Decision **PROPOSED DECISION OF ALJ LONG** **(Mailed 11/19/2007)**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of PACIFIC GAS AND ELECTRIC COMPANY to Recover Incremental Costs Related to the 2005-2006 New Year's Storms and July 2006 Heat Storm Recorded in the Catastrophic Event Memorandum Account (CEMA) Pursuant to Public Utility Code Section 454.9. (U39E)	Application 06-11-005 (Filed November 13, 2006)

FINAL OPINION ON RECOVERY BY PACIFIC GAS AND ELECTRIC COMPANY FOR A CATASTROPHIC EVENT MEMORANDUM ACCOUNT RELATED TO THE 2005-2006 NEW YEAR'S STORMS

TABLE OF CONTENTS

Title **Page**

FINAL OPINION ON RECOVERY BY PACIFIC GAS AND ELECTRIC COMPANY FOR A CATASTROPHIC EVENT MEMORANDUM ACCOUNT RELATED TO THE 2005-2006 NEW YEAR'S STORMS 2
1. Summary 2
2. Background 2
3. Procedural History 3
4. Standard of Review 3
4.1 Overview 3
4.2 Standard for Approval of a Settlement 4
4.2.1 Uncontested Settlement 5
5. Settlement 5
5.1 Eligibility for CEMA Recovery 7
5.2 The Settlement is Reasonable 9
5.2.1 Reasonable in Light of the Whole Record 9
5.2.2 Consistent With Law 9
5.2.3 In The Public Interest 9
6. Ex Parte Violations 11
6.1 Background 11
6.2 Discussion 13
7. Comments on Proposed Decision 16
8. Assignment of Proceeding 17
Findings of Fact 17
Conclusions of Law 18
ORDER 20
APPENDIX A

FINAL OPINION ON RECOVERY BY PACIFIC GAS AND ELECTRIC COMPANY FOR A CATASTROPHIC EVENT MEMORANDUM ACCOUNT RELATED TO THE 2005-2006 NEW YEAR'S STORMS

1. Summary

This opinion allows Pacific Gas and Electric Company (PG&E) to recover the settlement amount for 2005-2006 New Year's Storms' costs recorded in a Catastrophic Event Memorandum Account (CEMA). The adopted electric revenue requirement is $12,138,000, including interest through December 31, 2010, franchise fees, and uncollectibles, to be collected in rates beginning January 1, 2008, with $9,333,000 collected in rates in 2008, $1,431,000 in 2009, and $1,374,000 in 2010. PG&E will record the CEMA revenue requirement in its Distribution Revenue Adjustment Mechanism ($11,460,000) and to the Utility Generation Balancing Account ($503,000) for rate recovery through the Annual Electric True-up advice letter. (Settlement, p. 3.) This decision also resolves PG&E's ex parte violations. This proceeding is closed.

2. Background

During the hot weather of July 2006, certain equipment of PG&E failed. In part of this application, PG&E characterized this event as catastrophic and sought to have its expenses and investments in repairing the damage recovered through its CEMA. In Decision (D.) 07-07-041, dated July 26, 2007, the Commission found that PG&E had not satisfied the applicable eligibility standards for CEMA ratemaking treatment. We therefore denied that portion of the application.

This decision addresses the balance of the application, the 2005-2006 New Year's Storms. During the latter part of 2005 and early 2006 there was a series of winter storms which caused damage to PG&E's distribution system from Humboldt to Bakersfield. Governor Schwarzenegger issued emergency

proclamations on January 2, 3, and 12, 2006 covering 34 counties. (Ex. PG&E-1. pp. 1-7, and Ex. PG&E-2, pp. 1-6 – 1-8.)

3. Procedural History

The Commission denied recovery of the 2006 Heat Storm costs in D.07-07-041, dated July 26, 2007. For the 2005-2006 New Year's Storms, Division of Ratepayer Advocates (DRA) served testimony and evidentiary hearings were scheduled but cancelled upon PG&E and DRA indicating they had reached a settlement pursuant to guidance in the scoping memo. DRA was the only active party for this phase of the proceeding to consider the 2005-2006 New Year's Storms.[1]

4. Standard of Review

4.1 Overview

The Commission's prudent manager standard is the appropriate reasonableness standard to apply to the costs recorded in a CEMA.[2] In order for the Commission to consider the proposed settlement in this proceeding as being in the public interest, the Commission must be convinced that the parties had a sound and thorough understanding of the application and all of the underlying

