Decision **PROPOSED DECISION OF ALJ BROWN (Mailed 5/9/2006)**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company for Approval of an Agreement Concerning Certain Generation Assets Known as "Contra Costa 8" Pursuant to a Settlement and Release of Claims Agreement Approved by the Commission on January 14, 2005, for Authority to Recommence Construction, and for Adoption of Cost Recovery and Ratemaking Mechanisms Related to the Acquisition, Completion and Operation of the Assets. (U 39 E)	Application 05-06-029 (Filed June 17, 2005)

OPINION ADOPTING JOINT SETTLEMENT AGREEMENT, AS MODIFIED, FOR CONTRA COSTA 8

Summary

This decision adopts all provisions of the Joint Settlement Agreement (Settlement Agreement/Settlement)[1] concerning an application for a Certificate of Public Convenience and Necessity (CPCN) by Pacific Gas and Electric Company (PG&E) to accept, complete construction of, and operate the Contra Costa 8 (CC8) generating facility, except for the Nonbypassable Charge (NBC) provision contained in Paragraph 11. The Settling Parties propose an NBC for

[1] The Settling Parties include PG&E, Division of Ratepayer Advocates (DRA), The Utility Reform Network (TURN), and California Unions for Reliable Energy (CURE). A copy of the Settlement Agreement is attached to this decision as Attachment A.

CC8 for the 30-year life of the project. We do not approve that provision, but instead adopt a 10-year NBC, consistent with Decision (D.) 04-12-048.

Background

On June 17, 2005, PG&E filed an application seeking Commission authorization for approval of an Asset Transfer Agreement (ATA) for a new combined cycle, 530 megawatt (MW) electric generating facility known as CC8. PG&E wants to accept, complete construction of, and operate CC8 and requests funding and cost recovery mechanisms to accomplish this. CC8 is available to PG&E pursuant to a settlement agreement approved by the Commission on January 14, 2005, regarding the resolution of matters and claims related to Mirant Delta LLC (Mirant).

At the initial prehearing conference (PHC), it was evident that there was little opposition to the CC8 project, but some protesting parties had concerns over other related issues, including the recovery of stranded costs from an NBC. PG&E was requesting authorization for an NBC for 30 years to parallel the 30-year amortization schedule proposed for cost recovery of the project. CCSF and MID protested the proposed 30-year NBC. The Independent Energy Producers (IEP) and Californians for Renewable Energy, Inc. (CARE) protested other aspects of the CC8 project that are discussed further in this decision.

Following the PHC, PG&E, DRA, TURN, and CURE stipulated that the scope of the proceeding could focus solely on whether the 10-year NBC approved in D.04-12-048 should be extended to 30 years for CC8. Evidentiary hearings on the length of the NBC were scheduled for December 5, 2005.

In preparation for the December 5, 2005 hearings, DRA, MID, CCSF and CARE served testimony. During this same time frame, PG&E, DRA, CURE and TURN engaged in settlement discussions. On November 28, 2005, pursuant to

Rule 51.1(b) of the Commission's Rules of Practice and Procedure,[2] PG&E filed a Notice of Settlement Conference for December 5, 2005. On December 2, 2005, a Settlement Agreement was circulated to the service list.

On December 5, 2005, the Commission opened and suspended the evidentiary hearings and set dates for comments and reply comments to the Settlement Agreement. The non-settling parties met with the settling parties, but no other parties joined in the Settlement. Following the comment cycle it was evident that there was just one factual issue in dispute: whether the 10-year NBC established in previous Commission decisions should be extended to 30 years.

Evidentiary hearings were rescheduled and were held on March 1 and 2, 2006. Before the hearings commenced, the Energy Producers and Users Coalition (EPUC) filed a motion to intervene in the proceeding so it could participate in the hearings. The only issue developed during the hearings was the Settlement Agreement and whether the proposed 30-year NBC should be adopted by the Commission.

Settlement Agreement

DRA, CURE, and TURN agree that the Commission should grant PG&E a CPCN for PG&E to accept, complete construction of, and operate CC8, and make the necessary findings for PG&E to recover the reasonable costs of the project. PG&E submitted the Settlement Agreement for Commission approval. The Settlement contains Paragraph 11 that authorizes PG&E to recover any above-market costs for CC8 for the 30-year life of the project through an NBC, the details of which are to be determined in another proceeding.

