

JAN 7 1998

Decision 98-01-003 January 7, 1998

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Joint Application of Pacific Gas and Electric Company and Energy Reserve, Inc. for an order approving the applicants' settlement agreement.

Application 97-07-016
(Filed July 15, 1997)

ORIGINAL

O P I N I O N

Summary

The Settlement Agreement (Agreement) between joint applicants Pacific Gas and Electric Company (PG&E) and Energy Reserve, Inc., (ERI) is approved.

Background

PG&E and ERI jointly filed this application on July 15, 1997, seeking Commission approval of the Agreement, which is attached as Appendix A to this opinion.

Applicants allege that the Agreement accomplishes the following:

- implements the Assigned Commissioner's Ruling dated August 27, 1996;
- reasonably resolves Case (C.) 92-03-025; and
- provides significant ratepayer benefits.

C.92-03-025 concerned a dispute about a contract for PG&E to purchase electricity from ERI's project. The proposed ERI project was an enhanced oil-recovery cogeneration project known as the Chico-Martinez Project (Project) that consisted of two phases. Phase 1 was to provide 20.5 megawatts (MW) of generation under a contract with terms that included payments of \$125/kW for capacity for 32 years with an on-line deadline of December 24, 1991. Although the parties executed the first phase agreement, the project did not come on-line by December 24, 1991, or at any other time. Phase 2 was to provide an additional 24.5 MW of generation at "as delivered" capacity prices. A Phase 2 agreement was not executed.

ERI blames PG&E for the project failure, alleging that PG&E improperly prepared a transmission interconnection study and, in violation of Commission orders, refused to negotiate in good faith on several issues, including project viability.

PG&E, on the other hand, blames the project failure on management and financial difficulties unrelated to PG&E.

On March 13, 1992, ERI filed C.92-03-025, seeking as a remedy an order requiring PG&E to extend the first phase Purchased Power Agreement (PPA) at escalated prices, or, alternatively, at the prices previously established. Hearings were completed and briefs filed by the parties.

Then on August 27, 1996, Assigned Commissioner Duque issued an Assigned Commissioner's Ruling, which found that a litigated outcome of C.92-03-025 would not be in the public interest and directed the parties to explore settlement. The ruling notes that the case has taken an unusually long time to process, apparently due to a long and convoluted history, and aggravated by acrimonious relations and substantial miscommunication between the parties. The ruling further notes that the remedy sought by ERI is an all or nothing solution, with no apparent middle ground available. Neither solution would be in the ratepayers' interest, in his view.

Agreement

The parties met and ultimately reached the Agreement, whose terms may be summarized as follows:

1. Payment -- PG&E shall pay ERI the sum of \$3,500,000 within 10 business days of full satisfaction of the following paragraphs of the Agreement.
2. PPA Termination -- this Agreement terminates any and all obligations of the first and second phases, releasing both parties from these obligations.
3. Release of Claims --
 - a. Upon the payment in Paragraph 1 and Commission approval of the Agreement, ERI and PG&E each waive and release any and all claims, demands, causes of action, losses, expenses, fees, damages, or other right to relief.

- b. ERI shall within 10 days of the execution of the Agreement, deliver to PG&E a release of claims in the form attached to the Agreement as Exhibit B.
4. Indemnification -- ERI shall defend, indemnify and hold harmless PG&E from and against any and all claims, demands, causes of action, losses, expenses, fees, damages, or other right to relief against PG&E and its subsidiaries and affiliates related to the first phase PPA and the second phase PPA.
5. Dismissal of C.92-03-025 -- ERI shall within 10 days of execution of the Agreement file a motion with the Commission requesting immediate stay of all proceedings in the case and requesting that the case be dismissed with prejudice upon approval of the Agreement.
6. Condition Precedent -- PG&E conditions the Agreement on the Commission's approval of it by decision, finding that it is reasonable for ratepayers and approving recovery of all payments to ERI.
7. Regulatory Process -- both parties shall diligently pursue Commission approval of the Agreement.
8. Acceptance of Commission Order -- both parties shall abide by the Commission order unless notice of termination is given.
9. Termination of Agreement -- either party may notify the other party that the Agreement shall terminate if the Commission order has not approved the Agreement on terms that satisfy the conditions of it or protect the parties.

The remaining provisions of the Agreement primarily address other legal details.

Response of Office of Ratepayer Advocates (ORA)

ORA recommends approval of the Agreement and believes it represents significant ratepayer benefits as compared to the risks of litigation and possible revival of ERI's power purchase agreement. The Agreement also complies with the Assigned Commissioner's Ruling which similarly concluded that litigation would not be in the ratepayers' best interests.