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[1] Notice of the application appeared in the Commission's Daily Calendar on November 16, 2006. The Commission preliminarily categorized it as ratesetting in Resolution ALJ 176-3183, dated November 30, 2006 and also determined that hearings were necessary. DRA and TURN filed timely protests on December 18, 2006. PG&E replied timely on January 2, 2007. By a ruling dated December 1, 2006, PG&E was directed to serve copies of any and all documentation that support the assertion of government-declared disasters relating to the 2005-2006 New Year's Storms and the July 2006 Heat Storm. In response to the Administrative Law Judge's (ALJ) telephone request, PG&E served the relevant volume of workpapers on November 30, 2006 before service of the ruling. (Ex. PG&E-2.) DRA served testimony on July 6, 2007, and an all-party settlement was filed on September 21, 2007.

[2] *See* for example, D.02-08-064, dated August 22, 2002, *mimeo*., pp. 5-8.

assumptions and data included in the record. This level of understanding of the applications and development of an adequate record is necessary to meet our requirements for considering any settlement, as discussed below. The record is composed of all filed and served documents.

This section summarizes the requirements for review and approval of any proposed settlement and then provides an analysis to demonstrate that the proposed settlement is reasonable and should be approved. The February 5, 2007 scoping memo (*Mimeo,* pp. 4 – 5) provided specific guidance and mandated two settlement conferences to encourage and promote the likelihood of settling the application.

4.2 Standard for Approval of a Settlement

(Rule 12.1) Proposal of Settlement

> (a) Parties may … propose settlements on the resolution of any material issue of law or fact or on a mutually agreeable outcome to the proceeding. Settlements need not be joined by all parties; however, settlements in applications must be signed by the applicant ...
>
> The motion shall contain a statement of the factual and legal considerations adequate to advise the Commission of the scope of the settlement and of the grounds on which adoption is urged. Resolution shall be limited to the issues in that proceeding and shall not extend to substantive issues which may come before the Commission in other or future proceedings. …
>
> (b) Prior to signing any settlement, the settling parties shall convene at least one conference with notice and opportunity to participate provided to all parties for the purpose of discussing settlements in the proceeding. …
>
> (c) Settlements should ordinarily not include deadlines for Commission approval …
>
> (d) 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.

In short, we must find the settlement comports with Rule 12.1(d), which requires a settlement to be "reasonable in light of the whole record, consistent with law, and in the public interest." We address below whether the settlement meet these three requirements.

4.2.1 Uncontested Settlement

A further standard is articulated in *San Diego Gas & Electric* 46 CPUC 2d 538 (1992), and applies to all-party settlements. As a precondition to approving such a settlement, the Commission must be satisfied that:

1. The proposed all-party 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 settlement term contravenes statutory provisions or prior Commission decisions.
4. Settlement documentation provides the Commission with sufficient information to permit it to discharge its future regulatory obligations with respect to the parties and their interests.

We can answer all four requirements in the affirmative for PG&E's uncontested settlement with DRA.

5. Settlement

PG&E and DRA filed a joint motion for the adoption of a proposed settlement (Attachment A) pursuant to the Commission's rules and precedents. The settlement has four parts:

(1) The reasonable total cost recoverable from this CEMA application is $15.5 million, consisting of $11.3 million in capital costs and $4.2 million in expenses. The revenue

requirement resulting from these costs is $12.138 million in electric revenue requirements, including interest through December 31, 2010, franchise fees, and uncollectibles, to be collected in rates beginning January 1, 2008, with $9.333 million collected in rates in 2008, $1.431 million in 2009, and $1.374 million in 2010.[3] Upon approval of this settlement by the Commission, PG&E will record the CEMA revenue requirement into the Distribution Revenue Adjustment Mechanism ($11.46 million) and to the Utility Generation Balancing Account ($503,000[4]) for rate recovery through the Annual Electric True-up advice letter.

(2) The Settling Parties agree that the Commission should find that it is reasonable for PG&E to recover $12.138 million as PG&E's total authorized revenue requirement in this application. It is difficult to tie the final settlement amount to specific outcomes for individual issues; however, the final settlement amount does reflect litigation uncertainty assessed by one or both parties. This uncertainty includes, among other issues, the ability of either party to prove whether or not PG&E's requested costs were incremental to the costs approved in PG&E's 2003 test year GRC settlement. The GRC rate case settlement was not fully disaggregated, and thus did not

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[3] The revenue requirement numbers include interest calculated at the actual 90-day commercial paper rate through August 2007, and at the August 2007 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 2007. (Settlement Footnote 4.) Post 2010 the capital costs will be included in ratebase and recovered in subsequent general rate cases.

