BEFORE THE
PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company Proposing Cost of Service and Rates for Gas Transmission and Storage Services for the Period 2011-2014 (U39G)	Application 09-09-013 (Filed September 18, 2009)

OPENING BRIEF OF PG&E AND INDICATED GAS ACCORD V SETTLEMENT PARTIES

MARK D. PATRIZIO
KERRY C. KLEIN

Pacific Gas and Electric Company
P.O. Box 7442
San Francisco, CA 94120
Telephone: (415) 973-3251
Facsimile: (415) 973-5520
E-mail: KCK5@pge.com

Attorneys for
PACIFIC GAS AND ELECTRIC COMPANY

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ADDITIONAL PARTIES:

California Cogeneration Council

Joseph M. Karp
Winston & Strawn LLP
101 California Street
San Francisco, CA 94111
Telephone: (415) 591-1529
Facsimile: (415) 591-1400
E-Mail: jkarp@winston.com

California Manufacturers and Technology Association

Keith R. McCrea
Sutherland, Asbill & Brennan LLP
1275 Pennsylvania Avenue, NW
Washington, DC 20004-2415
Telephone: (202) 383-0705
Facsimile: (202) 637-0593
E-Mail: Keith.McCrea@sutherland.com

Calpine Corporation

Joseph M. Karp
Winston & Strawn LLP
101 California Street
San Francisco, CA 94111
Telephone: (415) 591-1529
Facsimile: (415) 591-1400
E-Mail: jkarp@winston.com

Canadian Association of Petroleum Producers

Mark Pinney
2100, 350-7th Ave., S.W.
Calgary, AB T2P 3N0
Canada
Telephone: (403) 267-1173
Facsimile: (403) 266-3123
E-Mail: pinney@capp.ca

City of Palo Alto

Grant Kolling
250 Hamilton Avenue
Palo Alto, CA 94301
Telephone: (650) 329-2171
Facsimile: (650) 329-2646
E-Mail: grant.kolling@cityofpaloalto.org

Dynegy Moss Landing, LLC and Dynegy Morro Bay, LLC

Brian T. Cragg
Goodin, MacBride, Squeri, Day & Lamprey
505 Sansome Street, Suite 900
San Francisco, CA 94111
Telephone: (415) 392-7900
Facsimile: (415) 398-4321
E-Mail: bcragg@goodinmacbride.com

Randall Hickok
Dynegy, Inc.
4140 Dublin Blvd.
Dublin, CA 94568
Telephone: (415) 803-5104
Facsimile: (415) 829-9406
E-Mail: Randy.Hickok@dynegy.com

Gill Ranch Storage, LLC

Ann L. Trowbridge
Ralph R. Nevis
Day Carter & Murphy LLP
3620 American River Dr., Suite 205
Sacramento, CA 95864
Telephone: (916) 570-2500
Facsimile: (916) 570-2525
E-Mail: atrowbridge@daycartermurphy.com
E-Mail: rnevis@daycartermurphy.com

ADDITIONAL PARTIES:

Indicated Producers
(Representing Chevron U.S.A. Inc, ConocoPhillips Company, Occidental Energy Marketing, Inc.,)

Evelyn Kahl
Seema Srinivasan
Alcantar & Kahl LLP
33 New Montgomery Street, Suite 1850
San Francisco, CA 94105
Telephone: (415) 421-4143
Facsimile: (415) 989-1263
E-Mail: ek@a-klaw.com
E-Mail: sls@a-klaw.com

Lodi Gas Storage

Dan L. Caroll
Downey Brand LLP
621 Capitol Mall, 18th Floor
Sacramento, California 95814
Telephone: (916) 444-1000
Facsimile: (916) 444-2100
E-Mail: dcarroll@downeybrand.com

Peter G. Esposito
Crested Butte Catalysts LLC
P.O. Box 668
Crested Butte, Colorado 81224
Telephone: (970) 349-2080
Facsimile: (970) 349-2083
E-Mail: peteresposito@earthlink.net

Northern California Generation Coalition
(Representing City of Redding, Modesto Irrigation District, Turlock Irrigation District, City of Santa Clara (Silicon Valley Power), and Northern California Power Agency)

Barry F. McCarthy
McCarthy &Berlin, LLP
100 W. San Fernando Street, Suite 501
San Jose, CA 95113
Telephone: (408) 288-2080
Facsimile: (408) 288-2085
E-Mail: bmcc@mccarthylaw.com

Wild Goose Storage, LLC

Michael B. Day
Jeanne B. Armstrong
Goodin, MacBride, Squeri, Day & Lamprey
505 Sansome Street, Suite 900
San Francisco, CA 94111
Telephone: (415) 392-7900
Facsimile: (415) 398-4321
E-Mail: mday@goodinmacbride.com
E-Mail: Jarmstrong@Goodinmacbride.com

The Utility Reform Network

Michel Peter Florio
115 Sansome Street, Suite 900
San Francisco, CA 94104
Telephone: (415) 929-8876
Facsimile: (415) 929-1132
E-Mail: mflorio@turn.org

Tiger Natural Gas Inc.

Lori Nalley
1422 E. 71st Street, Suite J
Tulsa, Oklahoma 74136
Telephone: (918) 491-6998
Facsimile: (918) 491-6659
E-Mail: LNalley@tigernaturalgas.com

ADDITIONAL PARTIES:

School Project for Utility Rate Reduction

Michael Rochman
1850 Gateway Blvd, Suite 235
Concord, CA 94520
Telephone: (925) 743-1292
Facsimile: (925) 743-1014
E-Mail: service@spurr.org

Vista Energy Marketing L.P.

Michael Nguyen
3200 Southwest Freeway, Suite 2240
Houston, TX 77027
Telephone: (713) 877-9900
Facsimile: (832) 213-0301
E-Mail: mnguyen@vistaenergymarketing.com

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I. INTRODUCTION

Pacific Gas and Electric Company ("PG&E") and the Gas Accord V Settlement Parties indicated below[1] ("Indicated Settlement Parties") submit this Opening Brief addressing the issues raised in this proceeding by Southern California Gas Company ("SoCalGas") and San Diego Gas & Electric Company ("SDG&E").

SoCalGas/SDG&E seek to upset a settlement negotiated by PG&E and 24 other parties over the course of eleven months. That Settlement would establish gas transmission and storage revenue requirements and rates for four years and resolve a number of other issues raised by PG&E and intervenors following PG&E's initial filing in this docket. SoCalGas/SDG&E are doing so in order to get a right for which they neither bargained nor paid consideration. In

[1] The non-PG&E Gas Accord V Settlement Parties that support this brief are: California Cogeneration Council ("CCC"); California Manufacturers & Technology Association ("CMTA"), Calpine Corporation; Canadian Association of Petroleum Producers; City of Palo Alto; Dynegy Moss Landing, LLC and Dynegy Morro Bay, LLC ("Dynegy"); Gill Ranch Storage (as to Section III.D only); Indicated Producers (representing Chevron U.S.A. Inc., ConocoPhillips Company and Occidental Energy Marketing, Inc.); Lodi Gas Storage LLC (as to Section III.D only); Northern California Generation Coalition (representing City of Redding, Modesto Irrigation District ("MID"), Turlock Irrigation District ("TID"), City of Santa Clara ("Silicon Valley Power"), and Northern California Power Agency ("NCPA")); Tiger Natural Gas Inc.; The Utility Reform Network ("TURN") (TURN joins in this opening brief except to the extent that it addresses the issue of whether SoCalGas/SDG&E have an existing contractual right to make northern California deliveries under their current G-XF contract. TURN is taking no position on that particular question); Wild Goose Storage, LLC (as to Section III.D only); School Project for Utility Rate Reduction ("SPURR"); and Vista Energy Marketing L.P.

particular, SoCalGas is attempting to gain a windfall in the form of on-system delivery rights under its G-XF contract — a windfall that would undo a fundamental tenet of the twelve-year old Gas Accord market structure. Granting SoCalGas the delivery point flexibility it seeks is fundamentally at odds with the Gas Accord structure, PG&E's G-XF tariff, PG&E's Firm Transportation Agreement with SoCalGas, and basic principles of contract interpretation.

In addition, SoCalGas and SDG&E argue that they should be granted two benefits negotiated between PG&E and the 24 parties that signed the Gas Accord V Settlement, notwithstanding the fact that SoCalGas/SDG&E refused to join that settlement. First, SoCalGas/SDG&E assert that the G-XF settlement rates should have been lowered in the same proportional amount that the Noncore Redwood path rates were lowered between the rates initially proposed in PG&E's first filing in this docket and the rates reflected in the Settlement. Second, SoCalGas/SDG&E want to participate in the revenue sharing mechanism that PG&E negotiated with the other 24 Gas Accord V Settlement parties, despite the fact that G-XF revenues do not contribute to any excess revenues under the Gas Accord V Settlement. Both of these arguments fail to acknowledge that G-XF rates are designed to recover no more and no less than the incremental costs of the Line 401 Expansion Project. Allowing G-XF shippers to participate in revenue sharing, and artificially reducing G-XF rates by the same proportion that Noncore Redwood rates decreased from the proposed to the settled rates, are antithetical to that rate design, and would effectively create a subsidization of SoCalGas/SDG&E by PG&E.

