BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Consider the Annual Revenue Requirement Determination of the California Department of Water Resources and related issues.	Rulemaking 11-03-006 (Filed March 10, 2011)

PACIFIC GAS AND ELECTRIC COMPANY REPLY BRIEF

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I. INTRODUCTION

Pursuant to the Scoping Memorandum of Assigned Commissioner Florio and Assigned Administrative Law Judge Wilson dated September 7, 2011, PG&E hereby submits its reply brief to the opening briefs of Southern California Edison Company (SCE) and San Diego Gas and Electric Company (SDG&E) in the above captioned matter.

II. EXECUTIVE SUMMARY: SCE HAS PROVIDED NO REASONABLE JUSTIFICATION FOR ITS CUSTOMERS TO RECEIVE A WINDFALL OF APPROXIMATELY $130 MILLION AT THE EXPENSE OF PG&E'S CUSTOMERS

As explained in PG&E's Opening Brief (at pp. 1-2), there are two fundamental issues in this proceeding:

(1) whether and how the Commission should allocate approximately $269 million[1/] of discounts provided by Sempra to DWR in an electricity supply contract ("Sempra Contract") as part of a class action settlement known as the "Continental Forge (CF) Settlement" or "CF

1/ The total CF Settlement benefit is approximately $299 million. Approximately $30 million was received in August – December 2008 and was effectively allocated to PG&E, SCE, and SDG&E using the permanent allocation factors. That amount is not at issue in this proceeding. The remainder, approximately $269 million, is at issue in this proceeding.. .

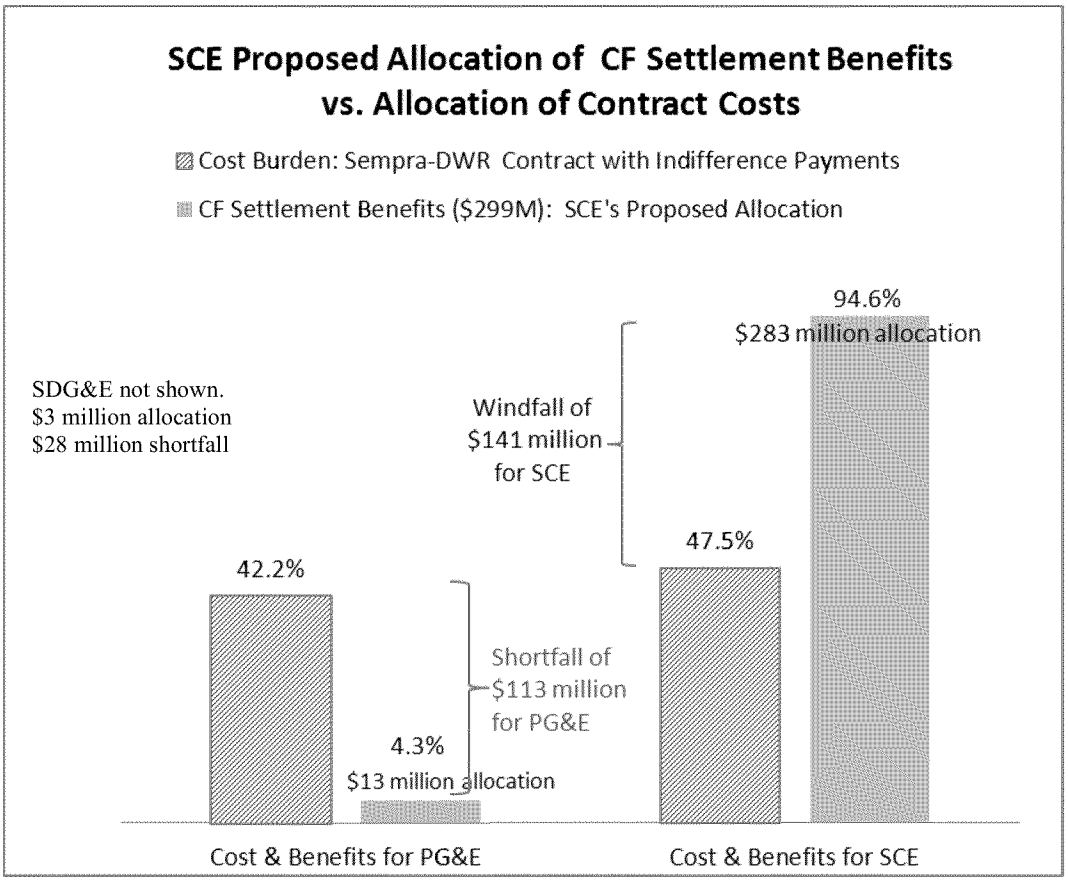
Discount";

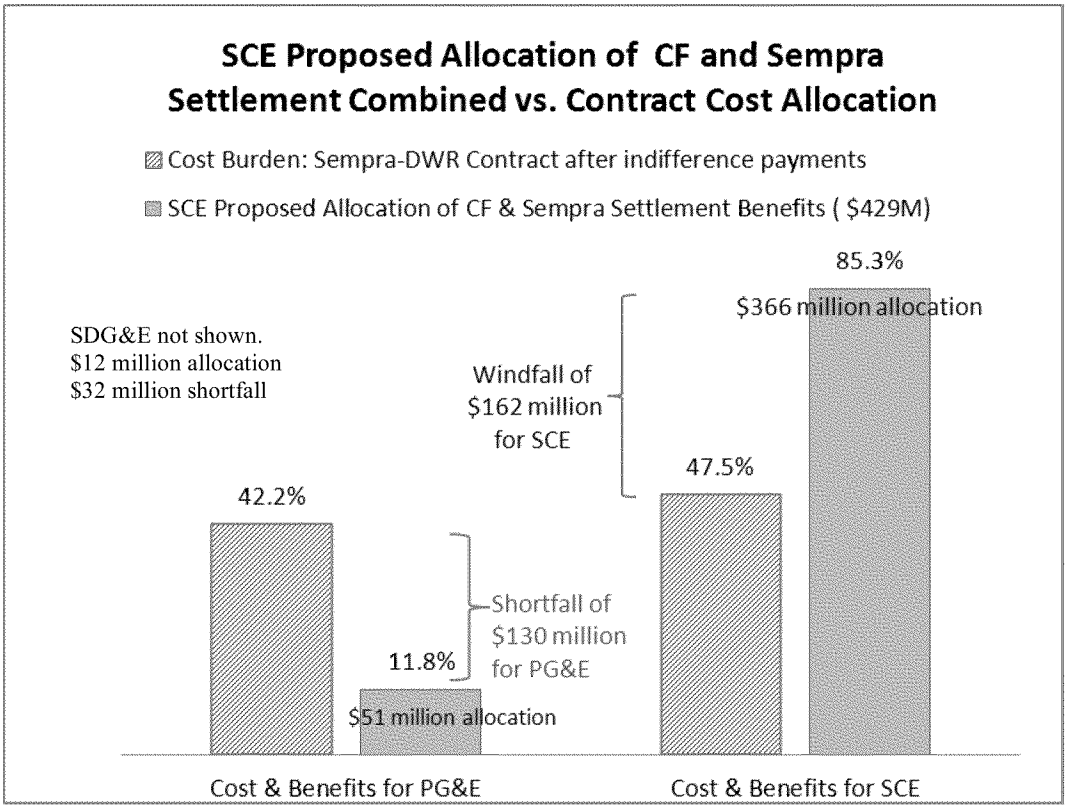
(2) how the Commission should allocate approximately $130 million in settlement payments from Sempra to DWR pursuant to a 2010 settlement known as the "Sempra Long-Term Contract Settlement" or "Sempra Settlement Funds."

It is undisputed that PG&E's customers have paid 42.2% of the non-avoidable costs of the Sempra Contract --- either through the permanent allocation percentages (prior to 2009) or through indifference payments after 2009. Nonetheless, SCE continues to assert that PG&E's customers are entitled to none of the CF Settlement discount paid after January 1, 2009 and none of the proceeds of the Long-Term Contract Settlement that SCE attributes to a period after January 1, 2009.

The following charts show how SCE's proposed allocation would work to alter the share of settlement proceeds that PG&E's customers would ordinarily expect in relation to the costs they have borne with respect to the CF Settlement discount alone and with respect to the CF Settlement discount and the Sempra Long Term Contract Settlement combined:[2/]

2/ The table in Appendix A shows numerically how the SCE and PG&E proposals for allocating settlement proceeds compare.





A. Continental Forge Settlement ($269 million)

With respect to the CF Settlement discount, SCE proposes that its customers receive the entire benefit of $269 million[/] in contract discounts at issue in this proceeding, despite the fact PG&E's customers bore 42.2% of the underlying non-avoidable contract costs. In this case, the unjustifiable amount allocated to SCE's customers at the expense of PG&E's customers is $113 million. As PG&E has shown in its Opening Brief (at pp. 10-15), not only is SCE's proposed allocation contrary to the Commission's Permanent Allocation and Indifference Decisions and the actual terms of the three utilities' (IOUs') Joint Advice Filing,[3/] it is directly contrary to the intent of representatives of the IOUs' electric customer class, who intended in the CF litigation that the discount would be allocated consistent with the ratepayers who bore the underlying costs.

Nothing in SCE's Opening Brief justifies its proposal to retain the entire benefit of the CF Settlement discounts paid after 2008 at the expense of PG&E's and SDG&E's customers.

First, SCE argues that DWR's omission of the CF Settlement from its forecast of non-avoidable costs was not a "mutual mistake" or "inadvertent error" but rather "established procedure [to] not forecast settlements when forecasting [DWR's] contract costs." (SCE Opening Brief, p. 11 and DWR's response to PG&E's first data request.) As PG&E explained in its Opening Brief, if DWR's omission of the CF Settlement was indeed intentional and not erroneous, then the CF Settlement discount was never captured in the indifference computation, and therefore, the Commission should treat the discount as a "[settlement] benefit arising from or in connection with other claims, proceedings, or litigation." (PG&E Opening Brief, p. 13, citing Joint Utility Advice Filing, p. 3.).[4/] All such settlement benefits that CDWR/CERS has received since 2004 have been shared using the permanent allocation percentages – the same relief that

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3/ D. 05-06-060 (the "Permanent Allocation Decision;" D. 08-11-056 (the "Indifference Decision)"; and Advice Letters 2051-E (SDG&E), 3384-E (PG&E), and 2304-E (SCE) (the "Joint Utility Advice Filing").

