

Decision 00-04-050 April 20, 2000

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

Application of PACIFIC GAS AND ELECTRIC  
COMPANY to Recover Costs Recorded in the  
Catastrophic Event Memorandum Account  
(CEMA) Effective January 1, 2000. (U 39 M)

Application 99-01-011  
(Filed January 7, 1999)

**OPINION****1. Summary**

Based on a settlement reached between the Settlement Parties<sup>1</sup> in this proceeding, this decision authorizes Pacific Gas and Electric Company (PG&E) to recover \$69.8 million of PG&E's Catastrophic Event Memorandum Account (CEMA) revenue requirement. This revenue requirement, comprising \$59.3 million in electric revenue requirement and \$10.5 million in gas distribution revenue requirement will be collected in the year 2000. There will be no change in gas transmission rates. PG&E's request was for \$85.1 million.

**2. Procedural Summary**

On January 7, 1999, PG&E filed its application. ORA filed a protest on February 18, 1999. A prehearing conference was held on February 23, 1999.

On February 25, 1999, Commissioner Henry M. Duque issued a Scoping Memo and Ruling of Assigned Commissioner confirming that, as preliminarily categorized in Resolution ALJ 176-3008, dated January 20, 1999, this is a ratesetting proceeding. We affirm the ruling.

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<sup>1</sup> The Settlement Parties are PG&E, the Office of Ratepayer Advocates (ORA), and Aglet Consumer Alliance (Aglet) and its director James Weil.

On March 1, 1999, PG&E filed a response to ORA's protest. ORA served its prepared testimony on July 1, 1999. James Weil served prepared testimony on August 5, 1999. PG&E served rebuttal testimony on August 24, 1999.

A second prehearing conference was held on August 31, 1999. Administrative Law Judge (ALJ) Bertram Patrick was the principal hearing officer.

On September 14, 1999, on the first day scheduled for evidentiary hearing the active parties announced that agreement had been reached on all contested issues. Pursuant to Rule 51.1(b), on September 15, 1999, notice of a settlement conference was served. On September 23, 1999, a settlement conference was held and a Settlement Agreement was signed. The California Farm Bureau Federation was the only other party to attend the settlement conference and did not express opposition to the Settlement Agreement. The motion for approval of the Settlement Agreement was filed on October 1, 1999. On February 11, 2000, the Settling Parties filed a motion to amend the Settlement Agreement, and the matter was submitted for decision.

### **3. Background**

Public Utilities Code Section 454.9<sup>2</sup> provides:

"454.9. (a) The commission shall authorize public utilities to establish catastrophic event memorandum accounts and to record in those accounts the costs of the following:

"(1) Restoring utility services to customers.

"(2) Repairing, replacing, or restoring damaged utility facilities.

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<sup>2</sup> All statutory references are to the Public Utilities Code unless otherwise indicated.

“(3) Complying with governmental agency orders in connection with events declared disasters by competent state or federal authorities.

“(b) The costs, including capital costs, recorded in the accounts set forth in subdivision (a) shall be recoverable in rates following a request by the affected utility, a commission finding of their reasonableness, and approval by the commission. The commission shall hold expedited proceedings in response to utility applications to recover costs associated with catastrophic events.”

Resolution E-3238, adopted July 24, 1991, issued in response to the repair work necessitated by the Loma Prieta earthquake, predated Section 454.9, but is consistent with it.

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

On January 7, 1999, PG&E filed its application in accordance with the provisions of Section 454.9 and Resolution E-3238. PG&E's showing includes the costs recorded on or before May 31, 1999, from seven declared disasters: (1) the February 1998 Storms, (2) the 1997 New Year's Flood, (3) the March 1995 Storms, (4) the January 1995 Storms, (5) the Northridge Earthquake, (6) the Calaveras and Shasta County Fires, and (7) the Oakland/Berkeley Hills Fire.

PG&E requests recovery of revenue requirements of \$75.9 million in the year 2000, plus \$2.2 million in gas transmission revenues in the years 2001 and 2002, plus \$7.0 million for correction of a calculation error relating to depreciation expense in its revenue requirements model. (Exhibits 1, 2, and 3.) Adding the revenue requirements together, PG&E's total request amounts to \$85.1 million.

PG&E states that in compliance with Resolution E-3238, PG&E adjusted its CEMA request to reflect insurance reimbursement received for the 1997 New Year's flood, which is the only one of the seven disasters for which PG&E

received insurance recovery. PG&E also adjusted its CEMA request to remove any costs recovered in previous and current General Rate Case (GRC) proceedings, Non-Nuclear Capital Addition Proceedings and Section 368(e) System Safety and Reliability Enhancement Funds.

PG&E submits that it is impossible to go back and re-create some "assumed" level of straight-time labor costs embedded in its revenue requirement over the past several years. As a result, PG&E took a conservative approach and is not requesting recovery of any straight-time labor costs associated with CEMA event expenses. The excluded costs include benefits associated with straight-time labor, and other costs that do not change as a result of a disaster. PG&E contends that even though there are certainly some straight-time labor costs that would not have occurred absent the catastrophic event, PG&E's conservative approach eliminates any possibility that ratepayers will pay twice for straight-time labor costs.

## **5. Description of CEMA Events**

Resolution E-3238 established two specific criteria that must be met to record costs in the CEMA. The first criterion is that a catastrophic event is defined as one which results in the official declaration of a disaster by a competent state or federal authority. The second criterion is that, should a declared disaster occur, the utility should inform the Commission's Executive Director by letter within 30 days after the catastrophic event, if possible, if the utility has started recording costs in the CEMA. PG&E contends that the events described below meet the criteria established in Resolution E-3238.