Finally, SoCalGas/SDG&E seek to impose on PG&E the storage information posting requirements equivalent to those that the Federal Energy Regulatory Commission ("FERC") imposes on market-based storage fields directly connected to interstate pipelines that provide interstate gas storage services under Section 7(c) of the Natural Gas Act. SoCalGas/SDG&E

urge this result despite the fact that, unlike the southern California storage market, the Northern California storage market is a competitive market without a monopoly provider. Not only are additional storage postings unnecessary for PG&E, but requiring only PG&E to make such postings would put PG&E at a competitive disadvantage to the independent storage providers in northern California.

II. BACKGROUND

PG&E filed its 2011 Gas Transmission and Storage ("GT&S") Rate Case on September 18, 2009, requesting gas transmission and storage revenue requirements of $529.1 million for 2011, $561.5 million for 2012, $592.2 million for 2013, and $614.8 million for 2014. On December 18, 2009, the Assigned Commissioner and Administrative Law Judge ("ALJ") issued a Scoping Memo, which categorized this case as a rate setting proceeding, set the case for evidentiary hearings, and established a procedural schedule. On January 15, 2010, an Amended Scoping Memo was issued, which revised the procedural schedule. The procedural schedule was amended on several subsequent occasions in order to allow the parties to engage in settlement negotiations and prepare for hearings on contested issues. SoCalGas/SDG&E participated in settlement negotiations.

On August 20, 2010, following several months of settlement negotiations, PG&E and the 24 other Settlement Parties filed a Joint Motion of Settlement Parties for Approval of Gas Accord V Settlement. The proposed Settlement resolves all of the issues raised by any party in PG&E's 2011 GT&S Rate Case, except for two issues raised by SoCalGas/SDG&E.

On August 25, 2010, the Commission issued a Ruling Regarding The Process To Address The August 20, 2010 Motion For Approval Of Gas Accord V Settlement Agreement. Thereafter, on August 31, 2010, the Commission issued a further ruling, adopting the following procedural schedule to resolve the issues raised by SoCalGas/SDG&E:

September 20, 2010	DRA and Intervenor Testimony; comments contesting all or part of settlement due
October 11, 2010	Concurrent Rebuttal Testimony; reply to comments contesting all or part of settlement due
October 25-27	Evidentiary Hearings (if needed)

On September 20, 2010 SoCalGas/SDG&E served testimony in which they raised the following issues: (1) PG&E should allow SoCalGas to use its G-XF contract to deliver gas off-system or at the PG&E Citygate, at SoCalGas' option; (2) The Gas Accord V Settlement revenue sharing mechanism is discriminatory and should be rejected because it excludes G-XF shippers; (3) the G-XF rates set out in the Gas Accord V Settlement should be lowered such that the percentage reduction from proposed rates is identical to the percentage reduction in the Gas Accord V Noncore Redwood Path rates negotiated by the Settlement Parties; and (4) the Commission should order PG&E to make the same storage postings that storage providers subject to FERC jurisdiction are required to make.

SoCalGas/SDG&E were the only parties to contest the Gas Accord V Settlement. By contrast, 24 non-PG&E Settlement Parties filed joint testimony on September 20, 2010 in support of the Gas Accord V Settlement.

Hearings were held at the Commission on October 25 and 26, 2010. Those hearings were held in order to take further evidence on the four issues raised by SoCalGas/SDG&E.

III. ARGUMENT

A. SoCalGas Does Not Have, And Should Not Be Given, The Right To Deliver Gas At The PG&E Citygate Using Its G-XF Transportation Contract

SoCalGas alleges that, as both a policy matter and a contractual matter, in addition to the right it has to deliver gas to southern California, it should be granted the right (at its option) to deliver gas onto PG&E's system at the PG&E Citygate under its December 31, 1991 Firm Transportation Service Agreement ("FTSA"). SoCalGas's attempt to obtain on-system delivery rights should be denied, because it is fundamentally inconsistent with the Gas Accord market structure that has been in place since 1998, and was never bargained for or legally granted as a contractual matter.

1. SoCalGas's Claim That It Should Be Permitted Delivery Point Flexibility Is Inconsistent With The Gas Accord

PG&E's Line 401 Expansion project, completed in 1993, was originally intended to serve the southern California market by moving gas through the PG&E system from the California/Oregon border (at Malin) to Kern River Station in southern California.[2] The Commission certificated Line 401 in 1989 under its "let the market decide" policy for new pipeline capacity, and PG&E made a commitment that an incremental rate design would be used to assign the costs of Line 401 to the shippers who used that line, without rolling in any of the costs of the other, existing portions of PG&E's backbone system.[3] As a result, PG&E and several shippers (such as SDG&E) negotiated and signed contracts for Expansion service to support the development and construction of Line 401.[4]

Prior to the adoption of the first Gas Accord, PG&E's filed tariff applicable to firm Expansion service on Line 401 — Schedule G-XF — allowed delivery point flexibility. Specifically, the January 27, 1997 version of PG&E's G-XF tariff (which was the version of this tariff in effect immediately prior to the implementation of the Gas Accord on March 1, 1998) stated, "Shipper may nominate any Delivery Point on the Pipeline Expansion between Malin, Oregon and Kern River Station, California."[5] In fact, PG&E indicated to SDG&E during the

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[2] Exhibit ("Ex.") 23, p. 7, lines 19-24.

[3] Ex. 23, pp. 7, line 24 – 8, line 3.

[4] Ex. 23, p. 7, lines 20-22.

[5] Ex. 18, Attachment ("Att.") 1D.

pre-Gas Accord period that, although Exhibit A to SDG&E's FTSA states only one delivery point at Kern River Station, "PG&E's G-XF Tariff, until further or future revision, allows a shipper to nominate any delivery point on the Pipeline Expansion between Malin, OR and Kern River Station."[6]

With the adoption of the first Gas Accord, however, the economics of allowing delivery point flexibility for Expansion shippers was fundamentally altered. As explained in PG&E's 1996 Gas Accord Application (A.96-08-043), the limitation of Expansion shippers' service to a single delivery point was a fundamental prerequisite for Gas Accord, in order to prevent a financial windfall to those Expansion shippers at the expense of PG&E's other customers and shareholders, by displacing other on-system backbone services.[7] This fundamental shift in the economics of allowing delivery point flexibility for G-XF shippers at the advent of Gas Accord was explained in the motion to adopt the 1996 Gas Accord Settlement Agreement:

> Under today's postage stamp rates and bundled transportation system, delivery-point flexibility raises no significant issues, but in the unbundled and rate-differentiated world of the Accord, these shippers could receive a wholly undeserved financial windfall at the expense of PG&E's shareholders. This windfall could occur if these shippers, especially those located in Southern California, are permitted to drop gas off in the PG&E service territory, displacing gas that otherwise would have been transported over Line 300.[8]

Therefore, a fundamental component of the Gas Accord was the Commission's acceptance of revisions to PG&E's G-XF tariff that eliminated delivery point flexibility. PG&E explained the significance of this change to its G-XF tariff in the motion to adopt the first Gas Accord

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[6] Ex. 18, Att. 1C.

[7] Ex. 18, p. 1-5, lines 18-22.

[8] A.96-08-043, Motion for Order Adopting Stipulation and Settlement Agreement and for Other Procedural Rulings, at 34.

Settlement Agreement:

> As part of the Gas Accord, PG&E will assume 100 percent of the throughput risk associated with all PG&E intrastate transmission. One portion of this capacity is currently used by firm Expansion shippers under 30-year contracts. . . . Because of the significant financial risk assumed by PG&E in constructing new capacity for this purpose, implementation of the Gas Accord is not feasible for PG&E's shareholders unless the Commission supports and approves the G-XF modifications. . . . These modifications preserve the rights of these shippers without giving them a potential windfall due to the unbundling under the Gas Accord.[9]

In light of the Gas Accord, and in the interest of fairness to all customers, PG&E revised its G-XF tariff to limit each Expansion shipper to the single delivery point indicated in each respective shipper's Exhibit A. The March 1, 1998 G-XF tariff implementing the Gas Accord indicated that "Customer may nominate only to the Delivery Point set forth in Exhibit A to the Customer's FTSA."[10] That language is the same as PG&E's current G-XF tariff. The use of the singular "Delivery Point" was deliberate, to reflect that any given shipper was limited to a single delivery point.[11] By contrast, the heading of this section of the tariff is "Delivery Points" (plural) because:

> [A]s a group of customers, the G-XF group of customers have multiple delivery points. That is one customer has an on-system delivery point and most all the other customers have off-system delivery points. . . . [U]nder the tariff there is more than one delivery point allowed under the tariff. But I think the tariff states that for any given shipper that they were limited to the delivery point set forth in their Exhibit A.[12]

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[9] A.96-08-043, Motion for Order Adopting Stipulation and Settlement Agreement and for Other Procedural Rulings, at 33-34.

[10] Ex. 18, Att. 1E.

[11] Transcript, pp. 1197, line 28-1198, line 18 (Graham, PG&E).

[12] Transcript, p. 1198, lines 8-18 (Graham, PG&E).