ERI's Dr. Yazdani estimated that ERI could claim in civil court lost profits in excess of \$103.2 million for termination of the contract by PG&E. PG&E's Mr. Fields, by analyzing four scenarios, determined that payments under the contract with ERI would be from \$21.2 million to \$57.1 million higher than replacement costs. Thus PG&E's

exposure for terminating the contract ranges from the costs of litigation if it won and damages to ERI were not assessed, to as much as \$103.2 million.

Based on its review of PG&E's assumptions used in the scenarios, ORA is convinced that the settlement proposed is preferable to the risks of litigation.

Discussion

The Assigned Commissioner's Ruling in C.92-03-025 recommended that the parties explore settlement to avoid what could be substantial risks of litigation to PG&E and its ratepayers. The uncertainty of litigation could also cloud PG&E's future for a significant period of time. The essential all-or-nothing character of the dispute troubled the Assigned Commissioner. Ultimately, the parties reached a settlement in the Agreement, which requires Commission approval.

In evaluating the potential effect on the parties and on PG&E's ratepayers, we will attempt to address the risks and probabilities of litigation of this dispute, as compared to the Agreement.

The exposures to PG&E estimated by both Yazdani and Fields are substantially greater than the Agreement amount of \$3.5 million that PG&E is to pay ERI. The best scenario for PG&E and its ratepayers would be if it won and no damages were assessed against it, in which case the only cost to PG&E would be the costs of litigation. The other apparent extreme would be if ERI were awarded lost profits in the amount of \$103.2 million, as calculated by Dr. Yazdani. Fields estimated that the payments under the contract would be from \$21.2 million to \$57.1 million higher than replacement costs. It would not be surprising if litigation resulted in ERI being awarded damages in an amount within that range. Even the lower end of the range is substantially greater than the Agreement amount that PG&E will pay ERI. Litigation expenses would add to the cost.

When compared with the potential exposure, the uncertainties, and the delay in concluding this matter if it were litigated, the terms of the Agreement seem reasonable for PG&E and its ratepayers.

We note that ERI also benefits by eliminating the uncertainty of litigation and the inherent time delays associated with litigation. Under the Agreement ERI will receive the \$3.5 million from PG&E promptly and will also avoid litigation expenses.

The Agreement specifically terminates both the first phase PPA and the Second Phase PPA, and the parties agree to waive all claims and relief related to the First Phase PPA, Second Phase PPA and the allegations or issues that are the subject of C.92-03-025. The Agreement further requires ERI to file within 10 days of execution of the Agreement a request with the Commission to dismiss C.92-03-025 with prejudice.

The Agreement offers a reasonable settlement of the dispute for both parties. It appears to be the result of negotiation and compromise. Significant to the Commission, it removes a large exposure to PG&E and its ratepayers that litigation would entail. It also better situates PG&E for deregulation of the electric industry by eliminating a potentially large uncertainty inherent in this dispute.

In conclusion, we find that the Agreement is reasonable and in the interests of PG&E and its ratepayers. We will approve it in the order that follows.

Because the Agreement results in termination of both phases of the PPA, it is appropriate for PG&E to recover its payment through its Energy Cost Adjustment Clause (ECAC) mechanism or through the transition cost balancing accounts that will succeed ECAC after December 31, 1997. (See Decision (D.) 97-10-057, slip op. at 14, 25.) We note that the costs of terminations of power purchase contracts may be recovered as transition costs. (Public Utilities Code § 367.)

Finally, we commend the parties for their efforts to reach agreement consistent with the spirit of the Assigned Commissioner Ruling.

Findings of Fact

1. PG&E is an electric utility subject to the jurisdiction of the Commission.
2. An Assigned Commissioner's Ruling in C.92-03-025 directed the parties to explore settlement.
3. PG&E and ERI have entered into an Agreement, attached as Appendix A, to settle the dispute in this case.

4. ORA recommends approval of the Agreement.
5. No party opposes the Agreement.
6. The Agreement eliminates the uncertainty and time delays inherent in litigation.
7. The Agreement is the result of negotiation and compromise by both parties.
8. The Agreement provides for dismissal of C.92-03-025.

Conclusions of Law

1. A hearing is not necessary.
2. The Agreement is reasonable.
3. The Agreement should be approved.
4. PG&E's payment of \$3.5 million to ERI pursuant to the Agreement is reasonable.
5. This order should be effective on the date signed.
6. This proceeding should be closed.