### **A. February 1998 Storms**

In late January 1998, a series of storms swept through California with high winds, heavy rains, and snow causing widespread flooding, mudslides,

road closures, and power outages. On February 4, 1998, Governor Wilson declared a state of emergency; nine of the 10 counties in this declaration were located in PG&E's service territory. On February 9, 1998, President Clinton declared 27 counties disaster areas; 24 of the counties were located in PG&E's service territory. During subsequent days, Governor Wilson declared a state of emergency for additional counties. By February 18, 1998, a total of 33 counties were declared in a state of emergency due to the storms.

On March 6, 1998, PG&E filed its CEMA letter providing notice that costs would be recorded in the CEMA. There was widespread damage to PG&E's electric<sup>3</sup> and gas facilities, with the majority of the damage occurring on the electric distribution system. PG&E seeks recovery of \$4.8 million in revenue requirements for restoration costs.<sup>4</sup>

#### **B. 1997 New Year's Flood**

Beginning the last week of December 1996, northern California was hit by severe rain and flooding. On January 2, 1997, Governor Wilson declared a state of emergency in 25 northern California counties. On January 4, 1997, President Clinton declared 37 northern California counties disaster areas. By

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<sup>3</sup> PG&E's electric transmission facilities were under Commission jurisdiction at the time of the February 1998 storms. Therefore, these costs are included in PG&E's CEMA request.

<sup>4</sup> PG&E states that the capital-related costs incurred as a result of the February 1998 storms are not reflected in the 1997 recorded data, nor the forecast data that underlie the 1999 GRC request. In this filing, PG&E is requesting recovery of the 1999 and 2000 revenue requirements for the February 1998 storms.

January 13, 1997, Governor Wilson had declared a state of emergency in 46 counties.

On February 3, 1997, PG&E filed its CEMA letter providing notice that costs would be recorded in the CEMA. In the storm and flood, electric and gas facilities were destroyed or damaged. The majority of the damage was to PG&E's hydroelectric generation facilities. In 1998, PG&E received \$50 million in insurance proceeds for the damage incurred on PG&E's system as a result of this flood. Consistent with the principles established in PG&E's 1987 GRC D.86-12-095, PG&E applied the insurance proceeds first to expenses, with remaining dollars applied to capital. This disaster is the only CEMA event for which PG&E received insurance proceeds. PG&E seeks recovery of \$3.0 million in revenue requirements for restoration costs.

### **C. March 1995 Storms**

Beginning on March 8, 1995, a series of powerful storms battered California for over a week. The storms consisted of high winds, heavy rains, and snow causing widespread flooding, mudslides, road closures, collapsed bridges, and power outages. On March 12, 1995, President Clinton declared 39 counties disaster areas. Fifty-seven counties were declared disaster areas by March 28, 1995. These included 48 counties in PG&E's service territory.

On April 6, 1995, PG&E filed its CEMA letter providing notice that costs would be recorded in the CEMA. The March 1995 storms caused widespread damage to PG&E's electric and gas facilities. Electric transmission and distribution equipment damaged by the storm included poles, transformers, and several thousand spans of wire. A significant number of gas transmission crossings were exposed due to storm runoff and flooding. PG&E seeks recovery of \$18.6 million in revenue requirements for restoration costs.

#### **D. January 1995 Storms**

Beginning on January 6, 1995, a series of storms swept through California. The storms lasted for over a week with heavy rains, snow, and high winds which caused widespread flooding, landslides, and power outages. On January 9, 1995, Governor Wilson declared a state of emergency. On January 10, 1995, President Clinton declared 24 counties disaster areas. By January 6, 1995, 38 counties were declared disaster areas.

On February 3, 1995, PG&E filed its CEMA letter providing notice that costs would be recorded in the CEMA. Of the 38 counties declared disaster areas, 29 were located in PG&E's service territory. The storms caused significant damage to the electric transmission and distribution systems. The storms also damaged the Geysers Power Plant cooling towers and turbine buildings. PG&E seeks recovery of \$19.5 million in revenue requirements for restoration costs.

#### **E. Northridge Earthquake**

On January 17, 1994, an earthquake measuring 6.6 on the Richter scale occurred in Northridge. The Sylmar converter facility, which is owned 50% by Southern California Edison Company and 50% by the Los Angeles Department of Water and Power, was damaged. The Sylmar facility is part of the California Companies Pacific Intertie Agreement (Intertie Agreement). PG&E's service area was not affected by the earthquake; however, PG&E is a participant in the Intertie Agreement.

Under the Intertie Agreement, PG&E is responsible for 50% of the shared costs of repairing the facility. On February 11, 1994, PG&E filed its CEMA letter providing notice that costs would be recorded in the CEMA. PG&E seeks recovery of \$1.3 million in revenue requirements for restoration costs.

## **F. Calaveras and Shasta County Fires**

On August 16, 1992, a fire started in Calaveras County. The fire burned nearly 20,000 acres of land and destroyed 80 structures. The fire was declared under control by August 23, 1992. On August 20, a fire started in Shasta County, burning 64,000 acres of land and destroying 577 structures. The fire was 90% controlled by August 28, 1992. On August 29, 1992, President Bush declared these counties disaster areas.

On September 15, 1992, PG&E filed its CEMA letter providing notice that costs would be recorded in the CEMA. The fires destroyed or damaged electric transmission and distribution facilities. PG&E seeks recovery of \$5.0 million in revenue requirements for restoration costs.