SoCalGas/SDG&E is not the only G-XF shipper without flexible delivery rights. In fact, every G-XF shipper is limited to a single delivery point.[13] It also bears noting that only one G-XF shipper — the Northern California Power Agency ("NCPA") — has an on-system delivery right and that is because NCPA specifically negotiated that right because its constituents are all entities whose customers are located on PG&E's system.[14] It also bears noting that even NCPA has only one delivery point. It does not have the kind of "option" that SoCalGas seeks here — to deliver on-system or off-system whenever it so chooses.[15]

In short, the limitation of all Expansion shippers to a single delivery point is a fundamental tenet of the Gas Accord market structure[16] that has served PG&E's customers well for over twelve years. It should not now be disturbed in order to give SoCalGas/SDG&E a financial windfall.

2. Like All Other G-XF Shippers, SoCalGas Is Limited To One Delivery Point Under Its G-XF Contract

The history of SoCalGas/SDG&E's FTSA is consistent with the elimination of delivery point flexibility that resulted from the Gas Accord. The original FTSA between PG&E and

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[13] Transcript, p. 1192, lines 16-18 (Graham, PG&E); *see also* Ex. 32, SoCalGas-SDGE_002-01 and SoCalGas-SDGE_003-01.

[14] Transcript, p. 1192, lines 7-12 (Graham, PG&E); *see also* Ex. 32, SoCalGas-SDGE_003-01 ("The original Line 401 service agreements required customers to choose either delivery to the southern terminus of the PG&E expansion (off-system service) or to the PG&E intrastate distribution pipeline system (on-system service). NCPA elected on-system service in their original service agreement.")

[15] Transcript, p. 1192, lines 13-15 (Graham, PG&E).

[16] This is in contrast to FERC policy with respect to interstate pipelines. FERC requires interstate pipelines subject to its jurisdiction to give firm shippers flexible delivery points. Order No. 636, p. 109. However, such rights are limited to the delivery zone for which the shippers pay. This Commission has no such policy. For this reason, SoCalGas's testimony regarding alternate delivery point rights on interstate pipelines carries no weight.

SDG&E (executed on December 31, 1991) states:

> This Agreement covers firm transportation of gas for Shipper's account from the interconnection with PGT [the Pacific Gas Transmission Company, now Gas Transmission Northwest] near Malin, Oregon to the southern terminus(i) of the PG&E Expansion Project.[17]

In addition, Exhibit A to that contract identified the delivery point as the "southern terminus(i) of the PG&E Expansion Project," which is located at Kern River Station, California. On March 14, 1994, PG&E and SDG&E executed an amendment to the FTSA. This amendment made no change to Exhibit A, which continued to specify a single, off-system delivery point.

SDG&E was an active participant in the proceedings that culminated in Gas Accord I.[18] On December 2, 1996, after having been a party to the Gas Accord proceedings for months, SDG&E signed an "Amendment to the Firm Transportation Service Agreement Between San Diego Gas & Electric Company and Pacific Gas and Electric Company."[19] This Amendment made no change to Exhibit A. Furthermore, the Amendment states that "SDG&E agrees to deliver all gas transported under this amendment off PG&E's system, using the delivery point specified in Exhibit A attached to the original FTSA."[20]

Put simply, SoCalGas/SDG&E have always been permitted *only one* delivery point and that delivery point was *only* to deliver gas off-system at Kern River Station, in southern California. Not only is that the delivery right that SDG&E originally bargained for, but the advent of the Gas Accord and associated changes to the G-XF tariff eliminated any delivery

[17] Ex. 18, Att. 1A.

[18] Ex. 18 at p. 1-4, line 32.

[19] Ex. 18, pp. 1-4, line 32 – 1-5, line 3; Att. 1F.

[20] Ex. 18, Att. 1F, para. 7.

point flexibility that G-XF shippers (including SoCalGas/SDG&E) were afforded prior to Gas Accord.

3. The November 1997 Exhibit A Is A Mistake That Does Not Reflect The Intent Of The Parties

The lynchpin of SoCalGas's claim in this docket to a contractual right to deliver gas at the PG&E Citygate is a November 1997 Exhibit A. As PG&E witness Graham explained in his testimony in this proceeding, all extrinsic evidence leads to the conclusion that the November 1997 Exhibit A represents nothing more than a clerical error by PG&E. It does not reflect the intent of the parties and was never bargained for between them.

The November 1997 version of Exhibit A that has the delivery capacity quantity filled in two places rather than one was filled out in connection with a request by SDG&E to assign a portion of its Expansion capacity to an entity named "Husky" for a limited term.[21] At the end of the term of the assignment, July 31, 2003, all of the capacity was to revert to SDG&E.[22] All communications related to this exhibit concerned the partial assignment to Husky and the return of capacity to SDG&E at the end of the assignment term. At no time did SDG&E request an additional delivery point, nor did PG&E state that it was agreeing to give an additional delivery point — either during the period of the assignment to Husky or following the return of the assigned capacity to SDG&E.[23]

There is absolutely no contemporaneous evidence that SDG&E bargained for on-system delivery rights (or that the issue was even discussed) in 1997 in the course of the largely ministerial matter of executing this temporary capacity assignment. Not only was PG&E unable

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[21] Ex. 18, p. 1-7, lines 6-11.

[22] Ex. 18, p. 1-7, lines 10-11.

[23] Ex. 18, p. 1-7, lines 12-19.

to locate any evidence in its files that would indicate any intent of the parties at the time of the assignment to provide delivery point flexibility, but SoCalGas/SDG&E have failed to provide any contemporaneous evidence. In fact, PG&E asked SoCalGas/SDG&E for "all internal or external communications discussing SDG&E, SoCalGas or Sempra Energy's desire to obtain or use on-system delivery rights under its G-XF contract."[24] SoCalGas/SDG&E produced six documents in response. None of them is dated before 2008.[25] Even when specifically asked for "all communications from SDG&E, SoCalGas or Sempra Energy to PG&E where it specifically asked PG&E to provide on-system delivery rights under its G-XF contract prior to 2007," the only document SoCalGas produced was a December 18, 1996 letter *from* PG&E *to* SDG&E indicating that SDG&E's FTSA with PG&E includes a delivery point at Kern River Station, and referring generally to the delivery point flexibility afforded by PG&E's pre-Gas Accord G-XF tariff.[26] That document is not responsive to PG&E's request and certainly does not show that SDG&E ever asked for an on-system delivery point as part of the assignment of capacity.

Had SDG&E negotiated for delivery point flexibility in 1997, and had PG&E granted that right, there would certainly be some contemporaneous evidence of those negotiations. There is none. Even Dr. Van Lierop, SoCalGas's witness on this issue, admits that SoCalGas was unaware of the on-system delivery rights it now claims it has had since 1997 until someone fortuitously found the 1997 version of Exhibit A in the files in 2008:

> It started out with a more general discussion along the lines of, you know, can we talk about possibly getting rights to deliver on the system. And the answer from PG&E was no; absolutely not. So that's when we started to look at the contract file and we found

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[24] Ex. 25.

[25] Ex. 25 and attachments.

[26] Ex. 26.

> certain things. And then we concluded that we already did have the right.[27]

It simply makes no sense that PG&E would have agreed to grant SDG&E delivery point flexibility when it agreed to the partial assignment of capacity to Husky for a limited time. In light of PG&E's clear and consistent efforts in the Gas Accord to limit each Expansion shipper to a single delivery point, and PG&E's success in obtaining the agreement of those shippers (including SDG&E) to that limitation, it is inconceivable that PG&E would knowingly give away such a right when it had not even been requested, in the context of an otherwise administrative matter such as a partial assignment of capacity for a limited term.[28]

Finally, had PG&E sought to convey special delivery rights *only* to SoCalGas, PG&E would have been required to file with the Commission a change to the G-XF tariff. In the absence of Commission approval, PG&E does not have the authority to change substantive tariff provisions for the benefit of a single customer. However, PG&E did not file to make such a change.

All available evidence suggests that the 1997 version of Exhibit A was simply a clerical error made by PG&E in the course of finalizing a ministerial document. There is no evidence of intent on the part of either SDG&E or PG&E to request or grant a second delivery point. As such, the 1997 Exhibit A constitutes a mistake in writing that cannot confer, as a matter of law, rights on SoCalGas/SDG&E. Under well-established California law, such an erroneous writing is either disregarded, Cal. Civ. Code § 1640 ("When through fraud, mistake, or accident, a written contract fails to express the real intention of the parties, such intention is to be regarded, and the erroneous part of the writing disregarded"), or cured by reforming the contract. *See* Cal.

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[27] Transcript, pp. 1046, line 21 - 1047, line 1 (Van Lierop, SoCalGas).

[28] Ex. 18, pp. 1-7, line 31 – 1-8, line 5.

Civ. Code §§ 3399-3401.

The California Supreme Court's decision in *Hess v. Ford Motor Co.,* 27 Cal.4th 516 (2002) is instructive. There, plaintiff Hess, a passenger in a Ford pickup truck, was injured in an automobile accident. *Id.* at 520-21. He settled with the driver of the other car and his insurance carrier, signing a release that explicitly released and discharged "all other persons, firms, corporations, association or partnerships." *Id.* at 521. When Hess later sued Ford, Ford moved for summary judgment based on the release. *Id.* Contending the release was unambiguous, Ford presented the release itself and no other evidence. *Id.* at 522. Hess offered his own testimony and that of the claims adjuster for the other driver's insurance company that they did not intend to release Ford. *Id.* On appeal, the Supreme Court held that the extrinsic evidence showed that the parties to the release made a mutual mistake and did not intend to release Ford. *Id.* at 525-27.