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[2] Unless otherwise indicated, references to Rules refer to the Commission's Rules of Practice and Procedure and references to Code Sections refer to the California Public Utilities Code.

The non-settling parties are IEP, CARE, MID, EPUC, and CCSF. IEP opposes the Settlement because it does not address the issues that are of concern to IEP. In light of the Commission's directive in D.04-12-048 that competitive solicitations are the preferred method for selection of new energy resources, IEP questions whether it is appropriate that PG&E submitted the CC8 project to the Commission outside of such a solicitation. On August 16, 2005, Commissioner Peevey issued a Scoping Memo advising IEP that"[t]his proceeding was not the proper forum for clarification of the Commission's policies on utility procurement, and the directives set forth in D.04-12-048 will stand on their own."[3] Therefore, we do not address IEP's issue here. This issue may be considered in the 2006 Rulemaking on the utilities' Long-term Procurement Plans (LTPP), R.06-02-013, or in another appropriate proceeding.

CARE's request that the Commission conduct a CEQA review before approving the project is discussed below.

MID, EPUC, and CCSF oppose the Settlement because the 30-year cost recovery provision (Paragraph 11) is well beyond the 10-year time period authorized in D.04-12-048 and would negatively impact the customers of MID, EPUC, and CCSF.

Rule 51.1(e) directs that the Commission will not approve stipulations or settlements, whether contested or uncontested, unless the stipulation or settlement is reasonable in light of the whole record, consistent with law, and in the public interest.

[3] Scoping Memo, WEB Published Rulings, p. 3.

Parties Positions

The Settling Parties

PG&E, DRA, TURN and CURE

The settling parties urge the Commission to expeditiously approve the CPCN for CC8 on the grounds that the facility is in the public interest since it will provide lower rates for PG&E customers as well as provide a source of reliable energy supply. PG&E's estimates of the plant's completion costs and initial revenue requirements have decreased since PG&E filed the application and the purchase price for the facility is below market since it is the result of the settlement with Mirant. Mirant already obtained the necessary permits and partially completed construction. PG&E customers will be the beneficiaries of this economic asset.

The Settling Parties propose amortizing the cost of this generation asset over 30 years and seek to have all utility customers indifferent over this 30-year period to changing customer loads. Specifically, PG&E, along with DRA, TURN and CURE, suggest that all customers who benefit from the completion of the plant pay for it for 30 years—including departing load customers. The Settling Parties' concern is that if CC8 has any above-market costs during its 30-year life and all current customers are not responsible for these above-market costs, then PG&E's bundled ratepayers alone will bear the financial burden. Therefore, the settlement proposes that PG&E be authorized to recover any above-market costs of CC8 through an NBC for any departing load customers for the 30-year life of the project.

Paragraph 11 of the Settlement Agreement addresses this basic issue. The Settling Parties defer all other issues including, but not limited to the calculation,

application and allocation of the NBC to another appropriate proceeding, possibly R.02-01-011.

CCSF

CCSF's argument against Paragraph 11 is that CC8 is a relatively low-cost and low-risk project, a "good economic deal" that "should not be uneconomic."[4] CCSF believes that the Commission previously determined that a 10-year NBC was reasonable in regards to other similarly situated utility projects, such as Mountainview, Palomar, and Ramco, and was reasonable generically to all future utility projects as specified in D.04-12-048. While D.04-12-048 did permit a utility to justify an extended time for stranded cost recovery, CCSF argues that this justification is not presented in this record. First, CC8 should be economic, and therefore there should not be any "above-market" costs. Second, CC8 is a tried and true product, not a risky experimental project that conceivably could justify a longer NBC. And finally, under the 10-year default NBC, PG&E will have ample opportunity to adjust its procurement plans to changing customer loads. With a hybrid portfolio of different fuel types, different ownership forms and varied contract lengths, PG&E can adjust its procurement portfolio to match changing customer profiles.

