Decision 08-11-045 November 21, 2008

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of PACIFIC GAS AND ELECTRIC COMPANY to Recover Costs Related to the January 2008 Storms Recorded in the Catastrophic Event Memorandum Account (CEMA) Pursuant to Public Utility Code Section 454.9. (U39E)	Application 08-03-017 (Filed March 28, 2008)

DECISION APPROVING SETTLEMENT

1. Summary

We approve the settlement between Pacific Gas and Electric Company (PG&E) and the Commission's Division of Ratepayer Advocates contained in Attachment A. This settlement resolves all issues in this proceeding, and will permit PG&E to recover $23.44 million of the costs recorded in its Catastrophic Events Memorandum Account for the cost of restoring electric distribution facilities damaged by January 2008 storms. This $23.44 million consists of $15 million in capital costs and $8.44 million in expenses. These costs result in a $14.94 million in electric revenue requirements to be collected in rates, with $12.586 million collected in rates in 2009 and $2.349 million in 2010.

With the filing of this "all party" settlement, this becomes an uncontested matter in which we are granting the relief sought.

2. Factual Background

On March 28, 2008, PG&E filed Application 08-03-017 (Application) seeking recovery of costs related to the January 2008 storms. The storm-related costs were recorded in the Catastrophic Event Memorandum Account (CEMA).

More specifically, the Application asked to recover $19.24 million in electric distribution revenue requirements for the $27.47 million of costs that PG&E claimed are CEMA-eligible because they arose for its response to storm damage that occurred from January 3, 2008 through January 10, 2008. The Application asserted that PG&E seeks recovery of only those costs for damages "incurred in 13 counties and 2 cities which had formal disaster declarations, consistent with Decision (D.) 07-07-041."[1] In addition, PG&E proposed a procedural schedule leading to a Commission decision in December, 2008.[2]

Resolution ALJ 176-3211 (April 10, 2008) categorized the proceeding as ratesetting and reached a preliminary determination that hearings would prove necessary to the resolution of this matter.

On May 5, 2008, the Division of Ratepayer Advocates (DRA) protested the application of PG&E (Protest). The Protest argued that DRA "cannot effectively determine if the costs recorded in PG&E's CEMA were in fact incremental, or the extent which they were incremental, until PG&E provides complete recorded 2008 data."[3] DRA's Protest then proposed to hold the proceeding in abeyance until March 2009 and a procedural schedule leading to a Commission decision in September, 2009.[4]

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[1] Application of Pacific Gas and Electric Company, March 28, 2008, at 3.

[2] *Id.* at 11.

[3] Protest of the Division of Ratepayer Advocates, May 5, 2008, at 5.

[4] *Id.* at 5.

On May 15, 2008, PG&E replied to the protest of DRA, arguing that DRA's proposed schedule was "inconsistent with the CEMA statute."[5] PG&E's Reply concluded that "DRA's proposal to change the way incremental costs are calculated in CEMA proceedings should be rejected, and the proceedings should continue on an expedited schedule …"[6]

On May 22, 2008, a prehearing conference was held in San Francisco to address the issues concerning the management of this proceeding, including the alternative proposals concerning the scheduling of the proceeding.

On June 2, an Assigned Commissioner Ruling and Scoping Memo refined the scope of the proceeding and adopted a schedule that would produce a decision by the end of 2008. In addition, it established that PG&E and DRA are the only parties in this proceeding.

On August 4, DRA, after conducting discovery and analysis on PG&E's showing, served a report that recommended reductions of $4.89 million to the expenses and $15 million to capital costs that PG&E requested as storm-related. DRA, based on its investigation and audit of PG&E's showing, argued that PG&E did not demonstrate the incremental nature of many of the costs that it incurred.

PG&E's August 20, 2008 rebuttal testimony argued that its costs are justified and are incremental to those authorized in base rates, and therefore eligible for recovery.

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[5] Reply of Applicant Pacific Gas and Electric Company to Protest of the Division of Ratepayer Advocates (Reply), May 15, 2008, at 3.

[6] Reply of Applicant Pacific Gas and Electric Company to Protest of the Division of Ratepayer Advocates, May 15, 2008, at 4.

Subsequently, PG&E and DRA met to assesses each other's case, to discuss the possibility of compromise of each other's positions, and to gauge the risk of litigation. These meetings led to the attached settlement.

On August 28, 2008, attorneys representing DRA and PG&E (Settling Parties) sent an e-mail informing the Commission that they had reached a "settlement in principle" on this matter and requesting a suspension of the schedule. On August 29, 2008, an Administrative Law Judge's (ALJ) ruling suspended the procedural schedule in light of the settlement in principle.

