

Decision 17-03-021 March 23, 2017

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

Application of Pacific Gas and Electric Company for Compliance Review of Utility Owned Generation Operations, Electric Energy Resource Recovery Account Entries, Contract Administration, Economic Dispatch of Electric Resources, Utility Owned Generation Fuel Procurement, Diablo Canyon Seismic Studies Balancing Account, and Other Activities for the Period January 1 through December 31, 2015 (U39E).

Application 16-02-019  
(Filed February 29, 2016)

**DECISION ADDRESSING SETTLEMENT BETWEEN PACIFIC GAS AND ELECTRIC COMPANY AND OFFICE OF RATEPAYER ADVOCATES**

**Summary**

This decision approves the uncontested Settlement Agreement between Pacific Gas and Electric Company (PG&E) and the Office of Ratepayer Advocates in Application 16-02-019 - PG&E's 2015 Energy Resource Recovery Account compliance application, as discussed herein.

This proceeding is closed.

**1. Background**

The California Public Utilities Commission (Commission) established the Energy Resource Recovery Account (ERRA) balancing account mechanism in Decision (D.) 02-10-062 to track fuel and purchased power billed revenues against actual recorded costs of these items. In that decision, the Commission

required regulated electric utilities in California to establish a fuel and purchased power revenue requirement forecast, a trigger mechanism to address balances exceeding certain benchmarks, and a schedule for semi-annual ERRA applications. Each year a utility is required to file an annual ERRA forecast application and a separate ERRA compliance application.

In the annual ERRA forecast application, the utility requests adoption of the utility's forecast of what it expects its annual fuel and purchased power costs for the upcoming 12 months to be. In the annual ERRA compliance application, a utility requests a determination of whether it is in compliance with applicable rules governing energy resource contract administration, prudent maintenance of utility-retained generation, least-cost dispatch conducted during a prior year, and that the recorded entries in its ERRA were appropriate, correctly stated, and in compliance with applicable Commission decisions.

On February 29, 2016, Pacific Gas and Electric Company (PG&E) filed its application for compliance review of its ERRA, and review entries in its Diablo Canyon Seismic Studies Balancing Account and its Green Tariff Shared Renewables Memorandum Account for the record period from January 1 through December 31, 2015. The Office of Ratepayer Advocates (ORA) and the Alliance for Nuclear Responsibility filed protests to PG&E's application.<sup>1</sup> On April 15, 2016, PG&E filed a response to both protests.

The assigned Administrative Law Judge held a prehearing conference on June 1, 2016 during which time the service list was established and Panoche Energy Center, LLC (Panoche) also received party status.<sup>2</sup> On June 16, 2016, the

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<sup>1</sup> ORA filed its protest on April 4, 2016 and the Alliance filed its protest on April 6, 2016.

<sup>2</sup> On August 16, 2016, Panoche filed a motion to withdraw as a party in this proceeding and PG&E filed a response to Panoche's motion on August 23, 2016. On November 21, 2016, the Administrative Law Judge granted Panoche's motion.

assigned Commissioner issued a Ruling and Scoping Memo which set forth the schedule and scope of issues for this proceeding.

On July 7, 2016, PG&E filed a motion to amend the Scoping Memo regarding the issue of indirect greenhouse gas costs and the applicability of cost-effectiveness tests in this proceeding. On July 22, 2016, ORA and Panoche responded to PG&E's motion. On August 18, 2016, the assigned Commissioner and Administrative Law Judge jointly issued an Amended Scoping Memo of Assigned Commissioner and Joint Ruling of Administrative Law Judge (Amended Scoping Memo) responding to PG&E's motion.

As required by Rule 12.1(b), PG&E provided a notice of settlement conference to the service list on October 18, 2016. A settlement conference was conducted telephonically by PG&E on October 28, 2016, consistent with PG&E's notice.<sup>3</sup> Parties participating in the settlement conference were PG&E, ORA, and Southern California Edison.

On November 16, 2016, PG&E and ORA (jointly, the Settling Parties) filed a Joint Motion for Approval of Proposed Settlement (Joint Motion). According to the Joint Motion, the "Settlement Agreement Between PG&E and ORA" (Settlement Agreement) fully addresses all issues in this proceeding. No party filed opposition to the motion.<sup>4</sup>

## **2. Standard of Review for Settlement Agreement**

The Commission's Rules of Practice and Procedure, Rule 12.1(g) requires that, prior to approval, the Commission must find a settlement "reasonable in light of the whole record, consistent with the law, and in the public interest."

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<sup>3</sup> See Rule 12.1(b).

<sup>4</sup> Rule 12.2 allows that parties "may file comments contesting all or part of the settlement within 30 days of the date that the motion for adoption of settlement was served."