O R D E R

IT IS ORDERED that:

1. The Settlement Agreement between Pacific Gas and Electric Company (PG&E) and Energy Reserve, Inc. (ERI), attached as Appendix A, as set forth in Application (A.) 97-07-016 is approved.
2. PG&E is authorized to record its payment of \$3.5 million to ERI:
 - a. if the payment is made before January 1, 1998, as a debit to its Energy Cost Adjustment Clause Balancing Account;
 - b. if the payment is made on or after January 1, 1998, as a debit to its Interim Transition Cost Balancing Account or its Transition Cost Balancing Account, if it is established.
3. ERI shall file with the Commission a request to dismiss Case 92-03-025 with prejudice within 10 days of the effective date of this order.

A.97-07-016 ALJ/BRS/sid

4. A. 97-07-016 is closed.

This order is effective today.

Dated January 7, 1998, at San Francisco, California.

P. GREGORY CONLON
President

JESSIE J. KNIGHT, JR.

HENRY M. DUQUE

JOSIAH L. NEEPER

RICHARD A. BILAS

Commissioners

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT ("Settlement Agreement") is made and entered into effective as of the 23rd day of April 1997 by and between Energy Reserve, Inc., an Arizona corporation, ("ERI"), and Pacific Gas & Electric Company ("PG&E"), a California corporation, sometimes referred to herein individually as a "Party" and collectively as the "Parties."

RECITALS

- A. In 1987 in D.87-03-068, 24 CPUC 2d 64 (1987), the California Public Utilities Commission ("CPUC") approved a 1986 settlement between PG&E and ERI ("1986 Settlement") including a modified Standard Offer 2 Power Purchase Agreement ("First Phase PPA") for an enhanced oil recovery co-generation project known as the Chico-Martinez Project ("Project"). The First Phase PPA provided for 20.5 MW of generation at \$125/kW for capacity for 32 years with an on-line deadline of December 24, 1991. In addition, the 1986 Settlement provided for a second phase of 24.5 MW of generation at "as delivered" capacity prices ("Second Phase PPA").
- B. PG&E and ERI executed the First Phase PPA which became effective as of December 24, 1986.
- C. The Project did not come on-line on December 24, 1991 or at any other time.
- D. A disagreement has arisen between the Parties as to the reason why the Project did not come on-line (the "Dispute"). PG&E contends that the Project failed because of management and financial difficulties unrelated to PG&E. ERI contends that the Project did not come on-line because PG&E improperly prepared a transmission interconnection study requested on or about May 23, 1990 and completed on or about September 28, 1990 (the "Second Interconnection

Study"). ERI further contends that, in alleged violation of CPUC orders, PG&E failed to negotiate in good faith on several issues, including Project viability.

E. On or about March 13, 1992, ERI filed a Complaint with the CPUC in Case No. 92-03-025 concerning the Dispute and sought as a remedy *inter alia*, an order requiring PG&E to extend the First Phase PPA at escalated prices, or, in the alternative, at the prices previously established.

F. Hearings in Case No. 92-03-025 were completed on July 20, 1993 and briefs submitted on October 7, 1993 and November 1, 1993.

G. The respective positions of ERI and PG&E with respect to the Dispute are set forth in their pleadings, exhibits and testimony in Case No. 92-03-025.

H. On August 27, 1996, Assigned Commissioner Duque issued an Assigned Commissioner's Ruling ("ACR") directing the Parties to meet and confer to explore settlement or to consider alternative dispute resolution techniques to reach settlement.

I. Pursuant to the direction of the ACR, the parties have negotiated at length to resolve the Dispute and all issues presented in Case No. 92-03-25.

J. This Settlement Agreement is the complete and entire agreement settling the Dispute and Case No. 92-03-25 and terminating the First Phase PPA and any and all obligations to enter into the Second Phase PPA, all subject to the approval of the CPUC.

NOW, THEREFORE, in consideration of the mutual promises and obligations stated herein, the Parties intending to be legally bound, agree as follows:

1. Payment.

In settlement of the Dispute and of Case No. 92-03-25 and subject to the terms and conditions of this Settlement Agreement, PG&E shall pay to Energy Reserve, Inc. and David R. Pigott, its attorney, the sum of Three Million Five Hundred Thousand and No/100 Dollars (\$3,500,000) which shall be paid by check within ten (10) business days of full satisfaction of paragraphs 2, 3, 4, 5,6 and 8 hereof. Simultaneous with payment of said check, ERI shall deliver to PG&E, a "Notice of Satisfaction of Settlement Agreement" fully executed and in the form attached hereto as Exhibit A.

