

Reliability Must-run Settlement Agreement
Among California ISO, Northern California Power Agency
and Pacific Gas and Electric Company

This settlement agreement (“Settlement”) is made as of March 15, 2000, by and among the California Independent System Operator (“CAISO”), Northern California Power Agency (“NCPA”) and Pacific Gas and Electric Company (“PG&E”), individually “Party” and collectively “Parties.”

This Settlement is the result of the following:

- A. NCPA is a joint powers agency organized under California law which owns and operates certain electric generating facilities suitable to provide energy and ancillary services under Reliability Must-Run (“RMR”) contracts with CAISO. CAISO is a California public benefit corporation whose responsibilities, under the tariff (“the Tariff”) filed with and approved by the Federal Energy Regulatory Commission (“FERC”), include maintaining the reliability of the ISO Controlled Grid in California, and which is authorized under the Tariff to enter into RMR contracts for this purpose. PG&E is a California corporation which is responsible for paying CAISO the costs incurred under certain RMR contracts, including those between NCPA and CAISO involved in this Settlement.
- B. Through its Local Area Reliability Service (“LARS”) procurement process, CAISO selected certain generating units at NCPA-owned facilities to provide RMR services under RMR contracts for 1999. The Parties have been negotiating 1999 RMR contracts since April 1999. For a number of reasons, agreement on contract rates, terms and conditions has been delayed.
- C. In the summer of 1999, NCPA adopted a unilateral rate schedule for reliability service from its designated units. NCPA operated its units when requested to do so by CAISO in order to help ensure the reliability of portions of the ISO Controlled Grid located within PG&E’s service area. NCPA has billed CAISO for the generation under NCPA’s rate schedules, but the extent of applicability of such rate schedules and any obligation for payment under them is presently disputed by CAISO and by PG&E.
- D. Through another LARS procurement process, known as “LARS 2000,” conducted in August 1999, CAISO selected certain other NCPA units to provide services upon the negotiation of RMR contracts for 2000. After CAISO discovered what it believes was an error in this LARS process, CAISO conducted a supplemental LARS 2000 solicitation; the result of the supplemental solicitation, among other things, was a decrease in the number of NCPA generating units for which CAISO would negotiate RMR contracts in order to help ensure the reliability of the ISO Controlled Grid during the year 2000. NCPA has disputed the supplemental LARS 2000 process and its results in *NCPA v. CAISO*, case number 99CS02017 (Cal. Super. Ct., Sacramento County, filed September 28, 1999), in which a hearing is presently set for May 2000 (“Superior Court case”).

E. The Parties have completed their negotiations on this Settlement and the rates, terms and conditions of RMR contracts and service for both 1999 and 2000.

NOW, THEREFORE, in consideration of the preceding statements and the several promises below, the Parties agree as follows:

1. (a) At the same time as the Parties are executing this Settlement, NCPA and CAISO are executing the following agreements (“New Agreements”), which are appended to and expressly incorporated in and made a part of this Settlement including being subject to paragraph 15:

- a Participating Generator Agreement (“PGA”) effective January 1, 2000;
- a Meter Service Agreement for ISO Metered Entities (“MSA”) effective January 1, 2000;
- three RMR contracts (“Must-Run Service Agreements” or “MRSAs”), which together provide for service from the following NCPA units from June 1, 1999, through December 31, 1999: (i) Collierville 1 and 2; (ii) Lodi STIG; and (iii) Alameda CT 1 and 2, Lodi CT, and Roseville CT 1 and 2 (together, the “1999 MRSAs”); and
- two MRSAs, which together provide for service from the following NCPA units from January 1, 2000 through December 31, 2000, and are subject to extension from year-to-year thereafter by CAISO only: (i) NCPA Geothermal Plant Number 2, units 3 and 4; and (ii) Alameda CT 1 and 2 and Lodi CT (together, the “2000 MRSAs”).