### **3. Issues in this Proceeding**

The following issues to be addressed in this proceeding were established in the Amended Scoping Memo:

- Whether PG&E administered and managed its utility-owned generation in a prudent manner;
- Whether PG&E managed utility-owned generation outages and associated fuel costs in a prudent manner;
- Whether PG&E administered and managed its qualifying facility and non-qualifying facility contracts in accordance with the contract provisions in a prudent manner;
- Whether the contract amendments proposed by PG&E are reasonable and whether the associated costs should be recovered through the ERRA account;
- Whether PG&E achieved least-cost dispatch of its energy resources;
- Whether PG&E's entries in the ERRA for 2015 are reasonable;
- Whether the costs incurred and recorded in the Diablo Canyon Balancing Account, including costs for the long term seismic plan, are reasonable;
- Whether PG&E met its burden of proof regarding its claim for cost recovery;
- Whether the costs incurred and recorded in the Green Tariff Memorandum Account in 2015 are reasonable; and
- Whether PG&E's Greenhouse Gas Compliance Instrument procurement comply with the 2010 and 2014 bundled procurement plans.<sup>5</sup>

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<sup>5</sup> The Amended Scoping Memo concluded that the compliance review of PG&E's bundled procurement plan shall include a determination of whether the utility prudently operated and managed their programs in accordance with the terms of the contract. Furthermore, the Amended Scoping Memo clarified that the question of whether PG&E's Greenhouse Gas Compliance Instrument procurement complies with the 2010 and 2014 bundled procurement

#### **4. PG&E's ERRA Application**

In its application, PG&E requests that the Commission determine that PG&E made appropriate entries to its ERRA, the Diablo Canyon Seismic Studies Balancing Account, and the Green Tariff Shared Renewables Memorandum Account during the record period January 1 through December 31, 2015. PG&E also requests that the Commission find that PG&E complied with its Commission-approved Bundled Procurement Plan for fuel procurement, administration of power purchase contracts, greenhouse gas compliance instrument procurement, and least-cost dispatch of electric generation resources. PG&E requests recovery of revenue requirements totaling \$6.84 million.

PG&E makes the following contentions in its application:

- PG&E's least-cost dispatch is consistent with requirements in D.15-05-006 and D.15-12-015, as well as a proposed settlement from Application (A.) 15-02-023, the 2014 ERRA Compliance proceeding.<sup>6</sup>
- With respect to its operation of utility-owned generation resources, PG&E's work papers satisfy its burden of proof that it operated its facilities in compliance with the Commission's reasonable manager standard.
- PG&E prudently administered its procurement contracts and requests approval of the contracts identified in its testimony. PG&E acted as a reasonable manager, with respect to its fuel costs, remaining consistent with its Bundled Procurement Plan authority. PG&E's electric portfolio hedging activities were also consistent with its Bundled Procurement Plan authority.
- PG&E's testimony and work papers included an accurate accounting of amounts incurred and recorded in its Diablo

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plans shall include purchases and sales conducted (and recorded costs incurred) during the relevant record period.

<sup>6</sup> The Commission approved the 2014 ERRA Compliance proceeding settlement in D.16-12-045.

Canyon Seismic Studies Balancing Account, which are consistent with A.10-01-014. Long Term Seismic Program costs are reasonable and should be recovered the Diablo Canyon Seismic Balancing Account. The costs associated with PG&E’s Green Tariff Shared Resources program are reasonable and accurately reflected in the memorandum account.

- PG&E has complied with the following Commission decisions requiring inclusion of specific items in the annual ERRA compliance filing:

<b>Table 1 ERRA Compliance Requirements</b>	
<b>Specific Item Required</b>	<b>Source of Requirement</b>
Fuelco information	D.05-09-006, Attachment A (Settlement Agreement, ¶ 4)
Include a “high level discussion of [PG&E’s] internal procedures and controls for ensuring compliance with Commission-approved hedging plans.”	D.11-07-039, OP 3
STARS Alliance activities and operating costs	D.12-05-010, OP 3
Provision of a draft audit plan to ORA in November and meetings to review the draft audit plan	D.14-01-011, Attachment A, § 2.4.1
Review and document material changes to LCD business processes	D.14-01-011, Attachment A, § 2.4.2
Document review and justify changes to LCD models	D.14-01-011, Attachment A, § 2.4.2
Audit of ERRA balancing account	D.14-01-011, Attachment A, § 2.4.3
PG&E will address UOG outages and associated fuel costs, if applicable, in future ERRA Compliance proceedings	D.14-01-011, Attachment A, § 2.4.4
Include LTSP costs in DCSSBA for review in ERRA compliance proceeding	D.14-08-032 at 411
Include LCD showing and metrics for	D.15-05-006 and D.15-12-015

economically triggered demand response programs	
Review GTSR Program administration and marketing costs for the record period	D.15-01-051 at 113

- PG&E included the following items in its application, which were agreed upon in the proposed 2014 ERRA Compliance Settlement between PG&E and ORA. The 2014 ERRA Compliance Settlement was adopted by the Commission in D.16-12-025:

<b>Table 2 Required ERRA Compliance Items Pursuant to D.16-12-025</b>	
<b>Required Item</b>	<b>Relevant Settlement Section(s)</b>
Specified Demand Response Program Metrics included in least-cost dispatch chapter	Settlement Section 2.1
Evaluation of price forecast accuracy for all days of record period	Settlement Section 2.3
Description of decision-making process re use of proxy or registered costs for resources	Settlement Section 2.4
Information regarding resources that did not have bids submitted	Settlement Section 2.5
Definition of “operational constraints” as a reason not to dispatch when DR program economic triggers are met	Settlement Section 3.2
General set of guidelines for situations in which “customer fatigue” may occur in connection with DR programs	Settlement Section 3.2
Definition of “opportunity cost” as a reason not to dispatch DR programs when economic triggers are met	Settlement Sections 3.6
Standard of Conduct 4 maximum disallowance amount	Settlement Section 5.3

## **5. Overview of Settlement Agreement**

In the Settlement Agreement, Attachment A of this decision, the Settling Parties agree to the elements as described below.