2. PPA Termination.

Immediately upon the full satisfaction of paragraphs 1 and 8, both the First Phase PPA and any and all obligations to enter into the Second Phase PPA shall be terminated and each party shall be released from any performance thereunder.

3. Release of Claims.

(a) Immediately upon full satisfaction of Paragraphs 1 and 8 hereof, ERI and PG&E each hereby waive and release any and all claims, demands, causes of action, losses, expenses, fees, damages (compensatory, punitive, exemplary, statutory or otherwise), or other right to relief, whether based on contract, tort, statute, or other legal or equitable theory of recovery which each had, now has, or may hereafter have against the other or any of its subsidiaries, affiliates, officers, directors, agents, employees, attorneys or shareholders, arising out of or related to the First Phase PPA and/or Second Phase PPA and/or the Project and/or the allegations or issues which are the subject of Case No. 92-03-25. This mutual release of claims shall not apply to any action commenced to enforce this Settlement Agreement or this mutual release.

ERI and PG&E each acknowledge that they execute and agree to this full and final release as a compromise of matters which may involve disputed issues of law and fact, and ERI and PG&E fully assume the risk that the facts and the law may be other than they believe. ERI AND PG&E EACH EXPRESSLY WAIVE ALL RIGHTS UNDER CALIFORNIA CIVIL CODE SECTION 1542, WHICH PROVIDES AS FOLLOWS:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

ERI AND PG&E, BEING AWARE OF SAID CODE SECTION, HEREBY EXPRESSLY WAIVE ANY RIGHTS THEY MAY HAVE THEREUNDER, AS WELL AS UNDER ANY OTHER STATUTES OR COMMON LAW PRINCIPLES OF SIMILAR EFFECT.

(b) ERI shall, within ten (10) business days of execution of this Settlement Agreement, deliver to PG&E a release of claims in the form attached hereto as Exhibit B, fully executed by E.O. Tansev, doing business as Tansev & Associates, a sole proprietorship. If this condition is not satisfied, then this Settlement Agreement shall terminate upon PG&E notifying ERI in writing of such termination, provided, however, that such written notice is given within forty (40) business days of execution of this Settlement Agreement.

4. Indemnification.

ERI shall defend, indemnify and hold harmless PG&E from and against any and all claims, demands, causes of action, losses, expenses, fees, damages (compensatory, punitive, exemplary, statutory or otherwise), or other right to relief, whether based on contract, tort, statute or other legal or equitable theory of recovery, incurred by, or demanded, claimed or adjudged

against PG&E or any of its subsidiaries, affiliates, officers, directors, agents, employees or attorneys, arising out of or related to: the First Phase PPA and/or the Second Phase PPA and/or the Project and/or the allegations or issues which are the subject of Case No. 92-03-25.

5. Dismissal of Case No. 92-03-025.

ERI shall, within ten (10) business days of execution of this Settlement Agreement, file a motion with the CPUC in Case No. 92-03-025 requesting:

(a) Immediate stay of all proceedings in said case until such time as the CPUC rules upon the Parties' Joint Application for approval of the Settlement Agreement; and

(b) That upon approval of the Settlement Agreement as requested, and upon PG&E filing "Notice of Satisfaction of Settlement Agreement," in the form attached hereto as Exhibit A the Complaint is dismissed with prejudice.

If this condition is not satisfied, then this Settlement Agreement shall terminate upon PG&E notifying ERI in writing of such termination, provided, however, that such written notice is given within forty (40) business days of execution of this Settlement Agreement.

6. Condition Precedent.

PG&E's promises and obligations under this Settlement Agreement are conditioned in their entirety upon the CPUC issuing a decision or decisions with the following terms that becomes final, unconditional and unappealable (including exhaustion of all administrative and judicial appeals or remedies and time periods thereof): (a) approving in its entirety and without change this Settlement Agreement; (b) finding that the terms of this Agreement are reasonable and adequately protect PG&E's ratepayers' interest; (c) authorizing full recovery of all payments made pursuant to this Settlement Agreement through PG&E's Energy Cost Adjustment Clause ("ECAC"), or such successor mechanism (e.g., transition cost treatment) as the CPUC may adopt

for concurrent recovery of purchased power costs, without further reasonableness review and (d) dismissing the complaint in Case No. 92-03-025 with prejudice upon PG&E filing the "Notice of Satisfaction of Settlement Agreement" in the form attached hereto as Exhibit A.