[4] "These numbers only total $11.963 million because they assume interest only through December 31, 2007, when the revenue requirement numbers are assumed to be transferred to the [Distribution Revenue Adjustment Mechanism] and [Utility Generation Balancing Account], using the same assumptions as [Settlement] footnote 1." (Settlement, Footnote 5.)

specify costs in terms germane to a CEMA analysis. This also includes the likely inability of PG&E to prove whether its requested costs properly include those costs incurred in counties without a disaster declaration.

(3) PG&E agrees that it shall not pursue any appellate relief, in any court of law, regarding the underlying facts and issues raised in this proceeding. PG&E further agrees that it will not pursue or support an application for rehearing of D.07-07-041, the decision denying the portion of PG&E's application requesting recovery for costs associated with the July 2006 heat storm. PG&E also agrees to not pursue or support a petition for modification of D.07-07-041, or to pursue or support any collateral attack upon D.07-07-041, as it relates to the July 2006 heat storm.

(4) The parties further agree that in future CEMA applications, PG&E will not include an allocation of capitalized Administrative and General (A&G) costs in the costs booked to the CEMA. In the future, PG&E will allocate its capitalized A&G costs to non-CEMA capital costs. (Settlement, pp. 3 – 4.)

5.1 Eligibility for CEMA Recovery

The 2005-2006 Winter Storms are eligible for CEMA treatment consistent with our long-standing CEMA policy. Following the October 17, 1989 Loma Prieta earthquake, the Commission adopted Resolution E-3238, dated July 24, 1991, which ordered that any utility, as defined by Pub. Util. Code § 216, was authorized to establish a "Catastrophic Event Memorandum Account." (Ex. 4.) The resolution described the conditions for invoking CEMA and its general operation. In compliance, PG&E filed Advice Letter 1367-E (for the

electric department) on August 7, 1991. PG&E's initial CEMA tariff was effective on August 7, 1991.[5]

Resolution E-3238 described that the purpose of CEMA is:

> … to record costs of: (a) restoring utility service to its customers; (b) repairing, replacing or restoring damaged utility facilities; and (c) complying with government agency orders resulting from declared disasters. (*Mimeo*., p. 1.)

The resolution discussed the need for an established account which would ensure there was no issue of retroactive ratemaking – that an in-place mechanism would provide a legitimate vehicle to recover eligible costs.

The resolution specifically discussed eligibility:

> Because the intent of such [CEMA] is to capture for consideration for later recovery only those costs associated with truly unusual, catastrophic events such as the Loma Prieta earthquake, their use will be restricted to events declared disasters by competent state or federal authorities. Other events not so officially designated are outside the scope and intent of this authority and will not be considered for recovery under this mechanism. (Resolution E-3238, *mimeo*., p. 2.)

PG&E's current tariff similarly states:

> The purpose of the CEMA is to recover the costs associated with the restoration of service and PG&E facilities affected by a catastrophic event declared a disaster or state of emergency by competent federal or state authorities. (Ex. PG&E-2, p. 1-1.)

Governor Schwarzenegger's three declarations of emergency are appropriate triggers for PG&E to invoke the CEMA tariff. Based upon the

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[5] PG&E's current CEMA tariff is included in Ex. PG&E-2, pp. 1-1 and 1-2.

record, the Commission would, but for the settlement, determine whether PG&E incurred the costs as a result of the catastrophe and whether those costs are recoverable under the CEMA tariff.

5.2 The Settlement is Reasonable

5.2.1 Reasonable in Light of the Whole Record

The settlement proposes that PG&E would not recover its full request. The settlement is a reduction of $7.34 million compared to PG&E's request of $22.84 million. The settling parties note that the recent settled general rate case did not fully disaggregate the revenue requirement and therefore there is a reasonable dispute over the incremental amount spent by PG&E. Additionally, there were litigation risks to both sides, for example, the disputed allocation of overhead costs to CEMA-eligible restoration and repair work.