The Supreme Court pointed out that Hess did not allege any ambiguity in the release language. *Id.* at 525. Rather, he claimed that the release language ostensibly releasing Ford was a mistake. *Id.* In examining the extrinsic evidence, the Supreme Court concluded that "the uncontroverted testimony about the circumstances surrounding the formation of the Release demonstrates that the contracting parties did not intend to release Ford." *Id.* at 526.

Western Federal Sav. & Loan Ass'n v. Heflin Corp., 797 F.Supp. 790 (N.D. Cal. 1992) is to the same effect. In that case, plaintiff alleged an error in the description of the property conveyed by the deed at issue, and the court agreed, reforming the instrument. *Id*. at 792. There was no evidence of any communication and thus intent to exclude the interior walls and roofs that were omitted from the deed, and there was no instruction to the scrivener to do so. *Id.* at 792-93. In fact, the court found, such an exclusion was contrary to the extrinsic evidence, including other documents. *Id.* at 793.

The facts in this case are similar to the facts that led the courts in *Hess* and *Western Federal* to hold that the written instrument at issue did not accurately reflect the intent of the parties. Here, the circumstances surrounding the creation of the November 1997 Exhibit A demonstrate that neither PG&E nor SDG&E intended to amend the FTSA to add an on-system delivery point. There were no communications between the parties regarding adding a delivery point; the sole purpose of the November 1997 Exhibit A was to effect a partial assignment of SDG&E's capacity to Husky for a limited time. Therefore, the only conclusion to be drawn from the undisputed facts is that the November 1997 Exhibit A was an error that did not reflect the intent of the parties.

4. Granting SoCalGas The Delivery Point Flexibility It Now Seeks Would Inappropriately Shift Costs From SoCalGas's Customers To PG&E And Its Customers

The circumstances that led to eliminating delivery point flexibility for Expansion shippers as a condition precedent to the first Gas Accord will resurface if SoCalGas is granted on-system delivery rights. The revenue shortfall that PG&E would experience if SoCalGas's request were granted is up to $7.6 million annually, based on the Gas Accord V Settlement rates and assuming that SoCalGas would deliver its full capacity on system and that SoCalGas's on-system deliveries would displace as-available service that PG&E would otherwise provide on its Baja Path.[29] Because SoCalGas's contract is essentially evergreen, the total revenue shortfall would be staggering.[30]

It is a reasonable assumption that SoCalGas — if granted on-system delivery rights — would deliver 100% of its capacity on-system. As explained by Tom Beach, witness for several

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[29] Ex. 18, p. 1-8, lines 27-32.

[30] Ex. 18, pp. 1-8, line 34 – 1-9, line 2.

non-PG&E Gas Accord V Settlement Parties, the Gas Accord V G-XF rate ($0.2053/Dth) is much lower than the Settlement Noncore Redwood rate ($0.2865). As a result, SoCalGas is likely to be able to market its full contract volumes in northern California, displacing PG&E's sales of Redwood and Baja on-system service.[31] As a result of his analysis of daily price data over the two years ending July 22, 2010, Mr. Beach concludes that SoCalGas is highly likely to deliver all of its G-XF volumes to the PG&E Citygate, if given that option.[32] Forward market prices also suggest that SoCalGas will have an economic incentive to deliver all G-XF volumes into PG&E's system over the next few years.[33] In short, "the economics of delivering that gas at the PG&E citygate are much more favorable than delivering it to southern California."[34]

If SoCalGas were granted on-system delivery rights, the shortfall would be borne by either PG&E's shareholders, other PG&E backbone shippers, or both.[35] As Mr. Beach explains, "If the Commission modifies the Settlement as SoCalGas requests and if the Commission raises the Settlement's backbone rates to allow PG&E to recover fully this loss in backbone revenues, then PG&E's backbone customers, including both core and noncore customers, would face higher rates totaling as much as $27.6 million over a four-year period in order to allow SoCalGas to have delivery rights in northern California. This would result in approximately a 3.0%

[31] Ex. 23, p. 4, lines 4-9.

[32] Ex. 23, p. 4, lines 9-18.

[33] Ex. 23, p. 4, lines 18-21.

[34] Transcript, p. 1086, lines 10-13 (Beach, Indicated Settling Parties); *see also* Transcript, p. 1195, lines 4-13 (Graham, PG&E).

[35] The Gas Accord V Settlement Parties do not agree on whether the shortfall created if SoCalGas were granted on-system delivery rights should be borne by PG&E's shareholders, or PG&E's other backbone shippers. That issue is not addressed in this brief.

increase in backbone rates compared to those in the Settlement," if customers bear the shortfall.[36]

There is no justification in Commission policy or contract law for granting SoCalGas a windfall for which it never bargained, to the detriment of PG&E's shareholders or customers.

B. The Reduction Between Proposed Noncore Redwood Rates and Settlement Noncore Redwood Rates Should Not Be Mirrored In G-XF Rates

SoCalGas/SDG&E argue that G-XF rates should be lowered for the Gas Accord V period by the same percentage that the Noncore Redwood Path rates were lowered by the Gas Accord V Settlement relative to PG&E's initially proposed Noncore Redwood Path rates. As explained by PG&E witness Ray Blatter and Indicated Settlement Parties witness Tom Beach, however, G-XF rates are designed to collect costs exclusively associated with PG&E's Line 401 Expansion project, and reflect the incremental cost of providing service on the Line 401 Expansion pipeline.[37] Incremental rate treatment for G-XF Expansion Shipper service on Line 401 was first established in the Commission decision that granted PG&E permission to construct the Line 401 Expansion. D.90-12-119, Finding of Fact Nos. 41 and 101.[38] The original Gas Accord settlement, approved by the Commission in Decision 97-08-055, provided for continuation of this G-XF ratemaking methodology for Line 401 firm shippers who continued taking G-XF service, such as SDG&E.[39] Incremental rate treatment for G-XF Expansion Shipper service was also explicitly continued in Commission Decision 03-12-061 (conclusion of Law 57) for rates in effect in 2004, and has remained in place in the two subsequent Gas Accords (III and IV) that

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[36] Ex. 23, p. 5, lines 6-12.

[37] Ex. 18, pp. 2-1, line 33 – 2-2, line 4; Ex. 23, p. 10, lines 3-4.

[38] Ex. 18, pp. 2-2, line 32 – 2-3, line 3; Ex. 23, pp.7, line 24 – 8, line 3.

[39] Ex. 18, p. 2-3, lines 3-6; Ex. 23, p. 8, lines 8-10.

have been in effect since that time.[40]

By contrast, Noncore Redwood rates reflect the blended costs of that portion of Line 400 not set aside for Core Customers, that portion of Line 401 not set aside for G-XF shippers, and various "common" backbone costs[41] that are allocated to all backbone paths and services except Rate Schedule G-XF.[42] In short, unlike Noncore Redwood rates, G-XF rates are designed to recover the incremental costs of the Line 401 Expansion project, no more and no less. Therefore, it does not follow that the percentage change in G-XF rates between proposed and settled rates should match the percentage change in Noncore Redwood rates between proposed and settled rates. As Indicated Settlement Parties witness Tom Beach explains:

> The SoCalGas/SDG&E proposal that the Settlement should provide reductions in G-XF rates, compared to PG&E's litigation position, that are comparable to the reductions in on-system backbone rates completely ignores the vintages and cost structures of PG&E's backbone pipelines, and is inconsistent with how G-XF rates have always been set. This final proposal is particularly galling given that SoCalGas/SDG&E benefit from the fact that their G-XF contract reflects only the costs of the newest backbone pipeline on the PG&E system (Line 401), and thus they are avoiding the costs of the major work needed in the coming years to maintain and refurbish Lines 300 and 400.[43]

In addition, there were many compromises reached with respect to backbone rates in Gas Accord V that have no impact on G-XF rates. For example, Noncore Redwood rates are based

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[40] Ex. 18, p. 2-3, lines 6-9; Ex. 23, p. 9, lines 17-20.

[41] In this context, "'common' backbone costs" refers to the costs of PG&E's Bay Area Loop facilities and gathering facilities, and storage costs allocated to pipeline load balancing service (Ex. 18, p. 2-6, footnote 2). This usage is consistent throughout past Gas Accord settlements. However, it should not be confused with SoCalGas/SDG&E witness Dr. Van Lierop's testimony in which he uses the term "common" costs to refer to the costs at various Redwood path compressor stations that are shared by Lines 400 and Line 401. Transcript, pp. 1042, line 20 – 1043, line 2.

[42] Ex. 18, p. 2-6, lines 7-11.