With regard to the administration and management of utility-owned generation facilities, generation outages, and associated fuel costs, the Settling Parties agree that, except in the case of two outages, PG&E had operated these

facilities as a reasonable manager from January 1 through December 31, 2015. In the Settlement Agreement, the Settling Parties agree to a disallowance of \$856,121.33 for the Colusa Generating Station outage. The Settling Parties also agree that PG&E's rebuttal testimony sufficiently addresses all concerns regarding the outage at the Helms Pumped Storage hydroelectric facility.

The Settling Parties agree that, with respect to the administration of the qualifying facilities contracts, the sole issue is three overpayments. The Settling Parties support approval of the five (5) contract amendments at issue in this proceeding and PG&E has agreed to the \$895,798.24 disallowance for the three contract overpayments, as recommended by ORA.

The issue of Least-Cost Dispatch led to an exchange of ideas on improvements to the process. While recommending no disallowances, ORA suggested several options for further study and analysis with respect to this topic. PG&E offered several refinements and clarification to ORA's recommendations, which led to an agreement by PG&E to carry out the activities recommended by ORA. As a result of these exchanges, the Settlement Agreement establishes an agreed-upon approach for further actions, including how such actions should be reflected in future ERRA Compliance proceedings. The Settling Parties also agree to cost recovery for independent reviews, by an outside party, of PG&E's Least-Cost Dispatch processes, as proposed by ORA. Specifically, the outside party would review PG&E's processes for forecasting day-ahead load and prices, including an evaluation of whether PG&E revises and updates its strategies based on above-normal deviations.<sup>7</sup>

There were no identified contested issues with regards to the reasonableness of 2015 ERRA entries and 2015 Diablo Canyon Account entries

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<sup>7</sup> Exhibit ORA-01 at 1-3.

and cost recovery. Thus, the Settling Parties agree to the entries as indicated in PG&E's application. Similarly, the Settling Parties agree that PG&E's entries in its Green Tariff Memorandum Account are appropriate.

Lastly, the Settling Parties agree that PG&E procured greenhouse gas compliance instruments consistent with PG&E's Bundled Procurement Plan. However, the Settlement Agreement clarifies that ORA was not able to fully verify PG&E's greenhouse gas emissions and the weighted average costs.

## **6. Discussion**

We reviewed the proposed settlement pursuant to Rule 12.1(d), as defined above, and find the settlement meets the three criteria of reasonableness, legal consistency, and in the public interest. We therefore conclude that the Settlement Agreement should be adopted by the Commission. We discuss each of the three criteria below. We grant the motion of the Settling Parties to adopt the Settlement Agreement as proposed.

### **6.1. Settlement Agreement is Reasonable in Light of the Whole Record**

As depicted below, we find the Settlement Agreement is reasonable in light of the whole record. Furthermore, the Settlement Agreement addresses all of the issues in this proceeding, as established in the Amended Scoping Memo.

The Joint Motion presents three arguments on why the Settlement Agreement is reasonable in light of the entire record. First, the Settling Parties state that they represent two distinct affected interests and contend that the fact the Settling Parties were able to find common ground indicates the Settlement is reasonable in light of the whole record. We find that the interests of the Settling Parties reflects the scope of issues and the record for this proceeding.

The Settling Parties contend that the three primary contested issues in this proceeding, the outages at Helms and Colusa and the GHG compliance instrument procurement, are the subject of extensive testimony by both parties and, “based on the review of this testimony, the parties agreed to a reasonable compromise on each of these issues.”<sup>8</sup> Furthermore, the Settling Parties clarify that all other issues are addressed in the Settlement Agreement. We find that the Settlement Agreement resolves all issues established in the Amended Scoping Memo.

Highlighting the ability to find common ground with respect to where the parties originally differed, the Settling Parties underscore a substantial give and take by both sides when considering the entire record. The Settling Parties assert that this “represents a reasonable compromise between adverse parties based on the evidence presented and the legal theories and principles underlying this proceeding.”<sup>9</sup> Citing D.14-01-011 and D.15-05-015, the Settling Parties contend that the Settlement Agreement aligns with Commission policy that states settlements that demonstrate a reasonable compromise between the principles and legal theories of the adverse parties merit approval if they are fair and reasonable in light of the whole record.<sup>10</sup> As discussed in a prior section, settlement discussions focused on four contested issues, on which the parties were able to compromise. The resulting compromise included: 1) a full agreement that PG&E’s actions on the Colusa outage were consistent with the reasonable manager standard, but required a disallowance of 2/3 of the ORA’s original recommendation for a total of \$856,121.33; 2) an agreement that ORA

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<sup>8</sup> Joint Motion at 15.

<sup>9</sup> *Id.* at 15-16.

<sup>10</sup> *Id.* at 16.

withdraw its disallowance recommendation for the Helms outage and its request that PG&E be ordered to list and evaluate all hydroelectric instrumentations and control devices; 3) an agreement that the qualifying facilities contract amendments should be approved but required a disallowance of \$895, 798.24 for contract overpayments; and 4) a complete agreement that PG&E had procured greenhouse gas compliance instruments consistent with its Bundled Procurement Plan with a disclaimer that ORA was not able to fully verify PG&E's greenhouse gas emissions and weighted average costs. We find the agreed-upon terms of the Settlement Agreement, especially those that resolve the contested issues in this proceeding, demonstrate a reasonable compromise between the Settling Parties and, thus, should be approved.

For the reasons presented above, we find that the Settlement Agreement is reasonable in light of the whole record. However, with respect to the use of an outside party to conduct an independent review of PG&E's processes for forecasting day-ahead load and prices, we underscore that because this review is a new process, we will review future ERRA filings with a focus on the process' efficacy to ensure that the use of the outside party provides the desired "independent" results.