We have reviewed Ex. DRA-1, the testimony served by DRA, as well as the original, supplemental, and rebuttal testimony served by PG&E. There was no guarantee that litigation of the issues raised by DRA would have resulted in any adjustment to the revenue requirements as significant as proposed in the settlement which is acceptable to all parties. We can reasonably determine that the settlement outcome is within the reasonable range of possible litigation outcomes. We therefore can find the settlement to be reasonable based on the record. (Rule 12.1(d).)

5.2.2 Consistent With Law

The settlement does not violate any code or law and is therefore consistent with our settlement rules.

5.2.3 In The Public Interest

Rule 12(a) includes the requirement that a settlement "shall not extend to substantive issues which may come before the Commission in other or

future proceedings." The all-party settlement requirements state that the settlement must provide "the Commission with sufficient information to permit it to discharge its future regulatory obligations with respect to the parties and their interests." Rule 12.5 states that a settlement is not a precedent unless otherwise "expressly" adopted by the Commission. With these three proscriptions we must examine the settlement's fourth provision: "… that in future CEMA applications, PG&E will not include an allocation of capitalized Administrative and General (A&G) costs in the costs booked to the CEMA."

The Uniform System of Accounts provides:

Overhead Construction Costs.

> A. All overhead construction costs, such as engineering, supervision, general office salaries and expenses, construction engineering and supervision by others than the accounting utility, law expenses, insurance, injuries and damages, relief and pensions, taxes and interest, shall be charged to particular jobs or units on the basis of the amounts of such overheads reasonably applicable thereto, to the end that each job or unit shall bear its equitable proportion of such costs and that the entire cost of the unit, both direct and overhead, shall be deducted from the plant accounts at the time the property is retired. (Emphasis added, http://www.ferc.gov/legal/acct-matts/usofa.asp)

DRA argued in its testimony that the general rate case fully provided PG&E's overhead costs, (Ex. DRA-1, p. 6.) thus we could conclude any CEMA activity is unlikely to generate incremental overhead costs. One of the accepted practices in CEMA recovery is to only allow recovery of incremental costs because by the very definition of a CEMA-eligible event, it was unforeseen and thus incremental to existing ratemaking provisions. While we are cautious about any settlement proscribing future ratemaking, we find this agreement is a useful clarification of which costs are, or are not, incremental costs and therefore

should be included or excluded from CEMA recovery. We therefore find that the settlement does not interfere with the Commission's ability to discharge its future CEMA regulatory obligations and we can expressly adopt this settlement component to constrain PG&E's future CEMA applications. This adoption is an appropriate deviation, for good cause, under Rule 1.2, from the provisions of Rule 12.1(a) which provides that settlements should not address substantive issues in subsequent proceedings.

6. Ex Parte Violations

6.1 Background

The assigned Commissioner and the assigned ALJ determined that PG&E violated Pub. Util. Code § 1701.3(c), and Rule 8.2 of the Commission's Rules of Practice and Procedure (Rules) in two meetings that occurred on Thursday, May 17, 2007, between representatives of PG&E and personal advisors for two Commissioners, as well as with the assigned Commissioner, John A. Bohn, and the Commission President, Michael R. Peevey.[6] On May 22, 2007, PG&E served a letter indicating that "PG&E did not file a three-day notice in Docket number A.06-11-005." Rule 8.2(c)(2) *Ex Parte* Requirements states:

> (c) In any ratesetting proceeding, ex parte communications are subject to the reporting requirements set forth in Rule 8.3. In addition, the following restrictions apply:

[6] The meetings with personal advisors are subject to Rule 8.5 and do not require equal time or three days' notice. (Rule 8.5: "Communications with Advisors - Communications with Commissioners' personal advisors are subject to all of the restrictions on, and reporting requirements applicable to, ex parte communications, except that oral communications in ratesetting proceedings are permitted without the restrictions of Rule 8.2(c)(1) and (2).")

> (2) Individual oral communications: If a decisionmaker grants an ex parte communication meeting or call to any party individually, all other parties shall be granted an individual meeting of a substantially equal period of time with that decisionmaker. The party requesting the initial individual meeting shall notify the other parties that its request has been granted, at least three days before the meeting or call. At the meeting, that party shall produce a certificate of service of this notification on all other parties. If the communication is by telephone, that party shall provide the decisionmaker with the certificate of service before the start of the call. The certificate may be provided by facsimile transmission or electronic mail. (Emphasis added.)