4/ See Joint Utility Advice filing attached as Appendix B.

PG&E seeks in this proceeding.[5/] Moreover, the Joint Utility Advice filing explicitly states that the change in DWR allocations using the Costs-Follows-Contract (CFC) method ***did not cause any change*** to Commission's prior method of allocating settlements (i.e., by using such percentages.) Thus, no matter how the omission is construed, the $269 million of CF Settlement discounts is either (1) a material omission of a non-avoidable cost that should have been captured in the indifference payment computations or, (2) a distinct settlement benefit that must be allocated now using the permanent allocation percentages in accordance with the Joint Advice Filing.

Second, SCE argues that "It is not possible to go back in time and determine with certainty what would have occurred if the CF Discount issue had been raised in 2008 by one or more of the IOUs" (SCE Opening Brief, p. 11), and therefore that the Commission should not now "retroactively change a jointly-agreed-to indifference payment calculation." (*Id.,* p. 2.) However, SCE inaccurately characterizes what was "agreed-to" at the time of the indifference payment calculation. As described in PG&E's Opening Brief, in the Joint Utility Advice Filing implementing the Indifference Decision, the IOUs agreed that the "indifference payments made by an IOU, or received by an IOU, will equal the amount necessary to allocate the same amount of unavoidable DWR contract costs to the IOU's customers what would have been allocated under D.05-06-060." (PG&E Opening Brief, p. 11, citing Advice Letters 2051-E et al.) In that same Advice Filing, the IOUs agreed that "The revised DWR cost allocation methodology [*i.e.,* CFC)] does not in any way impact or affect the allocation of costs or benefits arising from or in connection with other claims, proceedings, or litigation." (Joint Utility Advice Filing, p. 3, *quoted* in PG&E Opening Brief, p. 13.) Again, the plain language of the Joint Utility Advice Filing supports PG&E's position that the parties intended benefits such as the CF Settlement

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5/ Appendix C supplements Appendix A of PG&E's opening brief and provides a listing of additional settlements that have been (or will be) allocated using the permanent allocation percentages. PG&E has previously noted that there has been one settlement with a different allocation specifically agreed upon by the IOU's as part of the settlement. This situation does not apply here.

discount to be applied using the percentages of Decision 05-06-060 (the Permanent Allocation Decision).

Third, SCE also asserts that "if PG&E wants to re-look at the indifference payment calculation with respect to the CF Discount issue, there are a number of other issues that SCE's customers would like re-examined as well." (SCE Opening Brief, p. 3.) SCE's "tip of the iceberg" argument, however, misconstrues (and effectively contradicts) PG&E's position in this proceeding. PG&E's fundamental argument is that a 42.4% allocation of the CF Settlement proceeds to PG&E's customers is necessary to comply with Commission's Permanent Allocation Decision and Indifference Decision and the Joint IOUs' Compliance Advice Filing. SCE's position, in contrast, is that, if the Commission re-allocates the CF Settlement discount in compliance with such prior decisions, the Commission should give SCE the opportunity to re-open and to fundamentally change those decisions.

Finally, SCE makes a generalized complaint that too much time has passed to make these adjustments, calling PG&E's proposal "untimely" and prejudicial to SCE's customers. (SCE Opening Brief, p. 2; *see also id.,* p. 12.) As PG&E explained in its Opening Brief (at pp. 9, 15-16), however, each utility maintains balancing accounts (known as the Utility Specific Balancing Account or USBA) that allow for retroactive adjustments. In addition, because SCE's power cost revenue requirement is substantially negative in 2012, SCE's customers will only see a reduction in the substantial rebate they will receive from DWR during 2012 – and that rebate to SCE's customers will remain substantial in 2012 even with PG&E's proposed adjustments. (PG&E Opening Brief, pp. 15-16.) Moreover, SCE exaggerates the period of "delay" and the impact of making appropriate adjustments on SCE's customers. What DWR has characterized as an "unexpected" benefit to SCE's customers did not begin until January 1, 2010, when DWR's remittance rate for the 2009 benefit became effective, and then only as to CF Settlement discounts covering two-thirds of one year that were recorded in the USBA (cash months, January 2009 through August 2009). All remaining CF Settlement Discounts (nearly 80% of the $270 million) are reflected in DWR's revenue requirements and SCE's rates in the current year (2011)

or a later year (2012-2013). For SCE's customers, other (unpredictable) settlement benefits included in the 2012 DWR revenue requirement determination will more than offset any prior period adjustments proposed by PG&E.

B. Sempra Long-Term Contract Settlement ($130 million)

In its Opening Brief (at pp. 7-10), SCE claims that its proposed allocation of the Sempra Long-Term Contract Settlement is fair, reasonable and logical. However, PG&E has shown in its own Opening Brief (at pp. 17-19) that SCE's "look-back" approach is arbitrary, inconsistent, contrary to Commission policy; and does not conform to the IOUs' Joint Advice Filing, which expressly states that the allocation methods for settlements (i.e., the use of the permanent allocation percentages to share settlement funds) *was not being changed by the new DWR [CFC] allocation methodology*. Moreover, as with the CF Settlement, SCE's proposal regarding the Sempra Long-Term Contract Settlement would result in SCE's customers receiving 100% of the benefits it claims should be allocated to post-2009 Sempra Contract energy deliveries even though PG&E customers bore 42.2% of the unavoidable costs through indifference payments. The unjustifiable mismatch in SCE's Sempra Settlement Funds Proposal results in SCE customers getting a $17 million windfall at PG&E's customers' expense.

SCE invokes a sleight of hand when it first states that "The Sempra Settlement funds should be allocated among the IOUs in the same manner that ***costs*** have been allocated" (emphasis added), but then switches quickly to a ***quantity*** calculation—one based solely on the quantity of MWhs purchased under the Sempra Contract using different time periods. The step ignored by SCE is that the ***cost*** of those MWhs have been borne by all customers using the permanent allocation percentages, whether between 2004-2008, using the permanent allocation percentages, or after 2008, through indifference payments that maintained those allocations and held SCE's customers indifferent to the change. Thus, SCE's assertion "From 2009 to contract expiration…SCE's customers have assumed all the costs and risks associated with the performance of the Sempra Contract…", ignores the basis upon which those costs were assumed:

that is, that PG&E's customers would still be paying for 42.2% of the unavoidable Sempra Contract costs for that period through ongoing indifference payments.

III. THE COMMISSION SHOULD ALLOCATE THE CF SETTLEMENT DISCOUNT USING THE SAME PERCENTAGES THAT WERE USED TO ALLOCATE THE UNAVOIDABLE CONTRACT COSTS.

The primary issue in this proceeding, both in terms of dollars and level of disagreement among the parties, is the treatment of the CF Settlement discount after January 1, 2009. As noted above and in PG&E's Opening Brief (at pp. 10-17), SCE's position is that PG&E's customers should receive none of the benefits of the CF Settlement discount after January 1, 2009, even though PG&E's customers paid for 42.2% of the underlying costs attributable to that period.

A. SCE's Opening Brief Supports PG&E's Position That The CF Settlement Discount Should Be Allocated 42.2% To PG&E As A Settlement Proceed.

It is PG&E's position that, *if* the CF Settlement discount should have been treated as a non-avoidable contract cost, then all parties were under a mutual mistake of fact as to the non-avoidable costs not having been reflected properly in the DWR spreadsheets provided to the utilities for translation into indifference payments. (PG&E Opening Brief, pp. 8-13.) Alternatively, if the CF Settlement discount was treated as arising from other claims, proceedings, or litigation, then it should be allocated in accordance with the permanent allocation percentages. (*Id.,* pp. 13-14.) Under either scenario, PG&E's customers should receive the same portion of the benefits from that CF Settlement discount as the Sempra Contract costs they bore -- 42.2%.

In its Opening Brief (at pp. 2-3), SCE suggests that the indifference computation involved some "agreement" by the parties; to the contrary, the computation of those payments was largely mechanical. Specifically, while SCE notes that "each IOU had time to examine the calculation of the indifference payments, ask questions of DWR, and perform any desired due diligence analysis" (SCE Opening Brief, p. 2), SCE fails to acknowledge that DWR's spreadsheets of future non-avoidable costs were simply converted into a string of indifference payments based on math. No adjustments or disputes resulted from this straightforward

conversion of data. In addition, in the Joint Utility Compliance Filing, the IOUs specifically agreed that "The indifference payments made by an IOU, or received by an IOU, will equal the amount necessary to allocate the same amount of unavoidable DWR contract costs to the IOU's customers that would have been allocated under D.05-06-060." (Advice Letter 2051-E et al., *quoted in* PG&E Opening Brief, p. 11.) As PG&E has shown in its Opening Brief (at pp. 8-9), if the CF Settlement discount is now to be treated as a non-avoidable cost, then the indifference payment schedule must be modified to result in a mathematical match.

SCE's Opening Brief (at p. 11) also supports the alternative theory proposed by PG&E in its own Opening Brief for making a proper allocation: namely, the CF Settlement discount should not be treated as a non-avoidable cost but as an amount arising from a settlement. (PG&E Opening Brief, pp. 13-14.) SCE alleges that "PG&E has tried to characterize the IOUs' and DWR's conduct as a 'mutual mistake' and 'inadvertent error' that must be corrected." (SCE Opening Brief, p. 11.) However, SCE states that PG&E is incorrect because DWR did not treat these amounts as unavoidable costs because they were proceeds of a settlement:

> In other words, DWR confirmed that it applied the CF Discount in a consistent manner as with other settlements – i.e. with distributions reflected in accordance with the Commission-approved allocation method that was in place when the distributions were received. (*Id.*)

Further supporting treatment of these amounts as proceeds of a settlement, which may have had continuing uncertainty associated with it (and, therefore, not appropriately treated as a reduction of non-avoidable costs), SCE states:

> With respect to PG&E's theory of a "mutual mistake," SCE does not know what the other IOUs had in mind or whether they considered the 2006 CF Settlement or CF Discount at the time each of the IOUs approved the indifference calculations in 2008. It is not possible to go back in time and determine with certainty what would have occurred if the CF Discount issue had been raised in 2008 by one or more of the IOUs**. Notably, DWR has**

> **stated that the 2006 CF Settlement has many "escape hatches" that have rendered Sempra Energy's payment of the discount over past and future years speculative. It is not possible to determine how the IOUs would have dealt with the uncertainty of future CF Discounts. It is quite possible that SCE would not have allowed its ratepayers to assume the risk that the uncertain discounted payments materialize and would have objected to their inclusion in DWR's revenue requirement forecast or asked for adjustments to the forecast**. (*Id.*, emphasis added.)

