APPENDIX A

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company (U 39-E) for Approval of 2008 Long-Term Request for Offer Results and for Adoption of Cost Recovery and Ratemaking Mechanisms.	Application 09-09-021 (Filed September 30, 2009)

MOTION FOR APPROVAL OF PARTIAL SETTLEMENT AGREEMENT BETWEEN AND AMONG PACIFIC GAS AND ELECTRIC COMPANY, THE DIVISION OF RATEPAYER ADVOCATES, THE UTILITY REFORM NETWORK, THE COALITION OF CALIFORNIA UTILITY EMPLOYEES, AND CALIFORNIA UNIONS FOR RELIABLE ENERGY

(PUBLIC VERSION)

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Date: February 17, 2010

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company (U 39-E) for Approval of 2008 Long-Term Request for Offer Results and for Adoption of Cost Recovery and Ratemaking Mechanisms.	Application 09-09-021 (Filed September 30, 2009)

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(PUBLIC VERSION)

I. INTRODUCTION AND SUMMARY OF RELIEF SOUGHT

Pursuant to Rule 12.1 of the California Public Utilities Commission's Rules of Practice and Procedure, Pacific Gas and Electric Company ("PG&E"), the Division of Ratepayer Advocates ("DRA"), The Utility Reform Network ("TURN"), California Unions For Reliable Energy ("CURE"), and the Coalition of California Utility Employees ("CUE") (collectively referred to as "the Parties" or individually as a "Party"), submit for the Commission's review and approval the attached Partial Settlement Agreement. The proposed Partial Settlement Agreement is in the public interest and represents a fair and equitable resolution of the ratemaking and cost recovery issues in the proceeding, and the Parties request that the Commission approve it without modification.

II. PROCEDURAL BACKGROUND

PG&E's April 1, 2008 Long-Term Request for Offers ("LTRFO") sought 800 – 1,200

MW of new dispatchable and operationally flexible resources to fill a regional capacity need identified by the Commission in *Opinion Adopting Pacific Gas and Electric Company's, Southern California Edison Company's, and San Diego Gas & Electric Company's Long-Term Procurement Plans,* Decision ("D.") 07-12-052 ("LTPP Decision"). The Commission previously approved five Power Purchase Agreements ("PPAs") arising from PG&E's 2004 LTRFO, two of which were subsequently terminated by the sellers.[1] The two terminated PPAs represent 312 MW.[2] As the Commission determined in the LTPP Decision, PG&E's procurement authority for these megawatts remains.[3] Accordingly, PG&E is currently authorized by the Commission to obtain from 1,112 MW to 1,512 MW of new long-term resources (referred to as the "LTRFO Need Amount").

On April 1, 2009, PG&E filed Application No. 09-04-001 requesting approval of a PPA with Mariposa Energy, LLC ("Mariposa"). The Mariposa PPA was the first agreement to be submitted for approval from the 2008 LTRFO. On September 3, 2009, PG&E, DRA, TURN, Californians for Renewable Energy ("CARE") and CURE filed a motion for approval of an all-party Settlement Agreement with the Commission. In the Settlement Agreement, the parties agreed that the unmet LTRFO Need Amount, after deducting the MWs anticipated from the Mariposa PPA, is 928 MW to 1,328 MW under peak July conditions. The Settlement Agreement was approved by the Commission on October 15, 2009, in D.09-10-017.

On September 29, 2009, PG&E filed the Application in this proceeding seeking approval of four additional agreements arising from PG&E's 2008 LTRFO: (1) a PPA with Mirant Marsh

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[1] *Application of Pacific Gas and Electric Company for Approval of Long-Term Request for Offer Results and for Adoption of Cost Recovery and Ratemaking Mechanisms*, D.06-11-048, Ordering Paragraph ("OP") 1.

[2] *Id.*, p. 6.

[3] LTPP Decision, pp. 105-106.

Landing for a new 719 MW natural gas-fired combustion turbine facility ("Mirant Marsh Landing PPA"); (2) a PPA with Mirant Delta LLC which requires closure of the existing Contra Costa units 6 and 7 following the expiration of an 18-month tolling agreement ("CC 6&7 Tolling PPA"); (3) a Purchase and Sale Agreement ("PSA") with Contra Costa Generating Station LLC for the purchase of the Contra Costa Generating Station (now known as the Oakley Generating Station), a new 586 MW natural gas-fired combined cycle facility ("CCGS PSA"); and (4) a PPA with an existing qualifying cogeneration facility, Midway Sunset Cogeneration Company ("Midway Sunset PPA").

DRA, TURN, CARE, Pacific Environment, Sierra Club of California, and Communities for a Better Environment ("CBE") protested the Application. In addition, the California Municipal Utilities Association ("CMUA") filed a clarification that did not appear to be a protest. On November 16, 2009, PG&E replied to the protests.

On December 2, 2009, a prehearing conference was held by Administrative Law Judge ("ALJ") Darwin Farrar. On February 1, 2010, Assigned Commissioner Peevey issued a Scoping Memorandum which established a schedule for the proceeding.

On February 9, 2010, PG&E filed and served on the service list a notice of settlement conference for February 16, 2010 at TURN's offices in San Francisco to discuss a settlement in principle between and among PG&E, TURN, CURE, CUE and DRA. After the settlement conference, the Parties finalized the attached Partial Settlement Agreement.