Pursuant to Rule 12.1(b), on September 9, 2008, the Settling Parties served e-mail notice of a settlement conference. On September 17, 2008, the Settling Parties held a settlement conference. No one claiming or seeking party status came to the settlement conference.

On September 17, the Settling Parties filed a Joint Motion for Approval of Settlement Agreement. The Commission received no opposition or comments on this motion.

Since the settlement is the product of the only two parties in the proceeding, it is an "all party" settlement for the purposes of the Commission's rules for reviewing settlements.

3. Jurisdiction

Section 454.9 of the Pub. Util. Code grants the Commission clear authority to authorize utilities to recover costs incurred in responding to a catastrophe:

> 454.9. (a) The commission shall authorize public utilities to establish catastrophic event memorandum accounts and to record in those accounts the costs of the following:
>
> (1) Restoring utility services to customers.
>
> (2) Repairing, replacing, or restoring damaged utility facilities.

> (3) Complying with governmental agency orders in connection with events declared disasters by competent state or federal authorities.
>
> (b) The costs, including capital costs, recorded in the accounts set forth in subdivision (a) shall be recoverable in rates following a request by the affected utility, a commission finding of their reasonableness, and approval by the commission. The commission shall hold expedited proceedings in response to utility applications to recover costs associated with catastrophic events.[7]

Resolution E-3238 authorizes utilities to record incremental catastrophic event costs for repairs and other related costs in its CEMA.

The Commission's Rules of Practice and Procedure set a standard for review of any settlement:

> 12.1 (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 addition, in a general rate case for San Diego Gas & Electric Company, the Commission amended the standard to adopt a policy on "all party" settlements.[8] As a "precondition" to approval of all party settlements, the Commission must be satisfied that:

a. the settlement commands the unanimous sponsorship of all active parties to the proceeding;

b. the sponsoring parties are fairly representative of the affected interests;

c. no term of the settlement contravenes statutory provisions or prior Commission decisions; and

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[7] Pub. Util. Code § 454.9.

[8] D.92-12-019 (46 CPUC2d 538, 550-551).

d. the settlement conveys to the Commission sufficient information to permit it to discharge its future regulatory obligations with respect to the parties and their interests.

4. Issues Before the Commission

The only issue in dispute is the amount of catastrophe-related costs booked into the CEMA account that is reasonable for PG&E to recover.

In light of the all-party settlement, the Commission must ensure that the settlement meets the "preconditions" of D.92-12-019 and must determine whether the settlement is reasonable in light of the whole record, consistent with the law, and in the public interest.

5. Discussion and Analysis

We first summarize the settlement, then review whether the settlement meetings the "preconditions" of D.92-12-019, and then review the merits of the settlement itself.

5.1. Overview of Settlement

In the Joint Motion, the settling parties summarize their agreement as follows:

The settlement consists of the following agreements by the Settling Parties:

1. The reasonable total costs recoverable from this CEMA application is $23.44 million, consisting of $15 million in capital costs and $8.44 million in expenses. The revenue requirement resulting from these costs is $14.94 million in electric revenue requirements, including interest through December 31, 2010, franchise fees, and uncollectibles, to be collected in rates with $12.586 million collected in rates in 2009, and $2.349 million in 2010, with any under or over collections of these amounts accruing to the associated balancing accounts. Upon approval of this settlement by

the Commission, PG&E will record commensurate amounts each year for the CEMA revenue requirement into the Distribution Revenue Adjustment Mechanism for rate recovery through its next available electric rate change in 2009 and through the Annual Electric True-up advice letter thereafter.

2. The Settling Parties agree that the Commission should find that it is reasonable for PG&E to recover $14.94 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.[9]

5.2. Settlement Meets D.92-12-019 Preconditions of an "All Party" Settlement

The settlement meets the first precondition of an "all party" settlement – it has the unanimous sponsorship of all active parties in the proceeding. DRA and PG&E are the only parties in this proceeding.

The settlement meets the second "precondition" set in D.92-12-019 – sponsoring parties represent the full range of affected interests. DRA represents the interests of ratepayers. PG&E represents the interests of the corporation and its owners. There are no other affected interests.

Our review of the settlement indicates that it meets the third "precondition" set in D.92-12-019 – no term of the settlement contravenes any statutory provision or prior Commission decision. In particular, the Joint Motion

[9] Joint Motion of PG&E and the DRA for Approval of Settlement Agreement (Settlement Motion), September 17, 2008 at 3.

and the record in the proceeding demonstrate the consistency of the settlement with past Commission policies and decisions.