7. Regulatory Process.

The Parties shall commence and diligently proceed with a Joint Application seeking CPUC approval of this Settlement Agreement on an expedited basis. The parties shall cooperate fully in the process of seeking approval. The Parties agree to extend their best efforts to ensure the adoption of this Settlement Agreement by the CPUC. No Party to this Settlement Agreement will contest any aspect of this Settlement Agreement in this proceeding or any other forum, by contact or communication, whether written or oral (including *ex parte* communications whether or not reportable under the Commission's Rules of Practice and Procedure) or in any manner before the CPUC or its staff.

8. Acceptance of CPUC Order.

If the CPUC issues a final order approving the Settlement Agreement and if neither PG&E nor ERI gives notice of termination of the Settlement Agreement pursuant to Paragraph 9 hereof, then (i) neither Party may dispute or appeal the order; (ii) the Settlement Agreement shall remain in full force and effect; and (iii) the remaining obligations required under the Settlement Agreement shall be performed.

9. Termination of Settlement Agreement.

If the CPUC does not approve this Settlement Agreement, or PG&E concludes, in its sole discretion that the CPUC has not approved the Settlement Agreement on terms which satisfy the conditions stated in Paragraph 1 and 6 or on terms which do not sufficiently protect PG&E from harm or detriment, then within fifteen (15) business days of the issuance of such order, PG&E

shall notify ERI in writing, that the CPUC order is not acceptable and the Settlement Agreement shall terminate, unless ERI and PG&E mutually agree otherwise.

If the CPUC does not approve the payment of Three Million Five Hundred Thousand and no/100 Dollars (\$3,500,000) to ERI under this Settlement Agreement, ERI may, in its sole discretion, within fifteen (15) business days of the issuance of such orders, notify PG&E in writing that the CPUC order is not acceptable and the Settlement Agreement shall terminate, unless ERI and PG&E mutually agree otherwise.

Upon termination of the Settlement Agreement, each Party shall be free to pursue its claims against the other Party as if the Settlement Agreement had not been executed.

10. Choice of Law.

This Settlement Agreement shall be governed by and construed in accordance with the laws of the State of California, excluding any choice of law rules that direct the application of the laws of another jurisdiction.

11. Modification.

This Settlement Agreement may be amended or modified only by a written instrument signed by the authorized representatives of both Parties.

12. Captions.

Captions are included herein for ease of reference only. The captions are not intended to affect the meaning of the contents or scope of this Settlement Agreement.

13. Non-waiver.

Failure by ERI or PG&E to enforce any right or obligation with respect to any matter arising in connection with this Settlement Agreement shall not constitute a waiver as to such matter or any other matter.

14. Interpretation.

No provision of this Settlement Agreement shall be interpreted for or against ERI or PG&E because ERI or PG&E, or their respective attorneys drafted that particular provision.

15. No Third Party Beneficiaries.

This Settlement Agreement is entered into for the express benefit of ERI and PG&E. This Settlement Agreement is not intended, and shall not be deemed, to create any rights or interests whatsoever in any other person, including without limitation, any right by a third party to enforce the terms of this Settlement Agreement.

16. Attorneys' Fees and Costs.

The Parties shall bear their own costs and attorneys' fees in connection with the negotiation and preparation of this Settlement Agreement and participation in the CPUC approval process.

17. Execution of Counterparts.

This Settlement Agreement may be executed in one or more counterparts, all of which, taken together, shall constitute one and the same instrument.

18. Binding upon Successors.

This Settlement Agreement shall be binding upon and for the benefit of the Parties, their respective successors and assigns.

19. No Admission of Liability.

Each Party understands and agrees that this is a compromise settlement of the Dispute, and that the furnishing of the consideration for this Settlement Agreement shall not be deemed or construed as an admission of liability or responsibility of ERI, or PG&E at any time for any purpose.

