

Decision **DRAFT DECISION OF ALJ VIETH** (Mailed 8/9/2005)**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of Pacific Gas and Electric Company  
for an Ex Parte Order Granting Limited  
Exemptions from the Affiliate Transaction Rules  
Adopted in D.97-12-088, as Subsequently  
Modified. (U 39 E)

Application 04-11-013  
(Filed November 15, 2004)

**OPINION APPROVING SETTLEMENT, WITH CONDITIONS****Summary**

We approve the settlement between Pacific Gas and Electric Company (PG&E) and the Office of Ratepayer Advocates (ORA) regarding the application of certain Affiliates Transaction Rules to PG&E's affiliate, Fuelco LLC (Fuelco), after requiring two conditions in addition to the three that underlie the parties' agreement. Fuelco, jointly owned by PG&E and two other utilities, was expressly formed to assist in transactions to secure nuclear products and services, including nuclear fuel, for use at the member utilities' nuclear power generators. Under the parties' settlement, PG&E agrees to report to the Commission annually on the activities and operating costs associated with its interactions with Fuelco; to apportion to ratepayers all net nuclear fuel cost savings generated by Fuelco for PG&E; and to apportion to ratepayers PG&E's share of any net proceeds on the sale or dissolution of Fuelco. We require in addition, that upon issuance by the United States Department of Justice, PG&E shall provide the Commission with a copy of the anti-trust safe harbor ruling for

Fuelco. Also, PG&E shall expand its annual report on interactions with Fuelco to include any activities undertaken outside the scope of Fuelco's general purposes, so that the Commission may monitor the full impact on ratepayers of PG&E participation in Fuelco.

### **Background and Procedural History**

Decision (D.) 97-12-088 adopted rules governing the relationship between Commission-regulated gas and electric utilities and certain of their corporate affiliates. The rules, known as the Affiliate Transaction Rules, create nondiscrimination, disclosure and information, and separation standards aimed at fostering competition and protecting consumers' interests.

PG&E's application seeks an exemption from certain of these Affiliate Transaction Rules for Fuelco, an entity in which PG&E currently has a 4% interest through its wholly-owned affiliate, Pacific Energy Fuels Company (PEFCO). Because this ownership interest is below the 5% threshold at which the Affiliate Transaction Rules take effect, the Rules are inapplicable at present. However, PG&E intends to increase its ownership interest.

By ruling on February 7, 2005, the assigned administrative law judge (ALJ) requested more information about the application. PG&E responded on February 28 by filing a document containing supplemental information (Supplemental Information). Thereafter, by motion on March 9, ORA requested leave to file a protest out of time. PG&E stipulated that it would not oppose the motion and the ALJ granted leave. On March 25, the ALJ held a PHC and on April 4, the Assigned Commissioner's scoping memo issued.

By joint motion filed June 29, 2005, PG&E and ORA now ask for approval of the Settlement Agreement, which resolves all disputed issues between them. The Settlement Agreement is Attachment A to this opinion. Confidentiality

issues pertaining to select portions of ORA's workpapers, offered in evidence as part of ORA's prepared testimony, were resolved by ALJ ruling on July 26, 2005. As described therein, the July 26 ruling also admitted the parties' prepared testimony into evidence in this proceeding.

## **Discussion**

### **Overview**

PG&E seeks a Commission order waiving application of the following provisions of the Affiliate Transaction Rules to Fuelco:

- Rule III.B, to the extent it restricts transactions between a utility and its affiliate to tariffed services or services subject to competitive bidding;
- Rule III.B.1, to the extent it limits and conditions the information a utility may make available to its affiliate;
- Rules III.E and IV.B, to the extent they further restrict or condition information sharing between a utility and its affiliate;
- Rules V.C and E, to the extent they proscribe the sharing of plant, facilities, costs, equipment, personnel and information;
- Rule V.G, to the extent it proscribes the sharing of employees and officers; and
- Rule V.H.6, to the extent it applies to the pricing of services provided by Fuelco.

The settlement between PG&E and ORA consists of an agreement that Fuelco should be exempt from these provisions of the Affiliate Transaction Rules, subject to three material conditions:

- PG&E will report, in its annual Energy Resource Recovery Account (ERRA), and in the format laid out in Appendix A to the Settlement Agreement, on the activities and operating costs associated with the interaction between PG&E/PEFCO and Fuelco;

- PG&E ratepayers will receive 100 % of any net nuclear fuel cost savings generated by Fuelco for PG&E; and
- PG&E ratepayers will receive the PG&E/PEFCO share of any net proceeds on the sale or dissolution of Fuelco, except to the extent that PG&E/PEFCO has infused capital for which it has not sought cost recovery (if any).

