVE, STE 100
SAN DIEGO CA 92123
Email: sephra.ninow@energycenter.org
Status: INFORMATION

CALIFORNIA ENERGY MARKETS
425 DIVISADERO ST, STE 303
SAN FRANCISCO CA 94131
Email: cem@newsdata.com
Status: INFORMATION

MIKE JASKE
CALIFORNIA ENERGY COMMISSION
1516 NINTH ST, MS-20
SACRAMENTO CA 95814
Email: mjaske@energy.state.ca.us
Status: INFORMATION

RONALD LIEBERT ATTORNEY
CALIFORNIA FARM BUREAU FEDERATION
2300 RIVER PLAZA DRIVE
SACRAMENTO CA 95833
Email: rliebert@cfbf.com
Status: INFORMATION

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WILLIAM H. BOOTH ATTORNEY
LAW OFFICE OF WILLIAM H. BOOTH
67 CARR DRIVE
MORAGA CA 94556
FOR: California Large Energy Consumers Association
Email: wbooth@booth-law.com
Status: PARTY

JEANNE M. SOLE DEPUTY CITY ATTORNEY
CITY AND COUNTY OF SAN FRANCISCO
1 DR. CARLTON B. GOODLETT PLACE, RM. 375
SAN FRANCISCO CA 94102-4682
Email: jeanne.sole@sfgov.org
Status: INFORMATION

DAVE DAVIS EXECUTIVE DIRECTOR
COMMUNITY ENVIRONMENTAL COUNCIL
26 W ANAPAMU ST, 2ND FLR
SANTA BARBARA CA 93101
Email: ddavis@cecmail.org
Status: INFORMATION

DON LIDDELL
DOUGLASS & LIDDELL
2928 2ND AVE
SAN DIEGO CA 92103
Email: liddell@energyattorney.com
Status: INFORMATION

CASSANDRA SWEET
DOW JONES NEWSWIRES
201 CALIFORNIA ST., 13TH FLR
SAN FRANCISCO CA 94111
Email: Cassandra.sweet@dowjones.com
Status: INFORMATION

Diana L. Lee
CALIF PUBLIC UTILITIES COMMISSION
LEGAL DIVISION
505 VAN NESS AVE RM 4107
SAN FRANCISCO CA 94102-3214
FOR: DRA
Email: dil@cpuc.ca.gov
Status: PARTY

Cheryl Cox
CALIF PUBLIC UTILITIES COMMISSION
ENERGY PRICING AND CUSTOMER PROGRAMS
BRANCH
505 VAN NESS AVE RM 4209
SAN FRANCISCO CA 94102-3214
FOR: DRA
Email: cxc@cpuc.ca.gov
Status: STATE-SERVICE

Thomas Roberts
CALIF PUBLIC UTILITIES COMMISSION
ENERGY PRICING AND CUSTOMER PROGRAMS
BRANCH
505 VAN NESS AVE RM 4104
SAN FRANCISCO CA 94102-3214
FOR: DRA
Email: tcr@cpuc.ca.gov
Status: STATE-SERVICE

STEPHEN GROVER, PH.D.
ECONORTHWEST
888 SW 5TH AVE, STE 1460
PORTLAND OR 97204
Email: grover@portland.econw.com
Status: INFORMATION

ERIK PAGE
ERIK PAGE & ASSOCIATES
1012 ROOSEVELT AVE
WINTERS CA 95694
Email: erik@erikpage.com
Status: INFORMATION

JONATHAN B. MAXWELL, PE DIRECTOR OF
ENGINEERING
ERS
710 PARK PLACE
COLLEGE STATION TX 77840
Email: jmaxwell@ers-inc.com
Status: INFORMATION

STEVE KROMER
3110 COLLEGE AVE, APT 12
BERKELEY CA 94705
Email: stevek@kromer.com
Status: INFORMATION

RICK RIDGE
3022 THOMPSON AVE.
ALAMEDA CA 94501
Email: rsridge@comcast.net
Status: INFORMATION

MIKE YIM
2920 CAMINO DIABLO, STE 210
WALNUT CREEK CA 94597
Status: INFORMATION

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Total number of addressees: 92

VIDHYA PRABHAKARAN
GOODIN MACBRIDE SQUERI DAY & LAMPREY LLP
505 SANSOME ST, STE 900
SAN FRANCISCO CA 94111
Email: vprabhakaran@goodinmacbride.com
Status: INFORMATION

