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**Confidentiality Protected Pursuant to  
Decision 06-06-066 and Decision 08-04-023**

January 26, 2010

Honesto Gatchalian  
California Public Utilities Commission  
Energy Division  
Tariff Unit, 4<sup>th</sup> Floor  
505 Van Ness Avenue  
San Francisco, CA 94102

**Re: Pacific Gas and Electric Company Comments on Draft Resolution E-4309**

Dear Mr. Gatchalian:

Pacific Gas and Electric Company ("PG&E") respectfully offers these brief comments on Draft Resolution E-4309 (the "Draft Resolution"), distributed for comment by the Energy Division on January 5, 2010. The Draft Resolution addresses PG&E's request for approval of a Power Purchase Agreement ("PPA") with Mt. Poso Generation Company, LLC ("Mt. Poso") for renewable energy from a biomass facility.

PG&E appreciates the Energy Division's thorough review of the issues presented in Advice Letter (AL) 3529-E, seeking approval of the Mt. Poso PPA. However, PG&E opposes the portion of the Draft Resolution requiring modification of the PPA and instead respectfully requests that the Commission approve the PPA without modification. Additionally, PG&E requests that the Commission further delete generic language in the Draft Resolution that would significantly expand the role and responsibilities of the Independent Evaluator ("IE") during Renewable Portfolio Standard ("RPS") contract negotiations.

**PG&E, Mt. Poso, and the IE are close to reaching a compromise on the Fuel Price Adjustment Clause.**

Since the Draft Resolution was issued, PG&E, Mt. Poso, and the IE have been engaged in a series of conference calls and have exchanged several alternative pricing proposals; as of the date of this filing, it appears that the parties are close to reaching a compromise that PG&E, Mt. Poso, and the IE can support. The revised agreement will be provided to the Energy Division, hopefully by early February. The IE has been especially helpful and diligent in this extended negotiation. If a compromise is, in fact, reached and filed,

PG&E requests that the revised agreement be approved by the Commission through a Tier 1 advice filing given the need for an expeditious decision.

**In the Alternative, PG&E requests approval of the Fuel Price Adjustment Clause that was negotiated and agreed to by the Parties.**

The Draft Resolution expresses concern that the fuel price adjustment provision in the Mt. Poso PPA is not cost-based and suggests that the Seller has an incentive not to bargain for the lowest price for its fuel stock. The Draft Resolution approaches the price adjustment mechanism from a cost-based perspective and concludes that PG&E's customers will be paying unreasonable rates for power produced by Mt. Poso simply because the price adjustment mechanism is not tied closely to Mt. Poso's actual fuel costs. PG&E understands this concern, but continues to believe it is misplaced.

The PPA was negotiated and should be viewed from a market perspective, not from the perspective of Mt. Poso's costs. In light of California's, the Commission's, and PG&E's concern for increasing the amount of renewable resources, the critical question to be addressed for any renewable contract is whether that contract is competitively priced vis-à-vis other renewable contracts. In 2009, negotiations with Mt. Poso and PG&E reached an impasse. There were no material negotiations with Mt. Poso from January 2009 through May 2009, in part because Mt. Poso spent that time seeking other potential buyers for its power. PG&E briefed the IE in weekly scheduled updates. In May 2009, PG&E learned that Mt. Poso was poised to enter into a PPA with another utility. At that point, PG&E requested an opportunity to respond to a take-it-or-leave-it proposal from Mt. Poso. With such a proposal, PG&E would secure the power if the terms were competitive with other alternatives. In June 2009, when the negotiations resumed, Mt. Poso introduced the price adjustment mechanism. From that point on, PG&E evaluated the Mt. Poso PPA using the highest possible price, assuming full implementation of the adjustment mechanism, which is capped. At the highest potential fuel price under the PPA, the Mt. Poso PPA is still competitive with other renewable resources, and it was on that basis that PG&E proceeded with the negotiations. PG&E and the IE recognized that the price adjustment, while tied to the price of biomass fuel, was not necessarily tied directly to incremental project costs.