Initially, ORA opposed all of the waivers except the waiver of Rule V.H.6. In its prepared testimony, however, ORA argued that if the Commission should determine to approve the other waivers,

it should require PG&E to report annually to the Commission and ORA about the activities and costs of Fuelco both for PG&E and non-Fuelco members and require PG&E to pass on to ratepayers any net savings from Fuelco's operations. If Fuelco is dissolved or sold in the future, ratepayers should receive the net gain on sale or [sic] dissolution. (Exhibit B.)

The Settlement Agreement incorporates all of ORA's proposed conditions. By executing the Settlement Agreement, ORA has removed its opposition to the requested Rule waivers. Thus, the Settlement Agreement essentially memorializes concurrence with PG&E's arguments that, *vis a vis* Fuelco, waivers of these Rules are not against the public interest, as long as the conditions listed above apply. Paragraph 3 of the Settlement Agreement reflects ORA's concurrence in these terms:

ORA withdraws its opposition to PG&E's request for waivers of the Affiliate Transaction Rules specified ... ORA believes that PG&E's use of Fuelco for nuclear fuel services may result in net savings for ratepayers.

Paragraph 1 of the Settlement Agreement memorializes the parties' agreement that the prepared testimony should be admitted as evidence in this proceeding. This prepared testimony constitutes the expert opinion of the PG&E

and ORA witnesses at the time it was distributed and thereby further develops the record. By approving the Settlement Agreement, we confirm the ALJ's ruling that the prepared testimony should be received in evidence.

### **Purpose and Organization of Fuelco**

In 2004, PG&E, through PEFCO, together with Union Electric Company (doing business as AmerenUE) and TXU Generation Company LP, formed Fuelco, a not-for-profit Delaware Limited Liability Company. Each of the founding members operates one or more nuclear reactors.

The Settlement Agreement states that Fuelco's "essential purpose" is to act on behalf of its member utilities to assist in the acquisition of nuclear fuels and related products and services. (Settlement Agreement, Recital B.) The Fuelco Agreement, itself, is Appendix A to the application.<sup>1</sup> Article IV, Section 1 of the Fuelco Agreement lists the five "general purposes and business objectives" Fuelco was formed to undertake: (a) assisting members in obtaining uranium, fabricated nuclear fuel and nuclear fuel components in a cost-effective manner and at competitive prices; (b) arranging financing for such purchases; (c) acting as a limited agent or broker for the individual Fuelco members in such transactions; (d) managing and optimizing the members' inventory and contracts for nuclear fuels and related products, as requested by each member; and (e) providing associated services such as contract administration; economic, fuel cost and amortization analysis; fuel inventory accountability support for fuel accounting and tax analysis; and market analysis and strategic development.

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<sup>1</sup> PG&E has withdrawn its request that the Commission file the Fuelco Agreement under seal.

Elsewhere PG&E describes Fuelco as providing “a formal structure for pooling expertise, diversifying supply, formulating larger fuel opportunities to achieve more attractive pricing, and sharing administrative costs.”

(Supplemental Information, p. 3.) PG&E emphasizes that Fuelco was formed to do the work traditionally done by each utility’s nuclear fuel procurement section. “The ultimate goal is to eliminate the need for members to have their own specialized staff with the potential to realize economies of scale.” (*Id.*, p. 7.)

With a unanimous vote of the members, however, the Fuelco Agreement does permit certain additional undertakings. Article VIII, section 1(d) lists seven, including joint ventures or transactions with third parties outside the scope of the “purposes” enumerated above and purchases or sales of nuclear fuels on behalf of third parties.<sup>2</sup> In response to a data request on this point, PG&E responded:

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<sup>2</sup> In summary, Article VIII, section 1(d) of the Fuelco Agreement prohibits Fuelco from engaging in the activities listed below without the unanimous vote of its members:

- Joint ventures or transaction with third parties outside the scope of Fuelco’s general purposes;
- Purchases/sales of nuclear fuel and products on behalf of third parties or speculative transactions that are not related to the members’ needs;
- Transactions that require Fuelco to take title to nuclear fuel;
- Transactions for the benefit of Fuelco’s own account;
- Transactions that convey anything more than a *de minimis* portion of Fuelco’s assets by deed, etc.;
- Transactions for borrowing money/executing promissory notes which are secured by mortgage, etc.; and