## **6.2. Settlement Agreement is Consistent with Law**

We find the Settlement Agreement is consistent with law and complies with Rule 12.1 regarding settlements. Specifically, the Settlement Agreement is consistent with applicable statutes and Commission decisions related to ERRA compliance proceedings. The Joint Motion presents five arguments as to how the Settlement Agreement is consistent with applicable statutes and Commission decisions.

First, the Settling Parties state that the Settlement is consistent with Pub. Util. Code § 451 and 454.<sup>11</sup> ORA claims that it extensively reviewed as the ERRRA account, the Diablo Canyon Seismic Study Balancing Account, and the Green Tariff Shared Renewables Memorandum Account; however, the only cost recovery issue in this proceeding relates to the Diablo Canyon account. In the Joint Motion, ORA contends that the entries in this account were properly stated and in compliance with Commission decisions. We find that ORA's contentions are reasonable. Accordingly, we conclude that the Settlement Agreement is consistent with both § 451 and § 454.

Second, the Joint Parties agree that while PG&E prudently administered its procurement contracts and fuel expenses, overpayments made to three contractors were not prudent and should be disallowed. In the Joint Motion, the Settling Parties contend the review by ORA conforms with § 454.5(d)(2) permitting such a review of a utility's compliance with its procurement plan and related contracts.<sup>12</sup> Furthermore, the Settling Parties also underscore adherence with D.02-10-062, which established the ERRRA balancing accounts, required the tracking of fuel and purchased power revenue against recorded costs, and established the annual ERRRA compliance review.<sup>13</sup> We find that ORA's review is allowed by § 454.5(d)(2). Furthermore, we also find that PG&E's ERRRA Compliance filing is in accordance with the requirements of D.02-10-062. Hence, we conclude that the Settlement Agreement complies with both § 454.5(d)(2) and D.02-10-062.

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<sup>11</sup> Section 451 requires that utility rates must be just and reasonable. Section 454 prevents a change in public utility rates unless the Commission finds such an increase justified.

<sup>12</sup> Joint Motion at 17.

<sup>13</sup> *Ibid.*

Third, in the Joint Motion, the Settling Parties assert that the Settlement Agreement meets the requirements of D.15-05-006, as modified by D.15-12-015. The Settling Parties explain that these two decisions establish Least-Cost Dispatch and demand response standards for ERRA compliance proceedings. The Joint Motion states that through PG&E's testimony and ORA's review and analysis of the testimony, the Joint Parties agree to ORA recommended improvements to PG&E's Least-Cost Dispatch showing in future ERRA Compliance filings. The Joint Motion maintains the recommended modifications are consistent with D.15-06-006.

In D.15-06-006, the Commission adopted an agreed-upon methodology that PG&E must follow in future ERRA Compliance proceedings "in order to make a showing that quantifies the degree to which it achieved or did not achieve least-cost dispatch of its portfolio." In the Settlement Agreement, the Settling Parties agree that in future ERRA Compliance proceedings, PG&E will utilize an independent review of its day-ahead load and price forecasts; costs for the review would be recovered in the ERRA. We find the independent review reasonable as it provides further assurance to the Commission that PG&E achieved least-cost dispatch of its portfolio. We conclude that the Settlement Agreement complies with D.15-06-066.

Fourth, the Settling Parties assert that the Settlement Agreement ensures that PG&E is held to the reasonable manager standard with regard to outages, as required by D.16-04-006. In the Joint Motion, the Settling Parties underscore that they were able to come to agreement on the Helms outage and while disagreeing about the Colusa outage, the Settling Parties reached a settlement whereby PG&E agreed to a disallowance of \$856,121.33, representing a reasonable compromise.

The Commission “has established that generation plant outages should be evaluated in conjunction with the “reasonable manager” standard in determining whether the outage is reasonable or unreasonable for the purposes of ERRRA compliance reviews.<sup>14</sup> Subsequently, in D.16-04-006, the Commission noted that inappropriate actions, root causes, or apparent causes that are identified in a post-incident evaluation may not translate directly into unreasonable actions on the part of a utility and a utility’s actions and identified root causes must be evaluated in conjunction with the “reasonable manager” standard in determining whether the outage is reasonable or unreasonable and whether a disallowance based upon power replacement costs is warranted.”<sup>15</sup> We find that the Settling Parties reached a reasonable compromise on the Helms and Colusa outages with respect to D.16-04-006 and, accordingly, conclude that the outage compromise portion of the Settlement Agreement is compliant with D.16-04-006.

Fifth, the Joint Parties contend that the portion of the Settlement Agreement focused on the greenhouse gas compliance instrument is compliant with Commission decisions and resolutions providing guidance on PG&E’s greenhouse gas procurement plans.<sup>16</sup> The record indicates that PG&E’s greenhouse gas compliance instrument is consistent with the bundled procurement plan previously approved by the Commission.<sup>17</sup> Hence, we conclude that the Settlement Agreement is also consistent with the bundled

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<sup>14</sup> D.10-07-049, Conclusion of Law 5: RCEs [root cause evaluations] must be evaluated in conjunction with the “reasonable manager” standard in determining whether the outage is reasonable or unreasonable for the purposes of this proceeding.

<sup>15</sup> D.16-04-006 at 23.

<sup>16</sup> Joint Motion at 18-19.