## **G. Oakland/Berkeley Hills Fire**

On October 20, 1991, a fire began in the Oakland/Berkeley Hills. The fire was declared under control on October 23, 1991. The fire burned 1,600 acres in the cities of Oakland and Berkeley and destroyed over 2,800 homes. On October 20, 1991, Governor Wilson declared a state of emergency for the area. On October 22, 1991, President Bush declared these cities disaster areas.

On November 19, 1991, PG&E filed its CEMA letter providing notice that costs would be recorded in the CEMA. The fire destroyed or damaged electric and gas facilities in PG&E's Central and Bay Divisions.<sup>5</sup> As quickly as possible, PG&E installed facilities to return service to its original state preceding the fire. At the same time, on behalf of the cities of Oakland and Berkeley, PG&E sought Commission authority to install underground electric facilities to replace

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<sup>5</sup> Subsequent to reorganizations at PG&E, these divisions are now East Bay Division in Area 2.



the overhead facilities that were destroyed in the fire with all costs of the undergrounding recorded in CEMA and borne by all PG&E ratepayers.

D.92-12-016 addressed PG&E's application. Conclusion of law 17 states:

PG&E's cost of the restoration of service following the fire (including the cost of the overhead system) and the cost of the undergrounding project, less the contribution by the Cities and other amounts discussed herein, shall be recorded in the CEMA for later review by the Commission and recovery in accordance with Resolution E-3238.

PG&E contends that the costs reflected in its filing are consistent with

D.92-12-016. PG&E seeks recovery of \$23.5 million in revenue requirements for restoration costs.

## **6. Impact of Other Proceedings**

Resolution E-3238 states "[r]ecovery may be limited by consideration of the extent to which losses are covered by insurance, the level of losses already built into existing rates, and possibly other factors relevant to the particular utility and event. Before authorizing recovery from customers of any costs, the Commission will examine how they relate to the overall costs currently authorized for these types of repairs." (Pp. 2-3.) In accordance with this requirement, PG&E identified the following proceedings or cost recovery mechanisms which could affect the level of CEMA recovery included in this application. PG&E states that its CEMA request has been adjusted to remove all costs currently reflected in rates.

### **A. GRC Proceedings**

Since 1991, PG&E filed and received decisions in its 1993 and 1996 GRC proceedings. PG&E also received a decision in its 1999 GRC (D.00-02-046).

GRCs provide base revenue changes, including those related to capital additions and operations and maintenance (O&M) expenses. As previously stated, PG&E

removed straight-time labor costs associated with expenses from its CEMA request. PG&E also reviewed the GRC adopted revenue requirements to determine if expense and capital-related costs were included in the adopted rate level.

PG&E states that for the Oakland-Berkeley Hills fire, it did not include the capital-related and expense costs associated with the fire in its 1993 or 1996 GRC requests; therefore, these costs were not included in either GRC base revenue changes. The capital-related and expense costs associated with the fire were included in the 1999 GRC request. For the Calaveras/Shasta fires, the 1994 Northridge earthquake, and the January and March 1995 storms, the authorized base revenue change in the 1996 test year GRC did not reflect capital-related or expense costs associated with these disasters. With respect to the February 1998 storms and the 1997 New Year's flood, the disasters occurred subsequent to PG&E's development of its 1999 GRC request. Additionally, due to electric and gas restructuring, PG&E states that electric generation costs and gas transmission costs are not included in the 1999 GRC request. PG&E points out that the revenue requirements adopted in the GRCs are based on normal operations, and do not include forecasts of catastrophic events.

#### **B. Non-Nuclear Generation Capital Additions Filing**

Pursuant to D.97-09-048, on July 30, 1998, PG&E submitted A.98-07-058 for recovery in the Transition Cost Balancing Account (TCBA) of capital additions made in 1997 and the first quarter of 1998 for hydroelectric, fossil and geothermal plants.<sup>6</sup> According to PG&E, the generation-related CEMA costs

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<sup>6</sup> The Commission issued D.99-06-085 on June 24, 1999, in that proceeding.

included in its CEMA filing reflect costs (and resultant revenue requirements) for which PG&E did not receive recovery during 1997 and the first quarter of 1998 when generation costs were recovered as part of GRC base rates. The time period associated with the revenue requirement for which PG&E is seeking CEMA recovery is not part of A.98-07-058. The capital additions filing will establish the level of recovery of capital in the TCBA effective April 1, 1998. PG&E states that, as a result, its CEMA request does not include revenue requirements that will result from the Commission's ruling in PG&E's capital addition filing.

**C. Assembly Bill (AB) 1890 Section 368(e)  
Funds**

As a result of AB 1890, PG&E received a base revenue increase in 1997 and 1998 (adjusted for inflation which is measured by the consumer price index, plus 2%) for funds to be used to enhance transmission and distribution system safety and reliability. As previously stated, in April 1998, the Federal Energy Regulatory Commission assumed jurisdiction for transmission facilities. As a result, for transmission facilities, Section 368(e) fund coverage expired on March 31, 1998.

PG&E states that to the extent there is an overlap in the costs for work orders that are recovered from Section 368(e) funds and the CEMA costs for 1997 and 1998, PG&E has removed those dollars from its CEMA request.

## **7. ORA's Testimony**

On July 21, 1999, ORA served its report on the application (Exhibit 4). ORA's report challenged PG&E's showing with regard to gas transmission costs, call center expenses, the Northridge earthquake, PG&E's allocations of insurance proceeds from the 1997 New Year's Flood, the level of PG&E's insurance deductibles, whether there should be a minimum threshold amount before the CEMA mechanism applies, forecasted costs, and whether there should be a limitation on the length of time interest accrues on the CEMA balance. ORA's revenue requirement calculation, not including correction of the PG&E revenue requirement modeling error, was \$67 million. (Exhibit 4, p. 1-7.)