20. Confidentiality Clause.

The Parties agree that any discussions between the Parties, notes concerning settlement discussions and/or documents created by the other Party which were prepared in connection with settlement discussions shall be treated as confidential, shall not be disclosed to any third party (other than each Party's legal counsel), shall not be the subject of discovery, and shall not be admissible at trial. Such discussions, notes, and documents shall be covered by the provisions of California Evidence Code Section 1152(a), which provides as follows:

Evidence that a person has, in compromise or from humanitarian motives, furnished or offered or promised to furnish money or any other thing, act, or service to another who has sustained or will sustain or claims that he or she has sustained or will sustain loss or damage, as well as any conduct or statements made in negotiation thereof, is inadmissible to prove his or her liability of the loss or damage or any part of it;

Provided, however, that this Confidentiality Clause:

- (a) Shall not prevent any Party from obtaining any discovery concerning documents unrelated to the settlement discussions as otherwise provided by law; and
- (b) Shall not apply to information or documents: (i) that are already in the possession of the receiving Party prior to the disclosure by another Party; (ii) that are obtained by the receiving Party from a third party free of any confidentiality restriction; or (iii) that are generally available in the public domain.

21. Entire Agreement.

This Settlement Agreement is intended as a final, complete and exclusive statement of the agreement among ERI and PG&E with respect to the terms of this Settlement Agreement. This Settlement Agreement integrates and supersedes prior negotiations, correspondence, understandings, and agreements among ERI and PG&E with respect to its subject matter covered herein.

IN WITNESS WHEREOF, the parties have caused this Settlement Agreement to be executed by their duly authorized representatives.

Dated: April 23, 1997

ENERGY RESERVE, INC.
an Arizona corporation

By: *Al Syrenger*
Name: AL SYRENGER
Title: C. E. O. C. / Bd.

Dated: ^{May 22}~~April~~, 1997

PACIFIC GAS AND ELECTRIC COMPANY
a California corporation

By: *[Signature]*
Name: ESMACIAS
Title: VP & GM

APPROVED A. JO Font

[Signature]
PETER CUBORG

5/19/97

Exhibit A

**NOTICE OF SATISFACTION OF
SETTLEMENT AGREEMENT**

To: The California Public Utilities Commission:

Please take Notice:

Pursuant to Order of the California Public Utilities Commission approving that certain Settlement Agreement entered April ____, 1997 between Energy Reserve, Inc. ("ERI") and Pacific Gas & Electric Company ("PG&E") in the above-captioned action, PG&E has delivered to ERI, its check in the sum of \$3,500,000.00 payable in the manner set forth in said Settlement Agreement.

PG&E has satisfied and discharged in full its obligations under the Settlement Agreement.

ERI hereby requests that the above captioned action, Case No. 92-03-025 filed by ERI against PG&E be dismissed with prejudice.

Dated: _____, 1997

ENERGY RESERVE, INC.

By: _____

Its. _____

Exhibit B

RELEASE OF CLAIMS

Pacific Gas and Electric Company ("PG&E"), E.O. Tansev doing business as Tansev and Associates, a sole proprietorship, (together referred to as "Tansev") each hereby waive and release any and all claims, demands, causes of action, losses, expenses, fees, damages (compensatory, punitive, exemplary, statutory or otherwise), or other right to relief, whether based on contract, tort, statute, or other legal or equitable theory of recovery which each had, now has, or may hereafter have against the other or any of its subsidiaries, affiliates, officers, directors, agents, employees, attorneys or shareholders, arising out of or related to any and all previously executed power purchase agreements between PG&E and Energy Reserve, Inc. ("ERI") and/or any and all obligations of PG&E to enter into any power purchase agreement with ERI in the future and/or the enhanced oil recovery cogeneration project known as the Chico-Martinez Project and/or allegations or issues which are the subject of California Public Utilities Commission Complaint Case No. 92-03-25.

This mutual release of claims shall not apply to any action commenced to enforce this mutual release.

PG&E and Tansev each acknowledge that they execute and agree to this full and final release as a compromise of matters which may involve disputed issues of law and fact, and PG&E and Tansev fully assume the risk that the facts and the law may be other than they believe. PG&E and Tansev EACH EXPRESSLY WAIVE ALL RIGHTS UNDER CALIFORNIA CIVIL CODE SECTION 1542, WHICH PROVIDES AS FOLLOWS:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

PG&E AND TANSEV, BEING AWARE OF SAID CODE SECTION, HEREBY EXPRESSLY WAIVE ANY RIGHTS THEY MAY HAVE THEREUNDER, AS WELL AS UNDER ANY OTHER STATUTES OR COMMON LAW PRINCIPLES OF SIMILAR EFFECT.

Dated: April ____, 1997

PACIFIC GAS AND ELECTRIC COMPANY
a California corporation

By: _____

Name: _____

Title: _____

Dated: April ____, 1997

E.O. TANSEV

Dated: April ____, 1997

TANSEV AND ASSOCIATES,
a sole proprietorship

By: _____

Name: _____

Title: _____

SFI: 26076824.1