The Mt. Poso PPA in effect gives PG&E an RPS contract that, even at the highest potential price under the fuel price adjustment, is competitive with other renewable resources available to PG&E. Further, the highest potential price will not become effective unless Mt. Poso's costs of fuel significantly increase. The fuel price adjustment provision, although not tied closely to Mt. Poso's actual fuel costs, will increase the price only if those fuel costs increase beyond specified trigger price points. Finally, because Mt. Poso has locked in its fuel sources under contract for the first five years of the PPA's term, it is very unlikely that any price increase will be implemented until after that time, if at all. The contract specifies that Mt. Poso must use "commercially reasonable efforts to purchase fuel at the lowest reasonable price." As an added protection, PG&E negotiated for the right to audit Mt. Poso's fuel contracts, to confirm that the

preconditions for any price increase under the PPA have been met. The IE's report states in part:

*"The fundamental concept of the pricing provisions is not unreasonable under the circumstances. Adjusting power prices based on changes in fuel costs after a specified time period and after the fuel costs fall outside of a 'dead band,' with the ability of the buyer not to accept price increases beyond a specified level of price increases, is, in the IE's view, a reasonable way to manage the inherent risks associated with fuel supply for biomass projects from both the developer's the utility's and the Commission's perspective." (See I.E. Report, page 35).*

Thus, the IE agrees with the basic structure of the transaction, including the price adjustment provision that has caused such concern. In the context of the status of the negotiations and the market prices for other renewable resources, the negative characterization of that pricing provision by the IE and in the Draft Resolution is incorrect.

### **Scope of the Independent Evaluator's Duties**

In addition to addressing the Mt. Poso PPA, the Draft Resolution also contains generic language regarding the role of an IE in the RPS contract negotiation process. While some of the generic language is acceptable, certain statements significantly expand the scope of the IE's involvement in the negotiation process. These generic statements should be deleted from the Draft Resolution. PG&E agrees that the role of the IE is primarily to ensure that the process is fair to all participants, and that no potential Seller is given undue preference or subjected to undue discrimination; in that context, the IE should be expected to review bid evaluation, monitor negotiations, and review the resulting PPA. PG&E also agrees that the IE should have the opportunity to be included on a real-time basis in all substantive discussions or other communications regarding development of an RPS contract, including contract status and terms. However, the specific language currently in the Draft Resolution on Page 13, paragraph 3, expands the role of the IE and implies that, although PG&E and the RPS bidder are the two interested parties, the IE can serve as a third party negotiator, inserting his/her opinions in the negotiations and recommend specific terms and conditions to be used in the contract. PG&E does not believe that the IE's role should be dramatically changed through this RPS advice letter. In general, PG&E believes that the role of the IE should continue to be to remain neutral and evaluate the overall fairness of the negotiation process. PG&E requests the following deletion of the Draft Resolution language:

### **Suggested Deletion**

- **Page 13, paragraph 3** "Additionally, the IOU should seriously consider all of the IE's opinions and suggestions and provide the IE the opportunity to express those opinions and suggestions to the other party to the negotiations.

PG&E respectfully requests that the Commission modify the Draft Resolution consistent with the suggestions above, and that the Draft Resolution be approved as so modified.