SCE is correct that the 2006 CF Settlement did have "escape hatches" and adjustments that might have altered the value of the discount. It is also the case that the 2010 settlement with Sempra eliminated those escape hatches, converting them to real dollars, along with the $130 million additional payment we are also addressing. That is, it is the new settlement that fixed the values of the discount. Given these facts, and the fact that these discounts were indisputably not included in the schedules of non-avoidable costs, the discounts must now be treated under the litigation savings clause of the Joint Utility Advice Filing, which provides:

> The revised DWR cost allocation methodology [i.e., CFC, including the indifference payments] does not in any way impact or affect the allocation of costs or benefits arising from or in connection with other claims, proceedings, or litigation [i.e., those not reflected in non-avoidable costs]. (Joint Utility Advice Filing, p. 3, *quoted at* PG&E Opening Brief, p. 13.)

Thus, to comply with the terms of the Commission's Permanent Allocation Decision and Indifference Decision and the Joint Utility Advice Filing, the allocation of the CF Settlement discount must in accordance with the treatments of settlements generally– 10.3% to SDG&E's customers, 42.2% to PG&E's customers, and 47.5% to SCE's customers -- the same percentage that the IOUs' customers paid for the unavoidable costs of that contract.

As noted above, SCE argues in its Opening Brief that "It is not possible to go back in time and determine with certainty what would have occurred if the CF Discount issue had been

raised in 2008 by one or more of the IOUs" and that the Commission should not "retroactively change a jointly-agreed-to indifference payment calculation." (SCE Opening Brief, pp. 2, 11.) However, there is no evidence to suggest that the IOUs "jointly agreed" to the omission of the CF Settlement from the indifference calculation. One thing that is clear, however, is that in the Joint Utility Advice Filing implementing Decision 08-11-056 (the Indifference Decision), all of the IOUs expressly agreed:

> "The indifference payments made by an IOU, or received by an IOU, will equal the amount necessary to allocate the same amount of unavoidable DWR contract costs to the IOU's customers what would have been allocated under D.05-06-060."
>
> "The revised DWR cost allocation methodology [CFC] does not in any way impact or affect the allocation of costs or benefits arising from or in connection with other claims, proceedings, or litigation."

(Joint Utility Advice Filing, p. 3, *quoted* in PG&E Opening Brief, pp. 11, 13.) Under both Decision 05-06-060 and the "settlement exception" to the CFC methodology, the proceeds of the CF Discount should properly be allocated using the permanent allocation percentages.

B. The Commission Should Reject As Unfounded SCE's Claim Of Harm To Its Customers If An Adjustment Is Made.

In its Opening Brief, SCE claims that: "While the CF Discount issue may have been an unfortunate oversight by PG&E, to undo this oversight at this time would have an inequitable and unfair impact on SCE ratepayers, who are being asked to reverse the discounts that have already been reflected in customers' rates" and that "SCE's ratepayers have been unnecessarily prejudiced by PG&E's neglect to raise this CF Discount issue earlier." (SCE Opening Brief, p. 12.) As PG&E explained in its Executive Summary, above, however, almost 80% of the discounts are being reflected in rates in 2011 or a later year. SCE's protestation of customer prejudice and harm is highly questionable given the magnitude of the adjustment (which is but a fraction of SCE's total revenues) and the fact that energy balancing accounts and energy demand accounts often swing unpredictably by significant amounts. Moreover, as PG&E stated in its Opening Brief (at p. 4), any attempt to assign blame is essentially irrelevant to what is essentially

a ratepayer equity issue. Here, the fundamental issue remains the fact that PG&E's customers will be paying 42.2% of the Sempra Contract costs but will be receiving none of the benefits if the Commission adopts SCE's position.

Along similar lines, SCE argues that an adjustment should not be made because it built the 100% allocation of the CF Settlement discounts to its customers in its future rate planning:

> PG&E's proposal will detrimentally impact SCE's ratepayers by reducing the negative revenue requirement forecast from DWR in 2012, thereby placing upward pressure on SCE's retail rates. SCE has already reasonably relied on the indifference payment schedule approved by the Commission in 2008 and should not be required to adjust that schedule several years later. SCE's customers are facing upward rate pressures that could not be mitigated at this late date if the Commission were to adopt PG&E's proposed retroactive recalculation. (SCE Opening Brief, p. 13.)

SCE's claim of the timing or duration of an expected future benefit, and its purported reliance on that benefit, is questionable. As described above, SCE has also argued that there was a risk of the uncertain discounts not materializing – in other words, that this was a benefit that could not be relied upon. Also, SCE does not acknowledge when it became aware of what DWR calls this "unexpected" benefit from being allocated all of the CF Settlement discounts. The earliest it could have presumed such benefit would have been in connection with the 2010 revenue requirement proceeding when a small portion of the benefits first appeared in their USBA. Indeed, it is implausible that once SCE became aware of this "unexpected" benefit, it did not also assume the risk that PG&E would assert that having borne 42.2% of the Sempra Contract costs, that PG&E's customers were also entitled to share in 42.2% of the Settlement proceeds. In any event, SCE's argument that it customers would suffer undue harm by a reallocation of the CF Settlement discount is essentially an equitable argument, and the equities go against SCE and in favor allocating the discount to PG&E's customers that actually bore 42.2% of the costs at issue.

Finally, SCE exaggerates the impacts on its customers. No utility could have been assured that the various Sempra claims would ultimately settle in December, 2010 for approximately $239 million (including the Sempra short term claims and the Sempra Long Term Contract Settlement claim). SCE's customers' 47.5% share of the $239 million of recent settlement proceeds equals approximately $113.5 million and will offset entirely the prior period USBA adjustments that PG&E estimates at approximately $83 million.[6/] In addition, SCE customers would still receive under PG&E's proposal a substantial negative revenue requirement from DWR for 2012, likely to exceed $200 million. The Commission should, therefore, reject SCE's exaggerated claims about unexpected impacts on their customers.

C. The Commission Should Reject SCE's Threat To Reopen The Allocation Of Bond Charges Or To Ask For Reconsideration Of Congestion Charges And Other Issues.

SCE also claims that, if the Commission were to make the adjustments being proposed by PG&E, then the Commission should also reconsider its other decisions as well. However, as PG&E has explained in the Executive Summary above, SCE's argument turns PG&E's position on its head. PG&E is requesting that the Commission conform the CF Settlement discount allocation to the percentages adopted in its prior decisions; SCE is suggesting that PG&E's request would re-open prior decisions.

In any event, both the bond decision and the issue of congestion charges cited by SCE in its Opening Brief are clearly distinguishable from the issue at hand. In those cases, SCE is asking for change in a decision or advice filing. In contrast, PG&E is asking for a mathematical adjustment so that the results being sought by both the Indifference Decision and the Joint Utility Advice Filing can be fulfilled. Stated otherwise, applying the fixed allocation percentages to the CF discount to fulfill the terms of an advice filing is far different than seeking to change a

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6/ These include the USBA entries from January, 2009 through August 2010. All USBA allocations after August, 2010, are included in the USBA to be reflected in the 2012 revenue requirement.

decision or filing. The Commission should not conflate the need to make mathematical corrections or to treat settlement proceeds consistent with all other settlement proceeds with SCE's claim that it would then seek to revise prior Commission decisions.

As a specific example of the kind of changes that it would seek upon re-opening, SCE cites "the significant costs associated with the Sempra Contract borne solely by SCE's customers, such as congestion charges, line losses and contract deviation costs." (SCE Opening Brief, p. 3.) However, once again SCE is conflating *changing* a Commission decision, policy or advice filing, with *complying* with those decisions, policies, and filings.

First, PG&E believes that most (if not all) the costs SCE is referring to (e.g. congestion charges and line losses) would not be considered DWR costs, let alone DWR non-avoidable costs. Thus, these costs would not even have been allocable under the permanent allocation decision. SCE's concerns, therefore, do not concern compliance with the Indifference Decision or with the indifference computation contemplated by that decision, but rather an apparent complaint about the scope of the Permanent Allocation Decision. Stated otherwise, the equitable relief that SCE is seeking is likely to have required modification of the permanent allocation decision; this is far different than the PG&E adjustment that merely seeks conformance with the Indifference Decision and the Joint Utility Advice filing.

Second, regardless of whether or not the costs were costs of DWR, under the new CFC allocation method, utilities were automatically being assigned costs, including costs imposed by third parties, --- such as congestion charges that were to be imposed by the Independent System Operator (ISO) effective April, 2009. Each utility *knew* about the forthcoming ISO and other charges and *fully understood* that its customers would be directly assigned these costs under the CFC methodology, but presumably believed that the issue did not need to be revisited, perhaps because each utility would be imposed charges under their own assigned contracts on a roughly equivalent basis.[7/] This was certainly not true for the CF settlement. Either there was an

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7/ PG&E has been imposed similar charges under its non-avoidable contract with Coral. Further, ISO charges

unintentional error (and the unavoidable cost computation should be corrected to conform to the terms of the computation set forth in the Advice Filing) or the CF Settlement is covered by the other provision of the Joint Utility Advice which states that settlements not otherwise included in the unavoidable cost computation would continue to be allocated *without regard to the new CFC method* (i.e., by using the permanent allocation percentages). For third party and other charges there clearly was no error, and if SCE (or the other utilities) similarly wanted to exclude these charges imposed from the new CFC allocation, they should have done so in that filing, as the parties explicitly did with settlements

IV. THE COMMISSION SHOULD ALLOCATE THE SEMPRA LONG TERM CONTRACT SETTLEMENT BENEFITS IN ACCORDANCE WITH THE FIXED PERCENTAGES ADOPTED IN THE PERMANENT ALLOCATION EDCISION.