(b) Both the 1999 MRSAs and the 2000 MRSAs will be binding upon CAISO and NCPA upon execution, and will continue to be binding thereafter subject to their terms and the terms of this Settlement. Invoicing for service under the 1999 MRSAs will be exclusively as set forth in paragraph 6. Invoicing for service under the 2000 MRSAs will be as set forth therein, provided that the first invoice by NCPA to CAISO thereunder will include all charges for service provided beginning on January 1, 2000.

(c) Upon execution of this Settlement CAISO and NCPA will be deemed to have fully complied with all obligations arising under the 1999 MRSAs other than payment obligations prior to the execution thereof, including any obligations to provide notices, reports and forecasts; CAISO’s payment obligations under the 1999 MRSAs are suspended and will be discharged upon CAISO’s and PG&E’s compliance with paragraph 6, below.

(d) Notwithstanding the provisions of Section 2.2(d) of the MRSAs, if CAISO terminates or does not extend the term of an MRSA as to a Unit for 2001, CAISO may redesignate the same Unit or designate another non-reliability must-run unit at the same Facility, as a Reliability Must-Run Unit at any time during 2001, provided that the must-run service

agreement applicable to such Unit has a term of not less than twelve calendar months following commencement (or renewal) of service under such must-run service agreement.

(e) If this Settlement is terminated pursuant to paragraph 3(b), below, the 1999 MRSAs will be void *ab initio* and the 2000 MRSAs will be terminated as of the date of such termination of this Settlement.

2. (a) The Parties believe that the rates, terms and conditions of this Settlement and the New Agreements are just and reasonable, including the rates and charges under the MRSAs and PG&E's resulting payment obligations under the Tariff; and the Parties agree that the rates and charges under this Settlement and MRSAs are cost-based.

(b) CAISO will promptly file this Settlement with FERC, and CAISO will (in addition to such other matters as CAISO may deem necessary in respect of the filing) ask that FERC approve this Settlement, accept the MSA and PGA for filing, and authorize the rates and charges in the MRSAs, under the terms and conditions of those contracts, to be charged to and paid by PG&E as costs incurred by CAISO under those contracts. NCPA and PG&E will support CAISO's request for approval by FERC of this Settlement and the New Agreements in their entirety, including the rates to be charged to PG&E by the CAISO, without reservation or exception.

3. (a) For purposes of this Settlement, "Final FERC Action" means FERC's issuance of a final order, no longer subject to review and without modification unacceptable to any Party pursuant to paragraph 3(b), resulting from CAISO's filing of this Settlement.

(b) If FERC or a court reviewing a FERC order rejects the terms of this Settlement or modifies such terms in any way, including by imposing any limitation on CAISO's ability to recover the rates and charges specified in the MRSAs from PG&E under the Tariff, then any Party materially adversely affected may give written notice to the other Parties within fifteen (15) days after such a FERC or court decision. Failure to give such notice to the other Parties will be deemed continued acceptance of this Settlement regardless of the rejection or modification. If a Party provides such notice, then all Parties will meet within fifteen (15) days of receipt of such notice by the other Parties, to negotiate and determine promptly whether the benefits of this Settlement adversely affected by FERC's or a reviewing court's rejection or modification can be restored in a manner acceptable to the Parties, through modification of this Settlement or otherwise.

(c) If the Parties are able to so determine and they agree on a modified Settlement, then the modified Settlement will entirely supersede this Settlement, and CAISO will, if needed to implement the modified Settlement, promptly seek FERC approval of such modified Settlement with the active support (through filings at FERC) of NCPA and PG&E, which will be without reservation or exception.

(d) If the Parties have met and negotiated for at least sixty (60) days and are unable to determine that they can agree on a modified Settlement, then any Party may give the other

Parties written notice of termination of this Settlement. Such notice will also terminate all of the MRSAs and will be effective upon receipt of such notice by both of the other Parties. In the event of such termination, the Parties will be restored to their rights, obligations and positions prior to entering into this Settlement to the extent consistent with law and the terms of this Settlement.

