

**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

<b>California Independent System Operator Corporation</b>	)	<b>Docket Nos.</b>	<b>ER02-250-000</b>
	)		<b>ER02-527-000</b>
	)		
<b>Pacific Gas and Electric Company</b>	)	<b>Docket No.</b>	<b>ER02-479-000</b>
	)		

**OFFER OF SETTLEMENT AND SETTLEMENT AGREEMENT**

Pursuant to Rule 602 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission” or “FERC”), 18 C.F.R. § 385.602 (2002), the California Independent System Operator Corporation (“ISO”), Pacific Gas and Electric Company (“PG&E”), and Southern California Edison Company (“Edison”) (collectively, the “Sponsoring Parties”) hereby offer and agree to the terms of this Offer of Settlement and Settlement Agreement (“Settlement Agreement”) as the full and final resolution of all issues, apart from a single issue of interest only to San Diego Gas & Electric Company (“SDG&E”),<sup>1</sup> in the above-captioned Grid Management Charge (“GMC”) and GMC Pass-Through proceedings. Certain other parties have authorized counsel for the ISO to represent that such parties support this Settlement Agreement (“Supporting Parties”)<sup>2</sup> or

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<sup>1</sup> The remaining issue relates to the Southwest Power Link (“SWPL”).

<sup>2</sup> The Supporting Parties are: The California Department of Water Resources and the Staff of the California Public Utilities Commission.

do not oppose this Settlement Agreement (“Non-Opposing Parties”).<sup>3</sup> Sponsoring, Supporting, and Non-Opposing Parties are hereinafter referred to collectively as “Parties” and individually as “Party”. This use of the defined term “Parties” does not limit the legal effect of this Settlement Agreement on all parties to the above-captioned proceeding or the application of rates put into effect by this Settlement Agreement to all entities that are subject to the ISO’s rates pursuant to the ISO Tariff.

In accordance with Rule 602(d), 18 C.F.R. § 602(d), this Settlement Agreement is being served on the Public Utilities Commission of California, the California Energy Commission, the California Electricity Oversight Board, all entities with effective Scheduling Coordinator Service Agreements under the ISO Tariff, and on all parties on the Commission’s official service list for the above captioned proceedings. In addition, a copy of this Settlement Agreement is being electronically sent to all market participants via ISO market notice. Under Rule 602(f), 18 C.F.R. § 385.602(f), those entities will have an opportunity to comment on this Settlement Agreement.

### **BACKGROUND**

The GMC is the administrative charge assessed by the ISO on its customers through a rate subject to FERC review under the Federal Power Act (“FPA”) in order to recover its costs. On November 2, 2001, the ISO filed its GMC for 2002, which was

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<sup>3</sup> The Non-Opposing Parties are: The California Electricity Oversight Board, The City and County of San Francisco, The City of Redding, The City of Santa Clara, The Metropolitan Water District of Southern California, Modesto Irrigation District, Northern California Power Agency, Sacramento Municipal Utility District, San Diego Gas and Electric Company, San Francisco Bay Area Rapid Transit District, Trinity Public Utility District, the Transmission Agency of Northern

assigned Docket No. ER02-250-000. On December 5, 2001, PG&E filed modifications to its GMC Pass-Through Tariff (“GMC P-TT”) which were assigned Docket No. ER02-479-000. The GMC P-TT is intended to allow PG&E to pass through and recover on a dollar-for-dollar basis the ISO’s GMC from PG&E’s Control Area Agreement (“CAA”) Customers to which the GMC is applicable.

The ISO assesses the GMC on PG&E for PG&E’s role as Scheduling Coordinator for its CAA Customers. Rather than impose on PG&E separate GMC charges for each CAA Customer, the ISO instead submits one invoice to PG&E assessing aggregated GMC charges for PG&E’s retail customers and the Western Area Power Administration, and a second invoice assessing aggregated GMC charges for PG&E’s remaining CAA Customers. PG&E, in turn, attempts to disaggregate and apportion the ISO’s GMC charges to PG&E’s individual CAA Customers pursuant to Schedule 1 of the GMC P-TT.