MID

In principal, MID argues against any NBC as being anti-competitive. However, conceding that an NBC might be imposed for CC8, Modesto, and Merced Irrigation Districts argue that the 30-year period set forth in Paragraph 11 of the Settlement is too vague, uncertain and anti-competitive to be reasonable or in the public interest. In particular, Paragraph 11 only authorizes

[4] Transcript (Tr.), p. 191 (PG&E/Wan).

PG&E to recover the above-market costs of CC8 for 30 years, but defers implementation and all the pertinent details to another case. MID contends that it would be more appropriate to defer all aspects of an NBC in excess of 10 years to another case, rather than approving the 30 years in this case—with all pertinent details to be determined later. For example, MID is concerned that if there are above-market costs in a particular year that are collected by way of an NBC, but yet in another year CC8 is below-market, there should be provisions for returning money to the NBC payers.

The Commission has already determined that a 10-year period for an NBC is reasonable in D.04-0-12-048, and MID claims that PG&E presented no evidence to support a revision of this provision. Finally, MID asks that if the Commission does impose an NBC, that it be for no more than 10 years, that it be applicable only to customers who depart on/after the date CC8 commences commercial operations and that it should not apply to "new" load, i.e., customers who have never been served by the utility.

EPUC

EPUC is concerned with customer-generated departing load (CGDL) and opposes the 30-year NBC because it would discourage co-generation (co-gen) and distributed generation (DG) at a time when the state and the Commission are promoting such alternative resources. EPUC argues that PG&E has the ability to anticipate changes in its customer base and should use prudent planning to shape its procurement plans to changing customer profiles rather than seek to collect above-market costs from departing load.

Discussion

The Commission is being asked to determine now, which customers should be responsible for any above-market costs that the CC8 facility might

have over the 30-year useful life of the plant. Should it be PG&E's bundled customers or should PG&E customers who are ineligible for direct access at the time the plant goes into operation, but who subsequently leave PG&E's service, share in the cost of the plant by way of an NBC?

Many of the factors that inform our decision on this cost-sharing issue are hard to predict. For example, expectations are that CC8 will be economic for its 30-year plant life, but PG&E can not guarantee that in light of possible shifts in its customer base, including customers leaving for direct access (DA), municipalization or Community Choice Aggregation (CCA). In addition to customer migration, there could also be changes in customer usage through conservation, energy efficiency, advanced metering, DG, and renewables.

We are mindful of these factors as we consider Settling Parties' proposal to have any above-market costs for CC8 borne by all customers who benefit from the facility's commercial operation for its 30-year life and cost amortization--including departing load customers. Before it makes the commitment for CC8, PG&E wants to ensure that its bundled customers will be indifferent to future departing loads. DRA and TURN support this 30-year NBC because it will protect bundled ratepayers of PG&E from being responsible for any above-market costs if there is a significant migration of customers to competing energy providers in PG&E's service territory.

However, we are also aware of the potential logistical difficulties such a 30-year NBC could have in terms of the calculation, application, and allocation of the charge. Although Settling Parties propose deferring those issues, and any other related NBC issues, to another proceeding, we must be cognizant about the full panoply of concerns authorizing such a lengthy NBC could have, not just on PG&E's departing load customers, but for the other utilities as well.

We faced these same possible customer migration and cost-sharing issues when we considered SCE's Mountainview facility and SDG&E's Palomar and Ramco plants, and when we established policies for the IOUs' long-term procurement plans. In all three instances, we approved a cost-recovery mechanism for a 10-year period.

In Mountainview, we found ". . . in order to not over-burden ratepayers in the early years of the contract, we adopt TURN's proposal that all customers of Edison that are currently ineligible for direct access be obligated to pay for stranded costs for the first 10 years of Mountainview's life."[5] In the Decision approving Palomar and Ramco as new electric resources for SDG&E, we adopted "the same mechanism that we did in the Edison/Mountainview decision, D.03-12-059 whereby all customers of SDG&E that are currently ineligible for direct access are obligated to pay for the stranded costs of any new generation for the next ten years. This will insure that neither the utility, nor its bundled customers, will be forced to pay stranded costs for these generation assets in the event that new direct access is permitted."[6]

D.04-12-048 was directed at approving the long-term procurement plans for all three IOUs. In the discussion on recovery of stranded costs, we reviewed our policy as set forth in D.03-12-059 and D 04-06-011 and specified that "this decision adopts the same standards for fossil-fueled resources acquired by the utilities either directly or through contract. The utilities should be allowed to recover stranded costs for these resources from departing load over either the life of the contract or 10 years, whichever is less. The ten-year recovery period will

[5] D.03-12-059, Findings of Fact 22., *mimeo.*, p. 60.