Finally, the Settlement Agreement meets the last precondition because it provides the Commission with sufficient information to permit is to discharge its future regulatory obligations with respect to the parities and their interests. In particular, the settlement agreement states the changes in PG&E's revenue requirement resulting from the settlement and specifies that PG&E may include the authorized revenue requirement in its Distribution Revenue Adjustment Mechanism for inclusion in rates as part of its Annual Electric True-up advice letter. Thus, the settlement agreement provides information on the mechanics of ratemaking and sets a blueprint that ensures unambiguous implementation.

5.3. The Settlement Should Be Authorized

The Commission, in its past decisions, has focused on many different factors in determining whether a settlement is reasonable in light of the whole record, consistent with law, and in the public interest. In particular, the Commission has placed importance on determining whether a settlement produces a "fair" balance between the interests when resolving the issues before the Commission:

> The most important element in determining the fairness of a settlement is the relationship of the amount agreed upon to the risk of obtaining the desired result.[10]

PG&E initially requested recovery for costs totaling $27.47 million.

[10] 1988 Cal. PUC LEXIS 886 (Cal. PUC 1988), *236.

DRA, in developing its report, conducted an audit of PG&E's showing and served several data requests on PG&E. Of the $27.47 requested by PG&E, DRA's report did not contest $7.58 million.

Since DRA's report did not directly contest $7.58 million, only $19.89 million of the amount requested by PG&E was in dispute. Of the disputed amount, the settlement provides PG&E with $15.86 million, or about 80% of the disputed amount.

The settlement amount, which permits PG&E to recover $23.44 million, amounts to 85% of PG&E's initial request.

The parties state that the settlement amount represents a "fair assessment of each party's litigation risk."[11] Based on our review of the filings and proposed testimony, we concur.

The parties represent that the Settlement Agreement "is a reasonable compromise of strongly held views."[12] Based on our reading of the materials offered in the record, we concur.

The parties also note that "counsel and advocates for the Settling Parties are experienced in public utility litigation" and that "settlement negotiations were conducted at arm's length and without collusion."[13]

We concur. In the conduct of the PHC and in the filings of the parties, counsel and advocates for both parties presented clear, professional, and

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[11] Joint Motion at 5.

[12] *Id*. at 6.

[13] *Id*.

transparent analyses. Thus, the settlement is consistent with the record established in this proceeding.

Further, we note that the settlement is consistent with the law. It provides PG&E with the timely recovery of the costs incurred in responding to the emergency. In addition, the careful scrutiny of DRA assures that the costs that PG&E can recovery is consistent with Commission rulings, reflects the documentation provided by PG&E, and balances the costs, risks, and benefits of continued litigation.

Concerning the public interest, parties correctly note that "[t]here is a strong public policy favoring the settlement of disputes to avoid costly and protracted litigation"[14] and urge the Commission to approve the settlement. The parties argue that:

> The principal public interest affected by this proceeding is the delivery of safe, reliable electric service at reasonable rates. The Settlement Agreement advances this interest because it permits PG&E to recover costs of responding to a declared disaster. Taken as a whole, the Settlement Agreement is in the public interest.[15]

We concur with this statement. The overwhelming public interest lies in the timely resolution of this matter in a way that enables PG&E to respond to public emergencies while protecting the interest of ratepayers that all rates remain reasonable. The proceeding raises no new policy issues and resolution sets no precedents.

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[14] *Id*. at 7.

[15] *Id*.

In addition, we note that § 854.9 contemplates speedy resolution of matters concerned with the costs incurred in responding to emergencies. Thus, speedy resolution is consistent with the statute and the long-term public interest of providing utilities with clear incentives to respond rapidly in emergency situations.

For all these reasons, this settlement is in the public interest.

6. Conclusion

As a result of the above considerations, we find that the Settlement Agreement is (1) reasonable in light of the record; (2) consistent with the law; (3) in the public interest; and (4) an acceptable outcome to a pending proceeding that avoids the time, expense and uncertainty of litigation on the issues raised in PG&E's CEMA application. As such, it meets the Commission's standards for approval of all party settlements and of settlements in general.

Finally, we note that the joint settlement did not ask that the testimony of the parties be moved into the record of this proceeding. As such, the record of this proceeding consists principally of the application of PG&E, the protest of DRA, and the Joint Motion. We find that a record based on these filed materials is adequate to enable us to determine that the settlement meets the Commission's standards for approval of "all party" settlements and of settlements in general.

7. Comments on Proposed Decision

This is an uncontested matter, in which the decision grants the relief requested. Accordingly, pursuant to Pub. Util. Code § 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

8. Assignment of Proceeding

John A. Bohn is the assigned Commissioner and Timothy J. Sullivan is the assigned ALJ in this proceeding.

Findings of Fact

1. In light of the parties' settlement and given the completeness of the Settlement Agreement and Joint Motion seeking its approval, the ALJ held no hearings.