SCE has made a complicated proposal to allocate the proceeds of the Sempra Long-Term Contract Settlement based on the MWh deliveries under the contract, using the allocations in effect for the various contract periods. (SCE Opening Brief, pp. 7-10.) In its Opening Brief, PG&E explained why this approach is arbitrary and inconsistent with Commission policy and other settlement allocations. (PG&E Opening Brief, pp. 17-19.) Complexity and inconsistency with all other settlements is good enough reason to reject SCE's proposal. The most important reason, however, to reject SCE's proposal is that it would allocate to PG&E's customers none of the benefits for the settlement for a period in which PG&E's customers are incurring (through indifference payments) 42.2% of the costs. Of course, avoiding the issue of cost incurrence appears to be the point of the SCE proposal – as SCE has not provided any reasoned explanation for its novel proposal. Also, the Joint Utility Advice Filing specifically provided that the new CFC allocation method would not in any way change the allocation of settlement proceeds --- allocations that had been consistently done using the permanent allocation percentages. To

are imposed but then credited back to participants, since the ISO is not intended to profit from these charges. PG&E suspects, but is not certain, that SCE has stated its congestion charges on a gross basis, without regard to the credits back from the ISO. .

conform to that advice filing, therefore, the Commission must also reject SCE's proposal.

A. The Indifference Decision Preserves The Equities Of The Permanent Allocation Method And SCE's Proposal Would Alter Them.

PG&E's customers have paid and are paying 42.2% of the unavoidable costs of the Sempra Contract through indifference payments for the period from January 1, 2009 through the end of the contract in 2011. Notwithstanding this indisputable fact, SCE proposes to allocate to PG&E's customers none of the benefits of the Long Term Contract Settlement for this period --- even though the settlement was made because DWR believed that the unavoidable costs incurred under that contract were too high. In so doing, SCE's proposal would destroy the equities of the Permanent Allocation Decision that the Indifference Decision was specifically designed to preserve.

In its Opening brief, SCE claims:

> PG&E and SDG&E have proposed to only use a fixed percentage allocation method in effect during the 2004-2008 time period, despite the fact that this method was employed for less than half of the applicable refund period (i.e., less than half of the Sempra Contract term). This would prevent SCE from obtaining refunds pursuant to the CFC method in effect from January 1, 2009, forward, which would be inconsistent with the additional cost exposure SCE's customers incur or the congestion, deviation, and line losses associated with Sempra Generation deliveries. (SCE Opening Brief, p. 9.)

In effect, SCE is claiming that the CFC method resulted in a fundamental change in the allocation of a costs previously adopted under the Permanent Allocation Decision, such that those allocation no longer should apply to settlements relating to post January 1, 2008 periods. This position is belied, however, by the Commission's language, SCE's description of its own indifference computations, and the nature of an unavoidable cost.

The Commission wanted to facilitate the removal of DWR from energy contracts but did not wish to revisit the allocations among utilities of non-avoidable costs that it had previously

decided in Decision 05-06-060. At the same time, however, without a change in the allocation of contract costs, a utility accepting a novation would technically lose the allocation that had previously been made among utilities of unavoidable costs under that contract. The objective of the Indifference Decision was to preserve the equities of the permanent allocation decision while ensuring that a utility receiving a contract novation would not have their customers adversely affected as a result. The Commission explained its rationale as follows:

> Adopting a mechanism that preserves the existing allocation methodology, as proposed by SCE, is consistent with past Commission policy not to revisit the fixed percentages and the methodology adopted in D.05-06-060 to allocate the unavoidable costs over the life of the contracts. The previously adopted allocation methodology was "designed to be fair over the life of the contracts."….. We expressly stated in D.05-06-060 that the adopted cost allocation approach fairly balanced the relative cost burdens, and that we did not intend to revisit the adopted methodology. (D.08-11-056, *mimeo*, p 58.)

The Commission clearly intended (as did SCE) that the CFC method would not result in a fundamental realignment of costs, but rather would preserve the existing permanent allocations through indifference payments. Thus, SCE's claim that its customers bore 100% of these unavoidable contract costs after January 1, 2008, is flatly wrong, as the following findings of fact and conclusions of law within the indifference decision demonstrate:

> FOF#33 and #34
>
> 33. Under SCE's proposal, all unavoidable DWR contract costs would be allocated to the customers of the IOU that administers the subject contract, described as a "costs follows contract" allocation.
>
> 34. *In order to ensure that ratepayers are left indifferent to the effects of a "costs follow contracts" allocation, SCE's proposal calls for developing a schedule of transfer payments to ensure that the allocation equities adopted in D.05-06-060 are preserved.*

COL#9 and #10

> 9. In order to provide the appropriate incentives for the IOUs to enter into negotiations for replacement contracts, *provision should be made to ensure that the cost allocation equities established in D.05-06-060 are preserved.*
>
> 10. *SCE's proposed contract allocation methodology should be adopted since it preserves the allocation equities established in D.05-06-060,* and provides a practical approach to protect customers against cost shifting as replacement contracts are taken on by the three respective IOUs. (D.08-11-056, *mimeo*, pp. 87 and 89.)

SCE's proposal to allocate to itself all of the benefits of the Sempra Contract attributable to post-2008 deliveries, therefore, must be rejected because it would not preserve the equities of the Permanent Allocation Decision, but skew them in SCE's favor by allocating settlement benefits entirely to them, for periods when PG&E's customers are bearing 42.2% of the costs.

B. The Commission Should Reject SCE's Proposal To Change The Allocation Percentages For The Post-2008 Period, As It Is Contrary To The Joint Utility Advice Filing That Explicitly Provides That The New CFC Method Does Not Apply To "Benefits, Arising From … Claims, Proceedings, Or Litigation."

Despite the clear language of the Commission's decisions quoted above, SCE nonetheless claims that, because it was exposed to certain costs associated with Sempra Contract deliveries under the CFC method after January 2009, there was a fundamental change in allocation methods:

> Under the Commission adopted CFC method (Method 4, above), SCE's customers' exposure to the Sempra Contract is for all costs and benefits that arise from operation of the contract effective January 1, 2009. Given that SCE's customers are exposed to all of these Sempra Contract costs, including excessive contract charges, congestion and deviation charges and line losses for Sempra Generation's off-system deliveries and contract disputes related to post-2008 deliveries, SCE's customers should also receive the benefits,

> including the Sempra Settlement Funds, for the post-2008 period. (SCE Opening Brief, p. 10.)

PG&E has previously addressed why SCE's claims regarding congestion and other charges is a "red herring" (see Section III.C., above.)" Nothing SCE has alleged regarding these third party and other charges detracts from the fact that the unavoidable costs under the Sempra Contract continued to be shared based on the permanent allocation percentages using indifference payments, as if the allocation method of D. 05-06-060 had been retained, in accordance with the specific terms of the Indifference Decision and Joint Utility Advice Filing..

Lest there be any doubt about the parties' intention to somehow alter the traditional method for allocating settlements as a result of the CFC method, the Utilities' Joint Advice Filing specifically states that:

> *…. The revised DWR cost allocation methodology [CFC] does not in any way impact or affect the allocation of costs or benefits arising from or in connection with other claims, proceedings, or litigation.*[8/]

This statement leaves no doubt of the IOUs' joint understanding that the CFC method would not effectuate any change in the treatment of settlements --- which had been previously allocated uniformly using the permanent allocation percentages. Therefore, in addition to other reasons set forth above, because SCE's position to change those settlement allocations on account of the CFC method is contrary to the position taken in the Joint Utility Advice Filing, SCE's position must also be rejected.

C. While PG&E Would Not Object If The Commission Allocated To PG&E's Customers Higher Percentages For Periods Prior To December 2003, PG&E Believes Such An Allocation Is Inconsistent And Contrary To Commission Precedent And Would Entangle The Commission In Continuing Controversy.

This reply brief has addressed SCE's claims for different allocations over the term of the

---

8/ Joint Utility Advice Filing, p.3.

contract and has shown why settlement allocations attributable to the period after January 1, 2009, must be allocated using the permanent allocation percentages, in accordance with the costs borne by PG&E's customers and the terms of the Advice Filing. This still leaves a different position between SCE and PG&E over the allocation of amounts attributable to periods before 2004. Under SCE's approach, PG&E would actually receive a higher allocation for the pre-2004 portion, because settlement proceeds would be allocated to periods before 2003, when PG&E had been allocated 51.56% of the costs, and to periods during 2003, when PG&E was allocated 46.16% of the costs. PG&E continues to believe that based on precedent (and to avoid litigation) the Permanent Allocation Percentages should be uniformly applied.

Nonetheless, SCE has tried to distinguish this precedent and practice, stating:

> Undoubtedly, PG&E will point to many other settlements of short-term energy-crisis related refund claims and argue that these other settlements have set a precedent for allocating the Sempra Settlement Funds pursuant to the fixed percentage allocation (Method 3, above). This argument is without merit. Those other settlements are fundamentally different from the Sempra Contract Settlement in that the harm that was being resolved by those settlements had taken place before the settlements were entered into. (SCE Opening Brief, p. 10.)

First, the distinctions drawn by SCE do not hold up, because all of the settlements – the $130 million settlement, the CF Settlement, and the short-term energy crisis settlements -- primarily relate to overcharges sustained years ago.

Second. SCE does not explain why a "look back" or "origin of the claim" approach to allocating settlement proceeds is appropriate for a contract settlement, but not also appropriate for a settlements resolving damage claims during the energy crisis period. The Commission has traditionally rejected these look-back approaches as being complex and controversial, because determining the appropriate allocation method by time period will likely be disputed (just as

PG&E disputed the MWh allocation method proposed by SCE here).[9/] It is unclear why the Commission would now want to embark on more litigation over DWR allocations in light of its past pronouncements.