[6] D.04-06-011, *mimeo.*, p. 42.

also apply to any utility-owned generation acquired as a result of the procurement process, commencing once the resource begins commercial operation."[7]

Commission decisional precedent supports the ten-year stranded cost recovery. While we did permit a utility to justify requesting a cost recovery period of longer than ten years, neither PG&E, nor the Settling Parties, presents such justification. All of the uncertainties surrounding migrating customer bases and potential changes in customer electricity use are the same for PG&E's CC8, as they were for SCE's Mountainview and SDG&E's, Ramco, and Palomar facilities. We previously found that the 10-year cost recovery was a balanced compromise so as to not shift the cost burden of an uneconomic asset to a utility's bundled customers. We find nothing in the record of the CC8 proceeding that justifies changing the length of time for the cost recovery provision.

In addition, Paragraph 11 of the Settlement Agreement did not provide the Commission with sufficient information to understand the impact of implementing the 30-year NBC.

Therefore, we have determined that the record supports adopting the Settlement Agreement, with a 10-year NBC. This is consistent with Commission decisional precedent and will protect PG&E's bundled ratepayers from bearing the entirety of any above-market costs during this period.

Settlement Agreement

After reviewing the Settlement Agreement in its entirety and taking into consideration arguments presented by IEP, CARE, EPUC, MID, and CCSF, we

[7] D. 04-12-048, *mimeo.*, p. 60.

find that the Settlement Agreement as a whole, but for the 30-year cost recovery provision of Paragraph 11, is reasonable in light of the whole record, consistent with law, and in the public interest.

The record supports CC8 as a low-cost and low-risk project that meets PG&E's long-term procurement needs and that will provide an additional 530 MW of electricity that will contribute to grid reliability. The Settlement, but for the 30-year NBC, meets the requirements of Rule 51 et al.

As discussed above, the 30-year NBC is not consistent with Commission decisional precedent and the record does not support extending the NBC beyond the established 10-year period. We therefore modify Paragraph 11 to allow for a 10-year NBC. We base this modification on the entire record, including the evidentiary record developed in this case.

In addition, the record supports a finding that the Settling Parties do not wish to delay approval of the CC8 facility. The record indicates that CC8 is a beneficial for ratepayers, but that any delay that extends the resumption of construction past September 2006 will significantly increase the cost of the project. After September, PG&E's cost estimates increase almost $1 million a month, and PG&E's revenue requirement will correspondingly increase by $250,000 per month. Delays and increased costs are not in the interest of the ratepayers.

The Settlement Agreement also proposes cost recovery and ratemaking mechanisms related to the acquisition, completion, and operation of CC8. No party presented any opposition to these proposals. We find that the cost recovery and ratemaking mechanisms are reasonable in light of the record as a whole, consistent with law, and in the public interest and we adopt them.

Motions

CARE'S Motion for California Environmental Quality Act (CEQA) Review of CC8

CARE filed a motion asking the Commission to determine whether the CEQA was applicable to the CC8 project. CC8 comes to the Commission with a CEQA history. The California Energy Commission (CEC) reviewed CC8 under CEQA and approved Mirant's Application for Certification (AFC) in 2001. CARE acknowledges that, but questions whether the CC8 plant still complies with applicable regulations since there has been a five-year lapse in time since the CEC approval. Specifically, CARE asks whether CC8 complies with current state Best Available Control Technology (BACT) requirements, Federal Lowest Achievable Emission Requirements (LAER) and Bay Area Air Quality Management District (BAAQMD) regulations for emissions of air pollution from the plant. CARE argues that these requirements have all changed substantially since the AFC was first issued, and it would be appropriate for the Commission to conduct a new CEQA review. In addition, CARE claims that the CEQA review would be appropriate since there is a fundamental change in ownership and operators, from Mirant, a private owner/operator, to PG&E, a public utility owner/operator, and other changed circumstances.

