

File No. 150329 Committee Item No. 2  
Board Item No. \_\_\_\_\_

## COMMITTEE/BOARD OF SUPERVISORS

### AGENDA PACKET CONTENTS LIST

Committee: Government Audit and Oversight Date May 7, 2015

Board of Supervisors Meeting Date \_\_\_\_\_

**Cmte Board**

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| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Ordinance                                    |
| <input type="checkbox"/>            | <input type="checkbox"/> | Legislative Digest                           |
| <input type="checkbox"/>            | <input type="checkbox"/> | Budget and Legislative Analyst Report        |
| <input type="checkbox"/>            | <input type="checkbox"/> | Youth Commission Report                      |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Introduction Form                            |
| <input type="checkbox"/>            | <input type="checkbox"/> | Department/Agency Cover Letter and/or Report |
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| <input type="checkbox"/>            | <input type="checkbox"/> | Grant Information Form                       |
| <input type="checkbox"/>            | <input type="checkbox"/> | Grant Budget                                 |
| <input type="checkbox"/>            | <input type="checkbox"/> | Subcontract Budget                           |
| <input type="checkbox"/>            | <input type="checkbox"/> | Contract/Agreement                           |
| <input type="checkbox"/>            | <input type="checkbox"/> | Form 126 – Ethics Commission                 |
| <input type="checkbox"/>            | <input type="checkbox"/> | Award Letter                                 |
| <input type="checkbox"/>            | <input type="checkbox"/> | Application                                  |
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**OTHER (Use back side if additional space is needed)**

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|-------------------------------------|--------------------------|---|
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>Settlement Agreement - 2/20/2015</u> |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>PUC Reso No. 15-0081</u>             |
| <input type="checkbox"/>            | <input type="checkbox"/> | _____                                   |
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Completed by: Erica Major Date May 1, 2015  
Completed by: \_\_\_\_\_ Date \_\_\_\_\_

1 [Settlement of Lawsuits - Pacific Gas and Electric Company - City to Pay \$1,563,963.29 and  
2 City to Receive \$1,563,963.29]

3 **Ordinance authorizing settlement of two lawsuits: the first lawsuit entitled Pacific Gas  
4 and Electric Co. v. City and County of San Francisco was filed by the Pacific Gas and  
5 Electric Company (PG&E) on December 14, 2007, in San Francisco Superior Court,  
6 Case No. CGC-07-470086; that settlement requires the City to pay PG&E \$1,563,963.29  
7 and allows the City to continue providing electric service to the Ferry Building; the  
8 second lawsuit entitled City and County of San Francisco v. Pacific Gas and Electric  
9 Co. was filed by the City on March 6, 2013, in San Francisco Superior Court, Case No.  
10 CGC-13-529309; that settlement requires PG&E to pay the City \$1,563,963.29 and to  
11 provide the City with certain information necessary to prevent any future  
12 underpayments of franchise fees.**

13  
14 Be it ordained by the People of the City and County of San Francisco:

15 Section 1. Pursuant to Charter, Section 6.102(5), the Board of Supervisors hereby  
16 authorizes the City Attorney to settle the action entitled Pacific Gas and Electric Co. v. City  
17 and County of San Francisco, San Francisco Superior Court, Case No. CGC-07-470086, by  
18 the City's payment of \$1,563,963.29 to PG&E and PG&E's agreement that the City will  
19 continue to provide electric service to the Ferry Building. All of the terms and conditions of the  
20 settlement are set forth in the Settlement Agreement and Release of Claims signed by the  
21 parties ("Settlement Agreement"), which is on file with the Clerk of Board of Supervisors in File  
22 No. 150329 and is incorporated herein by reference.

23 The above-named action was filed in the San Francisco Superior Court on December  
24 14, 2007, and the following parties were named in the lawsuit: plaintiff and cross-defendant  
25

1 Pacific Gas and Electric Co., and defendant and cross-complainant the City and County of  
2 San Francisco.

3 Section 2. Pursuant to Charter, Section 6.102(5), the Board of Supervisors hereby  
4 authorizes the City Attorney to settle the action entitled City and County of San Francisco v.  
5 Pacific Gas and Electric Co., San Francisco Superior Court, Case No. CGC-13-529309, by  
6 PG&E's payment of \$1,563,963.29 to the City and PG&E's agreement to provide the City with  
7 certain information to prevent any future underpayments of franchise fees. All of the terms  
8 and conditions of the settlement are set forth in the Settlement Agreement.

9 The above-named action was filed in the San Francisco Superior Court on March 6,  
10 2013, and the following parties were named in the lawsuit: plaintiff the City and County of San  
11 Francisco, and defendant Pacific Gas and Electric Co.