Rule 8.2 was adopted to implement Pub. Util. Code § 1701.3(c), which mandates:

> Ex parte communications are prohibited in ratesetting cases. However, oral ex parte communications may be permitted at any time by any commissioner if all interested parties are invited and given not less than three days' notice. … If an ex parte communication meeting is granted to any party, all other parties shall also be granted individual ex parte meetings of a substantially equal period of time and shall be sent a notice of that authorization at the time that the request is granted. In no event shall that notice be less than three days.

PG&E acknowledged it violated Rule 8.2 and its May 22, 2007 notice included an apology.

On May 23, 2007, DRA served a letter on the Commissioners and the assigned ALJ indicating PG&E failed to inform DRA of the ex parte meetings with Commissioners Bohn and Peevey, and it thereby "request[ed] that it [DRA] receive equal lobbying time in this matter."

PG&E filed several separate ex parte reporting notices on May 21, 2007 for separate meetings with Commissioners and Commissioner's advisors that occurred on or about May 17, 2007. Additionally, the assigned ALJ noted there were possibly several errors in the e-mail transmittals and ex parte reports. PG&E subsequently filed corrections to its ex parte reports.

A separate hearing on June 19, 2007 afforded parties an opportunity to offer further evidence or argument on applicable law or relevant policy. PG&E, DRA, and The Utility Reform Network (TURN) actively participated. At that hearing, PG&E's Vice President accepted full and personal responsibility for the violations[7] and outlined the remedial steps PG&E implemented immediately to improve future documentation for ex parte requests. (TR. pp. 6–7.) DRA and TURN addressed the relevant sanctions.

6.2 Discussion

By Ruling dated August 8, 2007, the assigned Commissioner and assigned ALJ ruled that PG&E committed five separate violations and based these determinations on PG&E's admissions at the June 19 hearing:

(a) Two violations of Rule 8.2(c)(2), conducting an ex parte meeting with a Commissioner without producing a certificate of service of the ex parte meeting notification on all other parties;

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[7] Mr. Cherry, on behalf of PG&E, apologized and accepted responsibility: "First, I want to apologize to the parties in this room, to the ALJ, and to the Commission for our oversight in failing to give prior notification of our ex parte meetings in this proceeding." (TR. p. 4, lines 5–8.) As well as: "I take full responsibility for the miscommunications in my department. That was an oversight that shouldn't have happened. But I do want to assure you and the people in this room that it was an unintentional mistake, and we are sorry. We are very deeply sorry." (TR. p. 6, lines 9-14.)

(b) Two violations for scheduling a meeting with a Commissioner where PG&E failed to issue a notice or subsequently issue a notice and change the date of the ex parte meeting; and

(c) One violation for inadequate and incorrect reporting on May 21 of the four ex parte meetings held on May 16 and May 17, 2007.

We must determine the appropriate response predicated on the harm, if any, caused by these violations, any mitigation of the harm, and PG&E's prior compliance with the ex parte rules. The August 8, 2007 ruling found that the Commission has discretion, under Rule 8.2(j), to determine the appropriate response for the ex parte violation.

In terms of financial resources, PG&E is an extremely large company with ownership equity in the billions. The penalty range of $500 to $20,000 per transaction is a small sum for any deterrence value – if deterrence means avoiding the financial harm of the penalty. We could therefore impose the maximum penalty with little likelihood of a discernable financial impact on PG&E.

There are few precedents for ex parte violation enforcement. As the Commission has recognized, it is also difficult to find closely matching precedent since "The Commission adjudicates a wide range of cases which involve sanctions, many of which are cases of first impression. As such, the outcomes of cases are not usually directly comparable." (84 CPUC2d 155, 184.)

The violations in this proceeding may be a case of first impression covering a permissible ex parte contact gone awry because of the failure to provide advance notice. Nevertheless, we view any ex parte violation as a breach because such ex-record communication without the other parties' prior

knowledge or presence diminishes the quality and fairness of the deliberative process. Thus, we find there was harm.

In developing a recommendation for the Commission, the ruling required PG&E to either develop a best practices model[8] in cooperation with the Commission's General Counsel, or face a financial sanction.[9]

PG&E subsequently met with the General Counsel and designee and in good faith developed a best practices model to document, control, and report on ex parte contacts.