4. (a) In accordance with and subject to the express provisions of Article 9 of the MRSAs and Section 5.2.7 of the Tariff, and notwithstanding any provision of this Settlement to the contrary: (i) CAISO will only be obligated to pay NCPA for service under the MRSAs if and to the extent that payment for such service has been received by CAISO from PG&E; (ii) PG&E will pay to CAISO all amounts duly invoiced by CAISO under the MRSAs, whether or not such amounts are disputed by PG&E, *provided* that, in the event that payment of an amount invoiced by CAISO would be inconsistent with an order relating to the MRSAs of FERC or a court reviewing a FERC order, PG&E will pay so much of such invoice as would not be inconsistent with such an order, and the disposition of the remainder will be resolved by good faith negotiations between NCPA and PG&E, and (iii) CAISO will duly invoice PG&E for service under the MRSAs as required therein and in this Settlement.

(b) If a decision of FERC, or that of a court reviewing a FERC order, concerning rates or charges or changes to rates or charges under the MRSAs or their pass-through under the Tariff, results in a requirement that CAISO make refund to PG&E of amounts already paid under the MRSAs, PG&E and NCPA agree and covenant to CAISO that they will jointly: (i) take such actions as are necessary to ensure that the net amount collected from PG&E arising from the MRSAs (i.e., the amount paid by PG&E to CAISO minus any refund made by CAISO to PG&E) is equal to the amount that CAISO pays to NCPA in respect of the MRSAs, and (ii) certify to CAISO that, upon making such refund, CAISO will be in full satisfaction of its refund obligations to PG&E and its payment obligations to NCPA. NCPA and PG&E agree (i) to negotiate in good faith to implement promptly the foregoing requirement at such time as it may require implementation, and (ii) that CAISO may, in the event that NCPA and PG&E fail to implement timely such requirement, offset necessary amounts against payment or refund obligations to either or both of NCPA and PG&E in respect of the MRSAs to ensure that the net amount collected from PG&E in respect of the MRSAs is equal to the amount that CAISO pays in respect of the MRSAs.

(c) Unless the provisions of paragraph 3 apply, if FERC or a court reviewing a FERC order issues an order concerning rates and charges under any of the MRSAs that results in a requirement that PG&E pay less to CAISO than is required under such MRSAs, any Party may give written notice to the others within fifteen (15) days of such order and, following receipt of such notice, the Parties will negotiate in good faith in an attempt to determine whether the benefits of the MRSAs can be restored in a manner acceptable to the Parties. Failure to give such notice to the other Parties will be deemed continued acceptance of rates, terms and conditions of the MRSAs regardless of the order of FERC or the court. In the event that the Parties are unable to agree within sixty (60) days, any Party may terminate such MRSAs upon written notice to the other Parties, effective upon

receipt. Nothing in this paragraph 4(c) affects the applicability of paragraphs 4(a) and 4(b).

(d) This paragraph 4 will terminate at the end of December 31, 2000, *provided* that it will continue to apply to rates and charges under the 1999 MRSA's and the 2000 MRSA's incurred through December 31, 2000, and the pass-through of such rates and charges under the Tariff, for as long as necessary.