On December 7, 2001, the ISO made an errata filing related to its November 2, 2001 GMC filing. The purpose of this errata filing, which was assigned Docket No. ER02-527-000, was to include a proposed change to the ISO Tariff regarding the Quarterly Adjustment provision that was inadvertently left out of the November 2 filing.

Numerous parties filed protests and motions to intervene in the ER02-250-000 proceeding. On December 20, 2002, the Commission accepted the ISO’s filing in ER02-250-000, made the filing effective January 1, 2002 subject to refund and to the outcome of the 2001 GMC proceedings, and set the matter for hearing. The Chief Administrative

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California, and Turlock Irrigation District. In addition, Commission Trial Staff does not oppose this Settlement Agreement.

Law Judge designated Judge Bobbie J. McCartney as Presiding Judge for the ER02-250-000 proceeding. A procedural schedule was established at a pre-hearing conference held in ER02-250-000 on January 10, 2002. During the pre-hearing conference, the Presiding Judge urged the parties “to fully explore the possibility of settlement in this proceeding.” Tr. 20-21.

In an order issued January 31, 2002,<sup>4</sup> the Commission accepted for filing PG&E’s December 5, 2001 filing in ER02-479-000, and the ISO’s December 7, 2001 errata filing in ER02-527-000, effective January 1, 2002, subject to refund and the outcome of the 2001 GMC proceedings, and consolidated these dockets with ER02-250-000 for hearing.

During a subsequent pre-hearing conference held on May 30, 2002, the Presiding Judge again urged the parties to engage in settlement discussions, with the goal of settling at least some of the issues in the case. Tr. 181-82. The Presiding Judge instructed the parties to file, by June 28, either a request that a settlement judge be appointed or a new proposed procedural schedule. Tr. 183.

Following the May 30, 2002 pre-hearing conference, the Parties engaged in intensive settlement negotiations. On June 28, the Parties filed with the Presiding Judge a “Joint Motion for Appointment of Settlement Judge and Suspension of the Remaining Procedural Schedule.” As negotiations continued, it became apparent that a settlement in principle could be reached without the assistance of a settlement judge. Therefore, on August 7, the Parties filed with Judge McCartney a “Joint Motion to Suspend the

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<sup>4</sup> *Pacific Gas and Electric Company, et al.*, 98 FERC ¶ 61,089 (2002).

Procedural Schedule.” On August 15, a “Joint Motion to Institute Interim Rates” (“August 15 Motion”) was filed with the Commission, in order to allow the ISO’s customers to receive the benefit of the settlement rates while this Settlement Agreement was being finalized. The August 15 Motion was granted by the Commission in a letter order dated September 12, 2002, making settlement rates effective as of September 1, 2002. The rates made effective on an interim basis were anticipated to be recovered from July 1, 2002. In order to avoid an under-recovery and concerns about retroactive ratemaking, the active parties submitted a Joint Motion to Adjust Interim Settlement Rates on October 11, 2002 to have this Settlement Agreement’s ASREO rate for the period November 1, 2002 through December 31, 2002 made effective as an interim rate pending the Commission’s consideration of this Settlement Agreement. That motion is currently pending before the Commission.

## **TERMS OF SETTLEMENT**

### **Article I:    Scope of Settlement**

1.1    This Settlement Agreement settles Docket Nos. ER02-250-000, ER02-527-000, and ER02-479-000 apart from a single issue of interest only to SDG&E.<sup>5</sup> To the extent that any aspect of the ISO’s November 2, 2001 GMC filing, as amended by its errata filing of December 7, 2001, is not specifically addressed in this Settlement Agreement, the provisions of the ISO’s GMC filing shall be in effect as

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<sup>5</sup>    One issue of importance to SDG&E related to SWPL is not resolved by this Settlement Agreement.

to that aspect following the effectiveness of this Settlement Agreement. Except as provided in Section 10.3 of this Settlement Agreement, any issue concerning the ISO's GMC revenue requirement and rates is precluded from being raised during the period from the effective date of this Settlement Agreement through December 31, 2003 or the date the ISO makes a rate filing under Section 205 of the FPA, whichever comes first.