## **8. Weil's Testimony**

James Weil served his testimony on August 5, 1999. (Exhibit 5.) Weil's testimony generally supported the ORA report, with additional testimony on gas transmission costs, hydroelectric plant repairs, and the possible double counting of some revenue requirements in this CEMA application and other PG&E ratemaking proceedings. As a result of Weil's testimony, PG&E did discover one instance of a cost requested in the CEMA that had been approved for recovery in June 1999 in D.99-06-085, in the Non-Nuclear Generation Capital Additions Memorandum Account proceeding. Accordingly, in its rebuttal testimony, PG&E reduced its revenue requirement request in this CEMA proceeding by \$1.7 million.

## **9. Joint Motion to Amend Settlement Agreement**

On February 11, 2000, the Settling Parties filed a joint motion to amend the Settlement Agreement because of new developments following the signing of the Settlement Agreement. Specifically, the parties are concerned that D.99-10-057, issued in the Post-Transition Electric Ratemaking proceeding, might prevent

PG&E from recovering portions of settled CEMA revenue requirements not collected in rates.

#### **A. Background**

The Settlement Agreement includes four major elements: (1) the reasonable total revenue requirement resulting from PG&E's CEMA application is \$69.8 million, separated into components for electric generation (\$1.5 million), other electric revenue requirements (\$57.8 million), and gas distribution (\$10.5 million); (2) PG&E would be allowed to recover in rates the settled \$69.8 million revenue requirement; (3) any reallocation of insurance proceeds is fully accounted for in the Settlement Agreement; and (4) the CEMA revenue requirements would be collected in 2000.

Under the Settlement Agreement, PG&E would recover the \$1.5 million for electric generation as a one-time debit entry to the Revenue Section in PG&E's TCBA. The \$57.8 million for other electric costs would be recorded as part of the distribution revenue requirement in PG&E's Transition Revenue Account (TRA), to be collected during the 12 months of 2000. The \$10.5 million for gas costs would be collected over 12 months through PG&E's customer class charge.

On October 21, 1999, subsequent to the motion for approval of the Settlement Agreement, the Commission signed D.99-10-057 in A.99-01-016 et al., known as the Post-Transition Electric Ratemaking proceeding. The decision states, in relevant part, "No utility may carry over any costs from the TRA or the TCBA or any other account from costs incurred during the rate freeze period into the post rate freeze period." (D.99-10-057, discussion at mimeo., p. 15; see also Ordering Paragraph 2 at mimeo., p. 39.)

On February 2, 2000, as the Commission had not yet issued its decision approving the Settlement Agreement, PG&E sent to all parties a letter stating the

intention of the Settling Parties to amend the Settlement Agreement to mitigate rate recovery risks imposed by D.99-10-057. The letter sought responses from any party concerned with this proposal by February 14, 2000. No responses were filed.

#### **B. Impact of D.99-10-057**

The CEMA revenue requirements that are the subject of the Settlement Agreement cover PG&E costs incurred due to catastrophic events during the period from 1991 through May 31, 1999, well before the end of PG&E's rate freeze. According to the Settling Parties, when they negotiated the Settlement Agreement, they did not contemplate that the Commission might in another proceeding preclude post-rate freeze recovery of pre-rate freeze CEMA costs. The Settling Parties intended that PG&E would recover all of the settled revenue requirements during 2000, in accordance with the provisions of Section 454.9, which provides that reasonable CEMA costs approved by the Commission shall be recoverable in rates.

The Settling Parties state that if the rate freeze ends before the end of 2000, D.99-10-057 might prevent PG&E from recovering portions of settled CEMA revenue requirements that are not yet collected in rates. This outcome would be contrary to PG&E's interests and to the intent of the Settling Parties, and would upset the balance struck in the Settlement Agreement. It might also cause disputes over interpretation of the terms of the Settlement Agreement. Therefore, the Settling Parties negotiated the Amendment to the Settlement Agreement.

Similarly, the Settling Parties are concerned that strict construction of the rate recovery provisions of the Settlement Agreement might prevent PG&E from recovering portions of settled CEMA revenue requirements because less

than 12 months will remain in 2000 after Commission approval of the Settlement Agreement. This would also be contrary to PG&E's interests and to the intent of the Settling Parties. According to the Settlement Parties, the Amendment to Settlement Agreement is meant to mitigate that risk.

### **C. Amendments to Settlement Agreement**

The Settling Parties request that the Settlement Agreement be amended as follows:

- "A. If PG&E's electric rate freeze does not end before the end of 2000, PG&E is authorized to recover in rates the \$57.8 million of non-generation electric CEMA revenue requirement that is allowed under the Settlement Agreement over the remaining months of 2000 beginning after Commission approval of the Settlement Agreement and these Amendments to the Settlement Agreement.
- B. If PG&E's electric rate freeze ends before the end of 2000 or if that event seems reasonably likely, Settling Parties agree to renegotiate in good faith the rate recovery mechanism and period for the \$57.8 million of non-generation electric CEMA revenue requirement that is allowed in the Settlement Agreement. The Settling Parties intend that PG&E's ability to recover the \$57.8 million before the end of 2000 should not be compromised if the rate freeze ends prior to that time.
- C. PG&E is authorized to recover in rates the \$10.5 million of gas distribution CEMA revenue requirement that is allowed in the Settlement Agreement over the remaining months of 2000 beginning after Commission approval of the Settlement Agreement and these Amendments to Settlement Agreement." (Joint Motion filed February 11, 2000, p. 4.)

