

1 **BEFORE THE PUBLIC UTILITIES COMMISSION**  
2 **OF THE STATE OF CALIFORNIA**

3 Order Instituting Investigation on the  
4 Commission's Own Motion into the Operations  
5 and Practices of Pacific Gas and Electric Company  
with Respect to Facilities Records for its Natural  
Gas Transmission System Pipelines.

I.11-02-016

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7 **NONDISCLOSURE AGREEMENT**

8 This Nondisclosure Agreement ("Agreement") is effective this \_\_\_\_\_ day of \_\_\_\_\_, 2011,  
9 by and between Pacific Gas and Electric Company ("PG&E") and \_\_\_\_\_  
on behalf of \_\_\_\_\_ ("Receiving Party").

10 **RECITALS**

11 **A.** Certain of the information requested to be produced or disclosed by PG&E in the  
12 above-captioned proceeding ("Proceeding") constitutes trade secrets, proprietary, and/or  
confidential information ("Confidential Material").

13 **B.** PG&E and the Receiving Party believe that this Agreement will facilitate  
discovery in the Proceeding and avoid unnecessary law and motion practice.

14 **C.** PG&E and the Receiving Party believe that this Agreement will protect legitimate  
15 confidentiality concerns, and preserve their rights.

16 **AGREEMENT**

17 In consideration of the recitals set forth above, PG&E and the Receiving Party agree that  
18 the following terms and conditions shall govern the disclosure and use of Confidential Material in  
the context of the Proceeding:

19 **1.** For purposes of this Agreement:

20 **a.** The term "Commission" means the California Public Utilities Commission.

21 **b.** The term "Confidential Material" includes, but is not limited to, information or documents  
22 provided by PG&E in response to the Commission's orders in this proceeding or discovery  
23 requests and designated by PG&E as confidential, including material PG&E has designated as  
confidential under the provisions of Public Utilities Code section 583; any copies of Confidential  
Material; and any notes of Confidential Material.

24 **c.** The term "notes of Confidential Material" includes, but is not limited to, memoranda,  
25 handwritten notes, or any other form of information which copies or discloses all or portions of  
Confidential Material.

26 **d.** The term "Reviewing Representative" is a person described in paragraph 8 of this  
27 Agreement.  
28

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1           2.     This Agreement shall govern all Confidential Material and, notwithstanding any  
2 order terminating the Proceeding, shall remain in effect for a period of sixty (60) days after an  
3 order concluding or otherwise terminating the Proceeding is no longer subject to judicial review;  
4 however, the non-disclosure and confidentiality obligations of Reviewing Representatives, as  
5 specified in Appendix A to this Agreement, shall remain in full force and effect for two (2) years  
6 after an order concluding or otherwise terminating this Proceeding is no longer subject to judicial  
7 review.

8           3.     PG&E may designate as Confidential Material any information or documents that  
9 PG&E customarily treats as confidential or proprietary, which are not available to the public, and  
10 which, if disclosed freely, would, in PG&E's judgment, adversely affect either its ratepayers or  
11 PG&E. Confidential Material also includes information or documents in PG&E's possession that  
12 PG&E received from persons who consider the information or documents confidential or  
13 proprietary.

14           4.     Confidential Material shall be made available under the terms of this Agreement  
15 only to Reviewing Representatives as provided in paragraphs 7 and 8, and, where appropriate,  
16 paragraph 9 of this Agreement.

17           5.     Confidential Material shall remain available to the Receiving Party until the date  
18 that an order concluding or otherwise terminating the Proceeding is no longer subject to judicial  
19 review. Upon written request by PG&E after such date, all Reviewing Representatives shall  
20 return to PG&E within thirty (30) days all Confidential Material, including all copies of  
21 Confidential Material (except notes of Confidential Material). Even in the absence of such a  
22 request, the Receiving Party shall not disclose the Confidential Material except as otherwise  
23 provided in this agreement. Within the time period for return of Confidential Material, the  
24 Receiving Party shall destroy all notes of Confidential Material, and the Receiving Party shall  
25 submit to PG&E an affidavit stating that all Confidential Material, copies thereof, and notes of  
26 Confidential Material are being returned to PG&E or have been destroyed in accordance with this  
27 Paragraph.

28           6.     Each page of Confidential Material shall be physically and/or electronically  
marked "Confidential Material" or "Confidential Pursuant to Section 583 of the Public Utilities  
Code," or marked with words of similar purport. The Receiving Party may make only one (1)  
copy of Confidential Material without the prior approval of PG&E, which approval shall not be  
unreasonably withheld. The Receiving Party shall maintain a log of such copies for review by  
PG&E. All Confidential Material shall be maintained by the Receiving Party in a secure manner.  
Access to Confidential Material shall be limited to those Reviewing Representatives specifically  
authorized pursuant to paragraph 8, and, where appropriate, paragraph 9 of this Agreement.