*Footnote continued on next page*

Yes, Fuelco has already offered services to non-Members. The only significant instance has been an effort to develop a new source for a fuel product segment with very tight supply conditions. Fuelco recruited the participation of a non-member. The non-member has agreed to contribute to the out-of-pocket legal and travel costs of developing this fuel procurement opportunity. The participation of the non-member is reducing PG&E's pro-rata share of the fuel procurement opportunity development costs and is strengthening the attractiveness of the opportunity to the prospective supplier because Fuelco is bringing a larger total procurement volume to the transaction. As is the case with other Fuelco transactions, the participating utilities will be contracting directly for the supply. Fuelco will not take title to the nuclear fuel products. (Exhibit B, p. 7.)

PG&E distinguishes Fuelco from two existing entities, Utilities Service Alliance (USA) and Strategic Teaming and Resources Sharing (STARS) alliance. It describes USA as a "joint purchasing venture of utilities in the United States (currently twelve in number) for goods and services used in nuclear power production" such as permanent plant parts and specialized tools. (Supplemental Information, p. 6.) The members also share information such as advice on best practices. STARS alliance, composed of USA members that own and operate Westinghouse pressurized water reactors (including each of Fuelco's members), focuses on common operational and safety objectives. Fuelco is even more specifically focused. "Fuelco's members develop programs and processes that are specific to their nuclear fuel procurement strategies and risk profiles." (*Id.*, p. 7.)

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- Transactions that renew or extend such loans or notes.

The Fuelco Agreement contemplates application to the United States Department of Justice for an anti-trust safe-harbor ruling but, at least as of February 28, 2005, when PG&E filed its Supplemental Information, that request had not been made.

Fuelco has a Board of Managers, composed of individuals appointed by Fuelco's members. The Board of Managers provides strategic and operational guidance to Fuelco and appoints its officers. At present, Fuelco is staffed by employees loaned by its members and each member pays the salary, administrative expenses and benefits of the personnel it loans. In the future, Fuelco may hire its own staff, in accordance with the Fuelco Agreement.

**Rationale for Exemption and Anticipated  
Ratepayer Benefits**

PG&E states that it wishes to increase its ownership in Fuelco above 4% in order to exercise greater control over Fuelco's operations. An ownership percentage of 5% or greater triggers application of the Affiliate Transaction Rules and PG&E asserts that compliance with some of the Rules "would render Fuelco's operations impracticable and in some cases impossible." (Application, p. 5.) Recital E of the Settlement Agreement concurs.

PG&E's rationale for the requested exemptions largely relies on the unique status of nuclear fuel and related materials given their weapons potential and on the extensive worldwide oversight that characterizes their production, sale and use. PG&E states that "[e]ffective fuel procurement – from purchasing uranium ore or performing quality control on delivered fuel assemblies – requires specialized skills, industry knowledge and contacts." (Supplemental Information, p. 3.)



PG&E's experience to date supports its contention that in addition to increased supply flexibility, Fuelco membership can yield cost savings. In 2004, Fuelco brokered five transactions for PG&E which garnered approximately \$6.9 million in savings compared to market prices at the time. Four transactions were brokered at lower than the market price (one was higher). ORA adds that these net savings compared to market prices, when offset by PG&E's estimated share of 2005 operating costs (\$536,000), yield net savings overall.

PG&E proposes that the net fuel cost savings generated by its Fuelco membership should flow to ratepayers. ORA's prepared testimony reports PG&E's response to a data request regarding implementation specifics:

Yes, if Fuelco generates net nuclear fuel costs savings for PG&E, those savings will be passed on to PG&E ratepayers in full. PG&E recovers its nuclear fuel expense through its ERRA account [Energy Resource Recovery Account] as the Diablo Canyon Power Plant generates electricity. Inventory financing costs are recovered as a forecast rate base item in PG&E's general rate case. Reductions in fuel expense will flow directly through ERRA cost recovery mechanisms as fuel is used to generate electricity. Changes in average inventory levels will be captured as part of the regular general rate case cycle. (Exhibit E, p. 5.)