5 (a) The Parties agree to toll all applicable statutes of limitation, contractual time defenses, the equitable defense of laches and any other time-related bar or defense (collectively the "Time Defenses"), from the date of this Settlement to forty-five (45) days after the date of termination of this Settlement pursuant to paragraph 3(d), with respect to any suit, action or claim NCPA may bring against CAISO or PG&E or both in respect of any Claims, as defined in paragraph 11, or counterclaims, cross-claims or third-party complaints to or in any such suit, action or claim, or any separate suit, action or claim that may be filed in or in relation thereto by CAISO or PG&E. In the event any such suit, action or claim is filed on or before the forty-fifth (45th) day after the date of termination of this Settlement, and any such defense, counterclaim, cross-claim or third-party complaint, respectively, is timely raised, pled or otherwise asserted in such suit, action or claim, such suit, action, claim, defense, counterclaim, cross-claim or third-party complaint will be deemed to have been filed for purposes of the Time Defenses as of the date of execution of this Settlement. The Parties also agree that any order, decision, finding of fact or conclusion of law of the FERC in respect of any Claims will not, if this Settlement is terminated, be recognized or enforced in any court as a final or binding resolution of any issue of fact or law, be offered or be admissible in evidence, or be offered, argued or taken as any guidance on any point of fact or law, notwithstanding principles of collateral estoppel or res judicata, or issue or claim preclusion, or primary jurisdiction, or any other principle or doctrine of law, and that any such finding or conclusion of the FERC will be given no effect by any court so as to affect in any way a claim or defense of any Party; *provided* that CAISO or PG&E, after reasonable advance notice to and an opportunity for discussion (and potentially ADR) with the other Parties, may make a court aware, without characterization, of a specific requirement in any FERC order that CAISO or PG&E, respectively, take, or refrain from taking, action in respect of this Settlement if necessary in such Party's judgment to ensure that such Party is not subject to mutually exclusive obligations with respect to the taking, or refraining from taking, action imposed or potentially to be imposed by the FERC and by such court and provided that CAISO or PG&E may make a court aware, without characterization, of the amount authorized by FERC for pass-through to PG&E under the MRSA and of the potential financial consequences for CAISO and PG&E. Any dispute arising under the foregoing sentence will be resolved by ADR in accordance with paragraph 17, and the Parties agree to cooperate and use reasonable efforts, including jointly requesting extensions to procedural deadlines, to permit a conclusion of such ADR proceeding prior to CAISO or PG&E exercising rights under the foregoing sentence, so long as in CAISO's or PG&E's judgment such proceedings can be completed without unreasonably jeopardizing that Party's ability to inform the court as allowed by the proviso in the preceding sentence.

(b) The invoicing and payment obligations, if any, that otherwise exist with respect to reliability service from NCPA units during 1999 are tolled until either (i) Final FERC Action, in which event the provisions of paragraph 6 are applicable and there will be no other invoicing or payment obligations with respect to such service, and any outstanding invoices will be deemed withdrawn, or (ii) termination of this Settlement pursuant to paragraph 3(b), in which event the invoicing and payment obligations, if any, that otherwise exist with respect to such service will be reinstated as of the date of such termination.

(c) The provisions of this paragraph 5 shall survive termination of this Settlement for as long as necessary.

6. Within 10 days after Final FERC Action, NCPA will send an invoice to CAISO and PG&E for \$5,400,000 (plus interest at the Interest Rate, as defined in the MRSAs, commencing 90 days after the date the Settlement is filed with FERC), by overnight delivery, which invoice will cover all services provided under the 1999 MRSAs. PG&E will pay CAISO \$5,400,000 (plus interest as set forth above) under Section 5.2.8 of the Tariff as a single lump-sum amount within thirty (30) days after Final FERC Action. CAISO will pay NCPA \$5,400,000 (plus interest as set forth above) as a single lump-sum amount for all services provided under the 1999 MRSAs within one business day after receipt of PG&E's payment to CAISO.

7. NCPA agrees that it will not seek to increase the level of the Monthly Availability Payment under any MRSA that is part of this Settlement, under Section 14.3 of such MRSA or by any other means, based on CAISO's proposal to modify the Tariff to provide for dispatch of Energy under an MRSA at any time prior to CAISO's establishment of Final Schedules for the Day-Ahead Market operated by the California Power Exchange Corporation, as those terms are described in the Tariff. Such proposed modification of the Tariff is recognized as an exception to the precedence of the 2000 MRSAs over the Tariff.

