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

Application of PACIFIC GAS AND  
ELECTRIC COMPANY to Recover Costs  
Related to the 2008 Wildland Fires Recorded  
in the Catastrophic Event Memorandum  
Account Pursuant to Public Utility Code  
Section 454.9.

Application 09-02-020  
(Filed February 27, 2009)

(U 39 E)

**JOINT MOTION OF PACIFIC GAS AND ELECTRIC  
COMPANY (U 39 E) AND THE DIVISION OF  
RATEPAYER ADVOCATES FOR APPROVAL OF THE  
ATTACHED SETTLEMENT AGREEMENT**

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Dated: August 28, 2009

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OF THE STATE OF CALIFORNIA**

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Pursuant to Rule 12.1 of the Commission's Rules of Practice and Procedure (Rules), Pacific Gas and Electric Company (PG&E) and the Division of Ratepayer Advocates (DRA) request that the California Public Utilities Commission (Commission) approve the attached Settlement Agreement (Settlement). The Settlement resolves all issues raised by the Parties in this Application for recovery of costs recorded in PG&E's Catastrophic Events Memorandum Account (CEMA) for the cost of restoring electric service and repairing electric distribution facilities damaged by the 2008 Wildland Fires.

This motion contains statements of factual and legal considerations sufficient to advise the Commission and other parties not expressly joining the Settlement of its scope and of the grounds on which approval is urged. The Settling Parties believe that the Settlement: (1) meets the Commission's criteria for approval of all party settlements; and (2) is reasonable in light of the whole record, consistent with law and in the public interest, as required by Rule 12.1(d).

## **I. BACKGROUND AND PROCEDURAL HISTORY**

According to PG&E's Application, a series of Wildland Fires from May 22 through October 2008 caused \$12.97 million in restoration and repair costs to PG&E's electric distribution system. Pursuant to Decision (D.) 07-07-041, which held that CEMA recovery is limited to costs incurred in jurisdictions declared disasters by competent state or federal authorities, PG&E's Application asked for review of and authorization to recover the \$11.72 million of costs arising from the 2008 Wildland Fires in the counties that PG&E contended had disaster declarations by competent state or federal authorities. PG&E's request for recovery of costs included \$3.68 million in expense and \$8.04 million in capital costs arising from the restoration of service and repairs following the 2008 Wildland Fires. The \$11.72 million of costs included in the Application would have translated to a total revenue requirement of \$6.56 million to be recovered in 2010.

After conducting discovery and analysis of PG&E's showing, DRA served a Report on July 29, 2009, that recommended disallowances of \$599,090 in expense and \$60,000 in capital from the original costs requested by PG&E. DRA argued that \$588,000 in straight-time labor and \$11,090 in employee appreciation gifts were not CEMA-eligible expenses. DRA also argued that \$60,000 in capital costs incurred in Solano County were not CEMA-eligible.

PG&E's August 13, 2009, rebuttal testimony argued that the costs in its Application were justified.

The two active parties entered into settlement discussions to try to resolve their differences. This Settlement is the result of those discussions.

## **II. THE SETTLEMENT**

The Settlement consists of the following key agreements by the Settling Parties:

1. The reasonable total costs recoverable from this CEMA Application is \$11.09 million, consisting of \$8.01 million in capital costs and \$3.08 million in expenses. The revenue requirement resulting from these costs is \$5.92 million in electric revenue requirements, including interest through December 31, 2010, franchise fees, and uncollectibles, to be recovered in rates in 2010<sup>1/</sup>, with any under or over collections of these amounts accruing to the associated balancing accounts. Upon approval of this Settlement by the Commission, PG&E will record commensurate amounts for the CEMA revenue requirement into the Distribution Revenue Adjustment Mechanism (DRAM) for rate recovery through its next available electric rate change in 2010 and through the Annual Electric True-up (AET) advice letter.

2. The Settling Parties agree that the Commission should find that it is reasonable for PG&E to recover \$5.92 million as PG&E's total authorized revenue requirement in this Application. The final Settlement amount reflects litigation uncertainty assessed by one or both parties.

### **III. THE COMMISSION SHOULD APPROVE THE SETTLEMENT**

#### **A. Preconditions for Approval of All Party Settlements**

In D.88-12-083, 30 CPUC2d 189, 221-223, the Commission established a standard for review of settlements.<sup>2/</sup> Rule 12.1(d) of the Commission's Rules recites this standard:

The Commission will not approve stipulations or settlements, whether contested or uncontested, unless the stipulation or settlement is reasonable in light of the whole record, consistent with law, and in the public interest.