### **10. Discussion**

As discussed above, PG&E's CEMA request is consistent with the requirements identified in Resolution E-3238.

The all-party settlement attached to this decision as Appendix A, describes the agreements of the parties.

We agree that the settled total revenue requirement is reasonable. After an adjustment for a \$7.0 million calculation error, PG&E's total request was for \$85.1 million. ORA's recommendations, not including the calculation error, was \$67 million. Weil's testimony generally agreed with the ORA Report and discussed other monetary issues not addressed by ORA, specifically the disallowance of \$1,164,000 in revenue requirement allegedly included in rates, \$768,000 in revenue requirement for hydroelectric repair costs, and unknown amounts that might be recovered through PG&E's Non-nuclear Generation Capital Additions Memorandum Account. By comparison, the settled amount is \$69.8 million of total (electric and gas) revenue requirement in the year 2000.

We believe this outcome meets the Commission's criteria for settlements. We conclude that the all-party settlement conforms with the requirements of Article 13.5 of our Rules of Practice and Procedure. All active parties support the settlement. No party opposes it. The settlement meets the tests we outlined in San Diego Gas & Electric Co. (1992) 46 CPUC2d 538 (D.92-12-019) in that each party is adequately represented; the interests of all ratepayers have been asserted by ORA; Weil represents residential ratepayers; no terms of the settlement contravene any statutory provision or any decision of this Commission; and the settlement, together with the record in this proceeding, convey sufficient information to permit us to make an informed evaluation. The settlement should be adopted and the motion for approval of the settlement should be granted.

Rule 51.1(b) requires that before signing any settlement, the Settling Parties must convene a properly noticed settlement conference. The Settling Parties request a waiver of the rule to the extent that it might apply to the Amendment. The Settling Parties did convene a properly noticed settlement conference on September 23, 1999, prior to signing the Settlement Agreement. Only one other party attended the settlement conference, and no party has



opposed the Settlement Agreement or Amendment. For these reasons, we agree that a waiver of Rule 51.1(b) is justified.

Rule 51.2 allows settlements to be filed any time after the first prehearing conference but within 30 days after the last day of hearing. The only evidentiary hearing in this proceeding was convened on September 14, 1999. At the hearing, the Settling Parties announced that they had reached agreement in principle regarding all disputed issues. There was no cross-examination; however, four rounds of prepared testimony were submitted. Remaining hearing time was devoted to identification and receipt of exhibits. The 30th day after the hearing was October 14, 1999, prior to issuance of D.99-10-057. Because the ALJ's proposed decision regarding the Settlement Agreement had not been issued and because no party opposes the Settlement Agreement or Amendment, a waiver of Rule 52 is justified.

Further, we agree that the Amendment is reasonable because it restores the overall balance that was reached in the Settlement Agreement. The Amendment is the result of good faith negotiations by the Settling Parties and there is no opposition from any other party. We believe that the public has a strong interest in settlement of disputed issues in order to avoid lengthy and costly litigation. The Amendment promotes the public interest and should be approved.

However, we caution the Settling Parties that we are not approving any Amendment that could be construed as contravening D.99-10-057. The Settlement provides that recovery will occur in the remaining months of 2000. The Amendment essentially allows the settling parties to renegotiate recovery of the \$57.8 million in non-generation electric CEMA revenue requirement and provides for accelerated recovery should PG&E's rate freeze be forecast to end before December 31, 2000. No carryover will be allowed.

## **11. Comments on Draft Decision**

The draft decision of the ALJ in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g) and Rule 77.1 of the Rules of Practice and Procedure. Comments were filed on April 10, 2000, by ORA and Weil, PG&E, San Diego Gas and Electric Company, Southern California Gas Company (Semptra Utilities), and Southern California Edison Company (SCE). Reply comments were filed by PG&E.

The draft decision noted the fact that PG&E's request included \$12.3 million in accrued interest related to the seven CEMA events. Also, the draft decision proposed to modify Resolution E-3238 to allow a limit of 18 months of interest to be accrued from the date of the last entry into the CEMA. The purpose of the recommendation was to motivate utilities to file CEMA applications quickly after the conclusion of repairs. The fact that the oldest CEMA event included in PG&E's 1999 application dates back to 1991, the Oakland/Berkeley Hills fire, was the basis for the recommendation.

ORA and Weil support the draft decision proposal for a limit of 18 months of interest to be accrued from the date of the last entry into the CEMA.

PG&E states that it made its last entry into CEMA for the 1991 Oakland/Berkeley Hills fire in March, 1998. The CEMA application was filed in January 1999, some nine months after the last entry. But, to conserve utility and Commission resources, PG&E combined seven separate disasters into one filing, since it seemed that PG&E's service area was suffering about a disaster a year between 1991 and 1998. The last disaster included in Application 99-01-011 occurred in February 1998, and at the time of the filing in January 1999, some of the repairs for the February 1998 storms, the 1997 New Year's storm and flood, and the 1994 Northridge earthquake had not yet been finished and entered into

CEMA. PG&E thought then that it was better to combine the repairs for multiple disasters into a single filing instead of seven separate filings.

Also, PG&E points out that interest accrues at the 90-day commercial paper rate, an interest rate that was chosen not to compensate ratepayers or shareholders over time, but simply to make ratepayers and shareholders indifferent to the time value of money.