Paragraph 7 of the Settlement Agreement confirms that PG&E's ratepayers are to receive the full benefit of any net fuel cost savings Fuelco generates for PG&E. The Report required by the Settlement Agreement will provide the data necessary to ensure implementation of this result.<sup>3</sup>

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<sup>3</sup> The report, is to be prepared consistent with Appendix A to the Settlement Agreement, entitled "Annual Report of Pacific Gas and Electric Company and Pacific Energy Fuels Company on the Activities of Fuelco, LLC."

Upon dissolution of Fuelco, PG&E proposes that ratepayers receive PG&E's share of the net proceeds. ORA's prepared testimony (Exhibit E, p. 6) reports PG&E's expansive response to an ORA data request on this topic. Paragraph 8 of the Settlement Agreement confirms that ratepayers are to receive net proceeds, should Fuelco be dissolved.

### **A Closer Look at the Rule Waivers Sought**

Below, we summarize the purpose of each Rule for which PG&E seeks a waiver and the reasons PG&E advances for exempting Fuelco, based on problems or inefficiencies it claims each Rule would impose.

Rule III.B limits transactions between a utility and its affiliates to four categories. One category includes goods, property, products or services that the utility or its affiliate generally makes available to others through open, competitive bidding processes. PG&E seeks a waiver of the competitive bidding requirement and states that, given the nature of its interactions with Fuelco, the three other categories do not apply (i.e., tariffed products and services; joint purchases (per ruled V.D.); and corporate support (per Rule V.E.). PG&E argues that requiring public bidding could undermine the opportunity to structure lower-costs deals, given the differences between the markets for nuclear fuel and related products and for other energy commodities.

Rule III.B.1 requires that if a utility offers information (or supply, capacity, or services) to an affiliate, it must make the same offer to all other market participants, similarly situated. The concern here is sharing non-public information about PG&E's nuclear fuel supply needs with anyone other than the members of Fuelco, who are bound by the Fuelco Agreement to keep such information confidential. Not only is disclosure of such sensitive information problematic, but suppliers often require that details of their transactions be kept

confidential, according to PG&E. Absent a waiver of this Rule, suppliers' confidentiality concerns could severely restrict PG&E's ability to use Fuelco effectively.

Rules III.E and IV.B both govern other aspects of information sharing. PG&E states that the provisions of Rule III.E. that cause concern for Fuelco are the prohibitions on providing leads to an affiliate, acquiring information for an affiliate, and sharing market analyses and other proprietary reports with an affiliate. Rule IV.B is problematic because it permits a utility to "make non-customer specific non-public information ... about the utility's ... electricity-related goods or services, available to the utility's affiliates only if the utility makes that information contemporaneously available to all other service providers on the same terms and conditions, and keeps the information open to public inspection." Rule IV.B. permits the sharing of proprietary information with an affiliate, but limits the affiliate's use of the information – use may be made "in conjunction with the permitted corporate support services, and is not permitted for any other use." These restrictions would significantly limit PG&E's ability to assist Fuelco in its core purpose, the discovery and development of opportunities for transactions in nuclear materials and services.

Rule V.C prohibits a utility from sharing office space and equipment, and information systems with an affiliate. Rule V.E. permits the sharing of personnel but only if this sharing is "priced, reported and conducted in accordance with the Separation and Information standards" and other applicable Commission requirements. However, the shared support "shall not allow or provide a means for the transfer of confidential information from the utility to the affiliate...." As noted previously, the Fuelco Agreement permits the members to loan employees to Fuelco until such time as the members agree to hire a separate staff. PG&E is

sharing employees and office space with Fuelco at present and wishes to continue to be able to do so if it increases its membership share in Fuelco.<sup>4</sup> If PG&E were not participating in Fuelco, it contends it would have to fill vacant nuclear fuel procurement positions to increase its standalone procurement capabilities.

Rule V.G prohibits a utility and its affiliate from employing the same individual at the same time. PG&E wishes to continue to have at least two employees (see footnote 2) work at least part of the time for Fuelco and thus, seeks an exemption from this rule. While, to the extent Fuelco hires its own employees, this issue likely would become moot with respect to some individuals, it would continue to apply -- and therefore prohibit -- any temporary loans once PG&E has increased its ownership share to 5% or greater. PG&E contemplates that such loans may be desirable from time to time.

Rule V.H.6 requires the pricing of transfers of services from an affiliate to a utility at the lower of fully loaded cost or fair market value. The Fuelco Agreement requires that payment for such service transfers meet the requirements of the Public Utility Holding Company Act (PUHCA), which PG&E characterizes as analogous to fully loaded cost. ORA does not oppose PG&E's request for a waiver from a more narrow interpretation of Rule V.H.6.