The Partial Settlement Agreement reflects an agreement on ratemaking and cost-recovery issues raised in PG&E's Application. The Parties agreed upon appropriate and reasonable cost recovery and ratemaking proposals applicable to each of the agreements addressed in the Application to the extent that the Commission approves the agreements. The Partial Settlement

Agreement does not resolve whether all or a portion of the agreements should be selected to meet the LTRFO Need Amount or whether the selection of the winning 2008 LTRFO projects is just and reasonable, and the Parties reserve all rights to advocate for Commission approval of all or some of the agreements in this Application.

III. SUMMARY OF THE PARTIAL SETTLEMENT AGREEMENT

The Partial Settlement Agreement addresses the ratemaking issues and cost recovery in the 2008 LTRFO proceeding, but does not address selection of projects to meet the LTRFO Need Amount. Under the terms of the Partial Settlement Agreement, the Parties reserve all rights to advocate for Commission approval of all or a portion of the projects in the 2008 LTRFO Application. If the Commission approves selection of a project, the Partial Settlement Agreement addresses the applicable ratemaking and cost recovery treatment for the project. There are essentially three ratemaking and cost recovery components to the Partial Settlement Agreement: (1) cost recovery for the PPAs (*i.e.*, the Mirant Marsh Landing PPA, CC 6&7 Tolling PPA and the Midway Sunset PPA); (2) cost recovery for the CCGS PSA and project; and (3) recovery of the net capacity costs under Public Utilities Code section 365.1.

First, the Partial Settlement Agreement provides that PG&E shall recover the costs of all payments made pursuant to the Mirant Marsh Landing PPA, CC 6&7 Tolling PPA, and Midway Sunset PPA (to the extent approved by the Commission) through PG&E's Energy Resources Recovery Account ("ERRA"). *See* Partial Settlement Agreement, ¶ III.C.

Second, with regard to the CCGS PSA and project, the Parties agree that the cost recovery and ratemaking proposals in the Application applicable to CCGS, as modified by the Partial Settlement Agreement, are reasonable and should be approved by the Commission, if CCGS is selected to meet the LTRFO need. The Partial Settlement Agreement would adopt

PG&E's ratemaking proposals for the CCGS PSA as presented in the Application and in Chapter 9 of PG&E's Prepared Testimony, with the following key changes:

1. O&M Costs: PG&E has agreed to fix operations and maintenance ("O&M") rates for CCGS through January 1, 2022, based upon the O&M forecast used in the bid evaluation to evaluate and ultimately select the Project as a winner in the 2008 LTRFO solicitation. The Project is expected to be operational in the 2014, resulting in a fixed revenue stream for at least the first 8 years of operations. Thus, if actual O&M costs are greater than forecast, PG&E cannot recover its excess costs in rates. The objective of this requirement was twofold: First, fixing O&M ensures that the O&M costs assumed for bid evaluation purposes (which resulted in the selection of CCGS as a winning bidder in the LTRFO) will not be exceeded for the first 8 years of operations. Second, fixing O&M costs will give PG&E a strong incentive to safely and efficiently operate the plant at the lowest cost since it will not have opportunity to increase O&M rates during this period. After the fixed period, customers will get the benefit of any cost savings realized in project operations since actual costs will be used to establish going forward O&M rates through the GRC process. *See* Partial Settlement Agreement, ¶ III.B.3.

2. O&M Rate Changes: There are a few limited opportunities where PG&E can propose to adjust its O&M rates via an expedited advice letter process in the first eight years (*i.e.*, until 2022): (1) delays in closing; (2) increased O&M caused by governmental agency requirements or changes in permitting assumptions; (3) changes in operating profile from the maximums assumed in forecast (*i.e.*, 333 starts/year and 4329 operating hours/year); and (4) on a one time basis, PG&E may update its forecast of Long Term Service Agreement ("LTSA") costs to reflect the terms and conditions in the executed contract. *See* Partial Settlement Agreement, ¶ III.B.3.3.

3. Initial Capital Cost: PG&E agrees to reduce the initial capital estimate for the CCGS project by $24.5 million. This primarily reflects a reduction of project contingency. The Parties have agreed to implement an incentive based structure to provide a strong encouragement for PG&E to manage costs within the target. There are three $20 million "bands" of recovery applicable to costs in excess of the target price. The first band would be passed through in rates at 100% recovery. The second $20 million band would be subject to 90/10 sharing, where PG&E could recover in rates only 90 percent of the costs in the band and shareholders would be responsible for the remaining ten percent. The final $20 million band would be subject to 80/20 sharing. If costs are in excess of the final band, PG&E would be required to file an application with the Commission for approval of any excess costs and would have the responsibility to

demonstrate such excess amounts were reasonable and should be recovered in rates. *See* Partial Settlement Agreement, ¶ III.B.4.

4. Capital Cost Changes: There are a few limited opportunities where PG&E may propose to adjust its initial capital cost target via an expedited advice letter: (1) delays in closing; (2) operational performance enhancements; and (3) changes beyond PG&E's control (including new permit or regulatory requirements, greenhouse gas issues, and costs incurred under the change in law sharing mechanism in the PSA). *See* Partial Settlement Agreement, ¶ III.B.4.3.

5. Capital Additions: Consistent with the approach to O&M costs, the Parties have agreed to fix the revenue requirement for capital additions prior to January 1, 2022, consistent with the revenue requirement that was used for the bid evaluation process. The Parties have imputed a capital revenue requirement for the first 8 years of project operations and included that in a table in the Partial Settlement Agreement. Prior to January 1, 2022, PG&E will not be authorized to recover the costs of capital additions in excess of the imputed revenue requirement unless: the capital additions improve safety, enable PG&E to comply with regulatory requirements, and/or reduce costs (such as capacity enhancement or efficiency improvements). *See* Partial Settlement Agreement, ¶ III.B.4.5.