In conclusion, by consistently using the permanent allocation percentages to allocate Settlements after January 1, 2004, the Commission has established a methodology that is the same as their current overall allocation of costs, taking the indifference payments into account, and has thereby avoided prolonged disputes. While PG&E would not object to receiving a higher allocation of settlement proceeds (including on short-term contract recoveries that relate to pre-2004 periods), PG&E has not pursued these arguments because of an interest in avoiding litigation. PG&E hopes that the Commission takes PG&E's position of accepting reasonable allocations, and not being opportunistic, into account when it evaluates PG&E's request for an equitable adjustment of the CF Settlement discounts, discussed in Section III above.

V. PG&E'S COMMENTS ON THE OPENING BRIEF OF SDG&E

SDG&E expresses its position in this matter as follows:

> SDG&E's position as to the appropriate allocation of the proceeds and benefits from the Sempra Settlement Funds and Continental Forge Discount among the ratepayers of SDG&E, Southern California Edison ("Edison") and Pacific Gas & Electric ("PGandE") is that the Commission should ultimately effect an allocation consistent with the prevailing equities and the Commission's applicable prior precedents. At this point in time, however, SDG&E is unable to propose any specific allocation of the funds in controversy. (SDG&E Opening Brief, p. 1.)

First, with respect to the Sempra Long Term Contract Settlement, SDG&E states:

> SDG&E has advised Edison that its proposed four-period allocation is complicated and unprecedented, and would result in a lower allocation of the

9/ See D. 03-10-087.

> settlement proceeds than SDG&E might otherwise expect. SDG&E has requested, but not received, an explanation from Edison as to the reasoning supporting Edison's proposed allocation methodology. (SDG&E Opening Brief, p. 3.)

PG&E agrees with SDG&E's assessment of this allocation issue. For the reasons described in Section IV above of this Reply Brief, SCE's proposal must be rejected based on the explicit terms of the IOUs' Joint Advice Filing.

Second, as to the CF Settlement discount, SDG&E indicates that, until January 2011, these amounts were not paid under the Sempra Contract itself but under the terms of the class action lawsuit, explaining this source of settlement funds as follows:

> The second source of funds, "the Continental Forge Discount", arises from a settlement reached in a class action lawsuit brought before, *inter alia*, the California Superior Court in and for the County of San Diego, by various plaintiffs against, *inter alia*, Sempra Energy and certain of its subsidiaries. A settlement of the claims was reached on January 4, 2011, and provided, *inter alia*, that Sempra Generation would provide the Department with a unilateral price reduction under the Sempra Generation-Department power contract in the form of a discount of four dollars and fifteen cents per megawatt-hour ($4.15/mwh) for the life of the contract, effective January 1, 2006. (SDG&E Opening Brief, p. 2.)

SDG&E goes on to describe the treatment of the proceeds recognizing that amounts for the period after August, 2010 have yet to have been allocated, The amounts before August, 2010 involve an issue that SDG&E has described as follows:

> With respect to the Continental Forge Discount, SDG&E is sympathetic to the PGandE view that the allocation of the January 2009 to August 2010 benefits entirely to Edison could be viewed as an administrative "oversight" and "miscalculation".[4] Nevertheless, SDG&E is also concerned that "reopening" past allocations of the Department's revenue requirements or assignments of costs would be invited by the adoption of PGandE's view.

(SDG&E Opening Brief, p. 3.)

PG&E shares SDG&E's concerns of going back in time, even with respect to mathematical or computational errors of forecasts or recording of costs in the USBAs, as occurred in this case. Even though this appears to be a unique circumstance, PG&E does not want computations from 2001 revisited, even if there were mathematical errors. Here, however, notice of the first erroneous recording within the USBA (for eight months) occurred in the recording of USBAs approximately two years ago and another entry (for twelve months) occurred just one year ago. To date, the Commission has imposed no statute of limitations on such revisions, but PG&E would have no objection if the Commission were to impose a reasonable limitation period such as three years --- which would be the same as the time period during which corporate taxpayers may make corrections to their filed tax returns.[10/] Such a limitation period would recognize the DWR allocation computations are complex; the data is in control of DWR not the utilities and the USBAs of each utility include voluminous entries; and each utility has limited resources to understand the contractual terms and computational adjustments of the others. Here, the period that has run is approximately one and a half year, if one counts the period from effective date of the 2010 DWR revenue requirement determination allocation (the first allocation that PG&E proposes to adjust.) Whatever reasonable limitation period, if any, is ultimately imposed by the Commission, the adjustments being sought here by PG&E should fall within that period.

Finally, SDG&E suggests that the Commission defer allocation of proceeds until a workshop can be held, in effect holding out hope that a settlement can be reached. (SDG&E Opening Brief, p. 4.) SDG&E also states:

> The competing and disparate equities and views regarding the disposition of the funds in dispute, in our opinion, require greater and more detailed disclosures than has been provided to date.

10/ See e.g., Section 6511 of the Internal Revenue Code.

(SDG&E Opening Brief, p. 1.)

PG&E, however, is not optimistic about the prospects for settlement and strongly opposes any deferral. Nor does PG&E know what more "disclosures" might be needed to settle very basic issues. Currently, the USBA of SCE has recorded substantial dollars for SCE's customers' benefit that are appropriately allocated 42.2% to PG&E's customers for all the reasons that PG&E has described in its Opening Brief and in this Reply Brief. The essential facts are straightforward and uncontroverted. The Commission has established a procedural schedule for resolution of these issues and that schedule should be maintained, regardless of efforts to convene more workshops or to mediate the dispute. Having prepared both the Opening and Reply briefs on this matter, consistent with the Commissioner's Scoping Memorandum, PG&E and its customers have a right to have the issue decided without going back to workshops and then have an entirely new set of briefs resubmitted.

VI. CONCLUSION

For the reasons set forth above the Commission should direct that the CF Settlement discount and Sempra Long Term Settlement funds be allocated among the IOUs' customers in accordance with the permanent allocation percentages --- 42.2% to PG&E's customers, 47.5% to SCE's customers, and 12.3% to SDG&E's customers. This will require appropriate adjustments to be made in the recording of the CF Settlement discount in the USBAs of the three IOUs. Because the USBAs of the three utilities already reflect this allocation with respect to the allocation of the Sempra Long Term Contract settlement funds, no adjustment is required.

In adopting the recommendations of PG&E, the Commission should consider adopting the following findings and conclusions:

- In D.05-06-060, the Commission adopted permanent allocation percentages to allocate DWR's non-avoidable costs using the following percentages:

SCE	47.5%
PGE	42.2%
SDGE	10.3%

- In the Indifference Decision the Commission ordered that indifference payments be computed to preserve those permanent allocations (i.e., for inter-utility payments to equal the amount necessary to allocate the same amount of unavoidable DWR contract costs to the IOU's customers that would have been allocated if D.05-06-060 was not modified.)
- As a result of the indifference payments all utility customers continued to share in the unavoidable costs of the DWR contracts based on the permanent allocation percentages so that PG&E's and SDG&E's customers continued to pay for 42.2% and 10.3% , respectively, of the unavoidable costs of the Sempra Contract.
- Representatives of the electric class of ratepayers in the CF litigation envisioned that the IOU ratepayers would receive benefits from the CF Settlement discount based on their allocation of costs.
- Since the adoption of D.05-06-060, settlement funds have been consistently allocated by the CPUC using the permanent fixed allocation percentages.
- The joint utility advice filing, accepted by the Commission in January, 2009, provided that the revised DWR cost allocation methodology (CFC) would not impact or change the Commission's practices for allocating settlement proceeds.
- The benefits of the CF Settlement discount did not reduce the DWR provided forecasts of non-avoidable Sempra contract costs and no portion of the CF Settlement discount was used as an offset in the indifference computations.
- To conform to the explicit terms of the advice filing that required settlements to

be allocated using past practices and to match benefits from these settlements with the underlying cost responsibility; the Commission should allocate benefits from the CF Settlement and the Sempra Long Term Contract Settlement to all ratepayers using the permanent allocation percentages.

Respectfully Submitted,

CHRISTOPHER J. WARNER
CRAIG M. BUCHSBAUM

By: /s/
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PACIFIC GAS AND ELECTRIC COMPANY

Dated: September 30, 2011

Appendix A

Table Comparing SCE and PG&E Treatment of Settlement Proceeding[1]

[1] The slight discrepancy between the numbers in this Appendix A and the numbers in the text is attributable to an error that PG&E believes SCE made in converting their methodology for the Sempra Long Term Contract Settlement proceeds into an actual allocation of the proceeds. The numbers in this Appendix A use SCE's numbers (which PG&E believes are in error based on the allocation method SCE is proposing). The numbers in the text use the numbers PG&E believes are correct, based on PG&E's interpretation of the allocation method SCE is proposing.

PG&E vs. SCE SETTLEMENT ALLOCATIONS
(includes proceeds from all years)

SCE's Proposal for Sempra Settlement Allocations	**PG&E** ($ millions)	**SCE** ($ millions)	**SDG&E** ($ millions)	**TOTALS** ($ millions)
Sempra Settlement Funds ($130 Million)	$40.8	$79.4	$9.8	**$130.0**
Continental Forge Settlement Discounts	12.9	283.3	3.1	**299.3**
Total of SCE's Proposed Allocations	**$53.7**	**$362.6**	**$12.9**	**$429.3**
Resulting allocation of SCE's proposal (%)	12.5%	84.5%	3.0%	100.0%
IOU's cost burden of Sempra-DWR contract ***after*** including indifference payments:	**42.2%**	**47.5%**	**10.3%**	**100%**
Gain (loss) compared to cost burden	-29.7%	**37.0%**	-7.3%	**0.0%**

PG&E's Proposal for Sempra Settlement Allocations	**PG&E** ($ millions)	**SCE** ($ millions)	**SDG&E** ($ millions)	**TOTALS** ($ millions)
Sempra Settlement Funds ($130 Million)	$54.9	$61.8	$13.4	**$130.0**
Continental Forge Settlement Discounts	126.3	142.2	30.8	**299.3**
Total of PG&E's Settlement Allocations	**$181.2**	**$203.9**	**$44.2**	**$429.3**
PG&E's Resulting Allocation %:	42.2%	47.5%	10.3%	**100%**
Difference: PG&E allocation vs. SCE	**$127.4**	($158.7)	**$31.3**	($0.0)

Appendix B

Joint Utility Advice Filing

STATE OF CALIFORNIA
PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

ARNOLD SCHWARZENEGGER, *Governor*

January 28, 2009

Advice Letter 3384-E

Brian K. Cherry
Vice President, Regulatory Relations
Pacific Gas and Electric Company
77 Beale Street, Mail Code B10C
P.O. Box 770000
San Francisco, CA 94177

Subject: Calculation of Indifference Payments in Compliance with D.08-11-056

Dear Mr. Cherry:

Advice Letter 3384-E is effective January 12, 2009.