12 Section 3. On March 24, 2015, the San Francisco Public Utilities Commission  
13 approved the settlement of both of these matters in Resolution No. 15-0081, which is on file  
14 with the Clerk of the Board Supervisors in File No. 150329 and is incorporated herein by  
15 reference.

16 Section 4. Pursuant to the parties' agreement, the Board of Supervisors authorizes the  
17 San Francisco Public Utilities Commission to effectuate the settlement by transferring  
18 \$1,563,963.29 to the City and County of San Francisco General Fund from appropriated,  
19 unspent Power funds.

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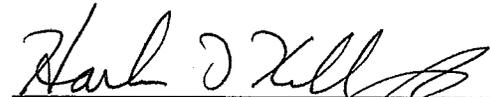
APPROVED AS TO FORM AND  
RECOMMENDED:

DENNIS J. HERRERA, City Attorney

  
WILLIAM K. SANDERS  
Deputy City Attorney

RECOMMENDED (Both Cases):

SAN FRANCISCO PUBLIC UTILITIES  
COMMISSION

  
HARLAN L. KELLY, JR.  
General Manager

RECOMMENDED  
(Case No. CGC-13-529309 Only):

  
BEN ROSENFELD  
Controller

FUNDS AVAILABLE  
(Case No. CGC-07-470086 Only):

  
BEN ROSENFELD  
Controller

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## SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

This Settlement Agreement and Release of Claims ("Agreement" or "Release"), dated February 20, 2015, is made by and between the City and County of San Francisco, a municipal corporation (the "City"), acting by and through the San Francisco Public Utilities Commission ("SFPUC"), and Pacific Gas and Electric Company ("PG&E"), a California corporation. The City and PG&E are sometimes referred to in this Agreement as the "Parties."

### RECITALS

This Agreement is made with regard to the following facts, intentions and understandings:

A. The City filed a complaint in the Superior Court of San Francisco, entitled *City and County of San Francisco v. Pacific Gas and Electric Company*, Case No. CGC-13-529309, in which the City alleges that PG&E failed to pay certain franchise fees that were due and owing the City based on PG&E's gross annual receipts from the sale of electricity within San Francisco, pursuant to Ordinance No. 414, an Electric Franchise Agreement with PG&E, and seeks recovery of those franchise fees with interest, including interest arising pursuant to San Francisco Administrative Code, Chapter 11, section 11.27 ("City's Action").

B. PG&E denies any liability to the City for the matters alleged in the City's Action and denies that it would have been found liable for such additional annual franchise fees or interest had the matter gone to trial.

C. PG&E filed a complaint in the Superior Court of San Francisco, entitled *Pacific Gas and Electric Company v. City and County of San Francisco*, Case No. CGC-07-470086, in which PG&E alleges that the City breached the parties' 1987 Interconnection Agreement ("IA") and 1997 Master Settlement Agreement ("MSA") by requiring PG&E to transmit and deliver electricity to the Ferry Building for service to the City as municipal load, and seeks recovery of damages and interest on those damages ("PG&E's Action"). PG&E also sought declaratory relief which was granted by order dated July 16, 2009. The California Court of Appeal decision (206 Cal.App.4th 897) affirmed the July 16, 2009 order that granted declaratory relief for PG&E and remanded PG&E's claim for damages for breach of contract for a new trial.

D. The City denies any liability to PG&E for the matters alleged in PG&E's Action and denies that it would be found liable in damages to PG&E had that matter gone to trial on the breach of contract claim remanded by the Court of Appeal.

NOW, therefore, in consideration of the foregoing Recitals, which are incorporated herein by this reference, the promises and mutual covenants contained in this Agreement, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the City and PG&E agree as follows:

1. **Settlement of the City's Action.** In full and complete settlement of the City's Action, the Parties agree to each of the following:

a. PG&E owes the City \$1,563,963.29.

b. The City will file a Dismissal of the City's Action with Prejudice with the Court and will serve a file endorsed copy of same on counsel for PG&E within ten days of the Effective Date of this Agreement.

c. PG&E will provide City with the following information during future franchise audits:

i. Annual gas and electric franchise fee gross receipts detail showing the amounts related to Gas and Electric H Sheet, Hetch Hetchy, BART, Departed Load, assignments of San Francisco Town or Territory ("TOT") codes and TOT Correction, HH Data Stream Monthly Detail, and Uncollectible Accounts; and

ii. Wheeling and Street Light Certification Statements for the City/Town of Hetch Hetchy showing related transmission/distribution and street light receipts from Hetch Hetchy.

d. Within 60 days of the Effective Date, as defined in Section 7 below, PG&E and City will work together to develop a sample format for the documents set forth in Sections 1.c.i and 1.c.ii above, with the understanding that these are electronic systems-generated reports.

e. PG&E agrees to give reasonable notice to the City of any changes PG&E makes to its allocation methodology that materially impact the amount of franchise fees the City will receive from Hetch Hetchy revenues.