8. The Parties agree for purposes of this Settlement that PG&E's status as Scheduling Coordinator (as that term is defined in the Tariff) for NCPA, including its RMR units, and the execution by NCPA and CAISO of a PGA effective January 1, 2000, do not affect service from NCPA under the 1999 MRSAs, which service was provided as if NCPA had executed a PGA effective June 1, 1999. The Parties further agree that nothing in this Settlement (a) limits PG&E's ability to seek retroactive recovery of Scheduling Coordinator costs incurred on NCPA's behalf during 1999 or (b) constitutes PG&E's agreement that service under an MRSA can be provided by an NCPA resource also subject to the PG&E-NCPA Interconnection Agreement except for purposes of the 1999 MRSAs.

9. NCPA agrees that during the term of the MRSA applicable to the Lodi CT, the costs associated with the operation of the Lodi CT to relieve overloads or other operational constraints (in the Lockeford area) at the PG&E Lockeford substation will be fully

compensated from the revenues associated with such MRSA for the Lodi CT. PG&E and NCPA agree that, as part of PG&E providing transmission transfer capability for the year 2000 to the City of Lodi, PG&E will re-rate the Lockeford-Lodi No. 3 60 kV line and utilize existing PG&E operating procedures for the Lockeford area, which include operation of the Lodi CT pursuant to the MRSA applicable to the Lodi CT.

10. Promptly after the Parties enter into this Settlement, NCPA will either dismiss without prejudice or move to suspend indefinitely all proceedings in the Superior Court case. Immediately upon entering into this Settlement, all parties to that case will immediately suspend all pre-trial activities including discovery, and all pre-trial activities will remain suspended until this Settlement is terminated under paragraph 3, if it is, or otherwise until the Superior Court case has been dismissed with prejudice. Within thirty (30) days after Final FERC Action on this Settlement or as may be otherwise agreed in writing by the Parties, NCPA will move to dismiss the Superior Court case with prejudice and will request an expedited ruling on such request.

11. As of the date of Final FERC Action, the following mutual release will be effective:

CAISO, NCPA and PG&E each hereby waives and releases any and all claims, demands, causes of action, or other right to relief, whether based on contract, tort, statute, rate schedule, tariff, or other legal or equitable theory of recovery, for specific relief or for losses, expenses, fees, damages (compensatory, punitive, exemplary, statutory or otherwise), or compensation of any nature whatsoever, known or unknown, which, as of the effective date of this release (that is, as of the date of Final FERC Action) that Party had or has, or may have had or may have, against another Party to this release, or any of such Party's subsidiaries, affiliates, officers, directors, agents, employees, attorneys, shareholders or members, arising out of or based in whole or in part upon (i) failure to enter into an MRSA or any other contract of any nature with NCPA or any of its members or affiliates, for (x) Energy or Ancillary Services to provide reliability prior to December 31, 2000 or (y) the readiness and willingness to provide Energy or Ancillary Services to provide reliability (together, "Reliability Service"), from any generating unit whatsoever, prior to December 31, 2000 or (ii) payment or failure to pay NCPA or any of its members or affiliates for Reliability Service prior to December 31, 2000 (collectively, "Claims"). This mutual release will not apply to, and the foregoing definition of Claims will not include any claim or cause of action (a) to enforce this Settlement, including this mutual release, or any of the New Agreements, (b) brought by NCPA or any of its members or affiliates, solely in the capacity of a user or beneficiary of the ISO Controlled Grid and not as a potential or actual provider of Reliability Service, concerning the effect of CAISO's RMR designations on the reliability of the ISO Controlled Grid or adjacent control areas (except to the extent that NCPA should have, under normal principles of the compulsory joinder of claims or causes of action, brought or asserted such claims or causes of action in the Superior Court case as of the date the Superior Court case commenced) or (c) brought by NCPA or any of its members or affiliates

arising out of an NCPA claim that PG&E failed to provide Scheduling Coordinator services to NCPA or otherwise precluded NCPA from providing Ancillary Services under Section 2.5 of the Tariff, but not under any MRSA.