PG&E's position is that CEQA does not apply to the CC8 application. PG&E argues that under the California Legislature's direction, CEQA review is to be done by the CEC of applications to construct new thermal powerplants with over 50 MW of generating capacity. CC8 has a capacity of 530 MW, and therefore, under both Public Resources Code Section 25500 and Public Utilities Code Section 1002(b), the CEQA review of CC8 was conducted by the CEC. In May 2001, the CEC issued a Decision (P800-01-18) on PG&E's Application for

Certification (00-AFC-1). Furthermore, PG&E argues that the CEC's certificate shall be conclusive as to all matters determined by it. After conducting a full environmental review, the CEC determined that "the conditions of certification it imposed will ensure protection of environmental quality and assure reasonably safe and reliable operation of the facility, and will also assure that the project will neither result in, nor contribute substantially to, any significant direct, indirect, or cumulative adverse environmental impacts."[8]

In addition, PG&E argues that under Legislative direction, and the code sections, the CEC is the lead agency for any further review necessitated by amendments to the license it already issued. Since the CEC is the lead agency, this Commission has no independent responsibility to conduct further environmental reviews, and that is consistent with the position taken in Commission decisions on other facilities already certified by the CEC.[9]

However, the Commission is a responsible agency and under some circumstances, we have the authority to issue supplements to the lead agency's EIR. (Pub. Res. Code Section 21166.) A responsible agency may choose to do a supplemental EIR if (1) there are substantial changes to the proposed project; (2) substantial changes to the project's environmental effects; or (3) new information is known that goes to the project's effects, mitigation measures or alternatives. (Pub. Res. Code Section 21166 and CEQA Guidelines Section 15163.)

[8] CEC Decision, May 2001, p. 191.

[9] D.03-12-059, p. 61, D.04-04-019, p. 5, Commission's Rules of Practice and Procedure 17.1(c), and General Order 131-D (VII).

While CARE's motion enumerates reasons, set forth above, why it believes a supplemental EIR is necessary, none of those concerns detail a substantially changed project or project effect, nor are they new information that goes to effects, mitigations or alternatives. In summary, CARE's arguments go to the validity of the EIR and as such are properly addressed to a reviewing court of law, not the Commission as a responsible agency.

SCE's Mountainview application (A.03-07-032) presented the Commission with an analogous situation. In Mountainview, Sequoia Generating Company, LLC. (Sequoia), the previous owner of the facility, filed an AFC with the CEC for the 1,580 MW facility. The CEC conducted a CEQA review of the project and issued a decision in March 2001 granting the certificate. Some parties to the Mountainview proceeding questioned whether the passage of time since the CEC certification and the change of ownership from Sequoia to SCE should trigger a CEQA review by this Commission. In that decision we determined "[w]hile this Commission takes its responsibilities under CEQA seriously and is not reticent to perform environmental reviews, under the CEC licensing provisions, the CEC functions as the lead agency under CEQA. This Commission has no independent responsibility to conduct further environmental reviews. We have determined that the CEC's AFC process exempts projects, in this case Mountainview, from the requirements of CEQA. We therefore determine that no further CEQA review is triggered by Edison's application."[10]

CARE also argues that despite the CEC's previous CEQA review of CC8, we must conduct CEQA review of the ratemaking aspects of CC8. PG&E

[10]D.03-12-059, *mimeo.*, p. 58.

believes that the Legislature specifically exempts ratemaking from CEQA review and the Commission itself has held that CEQA does not apply to ratemaking.

Based on Legislative direction, the Public Resources Code, the Public Utilities Code, the Commission's Rules of Practice and Procedure, Rule 17.1(c), General Order 131-D(VII), and Commission decisional precedent, we determine that we do not have concurrent responsibility with the CEC to conduct CEQA review of CC8, including its ratemaking aspects, and on that basis deny CARE's motion.

Other Motions

Other motions filed during the course of this proceeding that have not already been ruled on or are not addressed in this decision are deemed denied.

Comments on Proposed Decision

The proposed decision of ALJ Brown in this matter was mailed to the parties in accordance with Public Utilities Code Section 311(d) and Rule 77.1 of the Rules of Practice and Procedure. Comments were received from _____.