Sincerely,

Julie A. Fitch, Director
Energy Division

Ken Deremer
Director
Tariffs & Regulatory Accounts
8330 Century Park Court
San Diego, CA 92123-1548

Tel: 858.654.1756
Fax: 858.654.1788
kderemer@semprautilities.com

December 22, 2008

SDG&E ADVICE LETTER 2051-E
(U902-E)

PG&E ADVICE LETTER 3384-E
(U39-E)

SCE ADVICE LETTER 2304-E
(U338-E)

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

SUBJECT: CALCULATION OF INDIFFERENCE PAYMENTS IN COMPLIANCE WITH DECISION 08-11-056

PURPOSE

Pursuant to California Public Utilities Commission (Commission) Decision No. (D.) 08-11-056, San Diego Gas & Electric Company (SDG&E), Pacific Gas and Electric Company (PG&E), and Southern California Edison (SCE) hereby submit this compliance filing to implement the revised cost allocation methodology adopted in D.08-11-056. In particular, this compliance filing includes the calculation of the cost allocation indifference payments for each year from 2009 until the last Department of Water Resources (DWR) contract is scheduled to expire and includes the utilities' agreement on a shaping proposal for the indifference payments.[1]

BACKGROUND

The "Direct Access" suspension was implemented to address the energy crisis of 2000-2001 when extraordinary wholesale power costs threatened the solvency of California's major investor-owned utilities (IOUs) and their ability to maintain reliable electric service. Assembly Bill 1 from the First Extraordinary Session (AB1X) authorized DWR to become the electric power supplier of last resort for retail customers of the IOUs.[2] To meet this mandate, DWR

[1] *See* D.08-11-056, Appendix 2, ¶¶ 5, 9.

[2] DWR supplied the "net short," i.e., the shortfall in demand not supplied under existing power contracts of the IOU or generated by an IOU facility.

entered into a series of contracts for the procurement of electric power to serve customers in the service territories of the IOUs: PG&E, SCE, and SDG&E.[3]

Since then, the energy markets have stabilized, the IOUs have resumed responsibility for procuring electric power, and DWR is no longer authorized to enter into contracts for power. However, DWR continues to supply power to retail customers under contracts entered into prior to January 1, 2003. In D. 08-11-056, the Commission found it to be in the public interest to establish a process for seeking to expedite the final phase-out of DWR's remaining involvement in supplying electric power to retail IOU customers, and to return full procurement responsibility to the IOUs.[4]

Procedural Background

In February 2008, D.08-02-033 was issued in Phase I of R.07-05-025, finding that lifting the suspension of Direct Access was barred as long as DWR continues to supply power to retail customers as a party to its existing power contracts (Water Code § 80260). The Commission also concluded that there was value in considering ways to relieve DWR of its obligations to supply power on an expedited basis by supporting negotiations with DWR contract counterparties to enter into replacement agreements with the IOUs.

Phase II(a) of this proceeding was split into two segments: Phase II(a)(1) addressed the feasibility and design of a plan to support arrangements to implement replacement contracts, and led to D.08-11-056, and Phase II(a)(2) will be conducted to implement the plan that was adopted in Phase II(a)(1).

As part of D.08-11-056, the IOUs were directed to file an advice letter which includes: (1) the calculation of indifference payments for each year from 2009 until the last DWR contract is scheduled to expire; (2) a mutually acceptable shaping of the indifference payment schedule across multiple years; and (3) any appropriate modifications to the payment schedule for indifference payments. In addition, Ordering Paragraph 3a of D.08-12-006 directed the IOUs to state in this advice letter when each IOU will start to bill and collect the new DWR remittance rates resulting from the shaping of indifference payments. Therefore, the IOUs present their methodology and indifference payment schedules in response to the Commission's directives.

DISCUSSION

Cost Allocation Methodology and Indifference Payments

The IOUs have discussed the revised DWR cost allocation methodology and indifference payment calculations and agreed to a multiple-step methodology including establishing an indifference payment schedule, and implementing a new "costs-follows-contracts" (CFC) cost

[3] AB1X authorized DWR to recover its power costs from electric charges established by the Commission (Water Code § 80110). DWR entered into servicing agreements with the IOUs to collect money on its behalf for power that DWR sells to IOU customers.

[4] D.08-11-056 at 3.

allocation methodology using the indifference payment schedule, effective beginning in calendar year 2009, in accordance with D.08-11-056.

The revised DWR cost allocation methodology adopted in D.08-11-056 maintains the equity of the permanent cost allocation methodology adopted in D.05-06-060 by implementing a CFC methodology with indifference payments to keep each IOU's respective customers indifferent to the attempt to novate the DWR contracts. "Avoidable" DWR contract costs will continue to be allocated on a CFC basis as is currently required under D.05-06-060. "Unavoidable" DWR contract costs will also be allocated on a CFC basis to the customers of the IOU that administers the subject DWR contract. DWR costs included in the calculation of DWR's Power Charge Revenue Requirement that are not attributable to energy deliveries will remain allocated on the fixed percentage allocations required by D.05-06-060. Additionally, costs allocated pursuant to DWR's Bond Charge Revenue Requirement are not impacted by this revised DWR cost allocation methodology. The DWR annual Power Charge Revenue Requirement determination process will continue until all of the DWR contracts have expired, been novated, or otherwise terminated.

The indifference payment calculation includes the costs and revenues associated with unavoidable DWR contract energy deliveries, including unavoidable DWR contract costs, gas collateral costs, allocated Williams Gas Cost reductions, the previously-approved 2009-2010 Calpine Reduction Credit, and any other applicable categories of costs and/or revenues associated with unavoidable DWR contract energy deliveries. The City and County of San Francisco (CCSF)-DWR contract forecast of unavoidable DWR contract costs is not currently included in DWR's data. If this contract becomes effective, an indifference payment schedule will be developed at that time for the allocation of CCSF-DWR contract costs. The revised DWR cost allocation methodology does not in any way impact or affect the allocation of costs or benefits arising from or in connection with other claims, proceedings, or litigation.

Establishing the indifference (transfer) payment schedule required a determination of the annual difference between the unavoidable DWR contract costs that would have been allocated to each IOU's customers under D.05-06-060 and the unavoidable DWR contract costs that will be allocated to those customers under the CFC methodology. In order to calculate the indifference payments for the Coral and Sempra contracts, and Williams Gas Cost reduction, the utilities were required to develop gas price forward curves.[5] The IOUs developed their own gas price forward curves and submitted these forward curves to the Energy Division, along with confirmation from an independent evaluator that the independent evaluator had reviewed the gas price forward curves being submitted. Each IOU calculated its forward curve by using the NYMEX futures daily settlement prices and NYMEX Clearport "SoCal Basis Swap" daily settlement prices at the close of the trading days in the period December 12-18, 2008. Each IOU calculated the simple average of the daily settlement prices during this period for each delivery month during the remaining term of the Sempra and Coral contracts: January 2009 through July 2012. The IOUs' respective calculations were reviewed by Energy Division-approved Independent Evaluators. The Energy Division reviewed this information and confirmed the gas price forward curve on December 19, 2008. This gas price forward curve was then used to calculate the indifference payments associated with the Coral and Sempra contracts and the Williams Gas Cost reduction.

[5] D.08-11-056, Appendix 2, ¶ 7.

Attachment A includes the indifference payments for each year from 2009 until the last DWR contract is scheduled to expire.[6] The indifference payments made by an IOU, or received by an IOU, will equal the amount necessary to allocate the same amount of unavoidable DWR contract costs to the IOU's customers that would have been allocated under D.05-06-060.

Shaping and Levelized Payments

As directed by D.08-11-056, during the 30-day compliance period, the IOUs explored a mutually acceptable shaping of indifference payments across multiple years that would facilitate rate stabilization of DWR remittance rate changes, shown in the top section of Attachment A. As a result of those discussions, the IOUs have agreed upon a shaping proposal that should not adversely impact customers when compared to payments based on the annual difference between the existing D.05-06-060 cost allocation and the CFC methodology. The IOUs propose to accelerate the indifference payment schedule by one year with an interest adjustment, as shown in the middle section of Attachment A.[7] This proposal is intended to reduce the volatility of DWR remittance rates to customers as compared to the status quo. Attachment B provides a comparison of the 2009 DWR remittance rate and revenue requirement changes under the proposed shaped payment schedule relative to the status quo D.05-06-060 cost allocation methodology. However, the proposed shaping schedule is contingent upon timely Commission approval that permits the IOUs to implement necessary rate adjustments by the dates set forth below.

If this accelerated payment schedule is approved by the Commission, SDG&E will consolidate this rate adjustment with its annual ERRA rate adjustment, tentatively expected April 1, 2009. This date is dependent on when SDG&E's ERRA forecast application (A.08-10-004) is approved.

Similarly, if this accelerated payment schedule is approved, PG&E and SCE will consolidate this rate adjustment on March 1, 2009 coincident with other anticipated rate changes approved by the Commission and the Federal Energy Regulatory Commission. Since the 2009 revised annual transfer payment schedule for PG&E and SCE will be implemented on March 1, 2009, PG&E and SCE will calculate their revised 2009 DWR Power Charge such that the revised transfer payment schedule to their customers will be realized over a ten-month period (i.e., March through December). This will set the revised DWR Power Charge for PG&E and SCE at the appropriate level so that DWR is able to recover its total annual revenue requirement by December 31, 2009.[8]

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[6] The indifference payments are in the first section of Attachment A, under the heading "Base Indifference Payments (Receipts)".