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<sup>1/</sup> The revenue requirement numbers include interest calculated at the actual 90-day commercial paper rate through August 2009, and at the August 2009 90-day commercial paper rate thereafter on the unamortized balance through 2010. The numbers will change slightly over time as the forecasted 90-day commercial paper rate is replaced by the actual 90-day commercial paper rate in each month following August 2009.

<sup>2/</sup> The decision was revised by D.89-03-062, but the revisions did not affect the standard.

In D.92-12-019, 46 CPUC2d 538, 550-551, the Commission amended the standard to adopt a policy on "all party" settlements. As a "precondition" to approval of all party settlements, the Commission must be satisfied that:

1. the settlement commands the unanimous sponsorship of all active parties to the proceeding;
2. the sponsoring parties are fairly representative of the affected interests;
3. no term of the settlement contravenes statutory provisions or prior Commission decisions; and
4. the settlement conveys to the Commission sufficient information to permit it to discharge its future regulatory obligations with respect to the parties and their interests.

The Settling Parties comprise all active parties. No other party submitted testimony or indicated it would participate in the hearings.

The Settling Parties represent all affected interests. PG&E represents the interests of its shareholders and DRA represents the interests of customers.

The Settling Parties are aware of no statutory provision or prior Commission decision that would be contravened or compromised by the Settlement.

The precondition regarding sufficient information has been applied principally to settlements that establish revenue requirements, rates, rules or conditions of service. This Settlement sets PG&E's total revenue requirement resulting from the CEMA Application and specifies that PG&E may include the authorized revenue requirement in its Distribution Revenue Adjustment Mechanism (DRAM) for inclusion in rates as part of its next Annual Electric True-Up (AET) advice letter.

In sum, the Settlement meets all four preconditions for Commission approval of an all party settlement.

**B. Reasonableness of the Settlement**

The four factors discussed above are preconditions for Commission approval of this Settlement, but not a substitute for requirements that a settlement also be reasonable, consistent with law and in the public interest. (D.95-05-042, 59 CPUC2d 779, 788.) In D.88-12-083, the Commission discussed many factors that might be balanced in determining whether a proposed settlement is reasonable. The Settlement meets most if not all of those standards.

First, the Settling Parties recognize that an element in determining the fairness of a settlement is the relationship of the settled amount to the risk that a given party will obtain its desired result. (D.88-12-083, 30 CPUC2d 189, 267.) PG&E requested a revenue requirement of \$6.56 million. Discovery, which consisted of an audit of PG&E's showing as well as several data requests, allowed DRA to gauge the strengths and weaknesses of PG&E's request. The settled amount of \$5.92 million represents roughly 90% of PG&E's request and based on the facts and circumstances of the instant Application, represents a fair outcome, from the Settling Parties' perspective, which meets the Commission's criterion.

Second, the Settlement is a reasonable compromise of strongly held views.

Third, the Settlement will spare the Commission and the parties the effort required to litigate disputed issues, particularly given the relatively small range of disputes raised in this proceeding, in consideration with the necessity of the Commission allocating its resources effectively. The Commission has a history of favoring settlements. Commission approval of the Settlement will provide speedy resolution of contested issues and will promote amicable working relations among the parties.

Fourth, counsel and advocates for the Settling Parties are experienced in public utility litigation.

Fifth, settlement negotiations were accomplished at arm's length and without collusion.

Sixth, the Settlement is uncontested. No other party opposes the Settlement. The absence of adverse reaction from affected interests favors approval.

Seventh, the Settlement addresses all major issues that were raised within the proceeding, and within the authority of the Settling Parties to settle. The Settlement approves rate recovery of a level of costs acceptable to both PG&E and DRA.

We emphasize that the discussion of the Settlement is meant only to show that in reaching the Settlement the Settling Parties have considered all of the Commission's concerns. The Commission should review the Settlement as a unified, comprehensive resolution of the issues at hand. It would be unfair to the Settling Parties to try to match individual Settlement elements against the specific costs identified in the Application and PG&E testimony, and then determine whether each match-up meets the standards for review of settlements. The willingness of the Settling Parties to cease their efforts to prove or disprove their cases is a key element of the Settlement.