Sincerely,

*Brian K. Cherry (sc)*

Vice President, Regulatory Relations

cc: President Michael R. Peevey  
Commissioner John A. Bohn  
Commissioner Timothy A. Simon  
Commissioner Dian M. Grueneich  
Julie Fitch, Director, Energy Division  
Paul Douglas, Energy Division  
Cheryl Lee, Energy Division  
Sean Simon, Energy Division

**DECLARATION OF KELVIN F. YIP  
SEEKING CONFIDENTIAL TREATMENT  
FOR CERTAIN DATA AND INFORMATION  
CONTAINED IN PG&E'S COMMENTS ON  
DRAFT RESOLUTION E-4309  
(PACIFIC GAS AND ELECTRIC COMPANY - U 39 E)**

I, Kelvin F. Yip, declare:

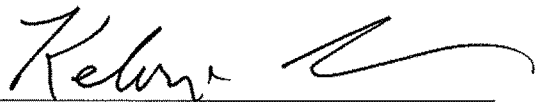
1. I am presently employed by Pacific Gas and Electric Company ("PG&E"), and have been an employee at PG&E since 2002. My current title is Senior Negotiator within PG&E's Energy Procurement organization. In this position, my responsibilities include negotiating PG&E's Renewables Portfolio Standard Program ("RPS") Power Purchase Agreements. In carrying out these responsibilities, I have acquired knowledge of PG&E's contracts with numerous counterparties and have also gained knowledge of the operations of electricity sellers in general. Through this experience, I have become familiar with the type of information that would affect the negotiating positions of electricity sellers with respect to price and other terms, as well as with the type of information that such sellers consider confidential and proprietary.

2. Based on my knowledge and experience, and in accordance with Decision ("D.") 08-04-023 and the August 22, 2006 "Administrative Law Judge's Ruling Clarifying Interim Procedures for Complying with Decision 06-06-066," I make this declaration seeking confidential treatment of PG&E's Comments on Draft Resolution E-4309.

3. Attached to this declaration is a matrix identifying the data and information for which PG&E is seeking confidential treatment. The matrix specifies that the material PG&E is seeking to protect constitutes the particular type of data and information listed in Appendix 1 of D.06-06-066 and Appendix C of D.08-04-023 (the "IOU Matrix"), and/or constitutes information

that should be protected under General Order 66-C. The matrix also specifies the category or categories in the IOU Matrix to which the data and information corresponds, and why confidential protection is justified. Finally, the matrix specifies that: (1) PG&E is complying with the limitations specified in the IOU Matrix for that type of data or information; (2) the information is not already public; and (3) the data cannot be aggregated, redacted, summarized or otherwise protected in a way that allows partial disclosure. By this reference, I am incorporating into this declaration all of the explanatory text in the attached matrix that is pertinent to this submittal.

I declare under penalty of perjury, under the laws of the State of California, that to the best of my knowledge the foregoing is true and correct. Executed on January 26, 2010 at San Francisco, California.



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Kelvin F Yip



PACIFIC GAS AND ELECTRIC COMPANY  
 Comments on Draft Resolution E-4309  
 January 26, 2010

IDENTIFICATION OF CONFIDENTIAL INFORMATION PER DECISION 06-06-066 AND DECISION 08-04-023

Redaction Reference	1) The material submitted constitutes a particular type of data listed in the Matrix, appended as Appendix 1 to D.06-06-066 and Appendix C to D.08-04-023 (Y/N)	2) Which category or categories in the Matrix the data correspond to:	3) That it is complying with the limitations on confidentiality specified in the Matrix for that type of data (Y/N)	4) That the information is not already public (Y/N)	5) The data cannot be aggregated, redacted, summarized, masked or otherwise protected in a way that allows partial disclosure (Y/N)	PG&E's Justification for Confidential Treatment	Length of Time
1 Document:							
4 Comments on Draft Resolution E-4309	Y	Item VII G) Renewable Resource Contracts under RPS program - Contracts without SEPs. Item VII (un-numbered category following VII G) Score sheets, analyses, evaluations of proposed RPS projects. General Order 66-C.	Y	Y	Y	These Comments contain information regarding the terms and pricing structure of the Agreement, and analysis and evaluations of the transaction. Disclosure of this information would provide market sensitive information to competitors and is therefore considered confidential. Furthermore, since negotiations are still in progress with bidders from the 2006, 2007, and 2008 solicitations, this information would be damaging to negotiations.	Remain confidential for three years.