The Sempra Utilities and SCE (utilities) submit that it would be contrary to the public interest to set an arbitrary time limit for the accrual of interest in the CEMA. The utilities suggest that the Commission should instead simply require any utility seeking relief through the CEMA, in the future, to explain why the amount of interest accrued is reasonable. Also, the utilities point out that there is nothing in Section 454.9 that would limit the Commission's ability to include in its reasonableness determination whether or not the utility completed projects as expeditiously as possible, and whether or not the utility prepared and submitted an application to the Commission as expeditiously as possible under the circumstances. Further, the utilities point out that in any case where the Commission might conclude that the utility acted imprudently and thereby caused the accrual of excess interest that could and should have been avoided, the Commission clearly has the authority to deny recovery of imprudently-accrued interest based upon all of the facts and circumstances of a particular CEMA application.

The utilities do not dispute that an 18-month period might be appropriate to repair and seek recovery of the costs of a single clean break to a gas transmission pipeline or an electric transmission line caused by an earthquake declared to be a natural disaster. However, the utilities disagree that the same time limitations should apply to utility facilities damaged following a major earthquake in a metropolitan area. The utilities state that since public roads

frequently have utility facilities running under or near them, the utility might be able to effectuate a temporary repair pending final completion of repairs to the thoroughfare, but might not be able to implement permanent repairs until the thoroughfare itself has been completely repaired or reconstructed. According to the utilities, in such a situation, a project can legitimately take more than 18 months "to close out."

Furthermore, the utilities state that from an accounting perspective, it can take several months to sort through thousands of individual invoices to ensure that they are properly chargeable to the proper CEMA work orders and are not duplicative of other invoices or charges. The utilities submit they should not be penalized for legitimate delays necessary to ensure that the CEMA accounting is correct before submitting an application.

We agree with the utilities that because the nature of CEMA events can vary considerably, it would not be reasonable to set a time limit for interest accrual for all projects. Section 454.9 states that utilities shall recover in rates the costs that the Commission finds reasonable. One of the factors the Commission will consider in determining reasonable costs is the length of time it took to repair and restore facilities, the timing of the application, and the interest costs associated with that period of time. In that regard, we agree that PG&E acted reasonably in deferring its application for recovery of costs for the Oakland/Berkeley Hills fire, and combining CEMA costs up to May 31, 1999, for the seven declared disasters into one application. We have modified the draft decision accordingly.

### **Findings of Fact**

1. As set forth in the Settlement Agreement, the active parties reached settlement on all issues in this proceeding.

2. The Settling Parties intend that PG&E recover all of the settled revenue requirements during 2000, in accordance with the provisions of Section 454.9, which provides that reasonable CEMA costs approved by the Commission shall be recoverable in rates.

3. Following signing of the Settlement Agreement, the Commission issued D.99-10-057 in the Post-Transition Electric Ratemaking proceeding, which could affect full recovery by PG&E of reasonable CEMA costs approved by the Commission in this proceeding.

4. To address this possibility of non-recovery of approved CEMA costs by PG&E, the Settling Parties filed an Amendment to the Settlement Agreement.

5. The Amendment allows: (1) the Settling Parties to revisit the collection period in the event the rate freeze ends during 2000, and (2) PG&E to collect CEMA revenue requirements over the months remaining in the year 2000.

6. The Settling Parties request Commission approval of the Settlement Agreement and the Amendment.

7. There is no opposition to the Settlement Agreement or the Amendment.

### **Conclusions of Law**

1. To the extent that Rule 51.1(b) and Rule 51.2 may apply to the Amendment, these rules should be waived.

2. The Settlement Agreement and the Amendment taken together: (1) meet the Commission's criteria for approval of all-party settlements; and (2) are reasonable in light of the whole record, consistent with law and in the public interest, as required by Rule 51.1(e).

3. Consistent with D.99-10-057, no CEMA costs can be carried over for recovery past the rate freeze.

4. The motions filed by the Settling Parties requesting approval of the Settlement Agreement and the Amendment should be granted.

## O R D E R

### IT IS ORDERED that:

1. The Settlement Agreement, attached as Appendix A, agreed to by Pacific Gas and Electric Company (PG&E), the Office of Ratepayer Advocates, and James Weil is approved.

2. The reasonable total revenue requirement resulting from this Catastrophic Event Memorandum Account (CEMA) application is \$69.8 million (\$59.3 million in electric revenue requirements and \$10.5 million in gas distribution revenue requirements)<sup>7</sup> to be collected in rates during the year 2000. The \$59.3 million in electric revenue requirements includes \$1.5 million related to electric generation. This \$1.5 million includes electric generation costs from the January and March 1995 storms and a portion of the costs incurred as a result of the 1997 New Year's Flood. The electric generation costs shall be recorded directly to the Revenue Section of the Transition Cost Balancing Account (TCBA) on a one-time basis. The remaining \$57.8 million in electric revenue requirements shall be recorded into the distribution revenue requirement of the Transition Revenue Account (TRA). The \$10.5 million in gas distribution revenue requirements shall be collected during the year 2000 through the gas Customer Class Charge. Upon

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<sup>7</sup> The allocation between electric and gas is based on the electric and gas split in PG&E's July 30, 1999, Update Testimony. The portion allocated to electric generation takes into consideration the \$1.7 million error identified by Weil.

Commission approval of this settlement agreement, PG&E shall file an advice letter to change the gas Customer Class Charge.