[43] Ex. 23, p. 11, lines 17-25.

on a forecasted system average load factor. In contrast, G-XF rates are designed based on uncontested load factors of 100 percent for the reservation charge component and a 95 percent load factor for the usage component.[44] Furthermore, under the Gas Accord V Settlement, the parties settled on rate differentials between Redwood and Baja rates that represent a negotiated compromise. As a result, Noncore Redwood rates are initially averaged with Noncore Baja rates, then de-averaged by means of negotiated rate differentials.[45] Finally, Noncore Redwood rates include a revenue sharing mechanism seed value credit and a Backbone Rate Surcharge to recover a portion of the Gas Accord V Local Transmission Bill Credits.[46]

SoCalGas/SDG&E complain that proposed G-XF rates increased as a result of PG&E's correction of an error in cost allocation underlying its rates filed on September 18, 2009.[47] However, PG&E explained to all parties that the updated rates were attributable to the correction of two errors that were discovered by PG&E subsequent to its September 18, 2009 filing. First, the Redwood Line 401 capacity was overstated in PG&E's initial filing. PG&E corrected that overstated capacity amount in PG&E's amendment to Application 09-09-013, filed with the Commission on December 8, 2009. As a result of that correction, the G-XF revenue requirement increased because the G-XF portion of Line 401 capacity represented a larger percentage of total Line 401 capacity than in PG&E's September 18, 2009 filing.[48]

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[44] Ex. 18, p. 2-6, lines 11-15.

[45] Ex. 18, p. 2-6, lines 15-21. SoCalGas/SDG&E overstate the reduction between proposed Noncore Redwood rates and settled Noncore Redwood rates by ignoring the effect of the de-averaging of Noncore Redwood and Baja rates, which increased Noncore Baja rates and decreased Noncore Redwood rates relative to the average.

[46] Ex. 18, p. 2-6, lines 21-25.

[47] Ex. 21, p. 8, lines 18-19.

[48] Ex. 18, p. 2-3, lines 19-26.

Second, certain Delevan Compressor station-related costs that should have been assigned to Lines 400 and 401 on a pro-rata basis, consistent with Commission Decision 90-12-119, Conclusion of Law No. 15, were inadvertently included in only one line or the other. In addition, certain Bethany Compressor station-related costs that should have been included in the Line 401 revenue requirement were erroneously classified as Local Transmission costs.[49] Correction of this error did not change PG&E's total revenue requirement, but it increased the costs assigned to Line 401 and decreased the costs assigned to Line 400 and Local Transmission. Since the G-XF rate reflects the incremental cost of service on Line 401, this correction resulted in an appropriate increase to the G-XF rates.[50]

Other than an unsupported assertion that SoCalGas/SDG&E find the increase as a result of the correction of these errors "problematic,"[51] SoCalGas/SDG&E concede that they have done nothing to show that the corrected rates are inaccurate.[52] Therefore, there is no reason not to approve the G-XF rates based upon the indisputably correct cost allocation.

SoCalGas/SDG&E have offered no justification for arbitrarily reducing G-XF rates by the same percentage that the Gas Accord V Noncore Redwood rates were reduced relative to PG&E's proposed Noncore Redwood rates. SoCalGas/SDG&E also ignore the fact that G-XF rates are *lower* on an absolute basis than Noncore Redwood rates. They also experience greater declines over the Gas Accord V period than do Noncore Redwood rates.[53] Lowering G-XF rates

[49] Ex. 18, pp. 2-3, line 27 - 2-4, line 2.

[50] Ex. 18, p. 2-4, lines 7-11.

[51] Ex. 21, p. 9, line 14.

[52] Transcript, p. 1030, lines 19-25 (Van Lierop, SoCalGas) ("I have not attempted to specifically rebut certain cost allocation changes.")

[53] Ex. 18, p. 2-7, lines 7-20.

any further would require a departure from the incremental rate design applicable to G-XF service.

C. G-XF Shippers Should Not Participate In Revenue Sharing

In its September 18, 2009 Application, PG&E proposed a symmetrical revenue sharing mechanism, in which customers and shareholders would share equally in any over- or under-recovery of GT&S revenues. Under PG&E's proposal, 50 percent of the difference between the adopted revenue requirement and the recorded revenues for PG&E's GT&S services would be shared with customers.

In settlement, PG&E and the 24 Settlement Parties agreed on a Revenue Sharing mechanism that shares over-collections (and in some cases under-collections) between customers and shareholders for the backbone, local transmission and storage lines of business, and "seeds" the revenue sharing mechanism with an annual $30 million rate credit, allocated to backbone and local transmission services, excluding Rate Schedule G-XF.[54]

SoCalGas/SDG&E argue that they should participate in the revenue sharing that PG&E and the other 24 Settlement Parties negotiated. SoCalGas/SDG&E's claim that the first "public" mention of the exclusion of G-XF shippers from revenue sharing was in the Settlement[55] is false. In fact, SoCalGas was aware as early as March 2010 that G-XF shippers were not included in the revenue sharing mechanism. Dr. Van Lierop was asked whether he was aware of a PG&E data response to SoCalGas/SDG&E dated March 11, 2010 stating that "PG&E is proposing that the shared revenues or shortfalls be allocated to its backbone paths in proportion to the cost allocation to each path, excluding the G-XF rate schedule. As such, G-XF shippers will not

[54] *See* Gas Accord V Settlement, Section 10.1.

[55] Ex. 21, p. 8, lines 6-7.

share in the potential benefits or costs of the sharing mechanism."[56] His answer was yes.[57]

The justification for excluding G-XF shippers from revenue sharing is rooted in the incremental nature of G-XF rates. The revenue sharing contemplated in the Settlement will come principally from PG&E's excess market storage revenues, and to a lesser extent from backbone and local transmission revenues. These are not revenue streams that have ever benefitted or been expected to benefit G-XF contract customers, whose rates always have been based strictly on Line 401 costs.[58] Therefore, it would not be appropriate for Expansion shippers to incur costs or receive credits associated with other backbone transmission paths or other lines of business.[59]

For the same reason, G-XF costs and revenues are excluded in the calculation of any over- or under-collection to be shared with customers.[60] Therefore, other customers will not be benefitting from any overcollection in G-XF revenues over the adopted revenue requirement for G-XF service. In addition, G-XF Shippers are also shielded from contributing to the Backbone Rate Surcharge, designed to collect part of the Local Transmission Bill Credits that are a feature of Gas Accord V.[61]

SoCalGas/SDG&E offer no reason why they should share in the benefits of a Revenue

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[56] Ex. 27.

[57] Transcript, pp. 1016, line 25 - 1019, line 27 (Van Lierop, SoCalGas).

[58] Ex. 23, p. 10, lines 4-9.

[59] Ex. 18, p. 2-8, lines 3-5.

[60] Transcript, p. 1218, lines 1-6 (Blatter, PG&E); Gas Accord V Settlement Agreement, Appendix C, Page C-3.

[61] Gas Accord V Settlement Section 9.5.1; Ex. 18, p. 2-8, lines 8-11; Transcript, p. 1022, lines 7-11 (Van Lierop, SoCalGas).

Sharing Mechanism.

D. PG&E Should Not Be Subject To Additional Storage Posting Requirements

SoCalGas/SDG&E propose that PG&E be required to comply with information posting requirements regarding its storage operations equivalent to those which the FERC imposes on market-based storage fields that are directly connected to interstate pipelines and that provide interstate gas storage service under Section 7(c) of the Natural Gas Act. This proposed requirement would require PG&E to post, for example: (upon first nomination) customer identity, contract duration, contract quantity, rate charged, and affiliate relationship. In addition, the FERC requires that an index of customers (including much of the same information) be posted quarterly.

The Commission should reject SoCalGas/SDG&E's attempt to impose these requirements on PG&E for two reasons. First, additional storage posting requirements are unnecessary in the northern California storage market. Unlike the southern California storage market, which has only one storage provider (SoCalGas), the northern California market is competitive. In addition to PG&E, which has substantial storage assets totaling 98 Bcf of capacity, Wild Goose and Lodi Gas Storage operate independent gas storage operations. Wild Goose has a current working gas capacity of 29 Bcf, and has filed for an expansion of up to 50 Bcf of working gas capacity.[62] Lodi Gas Storage currently has a total working gas capacity of approximately 34 Bcf.[63] Gill Ranch Storage commenced commercial operation on October 3, 2010.[64] The Gill Ranch Project comprises 15 Bcf of working capacity for GRS, and 5 Bcf for

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[62] Ex. 24, p. 4, lines 1-13.

[63] Ex. 24, pp. 6, line 27- 7, line 1.

[64] Ex. 24, p. 7, lines 2-4.

PG&E.[65] In addition, Central Valley Gas Storage ("CVGS") filed an Application for a Certificate of Public Convenience and Necessity ("CPCN"), and the Commission issued a final decision granting the certificate on October 14, 2010.[66]

By contrast, the southern California storage market is a monopoly of SoCalGas. It operates the only gas storage facilities in its service territory.[67] Although SoCalGas claims that customers for SoCalGas's unbundled storage services shop for competitive alternatives with the northern California storage fields, there is no evidence that that is true. In fact, from January 1, 2005 through August 31, 2010, receipts at the SoCalGas receipt point at Kern River Station have averaged only 1,898 decatherms per day, or 0.09 percent of total PG&E on-system receipts, indicating that customers of SoCalGas are not purchasing storage services in northern California to serve southern California.[68]

The storage market in northern California is competitive, with many participants, and is growing each year with new investments being made by various competitors. Requiring PG&E to make additional storage postings is unnecessary in light of the competitive market for storage in northern California. Neither PG&E's customers, nor the Commission, has ever indicated to PG&E that PG&E's current monthly storage reports are inadequate.[69] As Wild Goose and Gill Ranch Storage explain succinctly, "It is a solution in search of a problem."[70]

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[65] Ex. 24, p. 7, lines 4-6.