CAISO, NCPA and PG&E each acknowledges that it executes and agrees to this full and final release as a compromise of matters which may involve disputed issues of law and fact, and each Party fully assumes the risk that the facts and the law may be other than it believes. CAISO, NCPA AND PG&E, BEING AWARE OF CALIFORNIA CIVIL CODE SECTION 1542, EACH EXPRESSLY WAIVES ALL RIGHTS UNDER THIS STATUTE, WHICH PROVIDES AS FOLLOWS:

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

CAISO, NCPA and PG&E also each hereby expressly waives any rights it may have under any other statutes or common law principles of similar effect.

12. Agreement to or acquiescence in this Settlement will not be deemed in any respect to constitute an admission by any Party that any allegation or contention made by any other Party in any proceeding or dispute addressed in this Settlement, or that any specific statement or characterization in paragraphs A through D of this Settlement, is true or valid, and no Party will seek to introduce as true or valid based on this Settlement any such allegation, contention or specific statement or characterization against any other Party in any proceeding whatsoever; and the agreement and prohibition in this sentence will survive termination of this Settlement for as long as necessary. In reaching this Settlement, the Parties specifically agreed that this Settlement represents a negotiated agreement for the sole purpose of settling certain disputes, as described herein. No Party has or will 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 this Settlement, except as specifically provided in paragraph 2(a) of this Settlement. FERC's approval of this Settlement will not constitute approval of, or precedent regarding, any principle or issue among the Parties related to the subject matter of this Settlement.

13. The rights conferred and obligations imposed on any Party by this Settlement will inure to the benefit of and be binding on that Party's successors in interest or assignees as if such successor or assignee was itself a Party hereto.

14. This Settlement constitutes the full and complete agreement of the Parties with respect to the subject matter herein and supersedes all prior offers, discussions, and agreements, whether written or oral, with respect to such subject matter.

15. In the event of a conflict between the terms and conditions of this Settlement and any terms and conditions of any New Agreement, the terms and conditions of this Settlement will prevail.

16. This Settlement will be interpreted and construed under and pursuant to the laws of the State of California, without regard to principles of conflicts of laws.

17. Any dispute regarding the interpretation or enforcement of this Settlement will be resolved, to the extent permitted by law, under the ADR provisions of the MRSAs (Schedule K), provided that PG&E will have the same rights and obligations under such provisions as CAISO and NCPA, that any discovery must be completed within 15 days after the selection of the arbitrator(s), and that in any arbitration, the arbitrator(s) will issue an award or decision within 45 days of appointment.

18. Each Party has participated in the drafting of this Settlement with the aid of counsel and therefore no ambiguity will be interpreted for or against any Party.

19. For any notice that must be received to be effective under this Settlement, a receipt for overnight delivery by Federal Express, with the address(es) and telephone number(s) of the representative(s) of the Party to whom notice was being sent, as set forth below, will be conclusive evidence that the Party received the notice on the day following its entrustment to Federal Express:

For CAISO:

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(916) 351-2144

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For NCPA:

Attention: General Manager
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For PG&E:

Richard Weingart
Director, Generation/Reliability Strategy
Pacific Gas and Electric Company
77 Beale Street, B13J
San Francisco, CA 94105
(415) 973-9153

Attention: Senior Vice President and General Counsel
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77 Beale Street, B32
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(415) 973-2877

Judi K. Mosley
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San Francisco, CA 94105
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IN WITNESS WHEREOF, this Reliability Must-run Settlement Agreement has been entered into as of the date first set forth above.

PACIFIC GAS & ELECTRIC COMPANY

NORTHERN CALIFORNIA POWER AGENCY

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION

By: _____

Name: _____

Title: _____

Date: _____