**2. Settlement of PG&E's Action.** In full and complete settlement of PG&E's Action, the Parties agree to each of the following:

a. The City owes PG&E \$1,563,963.29.

b. PG&E will file a Dismissal of PG&E's Action with Prejudice with the Court and will serve a file endorsed copy of same on counsel for the City within ten days of the Effective Date of this Agreement.

c. The City intends to continue to provide electric service to the Ferry Building under the IA only until June 30, 2015.

d. The City intends to provide electric service to the Ferry Building beginning on July 1, 2015 under PG&E's Wholesale Distribution Tariff ("WDT"), which is on file with the Federal Energy Regulatory Commission. This Agreement does not resolve the Parties' disputes over the applicability of non by-passable charges to the Ferry Building customer(s), or the collection and payment of non by-passable charges associated with

the Ferry Building, once service under the WDT begins ("NBC Disputes"). The Parties preserve their claims concerning the NBC Disputes and defer resolution of those claims to future negotiations or other determination.

e. PG&E will not assert that the City's existing intervening facilities at the Ferry Building do not satisfy the requirements of either section 212(h) of the Federal Power Act or PG&E's WDT.

f. The City will not assert that the Court of Appeal's decision (206 Cal.App.4th 897) is invalidated, in whole or in part, by this Agreement.

3. **Payment of Compensation Due.** In the interest of efficiency, the SFPUC will make a payment in the amount of \$1,563,963.29 to the General Fund of the City and County of San Francisco. The Parties agree that the SFPUC's payment to the General Fund will fully satisfy each Party's financial obligation under this Agreement.

4. **General Release of Claims.**

a. In consideration of the settlement of the City's Action and PG&E's Action, and in consideration of the covenants, promises, terms and conditions herein, each Party, on behalf of itself and all of its representatives, officers, employees, attorneys, agents and assigns, hereby releases and forever discharges the other Party to this Agreement, including its representatives, officers, employees, attorneys, agents and assigns, of and from all claims, demands, controversies, actions, causes of action, obligations, damages, liabilities, costs, (including attorneys' fees) that arise or may arise out of the City's Action and PG&E's Action. This Release is limited to the Parties' disputes as alleged in both the City's Action and PG&E's Action, and has no effect on the rights and liabilities of the Parties at issue in any other litigation, including the City's claims in the City's complaint in the Superior Court of San Francisco entitled *City and County of San Francisco v. Pacific Gas and Electric Company*, Case No. CGC-13-529310.

b. In regard to the released matters, the City and PG&E knowingly, voluntarily, and unconditionally waive the provisions of Section 1542 of the Civil Code of the State of California, which provides:

**"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."**

c. This Release is the result of a compromise between the Parties and it will never at any time or for any purpose be considered an admission of liability, fault and/or responsibility, waiver, or acquiescence by the City or PG&E, nor will the payment or

waiver of any sum of money in consideration for the execution of this Release constitute or be construed as an admission of any liability, fault or responsibility whatsoever by either Party.

**5. Sunshine Ordinance.** PG&E understands and agrees that the City's Sunshine Ordinance (San Francisco Administrative Code Chapter 67) and the State Public Records Law (California Government Code Section 6250 et seq.) may apply to this Agreement and any and all records and materials submitted to the City in connection with this Agreement.

**6. No Responsibility for Other Party's Costs.** The Parties each acknowledge and agree that each Party will bear its costs, expenses, consultant and expert fees, and attorneys' fees arising out of and/or connected with the City's Action and PG&E's Action, the negotiation, drafting and execution of this Agreement, and all matters arising out of or connected therewith, except that, in the event any action is brought to enforce this Agreement, the prevailing Party will be entitled to reasonable attorneys' fees, expenses and costs in addition to all other relief to which that Party may be entitled.

**7. City Approval.** The City will seek approval of this Agreement from the San Francisco Board of Supervisors ("Board") and from the SFPUC to the extent required. Notwithstanding anything herein to the contrary, PG&E understands and agrees that no officer or employee of the City has authority to commit the City to this Agreement unless and until all required approvals have been obtained. The Board and the SFPUC may approve this Agreement, each in its sole discretion. Therefore, any obligations of the City hereunder are contingent upon obtaining any such required approvals, and this Agreement will not be effective unless and until required approvals are final. In the event the City is unable to obtain any required approvals of this Agreement, then this Agreement shall terminate and shall be of no force and effect whatsoever. In the event the City obtains the required approvals of this Agreement, the effective date of the last required approval shall be the effective date of this Agreement (the "Effective Date").