Assignment of Proceeding

Commissioner Michael R. Peevey is the Assigned Commissioner and Carol A. Brown is the assigned ALJ in this proceeding.

Findings of Fact

1. PG&E, DRA, TURN, and CURE presented the Commission with a Joint Settlement Agreement concerning the acquisition, completion, and operation of CC8, including cost recovery and ratemaking mechanisms related thereto.

2. The Settlement Agreement contains Paragraph 11 that proposes a 30-year NBC for the project.

3. Protests to the Settlement Agreement were filed by MID, CCSF, and IEP but only to Paragraph 11.

4. IEP protested PG&E's presentation of the CC8 project to the Commission outside of a competitive solicitation process as established by D.04-12-048 and requested clarification on the Commission's preferred procurement policies. This issue was not within the scope of this proceeding, and we do not address it in this decision.

5. Following submission of the Settlement Agreement to the Commission, the scope of the proceeding was limited to a determination as to whether the Settlement, and especially Paragraph 11, is reasonable in light of the record as a whole, consistent with law, and in the public interest.

6. Previously in regards to specific projects for other IOUs, and in the Long-term Procurement decision, D.04-12-048, in regards to IOU projects in general, the Commission authorized a 10-year NBC for above-market costs for departing load.

7. The Settlement Agreement proposes a 30-year NBC, but defers all other issues, including the calculation, application and allocation of the NBC to another proceeding.

8. We find that the proposed 30-year NBC, with all of the implementation details left inchoate, is not reasonable in light of the record in this proceeding, is not consistent with law, and is not in the public interest.

9. We find it reasonable to modify the NBC to a 10-year period.

10. We find the Settlement Agreement, including the cost recovery and ratemaking mechanisms, for the acquisition, completion and operation of CC8, with the NBC amended to a 10-year period, to be reasonable in light of the record, consistent with law, and in the public interest.

Conclusions of Law

1. The Settlement Agreement, as modified to include a 10-year NBC, meets the requirements of Rule 51.1 of the Commission's Rules of Practice and Procedure, and is adopted by the Commission.

2. The Settlement Agreement, with a 30-year NBC, is not reasonable in light of the record, is not consistent with law, and is not in the public interest.

3. Based on Legislative direction, the Public Resources Code, the Public Utilities Code, the Commission's Rules of Practice and Procedure, and Commission decisional precedent, we determine that we do not have concurrent responsibility with the CEC to conduct a CEQA review of the project.

O R D E R

IT IS ORDERED that:

1. The Settlement Agreement, with Paragraph 11 modified to impose a 10-year nonbypassable charge for departing load customers, is adopted.

2. Pacific Gas and Electric Company is granted a Certificate of Public Convenience and Necessity for the acquisition, completion, and operation of the Contra Costa 8 facility, including the cost recovery and ratemaking mechanisms related thereto, under the terms set forth in the attached Settlement Agreement, as modified by today's decision.

3. Californians for Renewable Energy, Inc.'s motion for the Commission to conduct a supplemental Environmental Impact Report under the California Environmental Quality Act is denied.

4. Application 05-06-029 is closed.

This order is effective today.

Dated _____, at San Francisco, California.

ATTACHMENT A
SETTLEMENT AGREEMENT

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company for Approval of an Agreement Concerning Certain Generation Assets Known As "Contra Costa 8" Pursuant to A Settlement and Release of Claims Agreement Approved by the Commission on January 14, 2005, for Authority to Recommence Construction, and for Adoption of Cost Recovery and Ratemaking Mechanisms Related to the Acquisition, Completion, and Operation of the Assets. (U 39 E)	Application 05-06-029

SETTLEMENT AGREEMENT AMONG PACIFIC GAS AND ELECTRIC COMPANY, OFFICE OF RATEPAYER ADVOCATES, CALIFORNIA UNIONS FOR RELIABLE ENERGY, AND THE UTILITY REFORM NETWORK

In accordance with Rule 51.1 of the California Public Utilities Commission's (Commission) Rules of Practice and Procedure, Pacific Gas and Electric Company (PG&E), the Office of Ratepayer Advocates (ORA), California Unions for Reliable Energy (CURE), and The Utility Reform Network (TURN), hereby enter into this Settlement Agreement in order to resolve all issues associated with PG&E's Application for Approval of An Agreement Concerning Certain Generation Assets Known as "Contra Costa 8" Pursuant to a Settlement and Release of Claims Agreement Approved By the Commission on January 14, 2005, for Authority to Recommence Construction, and for Adoption of Cost Recovery and Ratemaking Mechanisms Related to the Acquisition, Completion, and Operation of the Assets.