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<sup>4</sup> Two PG&E employees work for Fuelco from their offices a PG&E's Diablo Canyon Nuclear Power Plant and its General Office complex in San Francisco. One acts as Fuelco's Chief Financial Officer, devoting approximately 10% of his time to this effort. The other, the Manager of Fuel Procurement, spends 100% of his time on Fuelco projects.

**Settlement Criteria**

The Settlement Agreement is an uncontested “all-party” settlement. In such cases, the Commission applies two complementary standards to evaluate the proposed agreement. The first standard, set forth in Rule 51.1(e) and applicable to both contested and uncontested agreements, requires that the “settlement is reasonable in light of the whole record, consistent with law, and in the public interest.” The second standard, articulated in *San Diego Gas & Electric*, 46 CPUC 2d 538 (1992), applies to all-party settlements. As a precondition to approving such a settlement, the Commission must be satisfied that:

- a. The proposed all-party 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 settlement term contravenes statutory provisions or prior Commission decisions.
- d. 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.

PG&E and ORA are the only parties to this proceeding and both are signatories to the Settlement Agreement. Each party actively participated in all aspects of the proceeding – discovery, development of prepared testimony, etc. Settlement discussions did not commence until both parties’ positions were public. PG&E was represented by knowledgeable employees and by counsel. ORA, whose mandate is to represent ratepayer interests, likewise assigned knowledgeable staff and counsel. We conclude that the affected utility and

ratepayers interests were fairly represented. Thus, the Settlement Agreement meets the first and second criteria of the all-party settlement guidelines.

With respect to the third criteria, the parties represent that no term of the Settlement Agreement contravenes any statutory provision or Commission decision. We are not aware of any conflict with our own decisions or other controlling law. However, to ensure that the Fuelco Agreement, itself, poses no conflict with established anti-trust law (which would affect the legality of the Settlement Agreement), Fuelco needs to obtain a safe harbor ruling from the Department of Justice and we urge it to do so expeditiously. Once the ruling has been issued, PG&E should provide a copy of it to the Director of the Commission's Energy Division. Thus, our determination that the Settlement Agreement is not contrary to law may need to be reexamined if the safe harbor ruling cannot be obtained.

As to the fourth criteria, our review indicates that the Settlement Agreement provides the detail necessary to implement its terms and most of the detail necessary to discharge our future regulatory responsibilities. The form created as Appendix A to the Settlement Agreement, which PG&E will file as part of its annual ERRAs, will enable the Commission to monitor the costs of the utility's participation in Fuelco, as well as the savings or losses that result from any transactions that Fuelco arranges for PG&E/PEFCO. Thus, the Commission will be able to monitor the net benefit to PG&E/PEFCO and ensure that ratepayers receive that benefit. Likewise, if Fuelco should prove ineffective or inefficient, the Commission will be able to take appropriate action. We remain concerned, however, that a report prepared consistent with Appendix A to the Settlement Agreement will not fully capture all activities undertaken by Fuelco members outside the scope of Fuelco's core purposes, the cost of such endeavors,

and the net gain or loss to PG&E's ratepayers that may result. Above, we refer to Article VIII, section 1(d) of the Fuelco Agreement, which lists seven such, non-core activities. We believe the Settlement Agreement's Appendix A report should be expanded to identify any such activities and break out the costs of participation by PG&E/PEFCO in a consistent format, if doing so will adequately reflect the net impact on PG&E's ratepayers. If the activity does not lend itself to being reported in the same format, then at a minimum, PG&E should: identify and describe the activity; identify when the activity was undertaken; quantify the cost to its ratepayers and the associated ratemaking treatment; and quantify the benefits to its ratepayers and the associated ratemaking treatment.

Subject to these additional requirements, we conclude, on balance, that the Settlement Agreement is reasonable in light of the record developed in this proceeding, that it is not adverse to the public interest, and that it should be approved. Thus, the Settlement Agreement meets the conditions of Rule 51.1(e).

### **Comments on Draft Decision**

D.05-05-008 determined that this proceeding should be set for hearing and accordingly, as required by Rule 6.5 of the Commission's Rules of Practice and Procedure (Rules), changed the preliminary determination that no hearing would be required. However, hearings were cancelled after the parties filed their Settlement Agreement. Therefore, the ALJ prepared a draft decision, rather than a proposed decision, and it was mailed to the parties in accordance with § 311(g)(1) and Rule 77.7 of the Rules. Comment were filed \_\_\_\_\_.

