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**VIA EMAIL**

March 21, 2011

Commission President Michael Peevey  
Commissioner Mike Florio  
Commissioner Catherine Sandoval  
Commissioner Timothy Alan Simon  
California Public Utilities Commission  
505 Van Ness Avenue  
San Francisco, CA 94102

Re: Draft Resolution L-411

Dear Commission President Peevey and Commissioners Florio, Sandoval, and Simon:

On March 8, I wrote to express PG&E's strong opposition to Draft Resolution L-411.<sup>1</sup> Since that time, PG&E has received a further revision of the draft resolution.<sup>2</sup> For the following reasons, PG&E urges the Commission to withdraw Draft Resolution L-411 in its entirety. By withdrawing the draft resolution, the Commission will enable utilities such as PG&E to begin the planning process necessary to make the hundreds of millions of dollars in additional investments that will strengthen our energy infrastructure, spur the economy, and add much-needed jobs to our state.

**The Draft Resolution Undermines the Purpose of the New Tax Law and Threatens To Deprive California of The Benefits of Hundreds of Millions in Additional Investment.** The fundamental purpose of bonus depreciation is to encourage businesses such as PG&E to invest in capital equipment. The Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 ("New Tax Law") was signed by President Obama on December 17, 2010 and provides a 100% federal income tax deduction for capital investments placed in service by the end of 2011 and a 50% deduction for investments placed in service by the end of 2012.<sup>3</sup>

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<sup>1</sup> PG&E's March 8 letter addressed the Fourth Draft Resolution, which was posted on the Commission's website on March 7 but was not circulated for public review or comment.

<sup>2</sup> The most recent revision does not appear to have been posted on the Commission's website or circulated for public review and comment.

<sup>3</sup> The 100% deduction may extend to 2012, and the 50% deduction may extend to 2013, for certain projects and costs.

Time is of the essence. PG&E must begin work now to ensure that capital equipment is placed in service before the statutory deadlines. By creating uncertainty about the recoverability of additional infrastructure investments, Draft Resolution L-411 discourages PG&E from doing the planning, ordering, hiring, and other work necessary to take advantage of the New Tax Law's bonus depreciation provisions.

Subsequent to passage of the New Tax Law, PG&E's program managers and engineers looked across various parts of the business to identify additional capital projects the Company could undertake over the next two years to take advantage of the tax benefit on our customers' behalf. They identified roughly \$400 - \$600 million worth of projects per year over the next two years. Such additional capital expenditures will benefit the California economy through the creation of new jobs, increased tax revenues, and improved utility infrastructure. Absent the draft resolution, PG&E management would be making plans to break ground on some portion of these capital projects as soon as efficiently possible. The uncertainty created by the draft resolution stands in the way of such action.

**The Draft Resolution's Inclusion of the Small Business Act Would Penalize PG&E for Taking Advantage of Prior Bonus Depreciation Legislation.** In addition to discouraging future investment, Draft Resolution L-411 effectively penalizes PG&E and other utilities for taking advantage of prior bonus depreciation laws to the benefit of their customers. Specifically, by including the September 2010 bonus depreciation law ("Small Business Act") within its scope, Draft Resolution L-411 unfairly seeks to capture the tax benefits of the Small Business Act without making compensating adjustments to recognize that utilities such as PG&E made additional capital investments in 2009 and 2010 to take advantage of bonus depreciation laws passed in 2008 and 2009 – additional investments that are not reflected in PG&E's 2011 rate base. If the draft resolution were to pass as currently drafted, with benefits clawed back to the beginning of 2010, PG&E may be unable to implement its current budget of capital and other spending, let alone engage in additional spending – resulting in the exact opposite of the intent of the New Tax Law.

**The Draft Resolution Is Unworkable and Contrary to the Interest of California's Customers and Economy.** Finally, the process envisioned by Draft Resolution L-411 is simply unreasonable and unworkable.<sup>4</sup> By requiring PG&E and other utilities to file an application or

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<sup>4</sup> In its March 8 letter, PG&E stated that the Fourth Draft Resolution would require "that PG&E file an application or Tier 3 advice filing to identify specific projects, sources of funding, and need for the incremental projects." At Legal Division's request, PG&E hereby clarifies that the Fourth Draft Resolution does not contain the exact words quoted above, which were intended as a summary of the resolution's requirements. The Fourth Draft Resolution specifically requires: "In general, we prefer that large utility infrastructure investment programs be presented to the Commission by means of an application" but "if a utility for which this resolution establishes a memorandum account wishes to use savings from the New Tax Laws to invest in additional, needed utility infrastructure, not otherwise funded in rates, within a time frame shorter than would be practicable by filing an application, the utility may file a Tier 3 advice letter" that "should explain, in addition to any other relevant points: (i) why the additional revenue requirement should be recorded in a memorandum account, rather than awaiting the approval of an application; (ii) the kinds of investments it intends to make and why those investments should be made promptly; (iii) the amount of additional investments it intends to make and the impact that will have on its revenue requirement; and (iv) how the proposed investment will in fact be funded with money made available by the bonus depreciation provisions of the New Tax Laws or money that otherwise might be refunded to

advice letter in advance of making any capital investment to take advantage of the New Tax Law, Draft Resolution L-411 effectively defeats the purpose of the legislation and threatens to deprive customers of much-needed tax stimulus dollars. Notably, no other state that PG&E has surveyed has proposed anything similar to what the Legal Division is proposing here. Thus, the draft resolution will have a chilling effect on the ability of California utilities to take advantage of bonus depreciation, and more Federal stimulus dollars will flow to other states, creating more jobs in those states, more tax revenues for those states, a more robust recovery in those states, and improved utility infrastructure in those states. Meanwhile, as those other states become more attractive as a place to do business, California will be left behind.

For the foregoing reasons, PG&E urges the Commissioners to withdraw Draft Resolution L-411 in its entirety.

Very truly yours,



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cc: via e-mail –  
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