<sup>17</sup> See Exhibit PG&E-1 at 7-2 to 7-3.

procurement plans approved. We note that ORA underscored an inability to verify PG&E's greenhouse gas emissions and weighted average costs. In the Joint Motion, the Settling Parties state that they "intend to work together to address, if possible, ORA's concerns regarding the ability to verify PG&E's greenhouse gas emissions and weighted average costs."<sup>18</sup> However, this intention was not included in the Settlement Agreement. While this concern did not negatively affect the ability to settle this case, we find the concern to be valid. Hence, we find it reasonable to require the Settling Parties to continue to work toward resolution of this issue. The Settling Parties are directed to work together to develop a verification method for future ERRA Compliance filings beginning with PG&E's 2017 ERRA Compliance filing.

From these five examples, we find that the Settlement Agreement is consistent with the law. Furthermore, we find that that the Settling Parties complied with Commission rules regarding settlements in that the settlement was timely filed, the motion contained a statement of the factual and legal considerations, and a settlement conference was properly noticed and convened.

### **6.3. Settlement Agreement is in the Public Interest**

As detailed below, the Settling Parties presented several instances where the public benefits from the Settlement Agreement. As a result, we find that the Settlement Agreement is in the Public Interest.

The Settling Parties point to several instances where the public benefits from the Settlement Agreement. With respect to the issues of outages and contract administration overpayments, the Settling Parties emphasize that the Settlement Agreement includes disallowances for these issues, which will be paid for by PG&E's shareholders and not customers. The Settling Parties

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<sup>18</sup> Joint Motion at 19.

contend that customers will benefit by the additional Least-Cost Dispatch and Demand Response information that PG&E has agreed to provide in future ERRA Compliance proceedings. Finally, the Settling Parties assert that because it eliminates the need to litigate the issues in this proceeding, the Settlement Agreement conserves both Commission resources and the resources of the Settling Parties; resulting in savings to ratepayers.

We find that the Settlement Agreement provides several benefits to ratepayers; we find that it is in the public interest.

## **7. Other Procedural Matters**

### **7.1. Change in Determination of Need for Hearings**

In Resolution ALJ 176-3374, dated March 17, 2016, the Commission preliminarily categorized A.16-02-019 as ratesetting, and preliminarily determined that hearings were necessary. In the Scoping Memo, the assigned Commissioner scheduled evidentiary hearings, although eventually it was determined that hearings were not necessary. Given that no hearings were held in the current proceeding, we change the preliminary and Amended Scoping Memo determination regarding hearings, to no hearings necessary.

### **7.2. Compliance with the Authority Granted Herein**

In order to implement the authority granted herein, PG&E must file a Tier 1 Advice Letter within 30 days of the date of this decision. The tariff sheets filed in these Advice Letters shall be effective on or after the date filed subject to the Commission's Energy Division determining they are in compliance with this decision.

## **8. Waiver of Comment Period**

The settlement is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Pub. Util. Code § 311(g)(2) and

Rule 14.6, the otherwise applicable 30-day period for public review and comment is waived.

## **9. Assignment of Proceeding**

Michael Picker is the assigned Commissioner and Kelly A. Hymes is the assigned Administrative Law Judge in this proceeding.

### **Findings of Fact**

1. The interests of the Settling Parties reflects the scope of issues and the record for this proceeding.

2. The Settlement Agreement resolves all issues established in the Amended Scoping Memo of this proceeding.

3. The agreed-upon terms of the Settlement Agreement, especially those that resolve the contested issues in this proceeding, demonstrate a reasonable compromise between the Settling Parties.

4. The Settlement Agreement is reasonable in light of the whole record.

5. ORA's contentions regarding PG&E's entries in the ERRRA account, the Diablo Canyon Seismic Study Balancing Account, and the Green Tariff Shared Renewables Memorandum Account and its procurement contracts and fuel expenses are reasonable.

6. PG&E's ERRRA Compliance filing is in accordance with the requirements of D.02-10-062.

7. The independent review of PG&E's least-cost dispatch as agreed upon by the Settling Parties is reasonable as it will provide further assurance to the Commission that PG&E achieved least-cost dispatch of its portfolio.

8. The Settling Parties reached a reasonable compromise on the Helms and Colusa outages with respect to D.16-04-006.

9. The record indicates that PG&E's greenhouse gas compliance instrument is consistent with the bundled procurement plan previously approved by the Commission.

10. The Settlement Agreement is consistent with the bundled procurement plans approved.

11. It is reasonable to require the Settling Parties to continue to work toward resolution of how to verify PG&E's greenhouse gas emissions and weighted average costs.

12. The Settlement Agreement is consistent with the law.

13. The Settlement Agreement provides several benefits to ratepayers.

14. The Settlement Agreement is in the public interest.

15. No hearings were held in the current proceeding.

16. The settlement is an uncontested matter and the decision grants the relief requested.

### **Conclusions of Law**

1. The Settlement Agreement is consistent with Pub. Util. Code § 451 and § 454.

2. The Settlement Agreement complies with Pub. Util. Code § 454.5(d)(2) and D.02-10-062.

3. The Settlement Agreement complies with D.15-06-066.

4. The outage compromise portion of the Settlement Agreement is compliant with D.16-04-006.

5. The Settling Parties complied with Rule 12.1.

6. The Commission should require the Settling Parties to work toward resolution of how to verify PG&E's greenhouse gas emissions and weighted average costs.