TAM HUNT
HUNT CONSULTING
4344 MODOC ROAD, 15
SANTA BARBARA CA 93110
Email: tam.hunt@gmail.com
Status: INFORMATION

MICHAEL W. RUFO CO-MANAGING DIRECTOR
ITRON INC.
1111 BROADWAY ST, STE 1800
OAKLAND CA 94607
Email: Michael.Rufo@itron.com
Status: INFORMATION

BOB RAMIREZ
ITRON, INC. (CONSULTING & ANALYSIS DIV.)
11236 EL CAMINO REAL
SAN DIEGO CA 92130
Email: bob.ramirez@itron.com
Status: INFORMATION

JEFF HIRSCH
JAMES J. HIRSCH & ASSOCIATES
12185 PRESILLA ROAD
CAMARILLO CA 93012-9243
Email: Jeff.Hirsch@DOE2.com
Status: INFORMATION

WILLIAM MARCUS
JBS ENERGY
311 D ST, STE A
W. SACRAMENTO CA 95605
Email: bill@jbsenergy.com
Status: INFORMATION

RACHEL MURRAY, P.E.
KEMA, INC.
492 NINTH ST, STE 220
OAKLAND CA 94607
Email: rmurray@us.kema.com
Status: INFORMATION

JOHN STOOPS
KEMA, INC.
466 GEARY, STE 400
SAN FRANCISCO CA 94102
Email: john.stoops@rlw.com
Status: INFORMATION

C. SUSIE BERLIN
MCCARTHY & BERLIN LLP
100 W. SAN FERNANDO ST., STE 501
SAN JOSE CA 95113
Email: sberlin@mccarthylaw.com
Status: INFORMATION

AUDREY CHANG DIRECTOR-CALIFORNIA CLIMATE
PROGRAM
NATURAL RESOURCES DEFENSE COUNCIL
111 SUTTER ST, 20TH FLR
SAN FRANCISCO CA 94104
FOR: Natural Resources Defense Council
Email: achang@nrdc.org
Status: PARTY

LARA ETTENSON
NATURAL RESOURCES DEFENSE COUNCIL
111 SUTTER ST, 20TH FLR
SAN FRANCISCO CA 94104
Email: lettenson@nrdc.org
Status: INFORMATION

NOAH LONG
NATURAL RESOURCES DEFENSE COUNCIL
111 SUTTER ST, 20TH FLR
SAN FRANCISCO CA 94104
Email: nlong@nrdc.org
Status: INFORMATION

PETER MILLER
NATURAL RESOURCES DEFENSE COUNCIL
111 SUTTER ST, 20TH FLR
SAN FRANCISCO CA 94104
Email: pmiller@nrdc.org
Status: INFORMATION

DEVRA WANG STAFF SCIENTIST
NATURAL RESOURCES DEFENSE COUNCIL
111 SUTTER ST, 20TH FLR
SAN FRANCISCO CA 95104
Email: dwang@nrdc.org
Status: INFORMATION

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA SERVICE LIST

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Commissioner Assigned: John Bohn on February 4, 2009

ALJ Assigned: Thomas R. Pulsifer on February 19, 2009

CPUC DOCKET NO. R0901019 CPUC REV 05-18-09

Total number of addressees: 92

FRASER SMITH, D.PHIL.