[66] D. 10-10-001.

[67] Transcript, p. 1053, lines 10-15; 1054, lines 11-26 (Watson, SoCalGas/SDG&E).

[68] Ex. 18, p. 1-10, lines 24-28.

[69] Ex. 18, p. 1-12, lines 31-33; Transcript, p. 1195, lines 14-26 (Graham, PG&E).

[70] Ex. 24, p. 10, line 2.

In addition, the Independent Storage Providers offered testimony that northern California storage customers have adequate means of price discovery in the absence of any posting requirements,[71] and the Commission has instituted adequate means of monitoring the storage market for any potential market power issues.[72] The witnesses on the panel for the Independent Storage providers also testified that merely posting *ex post* prices is not as beneficial to customers as current price information and is, therefore, potentially misleading.[73]

Second, subjecting only PG&E to the FERC storage posting requirements would create an unlevel playing field in the northern California storage market. SoCalGas explains the problems associated with a disparity of posting requirements in its own testimony:

> Although SoCalGas' competitors can easily see SoCalGas' posted prices, SoCalGas does not know what prices are being offered by its competitors. If SoCalGas prices its products too high, it will lose sales revenue to the detriment of its ratepayers. If, on the basis of inaccurate or misrepresented claims concerning what competitors are offering, SoCalGas discounts its products too much, then it will lose revenues in that case as well.[74]

SoCalGas witness Steve Watson admitted that ordering PG&E to make the FERC-required storage posting would put PG&E in the same position, and could lead to lost revenues for PG&E.[75] Thus, SoCalGas's proposal would put PG&E in the very same disadvantaged position that SoCalGas incorrectly asserts that it now occupies. SoCalGas has offered no reason why PG&E should be put in that position.

[71] Ex. 24, pp. 12, line 12-13, line 7.

[72] Ex. 24, p. 10, lines 5-26.

[73] Transcript, pp. 1157, line 9 - 1158, line 11 (Yadav, Wild Goose; Henderson, Gill Ranch).

[74] Ex. 22, p. 9, lines 9-13.

[75] Transcript, pp. 1058, line 4- 1059, line 28 (Watson, SoCalGas/SDG&E).

In fact, as hard as SoCalGas tried at hearing to hide this fact through serial, duplicative motions to strike, SoCalGas voluntarily put itself in the position of making additional storage postings in order to settle claims that Sempra Energy, SoCalGas, and SDG&E conspired to restrict natural gas supplies to California during the energy crisis.[76] SoCalGas/SDG&E's agreement to make additional storage postings in order to settle antitrust claims is not a sufficient basis on which to impose additional storage posting requirements on PG&E.

Furthermore, SoCalGas's suggestions for "leveling the playing field" are not sufficient. Although SoCalGas suggests that "the Commission could require posting of transactional price and volume information by other storage providers in California when those providers request Commission approval for expansion of their existing storage facilities and/or construction of new storage facilities,"[77] it readily admitted that it failed to even raise the issue of storage posting requirements in the recent proceedings concerning expansion of the Wild Goose facility and the new construction of the Gill Ranch facility.[78] Moreover, in the only proceeding in which SoCalGas did argue for additional storage posting requirements, the Commission explicitly rejected SoCalGas's request.[79]

If the Commission imposes additional storage posting requirements on PG&E, it will be the only storage provider in northern California required to make such postings, possibly for many years to come, creating an unlevel playing field that is not justified in the name of market

[76] *See* Application of Southern California Gas Company, San Diego Gas & Electric Company and Southern California Edison Company for Approval of Changes to Natural Gas Operations and Service Offerings, A.06-08-026, p. 2.

[77] Ex. 22, p. 14, lines 12-14.

[78] Transcript, pp. 1060, line 19- 1061, line 13 (Watson, SoCalGas/SDG&E).

[79] D. 10-10-001, pp. 34-35.

transparency.

IV. CONCLUSION

For the foregoing reasons, PG&E and the Indicated Settlement Parties urge the Commission to adopt the Gas Accord V Settlement without modification.

Respectfully submitted on behalf of all Indicated Settlement Parties under Rule 1.8(d),

MARK D. PATRIZIO
KERRY C. KLEIN

By: *<u>/s/ Kerry C. Klein</u>*
KERRY C. KLEIN

Pacific Gas and Electric Company
P.O. Box 7442
San Francisco, CA 94120
Telephone: (415) 973-3251
Facsimile: (415) 973-5520
E-Mail: KCK5@pge.com

Attorneys for
PACIFIC GAS AND ELECTRIC COMPANY

Dated: November 10, 2010

CERTIFICATE OF SERVICE BY ELECTRONIC MAIL OR U.S. MAIL

I, the undersigned, state that I am a citizen of the United States and am employed in the City and County of San Francisco; that I am over the age of eighteen (18) years and not a party to the within cause; and that my business address is Pacific Gas and Electric Company, Law Department, 77 Beale Street B30A, San Francisco, California 94105.

I am readily familiar with the business practice of Pacific Gas and Electric Company for collection and processing of correspondence for mailing with the United States Postal Service. In the ordinary course of business, correspondence is deposited with the United States Postal Service the same day it is submitted for mailing.

On November 10, 2010, I served a true copy of:

OPENING BRIEF OF PG&E AND INDICATED GAS ACCORD V SETTLEMENT PARTIES

[XX] By Electronic Mail – serving the enclosed via e-mail transmission to each of the parties listed on the official service list for A.09-09-013 with an e-mail address.

[XX] By U.S. Mail – by placing the enclosed for collection and mailing, in the course of ordinary business practice, with other correspondence of Pacific Gas and Electric Company, enclosed in a sealed envelope, with postage fully prepaid, addressed to those parties listed on the official service list for A.09-09-013 without an e-mail address.

I certify and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on this 10th day of November 2010 at San Francisco, California.

/s/ Amy S. Yu

Amy S. Yu

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA SERVICE LIST

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Total number of addressees: 86

CASE ADMINISTRATION
PACIFIC GAS & ELECTRIC COMPANY
77 BEALE ST, MC B9A
SAN FRANCISCO CA 94177
Email: RegRelCPUCCases@pge.com
Status: INFORMATION

KENNETH BRENNAN
PACIFIC GAS AND ELECTRIC COMPANY
PO BOX 770000, MC N15A
SAN FRANCISCO CA 94177
Email: KJBh@pge.com
Status: INFORMATION

KRISTINA M. CASTRENCE
PACIFIC GAS AND ELECTRIC COMPANY
OPERATIONS PROCEEDINGS
77 BEALE ST., PO BOX 7442, MC B10A
SAN FRANCISCO CA 94120
Email: kmmj@pge.com
Status: INFORMATION

CASE COORDINATION
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE ST., PO BOX 770000 MC B9A
SAN FRANCISCO CA 94105
Email: RegRelCPUCCases@pge.com
Status: INFORMATION

ROGER GRAHAM
PACIFIC GAS & ELECTRIC COMPANY
245 MARKET ST, MC N15A
SAN FRANCISCO CA 94105
Email: RAG5@pge.com
Status: INFORMATION

NICOLAS KLEIN
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE ST, MC B9A
SAN FRANCISCO CA 94105
Email: NXKI@pge.com
Status: INFORMATION

WENDY LEI RATE CASE COORDINATOR
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE ST, RM 978, MAIL CODE B9A
SAN FRANCISCO CA 94105
Email: WMLb@pge.com
Status: INFORMATION

CARL ORR
PACIFIC GAS & ELECTRIC COMPANY
245 MARKET ST, MC N15A
SAN FRANCISCO CA 94105
Email: CDO1@pge.com
Status: INFORMATION

MARK D. PATRIZIO
PACIFIC GAS AND ELECTRIC COMPANY
PO BOX 7442, B30A
SAN FRANCISCO CA 94120
FOR: Pacific Gas and Electric Company
Email: MDP5@pge.com
Status: INFORMATION

WILLIAM STOCK
PACIFIC GAS & ELECTRIC COMPANY
77 BEALE ST, MC B10C
SAN FRANCISCO CA 94105
Email: WCS3@pge.com
Status: INFORMATION

KERRY C. KLEIN ATTORNEY
PACIFIC GAS AND ELECTRIC COMPANY
PO BOX 7442
SAN FRANCISCO CA 94120
FOR: Pacific Gas and Electric Company
Email: kck5@pge.com
Status: PARTY

Eugene Cadenasso
CALIF PUBLIC UTILITIES COMMISSION
ENERGY DIVISION
505 VAN NESS AVE AREA 4-A
SAN FRANCISCO CA 94102-3214
Email: cpe@cpuc.ca.gov
Status: STATE-SERVICE

Anthony Fest
CALIF PUBLIC UTILITIES COMMISSION
ENERGY COST OF SERVICE & NATURAL GAS BRANCH
505 VAN NESS AVE RM 4205
SAN FRANCISCO CA 94102-3214
Email: adf@cpuc.ca.gov
Status: STATE-SERVICE