6. Plant Availability and Heat Rate Information: Beginning at the commercial operations date for CCGS and ending December 31, 2021, PG&E will monitor and prepare an annual report describing monthly and annual plant availability, average monthly and annual heat rates and monthly hours of scheduled maintenance for the CCGS Project and the Colusa Generating Station, Gateway Generating Station and Humboldt Bay Generating Station. The annual report shall be provided to DRA, TURN and the Commission's Energy Division on a confidential basis. The report will monitor availability based upon forced outages (*i.e.*, excluding scheduled maintenance). The report will also track the number of start-ups for the combined cycle facilities. *See* Partial Settlement Agreement, ¶ III.B.5.

Third, under the Partial Settlement Agreement, the Parties have agreed that, in lieu of recovering stranded costs through a non-bypassable charge ("NBC") pursuant to Commission Decisions 04-12-048 and 08-09-012, a "Net Capacity Cost Charge" authorized under Senate Bill ("SB") 695, codified as Public Utilities Code section 365.1, will apply to the Mirant Marsh

Landing PPA and CCGS Project, to the extent these projects are approved by the Commission.[4] Consistent with Section 365.1, the Partial Settlement Agreement Net Capacity Cost Charge methodology determines the capacity value for a project by netting the project costs with imputed energy and ancillary services revenues based upon the California Independent System Operator's day-ahead market. This net capacity cost is then allocated to benefitting customers (*e.g.*, bundled utility, Community Choice Aggregation, and direct access customers) based upon their pro-rata share of the coincident peak load. These customers are also allocated a pro-rata share of the resource adequacy ("RA") value for the resource. The methodology in the Partial Settlement Agreement incorporates the Joint Parties' Proposal approved by the Commission in D.07-09-044, Appendix A, Section IX, for use prior to completion of an energy auction. The Parties selected this method because it has been the subject of extensive workshops, public comments and Commission review, and ultimately was approved by the Commission as a method for determining the net capacity value of a project prior to implementation of an energy auction approach. *See* Partial Settlement Agreement, ¶ III.D. Under Section 365.1, an energy auction is no longer required for projects subject to net capacity cost and benefit allocation.

The Partial Settlement Agreement is subject to a final Commission decision approving the terms of the agreement without modification (*see* Partial Settlement Agreement, ¶ III.E), and includes certain general terms and conditions related to the agreement among the parties. *See* Partial Settlement Agreement, ¶ III.F.

IV. THE SETTLEMENT IS REASONABLE AND IN THE PUBLIC INTEREST.

The Commission will approve a settlement if it finds the settlement "reasonable in light

[4] The CC 6&7 Tolling PPA and the Midway Sunset PPA (to the extent approved by the Commission) will be subject to stranded cost recovery through a non-bypassable charge pursuant to Commission Decisions 04-12-048 and 08-09-012, because these contracts do not provide new capacity to meet system reliability needs.

of the whole record, consistent with law, and in the public interest."[5] Here, the proposed Partial Settlement Agreement readily meets all of these criteria.

First, the Partial Settlement Agreement is reasonable in light of the whole record. PG&E's cost-recovery proposals and explanations for those proposals are extensively discussed in PG&E's testimony.[6] After PG&E served its opening testimony and parties conducted discovery about PG&E's ratemaking proposals, the Parties were able to reach a settlement agreement resolving all of the ratemaking and cost recovery issues. With regard to the ratemaking for the PPAs (*i.e.*, the Mirant Marsh Landing PPA, CC 6&7 Tolling PPA, and Midway Sunset PPA), to the extent these agreements are approved by the Commission, recovery of the PPA costs through ERRA is reasonable in light of the record and fully consistent with existing Commission precedent.[7] With regard to the CCGS PSA and project, PG&E submitted detailed testimony supporting the initial capital costs and O&M costs for the project.[8] However, as a result of settlement discussions between the Parties, PG&E has agreed to reduce its initial capital cost estimate by $24.5 million, cap the O&M costs and capital addition costs to the estimated costs used in the evaluation process for a period of eight years, and provide detailed plant availability and heat rate information to TURN, DRA and the Commission for not only the facilities at issue in this proceeding, but other PG&E owned facilities. With regard to the initial capital cost estimates, the Partial Settlement also includes a cost recovery band for costs above the initial estimates, which is a ratemaking mechanism previously approved by the Commission

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[5] Rule 12.1(d); *see also* D.09-10-017 (applying Rule 12.1(d) criteria to Mariposa settlement).

[6] *See* PG&E Opening Testimony, Chapters 7, 8 and 9.

[7] *See e.g.*, D.09-10-017, OP 1.d (ordering the recovery of the Mariposa PPA costs through ERRA); D.06-11-048, OP 19 (ordering recovery of the 2004 LTRFO winning PPAs through ERRA).

[8] *See* PG&E Opening Testimony, Chapters 7 and 8.

for utility-owned facilities.[9] Finally, PG&E's proposal for recovery of net capacity costs is also reasonable in light of the whole record. To the extent projects are approved by the Commission, these projects will be needed to provide reliable electric service in Northern California and recovery of these costs through a net capacity cost charge is fully supported by recently enacted legislation (*i.e.*, SB 695).