- 1.2 Except as may be necessary to carry out the provisions of this Settlement Agreement, the effectiveness of this Settlement Agreement shall serve to terminate the captioned proceedings.
- 1.3 The terms of this Settlement Agreement shall be applied by the ISO, on a non-discriminatory basis, to all of its customers, and by PG&E to its customers.

**Article II: Rates and Revenue Requirement**

2.1 The following rates (the "Settlement Rates") are effective as of January 1, 2002, for the Control Area Services Charge ("CAS"), the Congestion Management Charge ("CM"), and the Ancillary Services and Real Time Energy Operations Charge ("ASREO")<sup>6</sup>:

CAS	\$0.553/MWh
CM	\$0.312/MWh
ASREO	\$0.957/MWh

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<sup>6</sup> Provisions in this Settlement Agreement addressing the ASREO Charge also shall apply to the "Market Operations" charge in 2003, if the term is redefined.

For ASREO, the following rate is effective as of September 1, 2002 through October 31, 2002:

\$1.048/MWh

For ASREO, the following rate is effective as of November 1, 2002 through December 31, 2002:

\$1.158/MWh

The ASREO rate to be in effect on January 1, 2003 will be established by a filing to be made by the ISO pursuant to Article IV. The GMC rates for 2003 may be adjusted as described in Section 4.1 of this Settlement Agreement.

- 2.2 No portion of ASREO will be assessed based on volumes of self-provided Ancillary Services for 2002 and 2003.
  - 2.2.1 The ISO withdraws its filed charge of 50% of ASREO based on volumes of self-provided Ancillary Services in its 2002 GMC, effective January 1, 2002, and will not propose to assess an ASREO charge based on volumes of self-provided Ancillary Services for calendar year 2003.
  - 2.2.2 In 2002 and 2003, the ISO will recover through the CAS category the costs the ISO proposed to recover through the 50% of ASREO based on volumes of self-provided Ancillary Services.
  - 2.2.3 PG&E will submit a change to its Pass-Through Tariff, effective January 1, 2002, to reflect the ISO's withdrawal of its filed charge as set forth in Section 2.2.1 and the stipulated rates specified in Section 2.1.

2.3 The ISO's gross revenue requirement<sup>7</sup> for 2002 is stipulated to be \$239,200,000. The stipulated gross revenue requirement represents a reduction of \$5,593,886 from the gross revenue requirement in the ISO's filing of November 2, 2001, which reduction was accomplished by the ISO reducing its Operating and Maintenance expenses by that amount. The gross revenue requirements for the GMC service categories are:

CAS:	\$138,585,863
CM:	\$27,787,380
ASREO:	\$72,826,757

2.3.1 The rates in Section 2.1 result from reducing the amounts in Section 2.3 by (i) reallocating Operating & Maintenance expenses among the three GMC service categories; (ii) applying \$9 million in fines and penalties revenues to the CAS and ASREO categories; and (iii) applying an additional \$2,782,847 in fines and penalties revenues to the ASREO category.

2.4 The ISO may raise the GMC rates through a filing in order to restore the ISO's Operating and Capital Reserves Account (ISO Tariff 8.5) to the level specified in Appendix F, Schedule 1, Part C of the ISO Tariff, if that is necessitated by an effective FERC order requiring the ISO to return to sellers an amount of fines and penalties, or any portions thereof, without which the ISO would be unable to

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<sup>7</sup> For purposes of this Settlement Agreement, the term "gross revenue requirement" means the ISO's revenue requirement after application of any surplus funds from the Operating and Capital Reserves Account.



derive the rates in Section 2.1 and maintain the specified Operating and Capital Reserves Account level. Parties may contest in such filing only: (1) the ISO's calculation of the amount proposed to restore the financial reserve requirement, and (2) the extent of the above-described fines and penalties revenues attributed by the ISO as a cause of any financial reserve requirement deficiency.