Kelly C. Lee
CALIF PUBLIC UTILITIES COMMISSION
ENERGY COST OF SERVICE & NATURAL GAS BRANCH
505 VAN NESS AVE RM 4102
SAN FRANCISCO CA 94102-3214
Email: kcl@cpuc.ca.gov
Status: STATE-SERVICE

Richard A. Myers
CALIF PUBLIC UTILITIES COMMISSION
ENERGY DIVISION
505 VAN NESS AVE AREA 4-A
SAN FRANCISCO CA 94102-3214
Email: ram@cpuc.ca.gov
Status: STATE-SERVICE

Ramesh Ramchandani
CALIF PUBLIC UTILITIES COMMISSION
ENERGY COST OF SERVICE & NATURAL GAS BRANCH
505 VAN NESS AVE RM 4102
SAN FRANCISCO CA 94102-3214
Email: rxr@cpuc.ca.gov
Status: STATE-SERVICE

Thomas M. Renaghan
CALIF PUBLIC UTILITIES COMMISSION
ENERGY COST OF SERVICE & NATURAL GAS BRANCH
505 VAN NESS AVE RM 4205
SAN FRANCISCO CA 94102-3214
Email: tmr@cpuc.ca.gov
Status: STATE-SERVICE

Pearlie Sabino
CALIF PUBLIC UTILITIES COMMISSION
ENERGY COST OF SERVICE & NATURAL GAS BRANCH
505 VAN NESS AVE RM 4209
SAN FRANCISCO CA 94102-3214
Email: pzs@cpuc.ca.gov
Status: STATE-SERVICE

Karen M. Shea
CALIF PUBLIC UTILITIES COMMISSION
EXECUTIVE DIVISION
505 VAN NESS AVE RM 5303
SAN FRANCISCO CA 94102-3214
Email: kms@cpuc.ca.gov
Status: STATE-SERVICE

John S. Wong
CALIF PUBLIC UTILITIES COMMISSION
DIVISION OF ADMINISTRATIVE LAW JUDGES
505 VAN NESS AVE RM 5106
SAN FRANCISCO CA 94102-3214
Email: jsw@cpuc.ca.gov
Status: STATE-SERVICE

MARK PINNEY
CANADIAN ASSN. OF PETROLEUM PRODUCERS
2100, 350-7TH AVE., S.W.
CALGARY AB T2P 3N9 CANADA
FOR: Canadian Association of Petroleum Producers
Email: pinney@capp.ca
Status: PARTY

JASON A. DUBCHAK
WILD GOOSE STORAGE LLC
607 8TH AVE S.W., STE 400
CALGARY AB T2P OA7 CANADA
Email: jason.dubchak@niskags.com
Status: INFORMATION

GERALD L. LAHR
ABAG POWER
101 EIGHTH ST
OAKLAND CA 94607
FOR: ABAG Power
Email: JerryL@abag.ca.gov
Status: PARTY

KAREN TERRANOVA
ALCANTAR & KAHL
33 NEW MONTGOMERY ST, STE 1850
SAN FRANCISCO CA 94105
Email: filings@a-klaw.com
Status: INFORMATION

CATHERINE E. YAP
BARKOVICH & YAP, INC.
PO BOX 11031
OAKLAND CA 94611
Email: ceyap@earthlink.net
Status: INFORMATION

BETH VAUGHAN
CALIFORNIA COGENERATION COUNCIL
4391 NORTH MARSH ELDER CT.
CONCORD CA 94521
Email: beth@beth411.com
Status: INFORMATION

HILARY CORRIGAN
CALIFORNIA ENERGY MARKETS
425 DIVISADERO ST. STE 303
SAN FRANCISCO CA 94117-2242
Email: cem@newsdata.com
Status: INFORMATION

KEITH R. MCCREA ATTORNEY
SUTHERLAND ASBILL & BRENNAN LLP
1275 PENNSYLVANIA AVE, NW
WASHINGTON DC 20004-2415
FOR: California Manufacturers and Technology Association (CMTA)
Email: keith.mccrea@sutherland.com
Status: PARTY

JAY DIBBLE
CALPINE CORPORATION
717 TEXAS AVE, STE 1000
HOUSTON TX 77002
Email: jdibble@calpine.com
Status: INFORMATION

R. THOMAS BEACH
CALIFORNIA COGENERATION COUNCIL
2560 NINTH ST, STE 213A
BERKELEY CA 94710-2557
FOR: Calpine Corporation and The California Cogeneration Council
Email: tomb@crossborderenergy.com
Status: PARTY

SEEMA SRINIVASAN
ALCANTAR & KAHL LLP
33 NEW MONTGOMERY ST, STE 1850
SAN FRANCISCO CA 94105
FOR: Chevron USA/ ConocoPhillips/Occidental Energy Marketing, Inc.
Email: sls@a-klaw.com
Status: PARTY

GARY BAUM CITY ATTORNEY
CITY OF PALO ALTO
250 HAMILTON AVE
PALO ALTO CA 94301
FOR: City of Palo Alto
Email: Grant.kolling@CityofPaloAlto.org
Status: INFORMATION

GREGGORY L. WHEATLAND
ELLISON SCHNEIDER & HARRIS L.L.P.
2600 CAPITOL AVE, STE 400
SACRAMENTO CA 95816-5905
FOR: Clearwater Port LLC
Email: glw@eslawfirm.com
Status: PARTY

PETER G. ESPOSITO
CRESTED BUTTE CATALYSTS LLC
PO BOX 668 / 1181 GOTHIC CORRIDOR CR317
CRESTED BUTTE CO 81224
Email: peteresposito@earthlink.net
Status: INFORMATION

RALPH R. NEVIS
DAY CARTER & MURPHY LLP
3620 AMERICAN RIVER DR., STE 205
SACRAMENTO CA 95864
Email: rnevis@daycartermurphy.com
Status: INFORMATION

AVIS KOWALEWSKI
CALPINE CORPORATION
4160 DUBLIN BLVD, STE 100
DUBLIN CA 94568
Email: kowalewskia@calpine.com
Status: INFORMATION

EVELYN KAHL
ALCANTAR & KAHL, LLP
33 NEW MONTGOMERY ST, STE 1850
SAN FRANCISCO CA 94015
FOR: Chevron USA/ ConocoPhillips/Occidental Energy Marketing, Inc
Email: ek@a-klaw.com
Status: INFORMATION

KARLA DAILEY
CITY OF PALO ALTO
UTILITIES DEPARTMENT
BOX 10250
PALO ALTO CA 94303
Email: karla.Dailey@CityofPaloAlto.org
Status: INFORMATION

GRANT KOLLING
CITY OF PALO ALTO
250 HAMILTON AVE, PO BOX 10250
PALO ALTO CA 94303
FOR: City of Palo Alto
Email: Grant.Kolling@cityofpaloalto.org
Status: INFORMATION

DOUG VAN BRUNT
CREDIT SUISSE
11000 LOUISIANA ST, STE. 4600
HOUSTON TX 77002
Email: doug.vanbrunt@credit-suisse.com
Status: INFORMATION

EDWARD W. O'NEILL
DAVIS WRIGHT TREMAINE
505 MONTGOMERY ST, STE 800
SAN FRANCISCO CA 94111-6533
Email: edwardoneill@dwt.com
Status: INFORMATION

DRA
DIVISION OF RATEPAYER ADVOCATES
CPUC - ENERGY COST OF SRVC & NAT'L GAS
RM 4102
SAN FRANCISCO CA 94102
Status: STATE-SERVICE

GREGORY KLATT ATTORNEY
DOUGLASS & LIDDELL
411 E. HUNTINGTON DRIVE, STE 107-356
ARCADIA CA 91007
Email: klatt@energyattorney.com
Status: INFORMATION

Marion Peleo
CALIF PUBLIC UTILITIES COMMISSION
LEGAL DIVISION
505 VAN NESS AVE RM 4107
SAN FRANCISCO CA 94102-3214
FOR: DRA
Email: map@cpuc.ca.gov
Status: PARTY

JOSEPH PAUL SENIOR CORPORATE COUNSEL
DYNEGY-WEST GENERATION
1000LOUISIANA ST, STE. 5800
HOUSTON TX 77002
FOR: Dynegy-West Generation
Email: joe.paul@dynegy.com
Status: PARTY

FRANCESCA E. CILIBERTI COUNSEL
EL PASO CORPORATION - WESTERN PIPELINES
2 N. NEVADA AVEUE
COLORADO SPRINGS CO 80903
FOR: El Paso Corporation
Email: francesca.ciliberti@elpaso.com
Status: PARTY

JEFFERY D. HARRIS
ELLISON, SCHNEIDER & HARRIS LLP
2600 CAPITOL AVE, STE 400
SACRAMENTO CA 95816-5905
Email: jdh@eslawfirm.com
Status: INFORMATION

EVA N. NEUFELD ASSOCIATE GENERAL COUNSEL
GAS TRANSMISSION NORTHWEST CORPORATION
717 TEXAS ST, STE 26260
HOUSTON TX 77002-2761
Email: eva_neufeld@transcanada.com
Status: INFORMATION

DAVID L. HUARD
MANATT, PHELPS & PHILLIPS, LLP
ONE EMBARCADERO CTR, STE 2900
SAN FRANCISCO CA 94111-3736
FOR: Gas Transmission Northwest Corporation
Email: dhuard@manatt.com
Status: PARTY