### **Assignment of Proceeding**

Susan P. Kennedy is the Assigned Commissioner and Jean Vieth is the assigned Administrative Law Judge in this proceeding.

**Findings of Fact**

1. The Settlement Agreement includes the three conditions that ORA advocated: PG&E will report annually in the ERRA on interactions between PG&E/PEFCO and Fuelco; ratepayers will receive 100% of any net nuclear fuel cost savings resulting from such transactions; and ratepayers will receive the PG&E/PEFCO share of any net proceeds on the sale or dissolution of Fuelco.

2. In order to fully monitor the effect on PG&E's ratepayers of PG&E/PEFCO participation in Fuelco, the Commission requires information about participation by PG&E/PEFCO in any activities undertaken pursuant to Article VIII, section 1(d) of the Fuelco Agreement.

**Conclusions of Law**

1. The settlement between PG&E and ORA is an all-party settlement.

2. In order to be assured that the Fuelco Agreement is consistent with anti-trust law, Fuelco should request a safe harbor ruling from the Department of Justice. The Commission's determination that the Settlement Agreement is not contrary to law may need to be reexamined if the safe harbor ruling cannot be obtained.

3. It is reasonable to exempt Fuelco from the specified provisions of the Affiliate Transaction Rules in accordance with the terms of the Settlement Agreement and the additional requirements that PG&E: (a) provide the Commission with a copy of the Department of Justice anti-trust safe harbor ruling for Fuelco; and (b) expand, as described in Finding of Fact 2, the report to be filed with its annual ERRA.

4. Subject to the additional requirements listed in Conclusion of Law 2, the Settlement Agreement is not adverse to the public interest and should be approved.



5. No hearings are necessary.

6. In order to provide timely advice to the entities concerned, this order should be effective immediately.

**INTERIM ORDER**

**IT IS ORDERED** that:

1. The June 29, 2005 Joint Motion filed by Pacific Gas and Electric Company (PG&E) and the Office of Ratepayer Advocates (ORA) is granted and the Settlement Agreement that is Attachment A to that motion and to this opinion is approved subject to these additional conditions:

(a) Upon issuance by the United States Department of Justice, PG&E shall provide a copy of the anti-trust safe harbor ruling for Fuelco LLC (Fuelco), to the Director of the Commission's Energy Division.

(b) If PG&E and/or Pacific Energy Fuels Company (PEFCO) participate in any activities listed in Article VIII, section 1(d) of the Fuelco Agreement (i.e., activities outside the scope of general purposes and business objectives listed in Article IV, section 1 of the Fuelco Agreement), then PG&E shall include those activities in the annual report required by the Settlement Agreement's Paragraph 4 and Appendix A. If doing so will adequately reflect the net impact on ratepayers, the report shall identify such activities and quantify the costs of participation by PG&E/PEFCO in a format consistent with Appendix A. If the activity does not lend itself to being reported in that format, then at a minimum, PG&E/PEFCO shall: identify and describe the activity; identify when the activity was undertaken; quantify the cost to ratepayers and the associated ratemaking treatment; and quantify the benefits to ratepayers and the associated ratemaking treatment.

2. This proceeding is closed.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.

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

Application of Pacific Gas and Electric Company for an Exparte Order Granting Limited Exemptions from the Affiliate Transaction Rules Adopted in D.97-12-088, as Subsequently Modified

Application No. 04-11-013

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**SETTLEMENT AGREEMENT BETWEEN THE OFFICE OF  
RATEPAYER ADVOCATES AND PACIFIC GAS AND ELECTRIC COMPANY  
RESOLVING ALL ISSUES IN APPLICATION NO. 04-11-013**

In accordance with Article 13.5 of the California Public Utilities Commission's (Commission) Rules of Practice and Procedure, the Office of Ratepayer Advocates (ORA) and Pacific Gas and Electric Company (PG&E) (together, the "Settling Parties"), by and through their undersigned representatives, enter into this Settlement resolving their differences arising from Application 04-11-013. As a compromise of their respective litigation positions in A.04-11-013, ORA and PG&E agree to and support all of the terms of this Settlement.