2. This Settlement Agreement is an "all party" settlement that commands the unanimous sponsorship of all active parties.

3. The parties to this Settlement Agreement are fairly representative of the affected interests.

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

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

6. The Settlement Agreement is (1) reasonable in light of the record; (2) consistent with the law; (3) in the public interest; and (4) an acceptable outcome to a pending proceeding that avoids the time, expense and uncertainty of litigation on the issues raised in this application.

Conclusions of Law

1. The settlement between PG&E, CPSD, and CCSF is an all-party settlement and meets the "preconditions" established in D.92-12-019.

2. The Settlement Agreement is not adverse to the public interest and should be approved.

3. With the filing of the settlement, this proceeding becomes an uncontested matter. In accepting the settlement, we are granting the relief requested.

4. No hearings are necessary.

5. In order to provide timely direction to the parties and any interested persons or entities, this order should be effective immediately.

O R D E R

IT IS ORDERED that:

1. The September 17, 2008 Joint Motion of Pacific Gas and Electric Company and the Division of Ratepayer Advocates for Approval of Settlement Agreement is granted and the Settlement Agreement is approved.
2. Application 08-03-017 is closed.

This order is effective today.

Dated November 21, 2008, at San Francisco, California.

MICHAEL R. PEEVEY
President
DIAN M. GRUENEICH
JOHN A. BOHN
RACHELLE B. CHONG
TIMOTHY ALAN SIMON
Commissioners

ATTACHMENT A

Application of PACIFIC GAS AND ELECTRIC COMPANY to Recover Costs Related to the January 2008 Storms Recorded in the Catastrophic Event Memorandum Account (CEMA) Pursuant to Public Utility Code Section 454.9. (U 39 E)	Application No. 08-03-017

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. 08-03-017)

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 08-03-017. As a compromise among their respective litigation positions in Application 08-03-017, PG&E and DRA agree to and support all of the terms of this Settlement Agreement.

I. THE CATASTROPHIC EVENT MEMORANDUM ACCOUNT PROCEEDING

According to PG&E's application, a series of winter storms in early January 2008 caused $77 million in restoration and repair costs to PG&E's electric distribution system. Pursuant to Decision 07-07-041, which confirmed that CEMA recovery is limited to jurisdictions with competent

disaster declarations, PG&E's application asked for review of and authorization to recover the $27.47 million of costs arising from the January 2008 storms in the counties and cities which had obtained gubernatorial disaster declarations. PG&E's request for recovery of costs included $12.47 million in expense and $15 million in capital costs arising from the restoration of service and repairs following the January 2008 storms. The $27.47 million of costs included in the application would translate into a total revenue requirement of $19.24 million to be recovered during 2009 and 2010.

After conducting discovery and analysis on PG&E's showing, DRA served a report on August 4, 2008 that recommended reductions of $4.89 million in expense and $15 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 its costs.

PG&E's August 20, 2008 rebuttal testimony argued that its costs are justified and are incremental to those authorized in base rates.

II. THE SETTLEMENT

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

1. The reasonable total costs recoverable from this CEMA application is $23.44 million, consisting of $15 million in capital costs and $8.44 million in expenses. The revenue requirement resulting from these costs is $14.94 million in electric revenue requirements, including interest through December 31, 2010, franchise fees, and uncollectibles, to be

collected in rates with $12.586 million collected in rates in 2009, and $2.349 million in 2010[1] with any under or over collections of these amounts accruing to the associated balancing accounts. Upon approval of this settlement by the Commission, PG&E will record commensurate amounts each year for the CEMA revenue requirement into the Distribution Revenue Adjustment Mechanism for rate recovery through its next available electric rate change in 2009 and through the Annual Electric True-up advice letter thereafter.

2. The Settling Parties agree that the Commission should find that it is reasonable for PG&E to recover $14.94 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.

III. RESERVATIONS

1. The Settling Parties agree that this settlement represents a compromise of their respective litigation positions. It does not represent

[1] The revenue requirement numbers include interest calculated at the actual 90-day commercial paper rate through August 2008, and at the August 2008 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 2008.

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 08-03-017 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 other CEMA costs, not at issue in this proceeding, for PG&E or other utilities in any future proceeding. The Settling Parties have assented to the terms of this Settlement Agreement only for the purpose of arriving at the various compromises herein. Except as provided in reservation #4, 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.

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.

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 ELECTRIC ADVOCATES	PACIFIC GAS AND COMPANY
/S/	/S/
Dana Appling Director Division of Ratepayer Advocates	Dinyar Mistry Vice President Pacific Gas and Electric Company

Dated: September 17, 2008

(END OF ATTACHMENT A)