RECITALS

1. On May 30, 2001, the California Energy Commission (CEC) issued a decision approving Mirant Delta LLC's proposed 530 megawatt (MW) Contra Costa 8 generation project near Antioch, California ("CC8" or "the project"), together with conditions to mitigate environmental and community impacts. The CEC is the lead agency for CEQA review of new thermal powerplants with more than 50 MW of generating capacity. The CEC conducted an environmental review of the project, and has continuing jurisdiction over compliance with the conditions of its decision.

2. On January 14, 2005, the Commission approved and signed a Settlement and Release of Claims Agreement, resolving matters and claims raised in proceedings that were initiated with respect to events in the California Independent System Operator Corporation and California Power Exchange (CalPX) energy and ancillary services markets during the period from June 1, 2000 through June 20, 2001 as they relate to Mirant. Among other things the Settlement and Release of Claims Agreement constituted authorization for PG&E to either acquire and take ownership of the CC8 assets and to effect the other ancillary transactions included or intended to be addressed in the Asset Transfer Agreement and ancillary agreements, and required PG&E, Delta and Mirant Special Procurement, Inc. to use good faith, commercially reasonable efforts to negotiate and execute an Asset Transfer Agreement for CC8 that transfers and assigns the CC8 assets to PG&E or its designee. If CPUC does not approve the CC8 Asset Transfer Agreement and the transactions contemplated therein without material changes, modifications or conditions to PG&E's Application by December 31, 2006, or rejects the CC8 Asset Transfer Agreement or the transactions contemplated therein in whole or in material part, or the CC8 Closing Date has not occurred for any reason by June 20, 2008, or for other reasons stated in the Settlement and Release of Claims Agreement or Asset Transfer Agreement, PG&E may receive alternative consideration in the form of an

allowed, prepetition, non-priority general unsecured claim against Delta in its Bankruptcy Proceedings that will result in a total aggregate distribution to PG&E of $70 million in cash and/or securities. The Federal Energy Regulatory Commission approved the Settlement and Release of Claims Agreement on April 13, 2003 (111 FERC 61,017). The PG&E Bankruptcy Court and Mirant Bankruptcy Court also approved it.

3. On June 17, 2005, PG&E filed an application for approval of the terms and conditions of the Asset Transfer Agreement referred to in the Settlement and Release of Claims Agreement, including all ancillary documents and agreements, concerning the CC8 assets (i.e., the CEC-approved, partially constructed facility owned by the Mirant parties), together with ratemaking and cost recovery provisions designed to allow the plant to be completed and operated on a cost-of-service basis for 30 years, and a certificate of public convenience and necessity to complete construction of the plant as its developer.

4. Timely protests to PG&E's application were filed by ORA, the Independent Energy Producers Association, the City and County of San Francisco (CCSF), and Modesto and Merced Irrigation Districts (MID). PG&E filed a response to these protests on July 28, 2005. A prehearing conference was held on August 11, 2005, with all of these parties, plus TURN, CURE, and Californians for Renewable Energy (CARE), in attendance. On August 16, 2005, the Commission issued a scoping memo that limited the scope of the proceeding to certain issues identified by PG&E and other parties who protested the application, and directed PG&E to begin collaborative meetings before August 26, 2005. PG&E initiated settlement discussions, with notice to all parties on the service list. Opening testimony was filed on October 14 by CCSF, MID, ORA, and Californians for Renewable Energy (CARE). Rebuttal testimony was filed by PG&E on November 18, 2005. On November 28, 2005, pursuant to Rule 51.1 of the Commission's

rules, PG&E provided notice to all parties of a conference for the purpose of discussing this Settlement Agreement.

(END OF ATTACHMENT A)