2.5 The ISO shall reflect in the 2003 and 2004 GMC revenue requirements such amounts of fines and penalties collected that the ISO reasonably believes will not be subject to refund.

2.6 The Settlement Rates are based on the following stipulated annual billing determinant volumes for calendar year 2002:

CAS: 246,487,000 MWh

CM: 88,992,846 MWh

ASREO 63,148,156 MWh

The stipulated billing determinant volumes are based on a number of facts and assumptions, which include, among others: (1) the fact that the Sacramento Municipal Utility District has formed its own control area; (2) significant changes in market conditions prevailing at the time of settlement (excluding changes directly arising from implementation of the ISO's market design 2002 ("MD02") pursuant to the FERC order of July 17, 2002);<sup>8</sup> (3) removal of the estimated volumes for self-provided Ancillary Services from the ASREO category; and (4)

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<sup>8</sup> *California Independent System Operator Corp.*, 100 FERC ¶ 61,060 (2002).

actual settlement volumes for each category in 2001, which the ISO represents are true and accurate settlement volumes, and, as-available, estimated volumes for each category for 2002, which the ISO represents are estimates the ISO relied upon or will rely upon for budget or forecast purposes for the 2001 through 2003 GMC, as provided in the following table:

	<b>CAS</b>	<b>Inter-Zonal</b>	<b>Market Operations</b>
January 2001	20,663,075 ACTUAL	6,480,464 ACTUAL	13,452,739 ACTUAL
February	18,726,287 ACTUAL	5,318,393 ACTUAL	13,316,834 ACTUAL
March	20,564,315 ACTUAL	5,842,217 ACTUAL	11,847,271 ACTUAL
April	18,733,132 ACTUAL	5,761,919 ACTUAL	10,953,532 ACTUAL
May	21,095,581 ACTUAL	5,791,935 ACTUAL	10,465,734 ACTUAL
June	20,922,499 ACTUAL	6,346,920 ACTUAL	8,924,529 ACTUAL
July	22,505,115 ACTUAL	6,960,162 ACTUAL	7,547,313 ACTUAL
August	23,035,644 ACTUAL	7,284,050 ACTUAL	7,177,991 ACTUAL
September	20,079,250 ACTUAL	6,375,279 ACTUAL	5,888,591 ACTUAL
October	19,225,939 ACTUAL	6,406,781 ACTUAL	5,640,005 ACTUAL
November	17,883,866 ACTUAL	6,677,315 ACTUAL	5,360,027 ACTUAL
December 2001	23,440,374 ACTUAL	6,701,249 ACTUAL	5,669,350 ACTUAL
	<b>CAS</b>	<b>CM</b>	<b>ASREO</b>
January 2002	21,013,172 BUDGETED	7,220,471 ACTUAL	CURRENTLY UNAVAILABLE
February	18,988,507 BUDGETED	6,446,138 ACTUAL	CURRENTLY UNAVAILABLE
March	20,729,433 BUDGETED	6,651,576 ACTUAL	CURRENTLY UNAVAILABLE
April	19,017,441 BUDGETED	7,261,737 ACTUAL	CURRENTLY UNAVAILABLE
May	19,895,433 BUDGETED	7,535,500 ACTUAL	CURRENTLY UNAVAILABLE

		/ESTIMATED	
June	21,285,646 BUDGETED	8,193,432 ACTUAL /ESTIMATED	CURRENTLY UNAVAILABLE

The ISO projects the volumes for the remainder of 2002 to be as follows:

	<b>CAS</b>	<b>CM</b>	<b>ASREO</b>
July	22,868,840 BUDGETED	8,335,474 FORECAST	CURRENTLY UNAVAILABLE
August	23,642,742 BUDGETED	8,622,897 FORECAST	CURRENTLY UNAVAILABLE
September	20,338,665 BUDGETED	7,395,779 FORECAST	CURRENTLY UNAVAILABLE
October	19,672,643 BUDGETED	7,148,421 FORECAST	CURRENTLY UNAVAILABLE
November	19,830,962 BUDGETED	7,207,220 FORECAST	CURRENTLY UNAVAILABLE
December	19,203,545 BUDGETED	6,974,200 FORECAST	CURRENTLY UNAVAILABLE