For all of these reasons, the Settling Parties believe that the Settlement is reasonable in light of the whole record.

### **C. Consistency With Law**

As discussed above in the context of preconditions for approval of all party settlements, the Settling Parties are aware of no statutory provision or prior Commission decisions that would be contravened or compromised by the Settlement.

#### **D. Public Interest**

There is a strong public policy favoring the settlement of disputes to avoid costly and protracted litigation. (D.88-12-083, 30 CPUC2d 189, 221.) Absent opposition and absent identification of any serious defect in the Settlement,, the Commission should approve it.

Nonetheless, the Commission has long held that settlements submitted for review and approval are not simply the resolution of private disputes like those heard in civil court. The public interest and the interests of customers must be considered, and it is the Commission's duty to protect those interests.

The principal public interest affected by this proceeding is delivery of safe, reliable electric service at reasonable rates. The Settlement advances this interest because it permits PG&E to recover most of the asserted, and Commission-staff scrutinized, CEMA costs. Taken as a whole, the Settlement is in the public interest.

#### **IV. CONCLUSION AND REQUESTED COMMISSION ACTION**

The Settling Parties believe the Settlement is: (1) reasonable in light of the testimony; (2) consistent with the law; (3) in the public interest; and (4) a mutually acceptable outcome to a pending proceeding, thereby avoiding the time, expense and uncertainty of litigation on issues raised in PG&E's 2008 Wildland Fires CEMA Application. It meets the Commission's standards for approval of all party settlements and of settlements in general.

Wherefore, for the foregoing reasons, the Settling Parties respectfully request that the Commission:

(1) Adopt this Settlement in its entirety as reasonable in light of the whole record, consistent with law and in the public interest; and



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Application 09-02-020  
(Filed February 27, 2009)

(U 39 E)

**SETTLEMENT AGREEMENT BETWEEN  
PACIFIC GAS AND ELECTRIC COMPANY (U 39 E) AND THE  
DIVISION OF RATEPAYER ADVOCATES  
RESOLVING ISSUES IN THE  
CATASTROPHIC EVENT MEMORANDUM ACCOUNT PROCEEDING  
(APPLICATION NO. 09-02-020)**

In accordance with Rule 12 of the California Public Utilities Commission's (Commission) Rules of Practice and Procedure, the Division of Ratepayer Advocates (DRA) and Pacific Gas and Electric Company (PG&E) (together the "Settling Parties"), by and through their undersigned representatives, enter into this Settlement Agreement (Settlement) resolving issues raised by the Settling Parties in the Catastrophic Event Memorandum Account (CEMA) proceeding, Application 09-02-020 (Application). As a compromise among their respective litigation positions in the Application, PG&E and DRA agree to and support all of the terms of this Settlement.

**I. THE CATASTROPHIC EVENT MEMORANDUM ACCOUNT PROCEEDING**

According to PG&E's Application, a series of Wildland Fires from May 22 through October 2008 caused \$12.97 million in restoration and repair costs to PG&E's electric distribution system. Pursuant to Public Utilities Code (P.U.) sec. 454.9 and Decision (D.) 07-07-041, PG&E's Application asked for review of and authorization to recover the \$11.72 million of costs arising from the 2008 Wildland Fires in the counties that PG&E contended had obtained disaster declarations by competent state or federal authorities. PG&E's request for recovery of

costs included \$3.68 million in expense and \$8.04 million in capital costs arising from the restoration of service and repairs following the 2008 Wildland Fires. The \$11.72 million of costs included in the Application would have translated to a total revenue requirement of \$6.56 million to be recovered in 2010.

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PG&E's August 13, 2009, rebuttal testimony argued that the costs in its Application were justified.

## **II. THE SETTLEMENT**

The two active parties entered into settlement discussions to try to resolve their differences. This settlement is the result of those discussions. The settlement consists of the following agreements by the Settling Parties:

1. The reasonable total costs recoverable from this CEMA Application is \$11.09 million, consisting of \$8.01 million in capital costs and \$3.08 million in expenses. The revenue requirement resulting from these costs is \$5.92 million in electric revenue requirements, including interest through December 31, 2010, franchise fees, and uncollectibles, to be recovered in rates in 2010,<sup>1/</sup> with any under- or over-collections of these amounts accruing to the associated balancing accounts. Upon approval of this settlement by the Commission, PG&E will record commensurate amounts for the CEMA revenue requirement into the Distribution Revenue

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<sup>1/</sup> The revenue requirement numbers include interest calculated at the actual 90-day commercial paper rate through August 2009, and at the August 2009 90-day commercial paper rate thereafter on the unamortized balance through 2010. The numbers will change slightly over time as the forecasted 90-day commercial paper rate is replaced by the actual 90-day commercial paper rate in each month following August 2009.