3. As set forth in the Joint Motion filed on February 11, 2000, Amendments A, B and C set forth below shall be incorporated into the Settlement Agreement:

- A. If PG&E's electric rate freeze does not end before the end of 2000, PG&E is authorized to recover in rates the \$57.8 million of non-generation electric CEMA revenue requirement that is allowed under the Settlement Agreement over the remaining months of 2000 beginning after Commission approval of the Settlement Agreement and these Amendments to the Settlement Agreement.
- B. If PG&E's electric rate freeze ends before the end of 2000 or if that event seems reasonably likely, Settling Parties agree to renegotiate in good faith the rate recovery mechanism and period for the \$57.8 million of non-generation electric CEMA revenue requirement that is allowed in the Settlement Agreement. The Settling Parties intend that PG&E's ability to recover the \$57.8 million before the end of 2000 should not be compromised if the rate freeze ends prior to that time.
- C. PG&E is authorized to recover in rates the \$10.5 million of gas distribution CEMA revenue requirement that is allowed in the Settlement Agreement over the remaining months of 2000 beginning after Commission approval of the Settlement Agreement and these Amendments to the Settlement Agreement.

4. This proceeding is closed.

This order is effective today.

Dated April 20, 2000, at San Francisco, California.

LORETTA M. LYNCH

President

HENRY M. DUQUE

JOSIAH L. NEEPER

RICHARD A. BILAS

CARL W. WOOD

Commissioners

Application of PACIFIC GAS AND  
ELECTRIC COMPANY to Recover Costs  
Recorded in the Catastrophic Event  
Memorandum Account (CEMA) Effective  
January 1, 2000

(U 39 M)

Application 99-01-011

**SETTLEMENT AGREEMENT AMONG  
PACIFIC GAS AND ELECTRIC COMPANY, THE  
OFFICE OF RATEPAYER ADVOCATES AND JAMES WEIL,  
RESOLVING ALL ISSUES IN THE  
CATASTROPHIC EVENT MEMORANDUM ACCOUNT PROCEEDING  
(APPLICATION NO. 99-01-011)**

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"), Pacific Gas and Electric Company ("PG&E") and intervenor James Weil (together the "Settling Parties"), by and through their undersigned representatives, enter into this Settlement Agreement resolving all issues in the Catastrophic Event Memorandum Account (CEMA) proceeding, A. 99-01-011. As a compromise among their respective litigation positions in Application No. 99-01-011, PG&E, ORA and James Weil agree to and support all of the terms of this Settlement Agreement.

**I. THE CEMA PROCEEDING**

On January 7, 1999, PG&E filed an application requesting recovery of the costs of: (1) restoring utility service to its customers; (2) repairing, replacing or restoring damaged utility facilities; and (3) complying with government agency orders resulting from declared disasters, in accordance with the provisions of Public Utilities Code



Section 454.9 and Commission Resolution E-3238. PG&E's showing included the costs recorded on or before May 31, 1999, from seven declared disasters: (1) the February 1998 Storms, (2) the 1997 New Year's Flood, (3) the March 1995 Storms, (4) the January 1995 Storms, (5) the Northridge Earthquake, (6) the Calaveras and Shasta County Fires, and (7) the Oakland/Berkeley Hills Fire.

As set forth in PG&E's initial, update and rebuttal testimonies (Exhibits 1, 2 and 3), PG&E's application requests recovery of revenue requirements of \$75.9 million in the year 2000, plus \$2.2 million in gas transmission revenues in the years 2001 and 2002, plus \$7.0 million for a correction for a calculation error relating to depreciation expenses, in PG&E's revenue requirements model. Adding the revenue requirements together, PG&E's total request was for \$85.1 million.<sup>1</sup>

On July 21, 1999, ORA served its report on the application (Exhibit 4). ORA's report challenged part or all of PG&E's showing with regard to gas transmission costs, call center expenses, the Northridge earthquake, PG&E's allocations of insurance proceeds from the 1997 New Year's Flood, the level of PG&E's insurance deductibles, whether there should be a minimum threshold amount before the CEMA mechanism applies, forecasted costs, and whether there should be a limitation on the length of time interest accrues on the CEMA balance. ORA's revenue requirement calculation, not including correction of the PG&E revenue requirement modeling error, was \$67 million. (ORA Report, p. 1-7.)

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<sup>1</sup> Because of notice issues, PG&E's rebuttal testimony did indicate that even though the eligible revenue requirement was higher than \$75.9 million, PG&E would not increase its revenue requirement request above the \$75.9 million reflected in its January 7, 1999 application. Exhibit 3, PG&E rebuttal testimony, p. 1-7.

James Weil served his testimony on August 5, 1999 (Exhibit 5). Weil's testimony generally supported the ORA report, with additional testimony on gas transmission costs, hydroelectric plant repairs, and the possible double counting of some revenue requirements in this CEMA application and other PG&E ratemaking proceedings. As a result of Weil's testimony, PG&E did discover one instance of a cost requested in the CEMA that had been approved for recovery in June 1999 in Decision 99-06-085, in the Nonnuclear Generation Capital Additions Memorandum Account proceeding. Accordingly, in its rebuttal testimony, PG&E reduced its revenue requirement request in this CEMA proceeding by \$1.7 million.

## II. THE SETTLEMENT

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

1. The reasonable total revenue requirement resulting from this CEMA application is \$69.8 million (\$59.3 million in electric revenue requirements and \$10.5 million in gas distribution revenue requirements)<sup>2</sup> to be collected in rates effective January 1, 2000. The \$59.3 million in electric revenue requirements includes \$1.5 million related to electric generation. This \$1.5 million includes electric generation costs from the January and March 1995 storms and a portion of the costs incurred as a result of the 1997 New Year's Flood. The electric generation costs will be recorded directly to the

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<sup>2</sup> The allocation between electric and gas is based on the electric and gas split in PG&E's July 30, 1999, Update Testimony. The portion allocated to electric generation takes into consideration the \$1.7 million error identified by Weil.