TOTAL 2002 VOLUMES PER SETTLEMENT	246,487,029 rounded to 246,487,000	88,992,846	63,148,156
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- FORECAST IS AS OF JUNE 2002.
- BUDGETED FIGURES ARE LISTED FOR CAS FOR 2002, AS THE FORECAST AS OF JUNE 2002 DID NOT INDICATE 2002 FORECASTED LEVELS OUTSIDE THE 5% BAND SPECIFIED PER ISO TARIFF SCHEDULE 1, PART B.
- FIGURES MAY INCLUDE THE EFFECT OF RETROACTIVE ADJUSTMENTS BILLED IN THE LISTED MONTH. SUBSEQUENT ADJUSTMENTS/RE-RUNS MAY AFFECT THE ABOVE "ACTUAL" FIGURES.
- MONTHLY VOLUME BREAKDOWN FOR ASREO CATEGORY IS UNAVAILABLE. THE ISO DID NOT RETAIN MONTHLY FIGURES WHICH WERE USED FOR THIS ANNUAL FORECAST. TOTAL FORECASTED FIGURE FOR 2002, EXCLUDING ANCILLARY SERVICE SELF-PROVISION VOLUME IS 63,148,156 MWH.

2.7 If a filing under Section 205 of the FPA is required for 2003 to increase the revenue requirement to make up any under-recoveries due to volume shortfalls in

2002,<sup>9</sup> no Party may contest the ISO's right to such collection except that a Party has the right to investigate and challenge any erroneous aspect of such ISO filing, including the basis on which such under-recoveries are claimed.

**Article III: Refunds**

3.1 The ISO will provide refunds plus interest to customers to the extent amounts have been collected, pursuant to the GMC rates filed on November 2, 2001, in excess of the amounts that would have been collected pursuant to the Settlement Rates in Section 2.1 and for the terms of Section 2.2, had those rates and terms been in effect as of January 1, 2002. Interest shall be calculated as required in 18 CFR § 35.19a. Refunds plus interest shall be provided by the ISO by payment or credit to affected customers within 30 days of the effective date of this Settlement Agreement.

3.1.1 If, after the ISO makes refunds plus interest pursuant to Section 3.1, this Settlement Agreement except for this Section 3.1.1. is rendered null and void, the ISO shall have the right to recover the amount of refunds plus interest from those entities receiving such payments through separate charges on invoices for those entities reflecting the amount of refunds and interest received from the ISO under Section 3.1 above, plus interest from the dates refunds were received.

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<sup>9</sup> To the extent the forecasted ISO Operating and Capital Reserves Account balance as of December 31, 2002 for each category is less than 15% of budgeted O&M spending for the service category for 2003, a shortfall would be budgeted in 2003.

- 3.1.2 The ISO shall be permitted to recover in 2003 GMC rates the amounts paid or credited by the ISO to affected GMC service customers as interest on refunds, whether or not the ISO must file under Section 205 of the FPA.
- 3.2 PG&E agrees to pass through any refunds and credits from the ISO pursuant to Section 3.1 that are associated with amounts that previously were collected from PG&E's CAA customers.

**Article IV: Trigger for a Section 205 Filing**

- 4.1 The ISO shall seek approval under Section 205 of the FPA for (1) any increase in the GMC gross revenue requirement for 2003 over \$239,200,000; or (2) in the case of the gross revenue requirement for any individual service category, over \$138,585,863 for CAS, \$27,787,380 for CM, or \$72,826,757 for ASREO; or (3) in the event the ISO's gross revenue requirement – *excluding* the effect of the Operating and Capital Reserves Account – exceeds \$246,000,000. For its GMC rates to be effective January 1, 2003, the ISO may adjust its rate for each service category based on any change in the estimated billing determinant volumes from the volumes for 2002, provided that the ISO shall employ the actual budgeted gross revenue requirement not to exceed \$239,200,000 in establishing the rates for the GMC to be effective January 1, 2003. After January 1, 2003, the ISO may implement a quarterly rate adjustment based on changes in estimated billing determinants only pursuant to Appendix F, Schedule 1, Part B of the ISO Tariff. Notwithstanding Sections 8.3 and 8.4 of the ISO Tariff, the ISO may adjust its 2003 GMC rates to produce the revenue levels described above without making a