Second, the Partial Settlement Agreement is fully consistent with the law and existing Commission precedent. As explained above, recovery of PPA costs through ERRA is now well-established both by Commission precedent and California statute.[10] Moreover, the ratemaking proposal for the CCGS PSA and project is consistent with previous Commission decisions regarding utility-owned generating projects, which have approved initial capital costs and, in some instances, the use of a cost recovery band and cost sharing for costs above the initial capital cost estimates.[11] Finally, the net capacity cost charge is fully consistent with Public Utilities Code section 365.1, which was recently enacted. Under Section 365.1, the Commission is authorized to approve the recovery of net capacity costs from all "benefitting customers" for facilities that meet system or reliability needs.[12] The statute also requires that these customers be allocated the RA benefits of any approved generation. To the extent the Commission approves the Mirant Marsh Landing or CCGS projects, it will be doing so to meet a reliability need. Benefitting customers include bundled, community choice aggregation and direct access

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[9] *See e.g.*, D.06-06-035, Attachment A at ¶ 4 (approving cost recovery band for Gateway Generating Station).

[10] Public Utilities Code § 454.5(c)(1) (utility procurement costs incurred as a result of a competitive process "shall be recovered in the generation component of rates"); D.09-10-017, OP 1.d (ordering the recovery of the Mariposa PPA costs through ERRA); D.06-11-048, OP 19 (ordering recovery of the 2004 LTRFO winning PPAs through ERRA).

[11] D.06-11-048 (approving initial capital costs for the Humboldt and Colusa Generating Stations); D.06-06-035, Attachment A at ¶ 4 (approving cost recovery band for Gateway Generating Station).

[12] Cal. Pub. Util. Code § 365.1(c)(2).

customers. The Partial Settlement Agreement allocates both the net capacity costs and the RA benefits among the "benefitting customers," which is fully consistent with Section 365.1.

Finally, approval of the Partial Settlement Agreement is in the public interest. As the Commission has stated, to determine whether a settlement is in the public interest:

> [W]e consider individual elements of the settlement in order to determine whether the settlement generally balances the various interests at stake as well as to assure that each element is consistent with our policy objectives and the law.[13]

Here, the Partial Settlement Agreement resolves the ratemaking and cost recovery issues raised in this proceeding. The Partial Settlement Agreement does not address whether all or a portion of the projects selected in the 2008 LTRFO should be approved to meet the LTRFO Need Amount or whether the selection of the projects was just and reasonable. These are issues that both settling and non-settling parties can continue to address in this proceeding. The Partial Settlement Agreement does address ratemaking issues, which will no longer need to be litigated in this proceeding, conserving the time and resources of both the active parties in this proceeding and the Commission. More importantly, the Partial Settlement Agreement reduces customer costs by lowering the CCGS project initial capital costs, fixing the O&M and capital addition costs subject to certain limited exceptions, and allocating the costs and RA benefits of the Mirant Marsh Landing and CCGS projects among all benefitting customers. In short, the Partial Settlement Agreement is entirely in the public interest.

V. THE SETTLING PARTIES HAVE COMPLIED WITH THE REQUIREMENTS OF RULE 12.1(B)

Commission Rule 12.1(b) requires parties to provide a notice of a settlement conference at least seven days before a settlement is signed. On February 9, 2010, the Parties properly

[13] D.96-01-011; 64 CPUC2d 241, 267, citing D.94-04-088.

notified all of the parties on the service list of a settlement conference and subsequently convened the Settlement Conference on February 16, 2010 to describe and discuss the terms of the proposed settlement. Representatives of the Parties participated in the settlement conference. The Partial Settlement Agreement was finalized and executed on February 17, 2010.

VI. THE PROCEDURAL SCHEDULE IN THE PROCEEDING DOES NOT NEED TO BE MODIFIED

The *Assigned Commissioner's Ruling and Scoping Memo* issued in this proceeding on February 1, 2010 established a procedural schedule. The Partial Settlement Agreement will not affect the procedural schedule and can be reviewed by the ALJ and the Commission in parallel with the unresolved issues in this proceeding. Below, the Parties have prepared a procedural schedule that includes review of the Partial Settlement Agreement consistent with the time periods establish in Commission Rule 12. Review of the Partial Settlement Agreement will not require modification to any other elements of the current procedural schedule.

Procedural Schedule Including Review of Partial Settlement Agreement[14]

Event	Date
Partial Settlement Agreement filed	**February 17, 2010**
Non-utility testimony served	February 21, 2010
Request for final oral argument	March 3, 2010
Reply testimony served	March 10, 2010
PG&E Emails Joint Hearing Management Plan to the Service List	March 19, 2010, 3:00 p.m.
Comments on Partial Settlement Agreement and request for hearing on Partial Settlement Agreement	**March 19, 2010**

[14] Items added to the current procedural schedule to allow for review of the Partial Settlement Agreement are in bold.

Evidentiary Hearings **(including hearing on Partial Settlement Agreement if requested by any party filing comments)**	March 24-26, 2010 at 9:30 a.m.
Reply Comments on Partial Settlement Agreement	**April 5, 2010**
Concurrent opening briefs	April 14, 2010
Concurrent reply briefs	April 27, 2010
Proposed decision filed **(addressing all issues including Partial Settlement Agreement)**	May 27, 2010
Comments on proposed decision	June 24, 2010
Reply comments on proposed decision	July 1, 2010
Target Commission meeting **(addressing all issues including Partial Settlement Agreement)**	July 8, 2010

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VII. CONCLUSION

For all the foregoing reasons, the Parties request the Commission:

- Approve the Partial Settlement Agreement without change; and,
- Adopt the cost-recovery and ratemaking provisions in the Partial Settlement Agreement for the agreements ultimately approved by the Commission in this proceeding.