Adjustment Mechanism (DRAM) for rate recovery through its next available electric rate change in 2010 and through the Annual Electric True-up (AET) advice letter.

2. The Settling Parties agree that the Commission should find that it is reasonable for PG&E to recover \$5.92 million as PG&E's total authorized revenue requirement in this Application. The final settlement amount reflects litigation uncertainty assessed by one or both parties.

### **III. RESERVATIONS**

1. The Settling Parties agree that this Settlement represents a compromise of their respective litigation positions. It does not represent the Settling Parties' endorsement of, or agreement with, any or all of the recommendations, assumptions, or arguments made by the other party.

2. The Settling Parties shall by joint motion request Commission approval of this Settlement. The Settling Parties additionally agree to actively support prompt approval of the Settlement. Active support may include necessary reply comments, comments on a proposed decision, written and/or oral testimony. The Settling Parties further agree to participate jointly in necessary briefings to Commissioners and their advisors regarding the Settlement and the issues compromised and resolved by it.

3. This Settlement embodies the entire understanding and agreement of the Settling Parties with respect to the matters described herein, and, except as described herein, supersedes and cancels any and all prior oral or written agreements, principles, negotiations, statements, representations or understandings among the Settling Parties.

4. The Settlement may be amended or changed only by a written agreement signed by the Settling Parties.

5. The Settling Parties have bargained earnestly and in good faith to achieve this Settlement. The Settling Parties intend the Settlement to be interpreted and treated as a unified, interrelated agreement. The Settling Parties therefore agree that if the Commission fails to approve the Settlement as reasonable and adopt it unconditionally and without modification,

including the findings and determinations requested herein, any Settling Party may in its sole discretion elect to terminate the Settlement. The Settling Parties further agree that any material change to the Settlement shall give each Settling Party in its sole discretion the option to terminate the Settlement. In the event the Settlement is terminated, the Settling Parties may request that the unresolved issues in the instant Application be heard by the Commission.

6. This Settlement represents a compromise of the Settling Parties' respective litigation positions and should not be considered precedent with respect to other CEMA costs, not at issue in this proceeding, for PG&E or other utilities in any future proceeding. The Settling Parties have assented to the terms of this Settlement only for the purpose of arriving at the various compromises herein. Further, the Settlement should not be construed as an admission and/or adoption of either Settling Party regarding any material fact or question of law in relation to the subject fires.

7. It is understood and agreed that no failure or delay by any Settling Party hereto in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or future exercise thereof or the exercise of any other right, power or privilege.

8. 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.

9. This Settlement shall become effective among the Settling Parties on the date the last Settling Party executes the Settlement as indicated below.



**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, CA 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 the 28<sup>th</sup> day of August, 2009, I caused to be served a true copy of:

**JOINT MOTION OF PACIFIC GAS AND ELECTRIC COMPANY (U 39 E) AND THE  
DIVISION OF RATEPAYER ADVOCATES FOR APPROVAL OF THE ATTACHED  
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 A.09-02-020 with an e-mail address.

**[XX]** By U.S. Mail – by placing the enclosed 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 those parties listed on the official service list for A.09-02-020 without an e-mail 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 on this 28<sup>th</sup> day of August, 2009 at San Francisco, California.

\_\_\_\_\_  
/s/

MARTIE L. WAY

**THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA  
EMAIL SERVICE LIST**

Downloaded August 28, 2009; last updated: August 4, 2009  
**Commissioner Assigned:** John Bohn on March 13, 2009  
**ALJ Assigned:** David M. Gamson on March 13, 2009

**CPUC DOCKET NO. A0902020**

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# THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA SERVICE LIST

Downloaded August 28, 2009; last updated: August 4, 2009

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**ALJ Assigned:** David M. Gamson on March 13, 2009

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Total number of addressees: 14

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