Section 205 filing, *provided* (1) the GMC rates as adjusted do not produce (i) revenues for 2003 in excess of the settlement gross revenue requirement of \$239,200,000, or (ii) revenues for 2003 by service category in excess of the settlement amounts for the three service categories, as follows: CAS \$138,585,863, CM \$27,787,380, ASREO \$72,826,757; (2) the ISO does not propose a change in the three service categories reflected in the ISO's filing in this proceeding; and (3) the ISO's gross revenue requirement – *excluding* the effect of the Capital and Operating Reserves Account – does not exceed \$246,000,000.

4.2 For the purpose of determining whether the ISO must make a filing under Section 205 of the FPA as described in Section 4.1, the ISO shall retain discretion (in calculating the forecast 2002 year-end Operating and Capital Reserves Account balances) regarding the allocation of up to \$9 million in fines and penalties among the three service categories, consistent with the objective of avoiding, to the extent possible, increases in the revenue requirement for 2003 for any GMC service category above the levels set forth in Section 4.1.

**Article V: 2003 Budgeting/Rate Development Process**

The agreements reached concerning the 2003 Budgeting/Rate Development Process, found in Appendix A, are incorporated into and made a part of this Settlement Agreement as if set forth in this Article V.

**Article VI: 2003 Re-evaluation Process for 2004 GMC**

The provisions concerning the 2003 Re-evaluation Process for 2004 GMC, found in Appendix B, are incorporated into and made a part of this Settlement Agreement as if set forth in this Article VI.

**Article VII: Change to Section 8.5 and Appendix F, Schedule 1, Part B of the ISO Tariff**

7.1 The following text will replace the revision to Section 8.5 of the ISO Tariff proposed in the ISO's November 2 filing:

“Revenue collected to fund the ISO financial operating reserves shall be deposited in an Operating and Capital Reserves Account until such account reaches a level specified by the ISO Governing Board. If the Operating and Capital Reserves Account is fully funded, surplus funds will be considered revenues in the next fiscal year's operating budget.”

7.2 The following text will replace the current Appendix F, Schedule 1, Part B of the ISO Tariff:

“Each component rate of the Grid Management Charge will be adjusted automatically on a quarterly basis, up or down, so that rates reflect the ISO's FERC approved revenue requirement, if the estimated billing determinant volumes for that component, on an annual basis, change by 5% or more during the year.

“Each year the Grid Management Charge may be recalculated to reflect the following year's budget estimates and to adjust for any difference between

the previous year's revenue and cost estimates and actual revenues and costs, as reflected in Part D of this Schedule, 'Information Requirements'. The annual or periodic filing (which is described in Part D and is not the quarterly adjustment) shall not affect the automatic adjustment of the Grid Management Charge on a quarterly basis as set forth in the first paragraph of this Part B."

**Article VIII: Precedential Effect**

8.1 Except as otherwise indicated above, this Settlement Agreement is non-precedential with respect to any future proceeding and its terms may not be referred to in any future proceeding before the Commission for the purpose of supporting any specific approach to any issue. Notwithstanding the foregoing, the rights and obligations established by this Settlement Agreement may be enforced, by any Party, in any future rate case or other proceeding, and this Settlement Agreement may be referred to, and introduced, for that sole purpose and no other.