**8. Campaign and Governmental Conduct Code.** Through its execution of this Agreement, PG&E acknowledges that it is familiar with the provisions of Section 15.103 of City's Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts that constitute a violation of said provisions and agrees that it will immediately notify City if it becomes aware of any such fact during the term of this Agreement.

**9. Representations and Warranties.**

a. PG&E represents and warrants that the person signing this Agreement on behalf of PG&E has the power and authority to bind PG&E to the terms and conditions contained herein.

b. Subject to the requirements of Section 7 above, the City represents and warrants that the persons signing this Agreement on behalf of the City have the power and authority to bind the City to the terms and conditions contained herein.

**10. Miscellaneous.**

a. This Agreement may be modified only in writing and by mutual consent of both parties.

b. Except as set forth in Section 7 above, this Agreement shall become effective when signed by the authorized representatives of the City and PG&E.

c. This Agreement shall be governed by the applicable laws of California.

d. There are no intended third party beneficiaries of this Agreement. The Parties acknowledge and agree that this Agreement is entered into for their benefit and not for the benefit of any other party.

e. This Agreement contains the entire agreement between the Parties with respect to the subject matter of this Agreement. Any prior correspondence, memoranda, agreements, warranties, or written or oral representations relating to such subject matter are superseded in total by this Agreement.

f. This Agreement may be executed in multiple counterparts and signatures may be exchanged by facsimile or electronically, each of which shall be deemed to be an original document, and all of which together shall constitute one and the same document.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date first set forth above.

PACIFIC GAS AND ELECTRIC COMPANY CITY AND COUNTY OF SAN FRANCISCO  
A California corporation

Recommended:

By: \_\_\_\_\_

AARON JOHNSON  
Senior Director of Customer Programs

By:  \_\_\_\_\_

MICHAEL CARLIN  
Deputy General Manager and Chief Operating Officer  
San Francisco Public Utilities Commission

By: \_\_\_\_\_

ALBERT TORRES  
Vice President  
Customer Operations

DENNIS J. HERRERA  
City Attorney

By:  \_\_\_\_\_

William K. Sanders  
Deputy City Attorney

APPROVED AS TO FORM:

By: \_\_\_\_\_

Kelly J. Lack  
Attorney

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date first set forth above.

PACIFIC GAS AND ELECTRIC COMPANY CITY AND COUNTY OF SAN FRANCISCO  
A California corporation

Recommended:

By: 

AARON JOHNSON

Senior Director of ~~Customer Programs~~ <sup>(P3)</sup>  
*Customer Energy Solutions*

By: \_\_\_\_\_

MICHAEL CARLIN

Deputy General Manager and Chief Operating Officer  
San Francisco Public Utilities Commission

By: \_\_\_\_\_

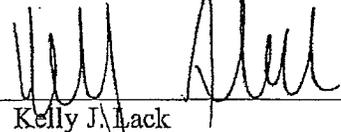
ALBERT TORRES  
Vice President  
Customer Operations

DENNIS J. HERRERA  
City Attorney

By: \_\_\_\_\_

William K. Sanders  
Deputy City Attorney

APPROVED AS TO FORM:

By:   
Kelly J. Lack  
Attorney

PUBLIC UTILITIES COMMISSION  
City and County of San Francisco

RESOLUTION 15-0081

RESOLVED, That on the recommendation of the General Manager of the Public Utilities Commission and the City Attorney, this Commission hereby recommends that the Board of Supervisors resolve and settle two separate lawsuits filed in the San Francisco Superior Court, one filed by the City and County of San Francisco ("City") against Pacific Gas and Electric Co. ("PG&E") (Case No. CGC-13-529309) and one filed by PG&E against the City (Case No. CGC-07-470086). The proposed settlement would resolve both lawsuits on the following terms:

**Plaintiff (Case No. CGC-13-529309)**  
**City and County of San Francisco**

**Amount Paid by PG&E**  
**\$1,563,963.29**

In addition, as a material term of the settlement, PG&E will provide the City with information specified by the Controller to ensure the City's ability to detect any future underpayments of franchise fees.

**Plaintiff (Case No. CGC-07-470086)**  
**Pacific Gas and Electric Co.**

**Amount Paid by City**  
**\$1,563,963.29**

In addition, as a material term of the settlement, the City will continue to provide electric service to the Ferry Building.

FURTHER RESOLVED, That the Commission recommends that the exchange of monies provided by the settlement be implemented as provided in the Settlement Agreement, by the Public Utilities Commission transferring \$1,563,963.29 to the City's General Fund from unspent funds appropriated for Power.

*I hereby certify that the foregoing resolution was adopted by the Public Utilities Commission at its meeting of March 24, 2015.*

  
Secretary, Public Utilities Commission