We choose to adopt a constructive remedial action. We therefore affirm the August 8, 2007 ruling of the assigned Commissioner and assigned ALJ and find that the development of written best practices to document, control, and report on ex parte contacts, is in the long-term best interests of the ratepayers and all other parties. PG&E's model of best practice is attached to this decision (Attachment B). We therefore find that no financial sanction is necessary.

7. Comments on Proposed Decision

The ALJ's proposed decision in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and Rule 14.3 of the Commission's Rules of Practice and Procedure. Opening comments were filed by DRA on December 7, 2007, and PG&E filed a timely reply. No changes were made as a result of the comments.

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[8] Best Practice is a management concept which asserts that there is a technique, method, or process that is more effective at delivering a particular outcome when compared to all other available techniques, methods, processes, etc. That is, with best practices, which include checks, and testing, a desired outcome can be delivered with fewer problems and unforeseen complications. Any best practice must also be tempered with good judgment applicable to the specific circumstances.

[9] Ruling, *mimeo.*, p. 10 ff. "We believe a written best practices model will provide a long-term tool to avoid ex parte violations by any party appearing before the Commission that relies on a good model and exercises good judgment."

8. Assignment of Proceeding

John A. Bohn is the assigned Commissioner and Douglas Long is the assigned ALJ in this proceeding.

Findings of Fact

Settlement

1. PG&E suffered damage to portions of its infrastructure caused by the 2005-2006 Winter Storms. This damage was significant and properly designated as a disaster eligible for CEMA recovery.

2. PG&E complied with the requirements for the CEMA as adopted in Resolution E-3238.

3. The active parties in the proceeding are representative of the stakeholders, and each has ably and vigorously pursued the interests of its constituency, and the parties had a sound and thorough understanding of the application.

4. The settlement is uncontested and resolves all disputed issues.

5. The proposed settlements' results are within the range of reasonable outcomes if the applications had been fully litigated on the parties' testimony.

Ex Parte Violations

6. On or before May 14, 2007, PG&E committed two violations by scheduling a meeting with a Commissioner when it failed to issue a notice or issue a notice and change the date of the ex parte meetings which were held on May 17, 2007.

7. On May 17, 2007, PG&E committed two violations when it conducted two ex parte meetings with a Commissioner without producing a certificate of service of the ex parte meeting notification on all other parties.

8. PG&E committed one violation for inadequate and incorrect reporting on May 21 of the four ex parte meetings held on May 16 and May 17, 2007.

9. The ex parte violations caused harm by diminishing the quality and fairness of the deliberative process.

10. On May 22, 2007 PG&E reported its violations after DRA reported it had not received notice of the ex parte meetings.

11. PG&E has taken steps intended to document, control, and report on ex parte contacts by developing a model of best practices in cooperation with the Commission's General Counsel.

12. PG&E could be subject to a financial penalty of between $500 and $20,000 per violation. Alternative discretionary sanctions include the development of model best practices to document, control, and report ex parte contacts.

Conclusions of Law

Settlement

1. PG&E alone bears the burden of proof to show that its costs were reasonable and are eligible for recovery under the CEMA tariff.

2. The Commission's prudent manager standard is the appropriate reasonableness standard to apply to the costs recorded in a CEMA.

3. The Commission is not dependent on an intervenor performing any specific analysis before the Commission may determine the reasonableness of a pending matter.

4. The settlement meets the criteria of an uncontested settlement under Rule 12 and *San Diego Gas & Electric*, 46 CPUC 2d 538 (1992).

5. The settlement is reasonable in light of the whole record.

6. The settlement is consistent with the law, and does not contravene or compromise any statutory provision or Commission decision.

7. The settlement is in the public interest.

8. The settlement provides sufficient information for the Commission to discharge its future regulatory obligations.

9. Under Rule 12.5, the adoption of the proposed settlement creates no precedent for subsequent CEMA applications, except for the expressly adopted component to exclude capitalized A&G expenses, which is reasonable.

Ex Parte Violations and a Permissible Deviation for Good Cause Under Rule 1.2

10. On or before May 14, 2007, PG&E committed two violations by scheduling a meeting with a Commissioner when it failed to issue a notice or issue a notice and change the date of the ex parte meetings which were held on May 17, 2007.

11. On May 17, 2007, PG&E committed two violations when it conducted two ex parte meetings with a Commissioner without producing a certificate of service of the ex parte meeting notification on all other parties.

12. PG&E committed one violation for inadequate and incorrect reporting on May 21 of the four ex parte meetings held on May 16 and May 17, 2007.