**Article IX: Reservations**

9.1 Agreement to or acquiescence in this Settlement Agreement shall not be deemed in any respect to constitute an admission by any Party that any allegation or contention made by any other Party in these proceedings is true or valid. In negotiating the Settlement Agreement, the Parties specifically agreed that the Settlement Agreement represents a negotiated agreement for the sole purpose of settling all issues in the captioned dockets. Except as expressly provided in this Settlement Agreement, no Party or affiliate of any Party shall be deemed to have



approved, accepted, agreed to, or consented to any fact, concept, theory, rate methodology, principle or method relating to jurisdiction, prudence, reasonable cost of service, cost classification, cost allocation, rate design, tariff provisions, or other matters underlying or purported to underlie any of the resolutions of the issues provided herein. The Commission's approval of the Settlement Agreement shall not constitute approval of, or precedent regarding, any principle or issue in these proceedings.

- 9.2 The resolution of any matter in this Settlement Agreement shall not be deemed to be a "settled practice" as that term was interpreted and applied in *Public Service Commission of the State of New York v. FERC*, 642 F.2d 1335 (D.C. Cir. 1980).
- 9.3 The discussions among the Parties that have produced the Settlement Agreement have been conducted on the explicit understanding that they were undertaken subject to Rule 602(e) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.602(e), and the rights of the Parties with respect thereto shall not be impaired by the Settlement Agreement.
- 9.4 The titles and headings of the various Articles in this Settlement Agreement are for reference purposes only. They are not to be construed or taken into account in interpreting this Settlement Agreement, and do not qualify, modify, or explain the effects of this Settlement Agreement.

**Article X: No Protest or Appeal of Settlement; No Challenge to Rates**

10.1 No Party shall:

- a. file comments or reply comments opposing this Settlement Agreement in whole or in part;
- b. seek rehearing of an order which approves this Settlement Agreement without condition or modification;
- c. appeal a final order which approves this Settlement Agreement without condition or modification;
- d. seek to set aside this Settlement Agreement or any provision thereof if approved without condition or modification; or
- e. challenge its applicability to such Party once it has become effective.

10.2 Pursuant to Rule 602(f)(3), 18 C.F.R. § 385.602(f)(3), any entity that chooses not to file comments within the time allowed for comments is deemed to have waived all objections to this Settlement Agreement. Therefore, such an entity may not seek rehearing or judicial review of the Commission order(s) approving this Settlement Agreement, or challenge any provision or rate put into effect by such order(s).

10.3 Nothing in this Settlement Agreement shall restrict the right of any Party to submit a complaint under Section 206 of the FPA seeking a Commission hearing to investigate (1) any aspect of the ISO's Tariff not covered by this Settlement Agreement, or (2) the ISO's implementation of any aspect of this Settlement Agreement.

**Article XI: Successors and Assigns**

11.1 The rights conferred and obligations imposed on any Party or other customer of the ISO by this Settlement Agreement shall inure to the benefit of or be binding on that Party's or customer's successors in interest or assignees as if such successor or assignee were itself a Party or customer.

**Article XII: Execution in Counterparts**

12.1 This Settlement Agreement may be executed in counterparts, each of which shall be deemed to be an original, but which together shall constitute one and the same instrument.

**Article XIII: Parties' Rights and Obligations**

13.1 Section 3.1.1 of this Settlement Agreement shall survive the nullification of the remainder of the Settlement Agreement unless Section 3.1.1 is specifically rejected by the Commission or a court.

13.2 If the Commission's approval of this Settlement Agreement is conditioned or the Settlement Agreement is modified in a way that significantly affects the benefits of this Settlement Agreement for any Party, it shall be considered to be accepted upon:

(a) acceptance by the Parties, other than the ISO, adversely affected by such condition or modification, who shall be deemed to have accepted it unless written notice of objection to and withdrawal from the Settlement Agreement, as modified or conditioned, is filed by such Party with the Commission and served on the other Parties:

(i) within a period of eight (8) days from the date of such order; or

(ii) if any Party has objected to or withdrawn from the Settlement Agreement under clause (i), within a period of thirteen (13) days from the date of such order;

and

(b) acceptance by the ISO, who shall be deemed to have accepted it unless within a period of twenty (20) days from the date of such order, written notice of objection to the Settlement Agreement, as modified or conditioned, is filed by the ISO with the Commission and served on the other Parties.