Respectfully submitted:

THE DIVISION OF RATEPAYER ADVOCATES

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February 17, 2010

ATTACHMENT A

PARTIAL SETTLEMENT AGREEMENT

(PUBLIC VERSION)

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I. INTRODUCTION

In accordance with Rule 12.1 of the California Public Utilities Commission's (Commission) Rules of Practice and Procedure, Pacific Gas and Electric Company (PG&E) the Division of Ratepayer Advocates (DRA), The Utility Reform Network (TURN), the Coalition of California Utility Employees (CUE), and California Unions For Reliable Energy (CURE) (collectively referred to as "the Parties" or individually as a "Party"), hereby enter into this Partial Settlement Agreement to resolve ratemaking and cost recovery issues raised in PG&E's Application for Approval of 2008 Long-Term Request for Offer Results and for Adoption of Cost Recovery and Ratemaking Mechanisms (Application). The Application seeks approval of four agreements arising from PG&E's 2008 Long-Term Request for Offers (LTRFO).

The Parties believe that this Settlement Agreement is in the public interest and represents a fair and equitable resolution of the ratemaking and cost recovery issues in the proceeding and request that the Commission approve it without modification. The Partial Settlement Agreement does not resolve whether all or a portion of the projects should be selected to meet the LTRFO

need amount or whether the selection of those projects is just and reasonable, and the Parties reserve all rights to advocate for Commission approval of all or a portion of the projects in this Application.

II. RECITALS

A. PG&E's April 1, 2008 LTRFOs sought 800 – 1,200 MW of new dispatchable and operationally flexible resources to fill a regional capacity need identified by the Commission in *Opinion Adopting Pacific Gas and Electric Company's, Southern California Edison Company's, and San Diego Gas & Electric Company's Long-Term Procurement Plans,* Decision (D.) 07-12-052 (LTPP Decision).

B. The Commission previously approved five Power Purchase Agreements (PPAs) arising from PG&E's 2004 LTRFO, two of which were subsequently terminated by the sellers.[1/] The two terminated PPAs represent 312 MW.[2/] As the Commission determined in the LTPP Decision, PG&E's procurement authority for these MW remains.[3/] Accordingly, PG&E is currently authorized by the Commission to obtain from 1,112 MW to 1,512 MW of new long-term resources (referred to as the "LTRFO Need Amount").

C. On April 1, 2009, PG&E filed Application No. 09-04-001 requesting approval of a PPA with Mariposa Energy, LLC (Mariposa). The Mariposa PPA was the first agreement to be submitted for approval from the 2008 LTRFO. On September 3, 2009, PG&E, DRA, TURN, Californians for Renewable Energy (CARE) and CURE filed a motion for approval of an all-party Settlement Agreement with the Commission. The Settlement Agreement was approved by

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1/ *Application of Pacific Gas and Electric Company for Approval of Long-Term Request for Offer Results and for Adoption of Cost Recovery and Ratemaking Mechanisms*, D.06-11-048, (November 30, 2006) Ordering Paragraph (OP) 1.

2/ *Id*., p. 6.

3/ LTPP Decision, pp. 105-106.

the Commission on October 15, 2009, in D.09-10-017.

D. On September 29, 2009, PG&E filed the Application seeking approval of four agreements arising from PG&E's 2008 Long-Term Request for Offers: (1) a PPA with Mirant Marsh Landing for a new 719 MW natural gas-fired combustion turbine facility ("Mirant Marsh Landing PPA"); (2) a PPA with Mirant Delta LLC which requires closure of the existing Contra Costa units 6 and 7 following the expiration of an 18-month tolling agreement ("CC 6&7 Tolling PPA"); (3) a Purchase and Sale Agreement (PSA) with Contra Costa Generating Station LLC for the purchase of the Contra Costa Generating Station(now known as the Oakley Generating Station), a new 586 MW natural gas-fired combined cycle facility ("CCGS PSA"); and (4) a PPA with an existing qualifying facility, Midway Sunset Cogeneration Company, for the partial output of a natural gas-fired cogeneration facility that will deliver 129 MW for 5 years and 61 MW through September 30, 2016 ("Midway Sunset PPA").

E. Intervenors who filed protests to the Application by November 5, 2009 were: DRA, TURN, CARE, Pacific Environment, Sierra Club of California, and Communities for a Better Environment. In addition, CMUA filed a clarification that did not appear to be a protest. On November 16, 2009, PG&E replied to the filed protests.

F. On December 2, 2009, a prehearing conference was held by Administrative Law Judge (ALJ) Darwin Farrar.

G. On February 1, 2010, Assigned Commissioner Peevey and ALJ Farrar issued a Scoping Memorandum which established a schedule for the proceeding.

H. On February 9, 2010, PG&E filed and served on the service list a notice of settlement conference for February 16, 2010 at TURN's offices in San Francisco to discuss a settlement in principle between and among PG&E, TURN, CURE, CUE and DRA.

I. This Partial Settlement Agreement reflects a partial settlement of issues in the Application. The Parties have agreed upon appropriate and reasonable cost recovery and ratemaking proposals applicable to each of the projects addressed in the Application to the extent that the Commission approves the projects to meet the LTRFO Need Amount. The Partial Settlement Agreement fully resolves the ratemaking and cost recovery issues in the Application. The Partial Settlement Agreement does not resolve whether all or a portion of the projects should be selected to meet the LTRFO Need Amount and the Parties reserve all rights to advocate for Commission approval of all or a portion of the projects in this Application.