**RECITALS**

- A. On August 6, 2004, PG&E's wholly-owned subsidiary, Pacific Energy Fuels Company (PEFCO) entered into an "Amended and Restated Limited Liability Company Agreement" (Fuelco Agreement) with Union Electric Company, doing business as AmerenUE and TXU Generation Company LP; the Fuelco Agreement governs the operation of Fuelco, LLC (Fuelco), a limited liability company. PEFCO's ownership interest in Fuelco is currently four percent.
- B. The essential purpose of Fuelco is to act on behalf of its member utilities to assist in the acquisition of nuclear fuels and related products and services. Fuelco is currently staffed by loaned employees from the member utilities who pay the salary, administrative expenses and benefits of the personnel they supply. Fuelco shares

office space and equipment with member utilities. Fuelco has also participated in transactions with non-member utilities.

- C. Given its current ownership interest, PG&E's transactions through PEFCO are not subject to the Commission's Affiliate Transaction Rules, first adopted in Commission Decision 97-12-088.
- D. The Fuelco Agreement permits PG&E, through PEFCO, to increase its ownership interest in Fuelco; such increased ownership interest would subject PG&E/PEFCO and Fuelco to the Affiliate Transaction Rules.
- E. If the interactions between PG&E/PEFCO and Fuelco were subject to certain of the Affiliate Transaction Rules, Fuelco could not operate in the manner contemplated by the Fuelco Agreement.
- F. The Fuelco Agreement specifically recognizes that increasing a member's ownership interest in Fuelco may require the member to seek regulatory approval and further requires that member to seek the approvals necessary to increase its ownership interest.
- G. In the case of PG&E/PEFCO, the regulatory approvals required include a waiver of certain of the Affiliate Transaction Rules.
- H. On November 15, 2004, PG&E filed Application 04-11-013 seeking the required waivers of certain of the Affiliate Transaction Rules. Specifically, the Application seeks waivers of:
  - Rule III.B, to the extent it restricts transactions between a utility and its affiliate to tariffed services or services subject to competitive bidding;
  - Rule III.B.1, to the extent it limits and conditions the information a utility may make available to its affiliate;
  - Rules III.E and IV.B, to the extent they further restrict or condition information sharing between a utility and its affiliate;

- Rules V.C and E, to the extent they proscribe the sharing of plant, facilities, costs, equipment, personnel and information;
  - Rule V.G, to the extent it proscribes the sharing of employees and officers; and
  - Rule V.G.6, to the extent it applies to the pricing of services provided by Fuelco.
- I. On February 28, 2005, PG&E filed supplemental information pertaining to Application 04-11-013 in response to a ruling from assigned Administrative Law Judge Jean Vieth.
- J. After initiating discovery, ORA sought and was granted permission to file out of time a protest to PG&E's application; ORA filed its protest on March 9, 2005.
- K. After concluding discovery, ORA served testimony and work papers in the form of a Report on May 23, 2005, opposing PG&E's request for waivers of all the Affiliate Transaction Rules listed in Recital H above, except for Rule V.G.6., a waiver of which ORA does not oppose.
- L. On June 6, 2005, PG&E served responsive testimony.
- M. On and after June 6, 2005, representatives of ORA and PG&E met to discuss the issues ORA raised in its testimony.
- N. In light of all the circumstances, and to expedite disposition of this Application, the Settling Parties have now agreed to resolve all matters at issue.

### **AGREEMENT**

IN CONSIDERATION of the foregoing recitals, the Settling Parties agree as follows, conditioned on receiving a final order of the Commission in a form and in substance satisfactory to each of the Settling Parties:

1. ORA's Report, Workpapers, and the Redacted Report served May 23, 2005 and the responsive testimony PG&E served June 6, 2005, should be admitted into evidence by stipulation.

2. ORA withdraws its opposition to PG&E's request for waivers of the Affiliate Transaction Rules specified in Recital H, above. ORA believes that PG&E's use of Fuelco for nuclear fuel services may result in net savings for ratepayers.
3. The Commission should grant without change or condition the waivers as requested in Application 04-11-013 and specified in Recital H, above.
4. PG&E will report certain information annually to the Commission by filing the information as part of PG&E's annual Energy Resource Recovery Account (ERRA) compliance proceeding. The form for this annual filing is attached hereto as Appendix A. This information pertains to the activities and operating costs associated with PG&E/PEFCO's interactions with Fuelco.
5. This reporting requirement shall not extend to activities of Fuelco members other than PG&E/PEFCO, whose activities do not affect or benefit PG&E. Nothing in this Settlement is intended to alter the scope or applicability of Public Utilities Code sections 314 and 309.5.
6. This settlement does not extend the Commission's jurisdiction to the members of Fuelco that currently operate outside the Commission's jurisdiction or to the transactions of those members that involve Fuelco.
7. If Fuelco generates net nuclear fuel cost savings for PG&E, those savings will be passed on to PG&E's ratepayers in full, as soon as practicable, through appropriate ratemaking mechanisms.
8. If Fuelco is dissolved or sold in the future, PG&E's ratepayers will receive PG&E/PEFCO's share of the net proceeds of the sale or dissolution of Fuelco, except to the extent that PG&E/PEFCO has infused capital for which it has not otherwise sought cost recovery. In case of sale or dissolution, PG&E will file an application with the Commission for the recovery of any unrecovered capital investment.