7. The Commission should adopt the Settlement Agreement.
8. Given that no hearings were held in the current proceeding, our preliminary determination regarding hearings should be changed.
9. Pursuant to Pub. Util. Code § 311(g)(2) and Rule 14.6, the otherwise applicable 30-day period for public review and comment is waived.
10. In order to implement the authority granted herein, PG&E should file a Tier 1 Advice Letter within 30 days of the date of this decision.
11. Application 16-02-019 should be closed.

## **O R D E R**

### **IT IS ORDERED** that:

1. *The Joint Motion of Pacific Gas and Electric Company (U 39 E) and the Office of Ratepayer Advocates for Approval of Proposed Settlement* is granted.
2. *The Settlement Agreement Between Pacific Gas and Electric Company (U 39 E) and the Office of Ratepayer Advocates (Attachment A)*, filed on November 16, 2016 is adopted.
3. Pacific Gas and Electric Company (PG&E) and the Office of Ratepayer Advocates shall work together to develop an agreed-upon verification method for PG&E's greenhouse gas emissions and weighted average costs for future Energy Resource Recovery Account (ERRA) compliance filings beginning with PG&E's 2017 ERRA compliance filing.
4. Pacific Gas and Electric Company shall file a Tier 1 Advice Letter within 30 days of the issuance of this decision. The tariff sheets filed in this Advice Letter shall be effective on or after the date filed subject to the Commission's Energy Division determining they are in compliance with this decision.
5. No hearings are necessary in this proceeding.

6. Application 16-02-019 is closed.

This order is effective today.

Dated March 23, 2017 at San Francisco, California.

MICHAEL PICKER

President

CARLA J. PETERMAN

LIANE M. RANDOLPH

MARTHA GUZMAN ACEVES

CLIFFORD RECHTSCHAFFEN

Commissioners

**ATTACHMENT A**

**Settlement Agreement**

**Between**

**Pacific Gas and Electric Company**

**and**

**the Office of Ratepayer Advocates**

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

Application of Pacific Gas and Electric  
Company for Compliance Review of Utility  
Owned Generation Operations, Electric Energy  
Resource Recovery Account Entries, Contract  
Administration, Economic Dispatch of Electric  
Resources, Utility Owned Generation Fuel  
Procurement, Diablo Canyon Seismic Studies  
Balancing Account, and Other Activities for the  
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Application 16-02-019  
(Filed February 29, 2016)

**SETTLEMENT AGREEMENT BETWEEN  
PACIFIC GAS AND ELECTRIC COMPANY (U 39 E) AND  
THE OFFICE OF RATEPAYER ADVOCATES**

The Office of Ratepayer Advocates (“ORA”) of the California Public Utilities Commission (“CPUC” or “Commission”) and Pacific Gas and Electric Company (“PG&E”) (collectively, the “Parties”) enter into this Settlement Agreement (“Settlement”) as a compromise of their respective litigation positions to resolve all disputed issues raised in the above-captioned proceeding. The Parties have addressed all of the issues in this proceeding and have negotiated this Settlement to resolve their disputes. Unless specifically addressed herein, any undisputed PG&E proposals addressed in its Application and supporting testimony (as discussed more fully below) shall be deemed supported by the Parties, and the Parties request the CPUC approve such proposals as just and reasonable.

#### **PROCEDURAL HISTORY**

On February 29, 2016, PG&E filed this Application for compliance review of its Energy Resource Recovery Account (“ERRA”), and review of PG&E’s entries in its Diablo Canyon Seismic Studies Balancing Account (“DCSSBA”) and its Green Tariff Shared Renewables Memorandum Account (“GTSR Memorandum Account”) for the record period from January 1 through December 31, 2015 (“Record Period”). Concurrent with filing the Application, PG&E also served its Prepared Testimony and workpapers. PG&E’s Prepared Testimony has been marked as Exhibit PG&E-1 in this proceeding. PG&E also provided responses to ORA’s Master Data Requests (“MDR”).

On April 4, 2016, ORA filed a protest to PG&E’s Application. The Alliance for Nuclear Responsibility (“A4NR”) filed a protest on April 6, 2016. On April 15, 2016, PG&E filed a response to ORA’s and A4NR’s protests, along with a motion for permission to late-file its response.

On April 20, 2016, PG&E served its Errata to Prepared Testimony, modifying and correcting its Prepared Testimony. PG&E’s Errata to Prepared Testimony has been marked as

Exhibit PG&E-2 in this proceeding. On April 27, 2016, PG&E served Supplemental Testimony on contract administration topics. The Supplemental Testimony has been marked as Exhibit PG&E-3.

On May 2, 2016, Panoche Energy Center, LLC (“Panoche”) filed a motion for party status, which was granted at the pre-hearing conference.

On June 1, 2016, the parties participated in a pre-hearing conference with assigned Administrative Law Judge (“ALJ”) Kelly Hymes.

On June 16, 2016, the *Scoping Memo and Ruling of Assigned Commissioner* (“Scoping Memo”) was issued in this proceeding.

On July 7, 2016, PG&E filed a motion to amend the Scoping Memo regarding “indirect” greenhouse gas (“GHG”) costs and the applicability of “cost-effectiveness” tests in this proceeding. On July 22, 2016, ORA and Panoche responded to PG&E’s motion.

On July 29, 2016, ORA and Panoche served their respective Testimony. ORA’s Testimony has been marked as Exhibit ORA-1.

On August 16, 2016, Panoche filed a motion to withdraw as a party in this proceeding. PG&E filed a response to Panoche’s motion on August 23, 2016.