13. PG&E could be subject to a financial penalty of between $500 and $20,000 per violation. Alternative discretionary sanctions include the development of model best practices to document, control, and report ex parte contacts.

14. Pursuant to Pub. Util. Code § 2107, sanctions could be imposed on PG&E for violating Rule 8.2(c)(2) and Rule 8.3(a)(2).

15. The Commission has the lawful discretion to impose appropriate and relevant alternative sanctions, including the requirement for PG&E to develop model best practices to document, control, and report ex parte contacts.

F I N A L O R D E R

IT IS ORDERED that:

1. The settlement agreement between Pacific Gas and Electric Company (PG&E) and the Division of Ratepayer Advocates is adopted. PG&E is authorized to recover revenue requirements for its 2005-06 Winter Storms Catastrophic Event Memorandum Account (CEMA) costs. PG&E shall recover $12,138,000 in electric revenue requirements, including interest through December 31, 2010, franchise fees, and uncollectibles, to be collected in rates beginning January 1, 2008, with $9,333,000 collected in rates in 2008, $1,431,000 in 2009, and $1,374,000 in 2010. PG&E shall record the CEMA revenue requirement in its Distribution Revenue Adjustment Mechanism ($11,460,000) and in the Utility Generation Balancing Account ($503,000) for rate recovery through the Annual Electric True-up advice letter.

2. PG&E shall exclude from future CEMA applications any capitalized Administrative and General Expenses in accordance with the terms of this adopted settlement agreement pursuant to Rule 12.5.

3. The August 8, 2007 ruling of the assigned Commissioner and assigned Administrative Law Judge is affirmed in determining that the creation of a written best practices model to document, control, and report ex parte communications is an appropriate remedial action for the identified violations in lieu of a financial penalty.

4. Application 06-11-005 is closed.

   This order is effective today.

   Dated _____, at San Francisco, California.

APPENDIX A

Application of PACIFIC GAS AND ELECTRIC COMPANY to Recover Incremental Costs Related to the 2005-2006 New Year's Storms and July 2006 Heat Storm Recorded in the Catastrophic Event Memorandum Account (CEMA) Pursuant to Public Utility Code Section 454.9. (U 39 E)	Application No. 06-11-005

SETTLEMENT AGREEMENT BETWEEN PACIFIC GAS AND ELECTRIC COMPANY AND THE DIVISION OF RATEPAYER ADVOCATES RESOLVING ISSUES IN THE CATASTROPHIC EVENT MEMORANDUM ACCOUNT PROCEEDING (APPLICATION NO. 06-11-005)

In accordance with Article 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 resolving issues in the Catastrophic Event Memorandum Account (CEMA) proceeding, Application 06-11-005. As a compromise among their respective litigation positions in Application 06-11-005, PG&E and DRA agree to and support all of the terms of this Settlement Agreement.

The Catastrophic Event Memorandum Account Proceeding

PG&E's Application 06-11-005 asked for review of and authorization to recover $60.87 million of costs arising from the 2005-2006 New Year's storms and the July 2006 heat storm. On July 26, 2007, the Commission dismissed PG&E's request for recovery of costs arising from the July 2006

heat storm. (*See* Decision 07-07-041.) As a result, PG&E's request for recovery of costs was reduced to $22.84 million ($8.16 million in expense and $14.68 million in capital) of costs arising from the restoration of service and repairs following the 2005-2006 New Year's storms. The $22.84 million of costs would translate into a total revenue requirement of $18.85 million to be recovered over the 2008 through 2010 period. PG&E's June 11, 2007 updated testimony reduced the expense portion of its request by $0.02 million and excluded $0.05 million of capital costs that were still classified as Construction Work in Progress as of April 30, 2007.

After conducting discovery and analysis on PG&E's showing, DRA served a report on July 6, 2007 that recommended a reduction of $12.027 million ($5.68 million in expense and $6.347 million in capital) of the original costs requested by PG&E. Based on its investigation and audit of PG&E's showing, DRA argued that PG&E did not demonstrate the incremental nature of some of the costs. DRA also argued that PG&E did not provide sufficient documentation of some of the costs.

PG&E's July 27, 2007 rebuttal testimony argued that its costs are justified and are incremental to those authorized in base rates, but agreed that $0.82 million in capitalized Administrative and General (A&G) costs should be removed from PG&E's request. The net result of the changes is that PG&E's updated requested revenue requirement for the 2005 through 2010 time period for the 2005-2006 New Year's storms is $18.31 million.