CASSANDRA SWEET
DOW JONES NEWSWIRES
EMAIL ONLY
EMAIL ONLY CA 0
Email: cassandra.sweet@dowjones.com
Status: INFORMATION

BRIAN T. CRAGG
GOODIN, MACBRIDE, SQUERI, DAY & LAMPREY
505 SANSOME ST, STE 900
SAN FRANCISCO CA 94111
FOR: Dynegy Moss Landing, LLC
Email: bcragg@goodinmacbride.com
Status: PARTY

WILLIAM W. TOMLINSON
EL PASO CORPORATION
2 NORTH NEVADA AVE.
COLORADO SPRINGS CA 80919
Email: william.tomlinson@elpaso.com
Status: INFORMATION

BRIAN BIERING ATTORNEY
ELLISON SCHNEIDER & HARRIS
2600 CAPITOL AVE, STE 400
SACRAMENTO CA 95816-5905
Email: bsb@eslawfirm.com
Status: INFORMATION

MICHAEL G. NELSON
EMAIL ONLY
EMAIL ONLY CA 0
Email: MNelson@MccarthyLaw.com
Status: INFORMATION

TARA S. KAUSHIK
MANATT, PHELPS & PHILLIPS, LLP
ONE EMBARCADERO CENTER, 30TH FLR
SAN FRANCISCO CA 94111
FOR: Gas Transmission Northwest Corporation
Email: tkaushik@manatt.com
Status: INFORMATION

ANN L. TROWBRIDGE
DAY CARTER & MURPHY LLP
3620 AMERICAN RIVER DRIVE, STE 205
SACRAMENTO CA 95864
FOR: Gill Ranch Storage, LLC
Email: atrowbridge@daycartermurphy.com
Status: PARTY

JEANNE B. ARMSTRONG
GOODIN MACBRIDE SQUERI RITCHIE & DAY LLP
505 SANSOME ST, STE 900
SAN FRANCISCO CA 94111
Email: jarmstrong@gmssr.com
Status: INFORMATION

JULIE MORRIS
IBERDROLA RENEWABLES INC
1125 NW COUCH ST, STE 700
PORTLAND OR 97209
Email: Julie.Moriis@iberdrolaren.com
Status: INFORMATION

WILLIAM MARCUS
JBS ENERGY, INC.
311 D ST, STE A
WEST SACRAMENTO CA 95605
Email: bill@jbsenergy.com
Status: INFORMATION

PATRICIA M. FRENCH
KERN RIVER GAS TRANSMISSION
2755 E. CONTTONWOOD PARKWAY, STE. 300
SALT LAKE CITY UT 84121
FOR: Kern River Gas Transmission Co.
Email: trish.french@kernrivergas.com
Status: PARTY

JAMES J. HECKLER
LEVIN CAPITAL STRATEGIES
595 MADISON AVE
NEW YORK NY 10022
Email: jheckler@levincap.com
Status: INFORMATION

DAN L. CARROLL ATTORNEY
DOWNEY BRAND, LLP
621 CAPITOL MALL, 18TH FLR
SACRAMENTO CA 95814
FOR: Lodi Gas Storage, L.L.C.
Email: dcarroll@downeybrand.com
Status: PARTY

LISA A. COTTLE
WINSTON & STRAWN LLP
101 CALIFORNIA ST, 39TH FLR
SAN FRANCISCO CA 94114
FOR: Mirant California, LLC and Mirant Delta, LLC
Email: lcottle@winston.com
Status: INFORMATION

SEAN P. BEATTY
MIRANT CALIFORNIA, LLC
696 WEST 10TH ST
PITTSBURG CA 94565
FOR: Mirant California, LLC and Mirant Delta, LLC
Email: Sean.Beatty@mirant.com
Status: PARTY

THOMAS W. SOLOMON ATTORNEY
WINSTON & STRAWN LLP
101 CALIFORNIA ST, 39TH FLR
SAN FRANCISCO CA 94111-5894
FOR: Mirant California, LLC/Mirant Delta, LLC
Email: tsolomon@winston.com
Status: INFORMATION

MRW & ASSOCIATES, LLC
EMAIL ONLY
EMAIL ONLY CA 0
Email: mrw@mrwassoc.com
Status: INFORMATION

RAY WELCH ASSOCIATE DIRECTOR
NAVIGANT CONSULTING, INC.
ONE MARKET PLAZA, STE 1200
SAN FRANCISCO CA 94105
Email: ray.welch@navigantconsulting.com
Status: INFORMATION

BARRY F. MCCARTHY
MCCARTHY & BERLIN, LLP
100 WEST SAN FERNANDO ST., STE. 501
SAN JOSE CA 95113
FOR: Northern California Generation Coalition
Email: bmcc@mccarthylaw.com
Status: PARTY

TOM ROTH
ROTH ENERGY COMPANY
EMAIL ONLY
EMAIL ONLY CA 0
Email: rothenergy@sbcglobal.net
Status: INFORMATION

STEVE COHN
SACRAMENTO MUNICIPAL UTILITY DISTRICT
6301 S. ST
SACRAMENTO CA 95817
FOR: Sacramento Municipal Utility District
Email: scohn@smud.org
Status: PARTY

MICHAEL ROCHMAN MANAGING DIRECTOR
SCHOOL PROJECT UTILITY RATE REDUCTION
1850 GATEWAY BLVD., STE. 235
CONCORD CA 94520
FOR: School Project for Utility Rate Reduction (SPURR)
Email: rochmanm@spurr.org
Status: PARTY

JOHNNY PONG
SEMPRA ENERGY
555 WEST FIFTH ST NO. 1400
LOS ANGELES CA 90013-1011
FOR: SDG&E/SoCal Gas
Email: JPong@SempraUtilities.com
Status: PARTY

MARCIE A. MILNER -1374
SHELL ENERGY NORTH AMERICA (US), L.P.
4445 EASTGATE MALL, STE. 100
SAN DIEGO CA 92121
Email: marcie.milner@shell.com
Status: INFORMATION

JOHN W. LESLIE, ESQ.
LUCE, FORWARD, HAMILTON & SCRIPPS, LLP
EMAIL ONLY
EMAIL ONLY CA 0
FOR: Shell Energy North America (US) LP
Email: jleslie@luce.com
Status: PARTY

SANDRA MOORMAN
SMUD
6301 S ST
SACRAMENTO CA 95817
Email: smoorma@smud.org
Status: INFORMATION

MICHAEL S. ALEXANDER ENERGY SUPPLLY AND MANAGEMENT
SOUTHERN CALIFORNIA EDISON
2244 WALNUT GROVE AVE
ROSEMEAD CA 91006
Email: michael.alexander@sce.com
Status: INFORMATION

JEFFREY L. SALAZAR
SOUTHERN CALIFORNIA GAS COMPANY
555 WEST FIFTH ST, GT14D6
LOS ANGELES CA 90013
Email: JLSalazar@SempraUtilities.com
Status: INFORMATION

NORMAN A. PEDERSEN
HANNA AND MORTON LLP
444 SOUTH FLOWER ST, STE 1500
LOS ANGELES CA 90071-2916
FOR: Southern California Generation Coaliton
Email: npedersen@hanmor.com
Status: PARTY

BRANDI E. DAY
SPARK ENERGY GAS, LP
2105 CITYWEST BLVD., STE 100
HOUSTON TX 77042
Email: bday@sparkenergy.com
Status: INFORMATION

KEN ZIOBLER
SPARK ENERGY GAS, LP.
2105 CITYWEST BLVD., STE 100
HOUSTON TX 77042
FOR: Spark Energy Gas, LP.
Email: kziobler@sparkenergy.com
Status: PARTY

JOSEPH M. KARP ATTORNEY
WINSTON & STRAWN LLP
101 CALIFORNIA ST, 39TH FL
SAN FRANCISCO CA 94111-5894
FOR: The Calpine corp/The Calif. Cogeneration council
Email: jkarp@winston.com
Status: PARTY

MICHEL PETER FLORIO
THE UTILITY REFORM NETWORK
115 SANSOME ST, STE 900
SAN FRANCISCO CA 94104
FOR: The Utility Reform Network
Email: mflorio@turn.org
Status: PARTY

KEN BOHN
TIGER NATURAL GAS AND IN-HOUSE ENERGY
337 ALEXANDER PLACE
CLAYTON CA 94517
FOR: Tiger Natural Gas and In-House Energy
Email: ken@in-houseenergy.com
Status: PARTY

JULIEN DUMOULIN-SMITH ASSOCIATE ANALYST
UBS INVESTMENT RESEARCH
1285 AVE OF THE AMERICAS
NEW YORK NY 10019
Email: julien.dumoulin-smith@ubs.com
Status: INFORMATION

MICHAEL B. DAY
GOODIN MACBRIDE SQUERI DAY & LAMPREY LLP
505 SANSOME ST, STE 900
SAN FRANCISCO CA 94111
FOR: Wild Goose Storage, LLC
Email: mday@goodinmacbride.com
Status: PARTY

ANDREW YIM
ZIMMER LUCAS PARTNERS
535 MADISON AVE., 6TH FLR
NEW YORK NY 10022
Email: Yim@ZimmerLucas.com
Status: INFORMATION