On August 18, 2016, in response to PG&E’s motion, an *Amended Scoping Memo of Assigned Commissioner and Joint Ruling of Administrative Law Judge* (“Amended Scoping Memo”) was issued.

On August 24, 2016, PG&E and ORA requested, via an e-mail to the assigned ALJ and the service list, that the schedule for the proceeding be revised.

On September 2, 2016, Judge Hymes issued her *Administrative Law Judge’s Ruling Granting Request to Revise Procedural Schedule*. That ruling granted ORA’s request to serve

revised testimony on September 2, 2016 to reflect the Amended Scoping Memo, and PG&E's request to revise the date for serving rebuttal testimony to September 30, 2016.

On September 2, 2016, ORA served its Amended Testimony which has been marked as Exhibit ORA-2 and on September 30, 2016, PG&E served its Rebuttal Testimony, which has been marked as Exhibit PG&E-4.

On October 14, 2016, PG&E and ORA informed Judge Hymes that they had reached a settlement in principle regarding all of the issues in the proceeding, and requested that Judge Hymes postpone scheduled hearings. On October 14, 2016, Judge Hymes granted PG&E and ORA's request that hearings be postponed.

On October 27, 2016, ORA served its Errata to the Amended Testimony to correct an error pointed out by PG&E on page 1-4, which has been marked as Exhibit ORA-3.

During this proceeding, PG&E has responded to twenty-four (24) sets of discovery propounded by ORA that included approximately 375 discovery requests. In addition, PG&E and ORA have conducted a number of face-to-face meetings to discuss information and data provided by PG&E, and to provide ORA with detailed analyses concerning the major topic areas that made up PG&E's affirmative showing for the Record Period.

ORA has reviewed PG&E's Application, testimony, workpapers, and responses to ORA's discovery and concluded that the Commission's final decision in this proceeding should approve all of the relief requested in PG&E's Application, except as expressly provided in this Settlement.

#### **SETTLEMENT TERMS AND CONDITIONS**

In order to avoid the risks and costs of litigation, the Parties agree to the following terms and conditions as a complete and final resolution of the issues between the Parties in this proceeding.

**1. Least Cost Dispatch**

1.1. PG&E agrees to adopt ORA’s proposals regarding least-cost dispatch and demand response (Exhibit (“Ex.”) ORA-1, p. 1-3, lines 10-27) with the following clarifications:

1.1.1. Prior to undergoing an independent review of its day-ahead load and price forecasts (p. 1-3, lines 10-13), PG&E proposes to report in its 2016 ERRA Compliance testimony a demonstration of its revisions and updates of strategies based on above-normal deviations in forecasts.

1.1.2. PG&E understands the “energy curtailment” component of ORA’s proposals (p. 1-3, lines 20-24) to refer only to renewable resources, not all resources in PG&E’s portfolio.

1.1.3. PG&E recognizes that the “explanations of energy curtailments” (p. 1-3, lines 20-24) will be limited to PG&E’s economic bids and California Independent System Operator (“CAISO”) market-based awards, as any non-economic curtailments by the CAISO are not otherwise part of PG&E’s least-cost dispatch demonstration.

1.1.4. PG&E notes that the economic decisions to curtail renewable resources are made in the CAISO markets based on bid prices.

1.2. Costs for the independent review of forecasting day ahead load and prices (p. 1-3, lines 10-13) would be recovered in ERRA. The independent review would be done after this Settlement is approved by the Commission, at the direction of PG&E and the results would be provided to ORA after the review is completed.

**2. Utility-Owned Generation – Hydroelectric**

2.1. ORA agrees to withdraw its disallowance recommendation related to the Helms Pumped Storage Facility Unit 2 outage (Ex. ORA-1, p. 1-3, lines 30-32).

2.2. ORA agrees to withdraw its recommendation related to all hydro facilities' instrument and controls devices (Ex. ORA-1, p. 1-3, lines 33-37).

### **3. Utility-Owned Generation – Fossil and Other Generation**

3.1. PG&E and ORA agree to a disallowance of 2/3 of the disallowance amount recommended by ORA for the Colusa Generating Station (“Colusa”) outage (Ex. ORA-1, p. 1-4, lines 3-7), which is equal to a disallowance of \$856,121.33.

3.2. PG&E agrees to report on the status of the corrective actions to be performed regarding the October 2015 outages/derates at Colusa. In its Testimony ORA recommended that PG&E provide this report in its 2016 ERRA Compliance Application (*see* Ex. ORA-1, p. 1-4, lines 8-12). ORA agrees that PG&E has met this obligation through the information provided in its Rebuttal Testimony (Ex. PG&E-4, p. 3-8, line 31 – p. 3-9, line 32).

3.3. PG&E agrees to evaluate Wartsila's quality control programs with regard to its corrective action commitments for Humboldt Generating Station (*see* Ex. ORA-1, p. 1-4, lines 13-16). ORA agrees that PG&E has met this obligation through the information provided in its Rebuttal Testimony (Ex. PG&E-4, p. 3-13, l. 28 – p. 3-15, l. 2).

### **4. STARS Alliance Audit**

4.1. PG&E agrees to submit the results of the STARS Alliance audit to ORA and the Commission as a part of its 2016 ERRA Compliance Application (*see* Ex. ORA-1, p. 1-4, lines 21-24).

### **5. Direct Greenhouse Gas Emissions and Compliance Instrument Costs**

5.1. ORA agrees to withdraw its disallowance recommendation related to GHG procurement (*see* Ex. ORA-3, p. 1-4, lines 28-34).