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 cost recoverable from this CEMA application is $15.5 million, consisting of $11.3 million in capital costs and $4.2 million in expenses. The revenue requirement resulting from these costs is $12.138 million in electric revenue requirements, including interest through December 31, 2010, franchise fees, and uncollectibles, to be collected in rates beginning January 1, 2008, with $9.333 million collected in rates in 2008, $1.431 million in 2009, and $1.374 million in 2010.[1] Upon approval of this settlement by the Commission, PG&E will record the CEMA revenue requirement into the Distribution Revenue Adjustment Mechanism ($11.46 million) and to the Utility Generation Balancing Account ($503,000[2]) for rate recovery through the Annual Electric True-up advice letter.

2. The Settling Parties agree that the Commission should find that it is reasonable for PG&E to recover $12.138 million as PG&E's total authorized revenue requirement in this application. It is difficult to tie the final settlement amount to specific outcomes for individual issues; however, the final settlement amount does reflect litigation

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[1] The revenue requirement numbers include interest calculated at the actual 90-day commercial paper rate through August 2007, and at the August 2007 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 2007.

[2] These numbers only total $11.963 million because they assume interest only through December 31, 2007, when the revenue requirement numbers are assumed to be transferred to the DRAM and UGBA, using the same assumptions as footnote 1.

uncertainty assessed by one or both parties. This uncertainty includes, among other issues, the ability of either party to prove whether or not PG&E's requested costs were incremental to the costs approved in PG&E's 2003 test year general rate case settlement. The GRC rate case settlement was not fully disaggregated, and thus did not specify costs in terms germane to a CEMA analysis. This also includes the likely inability of PG&E to prove whether its requested costs properly include those costs incurred in counties without a disaster declaration.

3. PG&E agrees that it shall not pursue any appellate relief, in any court of law, regarding the underlying facts and issues raised in this proceeding. PG&E further agrees that it will not pursue or support an application for rehearing of Decision 07-07-041, the decision denying the portion of PG&E's application requesting recovery for costs associated with the July 2006 heat storm. PG&E also agrees to not pursue or support a petition for modification of Decision 07-07-041, or to pursue or support any collateral attack upon Decision 07-07-041, as it relates to the July 2006 heat storm.

4. The parties further agree that in future CEMA applications, PG&E will not include an allocation of capitalized Administrative and General (A&G) costs in the costs booked to the CEMA. In the future, PG&E will allocate its capitalized A&G costs to non-CEMA capital costs.

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 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 shall include necessary reply comments, comments on a proposed decision, written and oral testimony, if required, appearances, and other means to obtain the approvals sought. 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 will request that the unresolved issues in Application 06-11-005 be heard at the earliest convenient time.

6. This Settlement represents a compromise of the Settling Parties' respective litigation positions and should not be considered precedent with respect to CEMA costs for PG&E or other utilities in any future proceeding, with the exception of the treatment of capitalized A&G costs in future CEMA applications described above. The Settling Parties have assented to the terms of this Settlement Agreement only for the purpose of arriving at the various compromises herein. Each Settling Party expressly reserves its right to advocate, in current and future proceedings, positions, principles, assumptions, arguments and methodologies that may be different from those underlying this Settlement, with the exception that PG&E has agreed not to appeal Decision 07-07-041 in any court of law, seek or support rehearing of Decision 07-07-041, seek or support a petition for modification of Decision 07-07-041, or collaterally attack Decision 07-07-041 as it relates to the July 2006 heat storm.

7. Each of the Settling Parties hereto and their respective counsel have contributed to the preparation of this Settlement. Accordingly, the Settling Parties agree that no provision of this Settlement shall be construed against any Settling Party because that party or its counsel drafted the provision.

8. 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 hereof, 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.

9. 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.

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

11. In witness whereof, intending to be legally bound, the Settling Parties hereto have duly executed this Settlement Agreement on behalf of the parties they represent.

DIVISION OF RATEPAYER ADVOCATES

/s/ DANA APPLING
Dana Appling
Director
Division of Ratepayer Advocates

PACIFIC GAS AND ELECTRIC COMPANY

/s/ DINYAR MISTRY
Dinyar Mistry
Vice President
Pacific Gas and Electric Company

Dated: September 21, 2007

ATTACHMENT B A0611005 Long