III. PARTIAL SETTLEMENT AGREEMENT

A. Approval Of Ratemaking and Cost Recovery For PPAs and PSA

As a compromise among their respective litigation positions, and subject to the recitals and reservations set forth in this Partial Settlement Agreement, the Parties agree that the Mirant Marsh Landing PPA, CC 6&7 Tolling PPA, CCGS PSA and Midway Sunset PPA cost recovery and ratemaking proposals in this Partial Settlement Agreement are reasonable and should be approved by the Commission for those projects that the Commission approves.

B. Cost Recovery for the CCGS PSA

1. PG&E's ratemaking proposal for the CCGS PSA in the Application is reasonable and should be approved by the Commission, subject to the modifications as set forth in this Section B.

2. Revenue Requirement**:** This Settlement adopts the following Initial Annual Revenue Requirements for the first eight years of commercial operation:

CCGS Initial Annual Revenue Requirement
(thousands of nominal dollars)

Year of Operation	1	2	3	4	5	6	7	8
Initial RRQ	222,281	206,641	202,013	194,900	188,269	181,872	175,701	169,739

This Initial Annual Revenue Requirement is based on the Initial O&M Estimate and the capital cost discussed below. PG&E will adjust the Initial Revenue Requirement prior to commercial operation, and at the end of each subsequent calendar year, to reflect changes in the Initial O&M Estimate as discussed in Section B.3, and Capital Cost Recovery as discussed in Section B.4, as well as the latest Commission-authorized Cost of Capital and Franchise, Uncollectibles and Property Tax factors. PG&E will begin accruing the revised Initial Revenue Requirement for Year 1 in the Utility Retained Generation Balancing Account (UGBA) as of the closing date of the CCGS Project. The UGBA accrual will be adjusted annually to reflect that latest revised Initial Revenue Requirement, and the appropriate proration to the calendar year, in each Annual Energy True-Up (AET) following commercial operation

3. O&M Costs:

3.1 O&M cost recovery for the CCGS Project shall be equal to the amounts shown in the Confidential Appendix A, as adjusted for escalation per Section B.2

3.2 The labor O&M costs will be adjusted to reflect the following escalation indices:

Labor O&M -- Annual change in negotiated IBEW Labor Rates

LTSA – As shown in the Confidential Appendix A.

Other O&M – Annual change in the Material Index used for the LTSA.

3.3 PG&E can request changes to its O&M forecast, and the initial revenue requirement, for the period prior to January 1, 2022, by expedited advice letter for the following reasons: (1) delays in closing; (2) increased O&M caused by governmental agency requirements or changes in permitting assumptions; (3) changes in operating profile from the maximums assumed in forecast (*i.e.*, 333 starts/year and 4329 operating hours/year); and (4) on a one time

basis, PG&E may update its forecast of Long Term Service Agreement (LTSA) costs to reflect the terms and conditions in the executed contract. PG&E may propose revised O&M rates for the CCGS Project beginning with the General Rate Case (GRC) Test Year 2022 or later applicable Test Year. Alternatively, PG&E may propose revised O&M rates for the CCGS Project by submitting an application for an increase in electric rates effective January 1, 2022 or later.

3.4 An allocation of overheads and insurance costs are included in the revenue requirement for the CCGS Project and such costs will be excluded from PG&E's GRC for rates effective during the period prior to January 1, 2022.

4. Capital Costs

4.1 The Initial Capital Cost Estimate will be reduced by $24.5 million. The Initial Capital Cost Estimate is included in the Confidential Appendix A. PG&E is entitled to include in rate base and recover in rates the actual costs of the CCGS Project up to the Initial Capital Cost Estimate without the need for an after the fact reasonableness review.

4.2 Recovery of costs in excess of Initial Capital Cost Estimate:

First $20 Million – 100% Recovery: PG&E is entitled to include in rate base and recover in rates 100% of actual costs up to $20 million in excess of the Initial Capital Cost Estimate without the need for an after the fact reasonableness review

Next $20 Million – 90% Recovery: PG&E is entitled to include in rate base and recover in rates 90% of actual costs between $20 million and $40 million in excess of the Initial Capital Cost Estimate without the need for an after the fact reasonableness review

Next $20 Million – 80% Recovery: PG&E is entitled to include in rate base and recover in rates 80% of actual costs between $40 million and $60 million in excess of the Initial Capital

Cost Estimate without the need for an after the fact reasonableness review

If actual costs of the CCGS Project exceed the Initial Capital Cost Estimate by more than $60 million, PG&E may file an application with the Commission seeking to recover additional amounts and shall be entitled to recover these additional amounts only if approved by the Commission upon a showing of reasonableness.

4.3 Changes to Initial Capital Cost Estimate: PG&E can request changes to the Initial Capital Cost Estimate by expedited advice letter under the following limited circumstances: (1) Delays in closing; (2) Operational Performance Enhancements; and (3) Changes beyond PG&E's control (including new permit or regulatory requirements, GHG issues, and costs incurred under the change in law sharing mechanism in the PSA).

4.4 Incentive Payments and Penalties: Incentive Payments and Penalties under the CCGS PSA are not included in the initial capital cost estimate and will be fully recovered in rates based upon actual incurred charges or payments.