POWER ENTERPRISE

SF PUBLIC UTILITIES COMMISSION
1155 MARKET ST, 4TH FLR
SAN FRANCISCO CA 94103

FOR: Power Enterprise

Email: FSmith@sflower.org

Status: INFORMATION

STEVEN D. PATRICK ATTORNEY

SAN DIEGO GAS & ELECTRIC COMPANY

555 WEST FIFTH ST, STE 1400
LOS ANGELES CA 90013-1011

FOR: San Diego Gas & Electric / Southern California Gas
Company

Email: spatrick@sempra.com

Status: PARTY

PEDRO VILLEGAS

SAN DIEGO GAS & ELECTRIC/ SO. CAL. GAS

601 VAN NESS AVE 2060
SAN FRANCISCO CA 94102

Email: pvillegas@semprautilities.com

Status: INFORMATION

THERESA BURKE REGULATORY AFFAIRS ANALYST

SAN FRANCISCO PUC

1155 MARKET ST, 4TH FLR
SAN FRANCISCO CA 94103

Email: tburke@sflower.org

Status: INFORMATION

MANUEL RAMIREZ

SAN FRANCISCO PUC

1155 MARKET ST, 4TH FLR
SAN FRANCISCO CA 94103

Email: mramirez@sflower.org

Status: INFORMATION

CENTRAL FILES

SDG&E AND SOCALGAS

CP31-E
8330 CENTRUY PARK COURT
SAN DIEGO CA 92123

Email: CentralFiles@semprautilities.com

Status: INFORMATION

JOY C. YAMAGATA REGULATORY MANAGER

SDG&E AND SOCALGAS

8330 CENTURY PARK COURT
SAN DIEGO CA 92123

Email: jyamagata@semprautilities.com

Status: INFORMATION

DON ARAMBULA

SOUTHERN CALIFORNIA EDISON

6042 N. IRWINDALE AVE, BLDG. A
IRWINDALE CA 91702

Email: don.arambula@sce.com

Status: INFORMATION

MONICA GHATTAS

SOUTHERN CALIFORNIA EDISON COMPANY

2244 WALNUT GROVE AVE
ROSEMEAD CA 91770

Email: monica.ghattas@sce.com

Status: INFORMATION

DARREN HANWAY

SOUTHERN CALIFORNIA EDISON COMPANY

6042 N. IRWINDALE AVE, BLDG. A
IRWINDALE CA 91702

Email: darren.hanway@sce.com

Status: INFORMATION

JENNIFER SHIGEKAWA SENIOR ATTORNEY

SOUTHERN CALIFORNIA EDISON COMPANY

2244 WALNUT GROVE AVE.
ROSEMEAD CA 91770

Email: jennifer.shigekawa@sce.com

Status: INFORMATION

TORY WEBER

SOUTHERN CALIFORNIA EDISON

6042 N. IRWINDALE AVE, STE A
IRWINDALE CA 91702

Email: tory.weber@sce.com

Status: INFORMATION

LARRY R. COPE

SOUTHERN CALIFORNIA EDISON COMPANY

2244 WALNUT GROVE AVE
ROSEMEAD CA 91770

FOR: Southern California Edison Co

Email: larry.cope@sce.com

Status: PARTY

SETH D. HILTON

STOEL RIVES, LLP

555 MONTGOMERY ST., STE 1288
SAN FRANCISCO CA 94111

Email: sdhilton@stoel.com

Status: INFORMATION

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Total number of addressees: 92

NIKHIL GANDHI
STRATEGIC ENERGY TECHNOLOGIES, INC.
17 WILLIS HOLDEN DRIVE
ACTON MA 1720
Email: gandhi.nikhil@verizon.net
Status: INFORMATION

FRANK STERN
SUMMIT BLUE CONSULTING
1722 14TH ST, STE 230
BOULDER CO 80302
Email: fstern@summitblue.com
Status: INFORMATION

ALLEN LEE
THE CADMUS GROUP, INC.
720 SW WASHINGTON, STE 400
PORTLAND OR 97205
Email: Allen.Lee@cadmusgroup.com
Status: INFORMATION

ROBERT FINKELSTEIN LEGAL DIRECTOR
THE UTILITY REFORM NETWORK
711 VAN NESS AVE., STE 350
SAN FRANCISCO CA 94102
FOR: TURN
Email: bfinkelstein@turn.org
Status: PARTY

JEFF ERICKSON
SUMMIT BLUE CONSULTING
161 HORIZON DR, STE 102
VERONA WI 53593
Email: jerickson@summitblue.com
Status: INFORMATION

SCOTT DIMETROSKY
THE CADMUS GROUP, INC.
1928 PEARL ST
BOULDER CO 80302
Email: Scott.Dimetrosky@cadmusgroup.com
Status: INFORMATION

DONALD D. GILLIGAN PRESIDENT
NAESCO
1615 M. ST, NW
WASHINGTON DC 20036
FOR: The National Association of Energy Service Co.
Email: dgilligan@naseco.org
Status: PARTY

BARBARA GEORGE
WOMEN'S ENERGY MATTERS
PO BOX 548
FAIRFAX CA 94978-0548
FOR: Women's Energy Matters
Email: wem@igc.org
Status: INFORMATION