5.2. ORA agrees that PG&E incurred costs procuring GHG instruments, consistent with its 2010 and 2014 Bundled Procurement Plans (*see* Ex. ORA-2, p. 7-3, lines 13-17).

However, ORA maintains that it was unable to fully verify PG&E's 2015 GHG emissions and weighted average costs.

**6. Contract Administration**

6.1. PG&E agrees to ORA's recommended \$895,798.46 disallowance (*see* Ex. ORA-1, p. 1-5, lines 26-28).

**7. Other Matters:** This would resolve all disputed matters in the 2015 ERRA Compliance proceeding. All other matters not specifically mentioned would be resolved with no recommendation or disallowance.

**GENERAL PROVISIONS**

**8. Scope and Approval**

8.1. In accordance with Rule 12.5, the Parties intend that Commission adoption of this Settlement will be binding on the Parties, including their legal successors, assigns, partners, members, agents, parent or subsidiary companies, affiliates, officers, directors, and/or employees. Unless the Commission expressly provides otherwise, and except as otherwise expressly provided herein, such adoption does not constitute approval or precedent for any principle or issue in this or any future proceeding.

8.2. The Parties agree that this Settlement is subject to approval by the Commission. As soon as practicable after the Parties have signed this Settlement, the Parties shall jointly file a motion for Commission approval and adoption of the Settlement. The Parties will furnish such additional information, documents, and/or testimony as the ALJ or the Commission may require in granting the motion adopting this Settlement.

8.3. The Parties agree to support the Settlement and use their best efforts to secure Commission approval of the Settlement in its entirety without modification.

8.4. The Parties agree to recommend that the Commission approve and adopt this

Settlement in its entirety without change.

8.5. The Parties agree that, if the Commission fails to adopt this Settlement in its entirety and without modification, the Parties shall convene a settlement conference within fifteen (15) days thereof to discuss whether they can resolve the issues raised by the Commission's actions. If the Parties cannot mutually agree to resolve the issues raised by the Commission's actions, the Settlement shall be rescinded and the Parties shall be released from their obligation to support the Settlement. Thereafter, the Parties may pursue any action they deem appropriate, but agree to cooperate in establishing a procedural schedule.

8.6. The Parties agree to actively and mutually defend the Settlement if the adoption is opposed by any other party.

8.7. This Settlement constitutes a full and final settlement of all issues reviewed by ORA in the above-captioned proceeding. This Settlement constitutes the Parties' entire settlement, which cannot be amended or modified without the express written and signed consent of all the Parties hereto.

## 9. **Miscellaneous Provisions**

9.1. The Parties agree that no signatory to the Settlement or any employee thereof assumes any personal liability as a result of the Settlement.

9.2. If any Party fails to perform its respective obligations under the Settlement, the other Party may come before the Commission to pursue a remedy including enforcement.

9.3. The provisions of this Settlement are not severable. If the Commission, or any competent court of jurisdiction, overrules or modifies as legally invalid any material provision of the Settlement, the Settlement may be considered rescinded as of the date such ruling or modification becomes final, at the discretion of the Parties.

9.4. The Parties acknowledge and stipulate that they are agreeing to this Settlement

freely, voluntarily, and without any fraud, duress, or undue influence by any other party. Each party states that it has read and fully understands its rights, privileges, and duties under the Settlement, including each Party's right to discuss the Settlement with its legal counsel and has exercised those rights, privileges, and duties to the extent deemed necessary.

9.5. In executing this Settlement, each Party declares and mutually agrees that the terms and conditions are reasonable, consistent with law, and in the public interest.

9.6. No Party has relied, or presently relies, upon any statement, promise, or representation by any other Party, whether oral or written, except as specifically set forth in this Settlement. Each Party expressly assumes the risk of any mistake of law or fact made by such Party or its authorized representative.

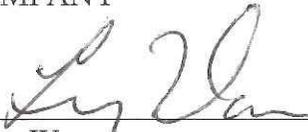
9.7. This Settlement may be executed in separate counterparts by the different Parties hereto with the same effect as if all Parties had signed one and the same document. All such counterparts shall be deemed to be an original and shall together constitute one and the same Settlement.

9.8. This Settlement shall become effective and binding on the Parties as of the date it is approved by the Commission.

9.9. This Settlement shall be governed by the laws of the State of California as to all matters, including but not limited to, matters of validity, construction, effect, performance, and remedies.

The Parties mutually believe that, based on the terms and conditions stated above, this Settlement is reasonable in light of the whole record, consistent with the law, and in the public interest. The Parties' authorized representatives have duly executed this Settlement on behalf of the Parties they represent.

PACIFIC GAS AND ELECTRIC  
COMPANY



\_\_\_\_\_  
Fong Wan  
Senior Vice President, Energy Policy and  
Procurement

Date: 11/14/2016

OFFICE OF RATEPAYER  
ADVOCATES

\_\_\_\_\_  
Elizabeth Echols  
Director, Office of Ratepayer Advocate

Date: \_\_\_\_\_

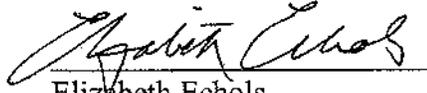
PACIFIC GAS AND ELECTRIC  
COMPANY

OFFICE OF RATEPAYER  
ADVOCATES

\_\_\_\_\_  
[Name]

[Title]

Date: \_\_\_\_\_



Elizabeth Echols

Director, Office of Ratepayer Advocate

Date: 11-10-16

( END OF ATTACHMENT A )