4.5 Capital Additions:

The Initial Annual Revenue Requirements assumes the following capital additions and related revenue requirement (RRQ):

Capital Additions
(thousands of nominal dollars)

Year of Operation	5	6	7	8
Capital Additions	84	85	87	89
Capital RRQ	14	28	42	55

Prior to January 1, 2022, capital additions to the CCGS Project will be placed in rate base and booked for accounting and ratemaking purposes but the revenue requirement associated with such capital additions shall be recovered in rates in GRCs for rates effective prior to January 1, 2022, only under the following circumstances: (1) the capital additions improve safety, enable

PG&E to comply with regulatory requirements, and/or reduce costs (such as capacity enhancement or efficiency improvements) or (2) for other capital additions, the revenue requirement shall not exceed the capital additions revenue requirement as shown above. For rates effective January 1, 2022 or later, there are no limitations on PG&E's ability to propose recovery of capital additions for the CCGS Project in a GRC or other application.

5. **Plant Availability and Heat Rate Data**: Beginning at the commercial operations date for CCGS and ending December 31, 2021, PG&E will monitor and prepare an annual report describing monthly and annual plant availability, average monthly and annual heat rates and monthly hours of scheduled maintenance for the CCGS Project and the Colusa Generating Station, Gateway Generating Station and Humboldt Bay Generating Station. The annual report shall be provided to DRA, TURN and the Commission's Energy Division on a confidential basis. The report will monitor availability based upon forced outages (*i.e.*, excluding scheduled maintenance). The report will also track the number of start-ups for the combined cycle facilities.

C. **Cost Recovery For PPAs.**

PG&E shall recover the costs of all payments made pursuant to the Mirant Marsh Landing PPA, CC 6&7 Tolling PPA, and Midway Sunset PPA through the Energy Resources Recovery Account (ERRA).

D. **Recovery Of Net Capacity Costs Under PUC § 365.1**

In lieu of recovering stranded costs under a non-bypassable charge pursuant to Commission Decisions 04-12-048 and 08-09-012, the following Net Capacity Cost Charge authorized under SB 695, codified as Public Utilities Code Section 365.1, will apply to the Mirant Marsh Landing PPA and CCGS Project, to the extent the project is approved by the Commission (each approved project is referred to as a "Project"). The methodology set forth

below incorporates the Joint Parties Proposal approved by the Commission in D.07-09-044, Appendix A, Section IX, for use prior to completion of the energy auction.

1. Applicability: Consistent with Public Utilities Code § 365.1, net capacity costs shall be recovered from: bundled customers, existing and new direct access customers of Energy Service Providers (ESPs), and Community Choice Aggregation (CCA) customers (collectively "Benefitting Customers"). PG&E may apply to the Commission to seek authorization to make the Net Capacity Cost Charge applicable to large municipalizations as specified in D.08-09-012.

2. Allocation of Resource Adequacy Benefits: System and local resource adequacy (RA) benefits associated with the Project will be allocated quarterly to load serving entities (LSEs) that serve Benefitting Customers based on each LSE's percentage of peak load. LSEs shall be notified in July of each year of the System and Local RA capacity they will be receiving for each month in the next calendar year.

3. Allocation of Net Capacity Costs: PG&E shall forecast the annual net capacity costs, which are defined below. This calculation shall be subject to an annual review and balancing account true-up. PG&E shall use the net cost forecast it has developed to establish an annual revenue requirement for all Benefiting Customers to recover the net capacity cost of the Project. All Benefiting Customers shall be charged monthly for their respective portion of the net capacity costs based on the established revenue requirement.

4. Term: Recovery of net capacity costs for the Mirant Marsh Landing PPA shall be equal to the term of each PPA. Recovery of net capacity costs for CCGS Project shall be limited to 10 years. To the extent the Project(s) are approved by the Commission, by approval of this Partial Settlement Agreement, the Commission makes the findings, authorizations and orders necessary to comply with Public Utilities Code Section 365.1 that each Project is needed to meet

system or local area reliability needs for the benefit of all Benefitting Customers.

5. Methodology For Calculation of Net Capacity Costs: The net cost of each Project will be determined by subtracting the Project Revenues from the Project Costs, where:

"Project Costs" include the following:

a. All actual unavoidable costs incurred by the utility for the Project (*e.g.*, capacity payments, the cost of posting collateral, if any, and the annual non-fuel revenue requirement for a utility-owned plant).

b. Imputed avoidable fuel costs calculated as the product of: (i) the quantity of natural gas that would be utilized by the Project, and (ii) the price of natural gas, (i) and (ii) being applicable for periods when the Project would recover its avoidable operating expenses from the day-ahead energy and/or ancillary services markets (*i.e.*, for periods when it would have been "economic" to "run" the Project, based on day-ahead prices).

(1) For purposes of this calculation, the price of natural gas for each hour shall be the daily spot index price for the applicable day as reported by an established industry publication (*e.g.*, *Gas Daily* or *NGI*) for the trading point closest to delivery point of the Project plus any applicable Project gas transportation charges and Local Distribution Company (LDC) tariff charges.

(2) The CAISO hourly day-ahead nodal price for the Project's "injection point" shall be utilized for energy.

c. Imputed avoidable non-fuel Project costs for all assumed dispatched energy from subsection (b) above. For example, if the Project requires a variable O&M charge of $2.00/MWh for delivered energy, the imputed avoidable non-fuel Project costs for a given hour would be the amount of energy assumed to have been dispatched times the $2.00/MWh variable O&M charge.