[7] The shaping proposal is in the second section of Attachment A, under the heading "Accelerated Indifference Payments (Receipts)".

[8] The "REVISED" remittance rates shown on Line No. 35 of Attachment B are based on annual revenue requirements and are therefore annual remittance rates. Because the impact of indifference payment and shaping adjustment shown on Lines Nos. 25.a and 25.b will be reflected in the "REVISED" remittance rates over a shorter time period (i.e., 9 or 10 months) as discussed in the foregoing paragraphs, the actual "REVISED" remittance rate for each utility will be modified to reflect that shorter time period. The actual "REVISED" remittance rate for each utility will be identified in each utility's subsequent advice filing implementing the new rate.

DWR's true-ups of actual DWR contract costs and remittances for contract deliveries in 2009 and beyond, reflected in the IOUs' respective utility-specific balancing accounts, will correspond to each IOU's allocated contracts. For true-ups of costs and remittances for pre-2009 deliveries, the D.05-06-060 cost allocation methodology will be used to calculate true-up amounts.

EFFECTIVE DATE

The IOUs believe this Advice Letter is subject to Energy Division disposition and should be classified as Tier 2 (effective after staff approval) pursuant to GO 96-B. As directed in Appendix 2 of D.08-11-056, this filing is to be effective 20 calendar days from the date filed. Therefore, SDG&E, PG&E and SCE respectfully request that this filing be made effective January 12, 2009, twenty days from the date filed. Revised tariffs to reflect the new DWR remittance rates using the CFC allocation methodology will be implemented by each utility filing Tier 1 advice letters pursuant to GO 96-B.

PROTEST

Anyone may protest this Advice Letter to the California Public Utilities Commission. The protest must state the grounds upon which it is based, including such items as financial and service impact, and should be submitted expeditiously. **As directed in D.08-11-056, protests must be received within 15 days of the date this Advice Letter was filed with the Commission.** There is no restriction on who may file a protest. The address for mailing or delivering a protest to the Commission is:

CPUC Energy Division
Attention: Tariff Unit
505 Van Ness Avenue
San Francisco, CA 94102

In addition, protests and all other correspondence regarding this advice letter should also be sent by letter and transmitted via facsimile or electronically to the attention of both Honesto Gatchalian (jnj@cpuc.ca.gov) and Maria Salinas (mas@cpuc.ca.gov) of the Energy Division. A copy of the protest should also be sent via both e-mail and facsimile to the address shown below on the same date it is mailed or delivered to the Commission.

Attn: Todd Cahill
Regulatory Tariff Manager
8330 Century Park Court, Room 32C
San Diego, CA 92123-1548
Facsimile No. (858) 654-1788
E-mail: tcahill@semprautilities.com

Attn: Brian K. Cherry
Vice President, Regulatory Relations
Pacific Gas & Electric Company
77 Beale Street, Mail Code B10C
PO Box 770000
San Francisco, CA 94177
Facsimile No. (415) 973-7226
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Attn: Akbar Jazayeri
Vice President of Regulatory Operations
Southern California Edison Company
2244 Walnut Grove Avenue
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Attn: Bruce Foster
Senior Vice President, Regulatory Operations
c/o Karyn Gansecki
Southern California Edison Company
601 Van Ness Avenue, Suite 2040
San Francisco, California 94102
Facsimile: (415) 673-1116
E-mail: Karyn.Gansecki@sce.com

NOTICE

A copy of this filing has been served on the utilities and interested parties shown on the attached list, which includes R.07-05-025, by providing them a copy hereof either electronically or via the U.S. mail, properly stamped and addressed.

Address changes should be directed to SDG&E Tariffs by facsimile at (858) 654-1788 or by e-mail at SDG&ETariffs@semprautilities.com.

KEN DEREMER
Director – Tariffs & Regulatory Accounts

(cc list enclosed)

CALIFORNIA PUBLIC UTILITIES COMMISSION

ADVICE LETTER FILING SUMMARY
ENERGY UTILITY

MUST BE COMPLETED BY UTILITY (Attach additional pages as needed)

Company name/CPUC Utility No. **SAN DIEGO GAS & ELECTRIC (U 902)**

Utility type:
☒ ELC ☐ GAS
☐ PLC ☐ HEAT ☐ WATER

Contact Person: Megan Caulson
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EXPLANATION OF UTILITY TYPE
ELC = Electric GAS = Gas
PLC = Pipeline HEAT = Heat WATER = Water

(Date Filed/ Received Stamp by CPUC)

Advice Letter (AL) #: 2051-E

Subject of AL: Calculation of Indifference Payments in Compliance with D.08-11-056

Keywords (choose from CPUC listing): Compliance

AL filing type: ☐ Monthly ☐ Quarterly ☐ Annual ☒ One-Time ☐ Other

If AL filed in compliance with a Commission order, indicate relevant Decision/Resolution #:
D.08-11-056

Does AL replace a withdrawn or rejected AL? If so, identify the prior AL N/A

Summarize differences between the AL and the prior withdrawn or rejected AL[1]: N/A

Does AL request confidential treatment? If so, provide explanation:

Resolution Required? ☐ Yes ☒ No

Tier Designation: ☐ 1 ☒ 2 ☐ 3

Requested effective date: 1/12/09

No. of tariff sheets:

Estimated system annual revenue effect: (%): N/A

Estimated system average rate effect (%): N/A

When rates are affected by AL, include attachment in AL showing average rate effects on customer classes (residential, small commercial, large C/I, agricultural, lighting).

Tariff schedules affected: N/A

Service affected and changes proposed[1]: N/A

Pending advice letters that revise the same tariff sheets: N/A

Protests and all other correspondence regarding this AL are due no later than 20 days after the date of this filing, unless otherwise authorized by the Commission, and shall be sent to:

CPUC, Energy Division
Attention: Tariff Unit
505 Van Ness Ave.,
San Francisco, CA 94102
mas@cpuc.ca.gov and jnj@cpuc.ca.gov

San Diego Gas & Electric
Attention: Todd Cahill
8330 Century Park Ct, Room 32C
San Diego, CA 92123
tcahill@semprautilities.com

[1] Discuss in AL if more space is needed.

General Order No. 96-B
ADVICE LETTER FILING MAILING LIST

cc: (w/enclosures)

Public Utilities Commission
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D. Appling
S. Cauchois
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Energy Division
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American Energy Institute
C. King
APS Energy Services
J. Schenk
BP Energy Company
J. Zaiontz
Barkovich & Yap, Inc.
B. Barkovich
Bartle Wells Associates
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Braun & Blaising, P.C.
S. Blaising
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Duke Energy North America
M. Gillette
Dynegy, Inc.
J. Paul
Ellison Schneider & Harris LLP
E. Janssen
Energy Policy Initiatives Center (USD)
S. Anders
Energy Price Solutions
A. Scott
Energy Strategies, Inc.
K. Campbell
M. Scanlan
Goodin, MacBride, Squeri, Ritchie & Day
B. Cragg
J. Heather Patrick
J. Squeri
Goodrich Aerostructures Group
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Hanna and Morton LLP
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M. Brady
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Morrison & Foerster LLP
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MRW & Associates
D. Richardson
OnGrid Solar
Andy Black
Pacific Gas & Electric Co.
J. Clark
M. Huffman
S. Lawrie
E. Lucha
Pacific Utility Audit, Inc.
E. Kelly
R. W. Beck, Inc.
C. Elder
School Project for Utility Rate Reduction
M. Rochman
Shute, Mihaly & Weinberger LLP
O. Armi
Solar Turbines
F. Chiang
Sutherland Asbill & Brennan LLP
K. McCrea
Southern California Edison Co.
M. Alexander
K. Cini
K. Gansecki
H. Romero
TransCanada
R. Hunter
D. White
TURN
M. Florio
M. Hawiger
UCAN
M. Shames
U.S. Dept. of the Navy
K. Davoodi
N. Furuta
L. DeLacruz
Utility Specialists, Southwest, Inc.
D. Koser
Western Manufactured Housing Communities Association
S. Dey
White & Case LLP
L. Cottle
Interested Parties
R.07-05-025

Attachment A
Indifference/Transfer Payments
and Accelerated Schedule of Indifference/Transfer Payments
(Dollars)