9. The Settling Parties shall by joint motion request Commission approval of this Settlement and will actively support such prompt approval. Active support may 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.
10. 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 between the Settling Parties.
11. The Settlement may be amended or changed only by a written agreement signed by the Settling Parties.
12. 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. If the Commission fails to approve the Settlement as reasonable and adopt it unconditionally and without modification, either Settling Party may in its sole discretion elect to terminate the Settlement. Any material change to the Settlement shall give each Settling Party in its sole discretion the option to terminate the Settlement. The Settling Parties, however, will negotiate in good faith with regard to any Commission-ordered changes to attempt to restore the Settlement to an acceptable compromise document. In the event such renegotiation is unsuccessful and the Settlement is terminated, the Settling Parties may request that the unresolved issues be heard before the Commission at the earliest convenient time.
13. This Settlement does not constitute or create precedent regarding any principle or issue in this proceeding or in any future proceeding.

14. Each of the Settling Parties hereto and their respective counsel have contributed to the preparation of this Settlement. Accordingly, no provision of this Settlement shall be construed against any Settling Party because the party or its counsel drafted the provision.
15. 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.
16. This Settlement shall become effective among the Settling Parties on the date the last Settling Party executes the Settlement as indicated below.

Name: /s/ GREGORY M. RUEGER  
Gregory M. Rueger

Title: \_\_\_\_\_  
Senior Vice President  
Generation and Chief Nuclear Officer

Date: June 27, 2005  
Pacific Gas and Electric Company



Name: /s/ REGINE DEANGELIS  
Regina M. DeAngelis

Title: Staff Counsel PUC  
Staff Counsel

Date: June 28, '05

Office of Ratepayer Advocates

**APPENDIX A**

**ANNUAL REPORT OF PACIFIC GAS AND ELECTRIC COMPANY  
AND PACIFIC ENERGY FUELS COMPANY  
ON THE ACTIVITIES OF FUELCO, LLC**

**RECORDED YEAR 20XX AND BUDGET YEAR 20XY**

**ADMINISTRATIVE COSTS ASSOCIATED WITH THE PROCUREMENT  
OF NUCLEAR FUEL AND FUEL-RELATED PRODUCTS OR SERVICES**

(All Data in \$000s)

		RECORDED YEAR 20XX	BUDGET YEAR 20XY
1	TOTAL COMMON COSTS (1)		
2	Out-of-Pocket		
3	Labor		
4	Total Fuelco		
5	PG&E/PEFCO Share (%)		
6	PG&E/PEFCO Share (\$)		
7	SPECIAL PROJECT COSTS (2)		
8	Out-Of-Pocket		
9	Labor		
10	Total Fuelco		
11	PG&E % (3)		
12	PG&E \$ (3)		
13	Total PG&E Share (\$)		

(1) Currently expensed on Fuelco books.

(2) Capitalized as deferred charges on Fuelco books.

(3) Reflects composite participation in one or more projects. Allocations may be estimated if final participation in a special project is subject to change. Allocations may reflect participation of non-members.

**NUCLEAR FUEL AND FUEL-RELATED PRODUCTS OR SERVICES  
PROCURED BY PG&E/PEFCO THROUGH FUELCO  
RECORDED YEAR 20XX  
INCLUDES CONFIDENTIAL, COMMERCIALY SENSITIVE DATA**

CONTRACT & DATE	PRODUCT & UNIT PRICE	TOTAL COST	DELIVERY DATE(S)	FUELCO TITLE (Y/N)	MARKET UNIT PRICE AT CONTRACT*	CURRENT MARKET UNIT PRICE*

\* A simple average of the prices reported in the most recent weekly publications of Trade Tech Nuclear Market Outlook and Ux Weekly Report.

**(END OF ATTACHMENT A)**