13.3 This Settlement Agreement shall survive the objection and withdrawal of any Party other than the ISO.

13.4 If the ISO provides notice of its objection and withdrawal pursuant to section 13.2(b), then this Settlement Agreement shall not become effective and it shall be a nullity for any and all purposes.

13.5 Failure of a Party to notify the other Parties and the Commission pursuant to Section 13.2 above shall be deemed agreement to the Settlement as modified or conditioned by such Party.

**Article XIV: Giving Effect to Commission Opinion in Docket Nos. ER01-313-000, et al. During the Term of This Settlement Agreement**

14.1 The ISO shall conform the rates, terms and conditions of the 2002 and 2003 GMC to the Commission's opinion in Docket Nos. ER01-313-000, *et al.*, except as provided in Section 14.2. If it appears that an opinion or reviewing court decision would result in the ISO's failure to recover or retain its gross revenue requirement during the term of this Settlement Agreement, the Parties shall meet within ten (10) days of the issuance of such an opinion or decision to determine if such an under-recovery or refunds would occur, were the opinion or decision to be

implemented. If such an under-recovery or refunds appear possible, the Parties shall determine how to modify this Settlement Agreement in a manner that will allow the ISO to recover or retain its gross revenue requirement during the term of this Settlement Agreement. The Parties shall have thirty days from the date of such Commission opinion or court decision to submit an amended settlement agreement to the Commission for approval. If Parties are unable to submit a modified settlement agreement to the Commission within 30 days of such an opinion or decision, and the ISO believes that it will under-recover or fail to retain its gross revenue requirement during the term of this Settlement Agreement without modification of the Settlement Agreement, the ISO shall implement the opinion or decision, but the ISO will be free to make a filing under Section 205 of the FPA in order to ensure the recovery of the gross revenue requirement during the term of this Settlement Agreement.

14.2 If a Commission order or reviewing court decision reduces the revenue requirement filed by the ISO in Docket Nos. ER01-313-000, *et al.*, such a reduction in an order or decision shall not affect the terms of this Settlement Agreement.

14.3 Should the 2001 GMC Initial Decision in Docket Nos. ER01-313-000, *et al.*, be reversed as to the propriety of PG&E's ability to pass through GMC costs to CAA customers, then provisions in this Settlement Agreement addressing PG&E's ability to pass through GMC costs shall be removed without otherwise affecting the Settlement Agreement. PG&E shall refund all amounts collected from CAA

customers pursuant to its GMC P-TT in 2002 to the extent directed by the Commission in Docket Nos. ER01-313-000, *et al.*

**Article XV: Effective Date**

15.1 This Settlement Agreement shall become effective upon issuance by the Commission of a Final Order approving this Settlement Agreement. For purposes of this Settlement Agreement, the term Final Order means a Commission order that is no longer subject to rehearing before the Commission. A Commission order shall be deemed a Final Order when the last date for filing an application for rehearing has expired and no application is filed by that date. If any application for rehearing is filed, a Commission order shall be deemed a Final Order when the Commission has acted on the merits of all requests for rehearing and no further requests for rehearing remain pending before the Commission.

**WHEREFORE**, the Sponsoring Parties respectfully request that the Commission approve this Settlement Agreement without condition or modification.

**IN WITNESS WHEREOF**, the Sponsoring Parties have agreed to and caused this Settlement Agreement to be duly executed by their duly authorized representatives on this 17th day of October, 2002.

CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION

BY \_\_\_\_\_

TITLE \_\_\_\_\_

DATE \_\_\_\_\_

PACIFIC GAS AND ELECTRIC COMPANY

BY \_\_\_\_\_

TITLE \_\_\_\_\_

DATE \_\_\_\_\_

SOUTHERN CALIFORNIA EDISON COMPANY

BY \_\_\_\_\_

TITLE \_\_\_\_\_

DATE \_\_\_\_\_