Revenue section of the Transition Cost Balancing Account (TCBA) on a one time basis. The remaining \$57.8 million in electric revenue requirements will be recorded into the distribution revenue requirement of the Transition Revenue Account (TRA) collected over twelve months. The gas distribution revenue requirements will be collected over twelve months through the gas Customer Class Charge. Upon Commission approval of this settlement agreement, PG&E will file an advice letter to change the gas Customer Class Charge Rate.

2. The Settling Parties agree that the Commission should find that it is reasonable for PG&E to recover \$69.8 million of CEMA revenue requirements as a result of this application. Although compromises were reached on several issues, the final settlement amount cannot be tied to specific outcomes for individual issues.
3. Any reallocation of insurance proceeds is fully accounted for in the settlement revenue requirement in this proceeding.
4. The CEMA revenue requirement will be collected in the year 2000. There will be no revenue requirements resulting from this application collected in the years 2001 or 2002. There will be no change in gas transmission rates as a result of this Settlement Agreement.

## II. RESERVATIONS

1. The Settling Parties agree that this Settlement represents a compromise of their respective litigation positions. It does not represent the Settling Parties' endorsement of, or agreement with, any or all of the recommendations made by the other party.

## APPENDIX A

## Page 5

2. Nothing in this settlement prevents or precludes PG&E from requesting rate recovery of CEMA costs in future CEMA filings for: (1) costs recorded after May 31, 1999, associated with the February 1998 Storms; (2) costs associated with disasters declared after September 23, 1999; and (3) certain potential CEMA costs that PG&E excluded from its revenue request in this proceeding because PG&E had included them in PG&E's Public Utilities Code Section 368(e) proceeding (Application 99-03-039). The latter costs are identified in the "Cost Exclusions - AB 1890" rows of Tables 9-1 and 9-2 of Exhibit 1 of this application. PG&E may include these costs in a future CEMA application if the Commission concludes that the revenues requested in the Section 368(e) proceeding should have been included in a CEMA request. Nothing in this settlement precludes or prevents any party from raising any objection to any part of any PG&E request in future CEMA filings.

3. The Settling Parties shall by joint motion request Commission approval of this Settlement. The Settling Parties additionally agree to actively support prompt approval of the Settlement. Active support shall include necessary reply comments, comments on a proposed decision, written and oral testimony, if required, appearances, and other means to obtain the approvals sought. The Settling Parties further agree to participate jointly in necessary briefings to Commissioners and their advisors regarding the Settlement and the issues compromised and resolved by it.

4. This Settlement embodies the entire understanding and agreement of the Settling Parties with respect to the matters described herein, and, except as described herein, supersedes and cancels any and all prior oral or written agreements, principles, negotiations, statements, representations or understandings among the Settling Parties.

5. The Settlement may be amended or changed only by a written agreement signed by the Settling Parties.

6. The Settling Parties have bargained earnestly and in good faith to achieve this Settlement. The Settling Parties intend the Settlement to be interpreted and treated as a unified, interrelated agreement. The Settling Parties therefore agree that if the Commission fails to approve the Settlement as reasonable and adopt it unconditionally and without modification, including the findings and determinations requested herein, any Settling Party may in its sole discretion elect to terminate the Settlement. The Settling Parties further agree that any material change to the Settlement shall give each Settling Party in its sole discretion the option to terminate the Settlement. In the event the Settlement is terminated, the Settling Parties will request that the unresolved issues in Application 99-01-011 be heard at the earliest convenient time.

7. This Settlement represents a compromise of the Settling Parties' respective litigation positions and should not be considered precedent with respect to CEMA costs for PG&E or other utilities in any future proceeding. The Settling Parties have assented to the terms of this Settlement Agreement only for the purpose of arriving at the various compromises embodied herein. Each Settling Party expressly reserves its right to advocate, in current and future proceedings, positions, principles, assumptions, arguments and methodologies that may be different from those underlying this Settlement.

8. The Settling Parties agree that no signatory to this Settlement, nor any member of the staff of the Commission, assumes any personal liability as a result of the Settlement Agreement.

9. Each of the Settling Parties hereto and their respective counsel have contributed to the preparation of this Settlement. Accordingly, the Settling Parties agree that no provision of this Settlement shall be construed against any Settling Party because that party or its counsel drafted the provision.


10. It is understood and agreed that no failure or delay by any Settling Party hereto in exercising any right, power or privilege hereunder shall operate as a waiver hereof, nor shall any single or partial exercise thereof preclude any other or future exercise thereof or the exercise of any other right, power or privilege.

11. 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.

12. This Settlement shall become effective among the Settling Parties on the date the last Settling Party executes the Settlement as indicated below.

In witness whereof, intending to be legally bound, the Settling Parties hereto have duly executed this Settlement Agreement on behalf of the parties they represent.

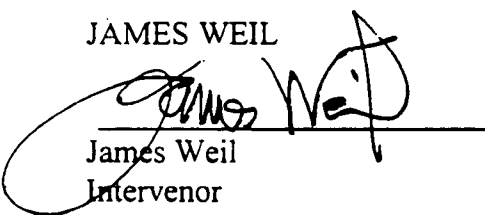
OFFICE OF RATEPAYER  
ADVOCATES

  
Jonathan Bromson  
Attorney

PACIFIC GAS AND ELECTRIC  
COMPANY

  
Robert B. McLennan  
Attorney

JAMES WEIL

  
James Weil  
Intervenor

Dated: September 23, 1999