Line			PG&E			SCE			SDG&E		
			Principal	Interest	Total	Principal	Interest	Total	Principal	Interest	Total
1	Base Indifference / Transfer Payments or (Receipts)	2009	(99,296,326)	-	(99,296,326)	6,223,651	-	6,223,651	93,072,674	-	93,072,674
2		2010	505,977,692	-	505,977,692	(512,602,145)	-	(512,602,145)	6,624,452	-	6,624,452
3		2011	413,736,884	-	413,736,884	(461,139,235)	-	(461,139,235)	47,402,352	-	47,402,352
4		2012	(39,511,374)	-	(39,511,374)	64,863,178	-	64,863,178	(25,351,805)	-	(25,351,805)
5		2013	959,945	-	959,945	11,550,975	-	11,550,975	(12,510,920)	-	(12,510,920)
6		2014	(1,975,428)	-	(1,975,428)	2,215,759	-	2,215,759	(240,331)	-	(240,331)
7		2015	(1,191,018)	-	(1,191,018)	978,778	-	978,778	212,240	-	212,240
8		Total	778,700,375	-	778,700,375	(887,909,038)	-	(887,909,038)	109,208,663	-	109,208,663
10											
11	Accelerated Indifference / Transfer Payments or (Receipts)	2009	406,681,366	(10,119,554)	396,561,813	(506,378,493)	10,252,043	(496,126,450)	99,697,127	(132,489)	99,564,638
12		2010	413,736,884	(8,274,738)	405,462,146	(461,139,235)	9,222,785	(451,916,451)	47,402,352	(948,047)	46,454,305
13		2011	(39,511,374)	790,227	(38,721,146)	64,863,178	(1,297,264)	63,565,915	(25,351,805)	507,036	(24,844,769)
14		2012	959,945	(19,199)	940,746	11,550,975	(231,020)	11,319,956	(12,510,920)	250,218	(12,260,702)
15		2013	(1,975,428)	39,509	(1,935,920)	2,215,759	(44,315)	2,171,444	(240,331)	4,807	(235,524)
16		2014	(1,191,018)	23,820	(1,167,198)	978,778	(19,576)	959,202	212,240	(4,245)	207,995
17		2015	-	0	0	-	(0)	(0)	-	0	0
18		Total	778,700,375	(17,559,934)	761,140,441	(887,909,038)	17,882,654	(870,026,385)	109,208,663	(322,720)	108,885,943
20											
21	Difference in Negative or (Positive) Cash Flow	2009	505,977,692	(10,119,554)	495,858,138	(512,602,145)	10,252,043	(502,350,102)	6,624,452	(132,489)	6,491,963
22		2010	(92,240,809)	(8,274,738)	(100,515,546)	51,462,909	9,222,785	60,685,694	40,777,899	(948,047)	39,829,852
23		2011	(453,248,257)	790,227	(452,458,030)	526,002,414	(1,297,264)	524,705,150	(72,754,156)	507,036	(72,247,120)
24		2012	40,471,318	(19,199)	40,452,119	(53,312,203)	(231,020)	(53,543,222)	12,840,885	250,218	13,091,103
25		2013	(2,935,373)	39,509	(2,895,864)	(9,335,216)	(44,315)	(9,379,531)	12,270,589	4,807	12,275,396
26		2014	784,410	23,820	808,230	(1,236,981)	(19,576)	(1,256,557)	452,571	(4,245)	448,326
27		2015	1,191,018	0	1,191,018	(978,778)	(0)	(978,778)	(212,240)	0	(212,240)
28		Total	(0)	(17,559,934)	(17,559,934)	0	17,882,654	17,882,654	(0)	(322,720)	(322,720)

Attachment B
Allocation of 2009 CDWR Revenue Requirement Among Utilities
Both Original and Revised
(Dollars in millions)

Line	Description	ORIGINAL Remittance Rate Calculation Table Using Permanent Allocation Only PG&E	SCE	SDG&E	Total	Reference	REVISED Remittance Rate Calculation Table Using Indifference/Transfer Payments with Acceleration PG&E	SCE	SDG&E	Total
1	Allocation Percentages	42.20%	47.50%	10.30%	100.00%	Decision 05-06-060	42.20%	47.50%	10.30%	100.00%
2										
3	2004-2007 Expenses	8,125	8,849	2,770	19,744	Actuals	8,125	8,849	2,770	19,744
4	2004-2007 Revenues	7,984	9,007	2,929	19,920	Actuals	7,984	9,007	2,929	19,920
5	Amount to be collected from /(returned to) the IOU USBA	$ 141	$ (158)	$ (159)	$ (175)	Line 3 - Line 4	$ 141	$ (158)	$ (159)	$ (175)
6										
7	2008 Expenses	1,662	1,932	589	4,183	actuals through Sep-08 the	1,662	1,932	589	4,183
8	2008 Revenues	1,126	2,108	531	3,765	actuals through Sep-08 the	1,126	2,108	531	3,765
9	Amount to be collected from /(returned to) the IOU USBA	$ 536	$ (177)	$ 58	$ 418	Line 7 - Line 8	$ 536	$ (177)	$ 58	$ 418
10										
11	**Balancing Calculation**									
12	December 31, 2009 Projected PCA Balance: Desired Allocation	566	637	138	1,341		566	637	138	1,341
13	January 1, 2004 Starting PCA Balance: Desired Allocation	701	789	171	1,660		701	789	171	1,660
14	Amount to be collected from /(returned to) the IOU USBA	$ (135)	$ (151)	$ (33)	$ (319)	Line 12 - Line 13	$ (135)	$ (151)	$ (33)	$ (319)
15										
16	Prior True-ups (2001/02, 2003, 2008 Calpine2)	(529)	394	135	0		(529)	394	135	0
17	2004-2007 True-up	677	(334)	(100)	243	Line 5 + Line 9	677	(334)	(100)	243
18	Starting and Ending balance True-up	(135)	(151)	(33)	(319)	Line 14	(135)	(151)	(33)	(319)
19	Cumulative True-up to be collected from/(returned to) IOU USBA	$ 14	$ (92)	$ 2	$ (76)	Subtotal	$ 14	$ (92)	$ 2	$ (76)
20										
21	**2009 Revenue Requirement Determination**									
22	Avoidable Costs	77	300	203	580	2009RptRR	77	300	203	580
23	Net Non-Avoidable Costs	1,539	1,732	376	3,647	2009RptRR	1,055	1,828	245	3,129
24	Los Esteros Contract Cost	4			4					
25	Calpine 2 Contract Cost Reduction Credit	(522)	0	0	(522)					
25.a	**Indifference/Transfer Payment (Attachment A, Line 1)**	0	0	0	0		**(99)**	**6**	**93**	**0**
25.b	**Shaping/Acceleration Adjustment (Attachment A, Line 21)**	0	0	0	0		**496**	**(502)**	**6**	**0**
26	Gas Collateral Cost	(8)	(9)	(2)	(18)	2009RptRR	(8)	(9)	(2)	(18)
27	Administrative and General	12	13	3	28	2009RptRR	12	13	3	28
28	Other Non-Allocated Costs	0	0	0	0	2009RptRR	0	0	0	0
29	Surplus Revenue	(0)	(50)	(5)	(55)	2009RptRR	(0)	(50)	(5)	(55)
30	Interest Earnings on Fund Balance	(15)	(17)	(4)	(36)	2009RptRR	(15)	(17)	(4)	(36)
31	Balancing Transfer between IOUs	14	(92)	2	(76)	Line 18	14	(92)	2	(76)
32		**$ 1,100**	**$ 1,877**	**$ 573**	**$ 3,551**		**$ 1,531**	**$ 1,477**	**$ 543**	**$ 3,551**
		ORIGINAL Remittance Rate Calculation Table					REVISED Remittance Rate Calculation Table			
33	**Revenue Requirement Allocated to IOU's Customers**	**$ 1,100**	**$ 1,877**	**$ 573**	**$ 3,551**		**$ 1,531**	**$ 1,477**	**$ 543**	**$ 3,551**
34	DWR Delivered Energy (GWh)	12,736	22,059	5,211	40,005		12,736	22,059	5,211	40,005
35	Calendar Year Remittance Rates*	0.08640	0.08510	0.11004	0.08877		0.12022	0.06697	0.10416	0.08877
1	**Sum of table lines 23, 24, 25, 25a**	**1,021**	**1,732**	**376**	**3,129**		**956**	**1,835**	**338**	**3,129**
2	CFC contract costs--assuming 100% market price gas	1,085	1,862	253	3,200		998	1,588	253	2,839
3	Difference between market gas price and Williams gas price	(30)	(34)	(7)	(71)		(9)	(10)	(2)	(21)
4	Plug for 2009 only to keep DWR revenue requirement the same (difference between DWR gas price forecast and new gas price)	0	0	0	0		66	250	(5)	311
5	**Net Cost Follows Contracts**	**1,055**	**1,828**	**245**	**3,129**		**1,055**	**1,828**	**245**	**3,129**
6	Permanent allocation of non-avoidable costs	1,321	1,486	322	3,129		1,189	1,339	290	2,818
7	Difference between permanent allocation and CFC	265	(342)	77	0		200	(240)	40	0
8	Calpine 2 adjustment	(299)	246	53	-		(299)	246	53	-
9	**Indifference/Transfer Payment**	**(34)**	**(96)**	**130**	**0**		**(99)**	**6**	**93**	**0**

* Revised remittance rates for PG&E, SCE and SDG&E represent an estimate of the average remittance rate for 2009 under the accelerated transfer payment schedule. Actual remittance rates for 2009 will start at the rates shown as the calendar year remittance rates using the permanent allocation only, and will be adjusted prospectively for each IOU upon implementation of customer rate changes as described in this compliance filing.

Appendix C

Listing of Additional Settlements Allocated Using the Permanent Allocation Percentages

Appendix C

Listing of Settlements since July, 2008

PG&E has identified the following settlement payments since July, 2008, that have been uniformly allocated (or will be allocated) using the permanent allocation percentages. This listing obviously excludes the CF Settlement and the Sempra Long Term Contract Settlement, as the allocation of those proceeds is under dispute. PG&E had previously provided a similar listing in Appendix A of its opening brief of settlements paid before July, 2008. Where the name of the settling party is omitted it is because PG&E has been unable to fully associate data on spreadsheets, showing payments, with specific settling parties.. Because the data and spreadsheets are complex with many entries, it should be noted that this listing is subject to possible revision.[1]

Settlements Received by DWR (from the supporting documentation for DWR's revenue requirement determination)		
Date Received	**Dollars**	**Settling Party**
December -08	11,835,701	
January-09	4,885,102	
February-09	1,461,600	NEGT
February-09	1,738,630	NEGT
April-09	340,228	ENRON POWER MARKETING INC(Allowed Claim).
May-09	94,859	
June-09	1,508,579	
July-09	283,738	
	292,514	Puget
August-09	120,377	PacifiCorp
September-09	586,013	NEGT
October-09	189,970	Enron Allowed Claim
November-09	8	
December-09	(282,588)	
January-10	11,309,140	LADWP

[1] For example, PG&E notes that some of the names of the settling parties in Appendix A of PG&E's opening brief turned out to be different than the actual names identified. The dollar amounts listed in that Appendix A remain correct, however.

January-10	1,987,684	CFE
January-10	26,969	PECO
March-10	21,350,000	
April-10	678,937	
May-10	152,000	
May-10	195,743	LADWP
May-10	10,851,092	Public Service New Mexico
May-10	605,031	NCPA
July-10	1,186.921	Tucson Electric
August-10	311,208	
September-10	353,577	
October-10	12,421,598	
November-10	134,149	ENRON POWER MARKETING INC (Allowed Claim)
December-10	706,518	
February-11	102,730,032	Sempra Short-term claim
March-11	4,590	
April-11	3,870,884	