"Project Revenues" include the following:

a. The imputed day-ahead energy revenues for hours in which the Project is determined to have been economic to dispatch. The imputed energy revenues shall be calculated as the product of the: (i) the calculated energy assumed to be dispatched by the Project, and (ii) the CAISO hourly day-ahead nodal energy price for the Project's "injection point".

b. The imputed day-ahead ancillary services revenues. For hours in which it was determined that the Project would not have been economic to be scheduled in the day ahead energy market, an assessment of whether it would have been economic to offer non-spinning reserves (assuming the Project provides such services) shall be performed using hourly CAISO day-ahead energy prices and natural gas prices

described in the definition of "Project Costs" Item (b)(1) above and the CAISO published day-ahead non-spinning reserves price. The imputed day-ahead ancillary service revenue calculation shall be constrained by the amount of capacity available under the Project to be offered into non-spinning reserves market and any other relevant operating limitation (*e.g.*, minimum load requirements or maximum operating hours). The imputed day-ahead ancillary services revenues shall be calculated net of any calculated operating costs that would have to be incurred to offer ancillary services capacity (*e.g.*, start-up costs). The imputed day-ahead ancillary services revenues calculation will not assume real-time incremental dispatch of energy by the CAISO.

6. Implementation: PG&E shall file an advice letter with the Commission implementing the above methodology for Projects that are approved by the Commission six months prior to the proposed effective date of the Net Capacity Charge.

7. Midway Sunset PPA and CC6&7 Tolling PPA: PG&E shall recover any stranded costs associated with the Midway Sunset PPA and CC6&7 Tolling PPA throughout their contract terms as non-bypassable charges consistent with Commission Decisions 04-12-048 and 08-09-012.

E. Commission Approval.

This Partial Settlement Agreement shall become effective on the date of a final Commission decision approving the terms of this Partial Settlement Agreement without modifications unacceptable to any Party.

F. General Terms and Conditions.

1. The Partial Settlement Agreement is intended to be a resolution among the Parties of the ratemaking and cost recovery issues raised in PG&E's Application.

2. The Parties agree to support the Partial Settlement Agreement and perform diligently, and in good faith, all actions required or implied hereunder to obtain Commission approval of the Partial Settlement Agreement, including without limitation, the preparation of written pleadings. No Party will contest in this proceeding, or in any other forum or in any

manner before this Commission, this Partial Settlement Agreement.

3. The Parties agree by executing and submitting this Partial Settlement Agreement that the relief requested herein is just, fair and reasonable, and in the public interest.

4. The Partial Settlement Agreement is not intended by the Parties to be precedent regarding any principle or issue. The Parties have assented to the terms of this Partial Settlement Agreement only for the purpose of arriving at the compromise embodied in this Settlement. Each 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 Partial Settlement Agreement and each Party declares that this Partial Settlement Agreement should not be considered as precedent for or against it.

5. This Partial Settlement Agreement embodies compromises of the Parties' positions. No individual term of this Partial Settlement Agreement is assented to by any Party, except in consideration of the other Parties' assent to all other terms. Thus the Partial Settlement Agreement is indivisible and each part is interdependent on each and all other parts. Any Party may withdraw from this Partial Settlement Agreement if the Commission modifies, deletes from, or adds to the disposition of the matters stipulated herein. The Parties agree, however, to negotiate in good faith with regard to any Commission-ordered changes in order to restore the balance of benefits and burdens, and to exercise the right to withdraw only if such negotiations are unsuccessful.

6. The terms and conditions of the Partial Settlement Agreement may only be modified in writing subscribed to by the Parties and approved by a Commission order.

The Parties have caused this Partial Settlement Agreement to be executed by their authorized representatives. By signing this Partial Settlement Agreement, the representatives of

the Parties warrant that they have the requisite authority to bind their respective principals.

DATED: February 17, 2010

THE DIVISION OF RATEPAYER ADVOCATES

BY: _____/s/_____
DANA APPLING
ITS __Director_____

PACIFIC GAS AND ELECTRIC COMPANY

BY: _____/s/_____
CHARLES R. MIDDLEKAUFF
ITS: __Director and Counsel_____

THE UTILITY REFORM NETWORK

BY: _____/s/_____
MICHEL P. FLORIO
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CALIFORNIA UNIONS FOR RELIABLE ENERGY

BY: _____/s/_____
MARC D. JOSEPH
ITS _Attorney_____

COALITION OF CALIFORNIA UTILITY EMPLOYEES

BY: ____/s/_____
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ITS _Attorney_____

CONFIDENTIAL APPENDIX A

[CONFIDENTIAL: REDACTED FROM PUBLIC VERSION]

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 17th day of February 2010, I served a true copy of:

MOTION FOR APPROVAL OF PARTIAL SETTLEMENT AGREEMENT BETWEEN AND AMONG PACIFIC GAS AND ELECTRIC COMPANY, THE DIVISION OF RATEPAYER ADVOCATES, THE UTILITY REFORM NETWORK, THE COALITION OF CALIFORNIA UTILITY EMPLOYEES, AND CALIFORNIA UNIONS FOR RELIABLE ENERGY

(PUBLIC VERSION)

[XX] By Electronic Mail – serving the enclosed via e-mail transmission to each of the parties listed on the official service list for A.09-09-021 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 R.08-08-009 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 17th day of February 2010 at San Francisco, California.

/s/

AMY S. YU

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA SERVICE LIST

Last Updated: February 16, 2010

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