          7.     Confidential Material shall be treated as confidential by the Receiving Party and  
by the Reviewing Representatives, in accordance with the Nondisclosure Certificate executed  
pursuant to paragraph 10 of this Agreement. Confidential Material shall not be used except as  
necessary for the conduct of the Proceeding and, subject to the limitations specified in  
paragraph 8, and, where appropriate, paragraph 9, Confidential Material shall not be disclosed in  
any manner to any person other than a Reviewing Representative who is engaged in the conduct  
of the Proceeding and who needs to know the information to carry out that person's  
responsibilities in the Proceeding. The Reviewing Representatives may make notes of  
Confidential Material, which notes must be maintained in a secure manner pursuant to  
paragraph 6 of this Agreement.

          8.     A Reviewing Representative may include: (a) an employee of the Receiving Party  
who is engaged in the conduct of the Proceeding and who needs to know the information to carry  
out that person's responsibilities in the Proceeding; (b) an attorney representing the Receiving  
Party in the Proceeding, including his or her associated attorneys, paralegals, or other employees

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1 (“Attorneys”); and (c) an expert or an employee of an expert retained by the Receiving Party for  
2 the purpose of advising, preparing for, or testifying in the Proceeding, so long as that expert or  
3 employee has not been and is not employed by or otherwise affiliated with the Receiving Party  
4 (“Experts”). In the event that the Receiving Party wishes to nominate as a Reviewing  
5 Representative a person not described in this Paragraph, the Receiving Party shall obtain the prior  
6 written agreement of PG&E.

7 **9.** PG&E may identify certain Confidential Material as “Highly Confidential  
8 Material” by marking it “Highly Confidential Material. Unless otherwise agreed in writing by  
9 PG&E, employees of the Receiving Party shall not be entitled to access to Highly Confidential  
10 Material. Access to Highly Confidential Material shall be limited to Attorneys and Experts, and  
11 only to the extent they must have access to this material as part of their participation in this  
12 Proceeding. PG&E will limit its designation of Highly Confidential Material to information and  
13 documents that are especially commercially sensitive. Except for the limited access to Highly  
14 Confidential Material specified in this Paragraph, Highly Confidential Material shall otherwise be  
15 treated as Confidential Materials subject to provisions and protections of this Agreement.

16 **10.** A Reviewing Representative shall not be permitted to inspect, participate in  
17 discussions regarding, or otherwise access Confidential Material pursuant to this Agreement  
18 unless and until each and every such Reviewing Representative has first executed and delivered  
19 to PG&E a Nondisclosure Certificate in the form set forth in Appendix A to this Agreement  
20 (“Nondisclosure Certificate”). Attorneys qualified as Reviewing Representatives are responsible  
21 for ensuring that all persons under their employment, instruction, supervision or control who  
22 require access to Confidential Material comply with this Agreement and execute and deliver to  
23 PG&E a Nondisclosure Certificate.

24 **11.** A Reviewing Representative may disclose Confidential Material to any other  
25 Reviewing Representative, as long as both Reviewing Representatives have executed and  
26 delivered a Nondisclosure Certificate to PG&E. In the event that any Reviewing Representative  
27 to whom Confidential Material is disclosed ceases to be engaged in the Proceeding or is  
28 employed or retained for a position whereby that person is no longer qualified to be a Reviewing  
Representative under paragraphs 7 and 8, and, where appropriate, paragraph 9, of this Agreement,  
such person shall no longer be permitted access to Confidential Material and must comply with  
the return and destruction requirements of paragraph 5 of this Agreement. Every person who has  
signed and delivered a Nondisclosure Certificate shall continue to be bound by the provisions of  
this Agreement and the Nondisclosure Certificate, even if such person is no longer engaged in the  
Proceeding.

**12.** If the Receiving Party intends to submit or use in the Proceeding any Confidential  
Material such that the submission or use would result in a public disclosure of such Confidential  
Material, including, without limitation, the presentation of prepared testimony,  
cross-examination, briefs, comments, protests, or other presentations before the Commission,  
counsel for the Receiving Party shall communicate with counsel for PG&E as soon as possible  
and, where practicable, not later than five (5) business days prior to such use, and both counsel  
shall constructively explore means of identifying the Confidential Material so that the  
confidentiality thereof may be reasonably protected (including, but not limited to, submission of  
testimony and briefs under seal, and clearing the hearing room during examination, discussion, or  
argument concerning Confidential Material), while at the same time enabling an effective  
presentation. If PG&E and the Receiving Party are unable to agree upon a procedure to protect  
the confidentiality of the Confidential Material, the Receiving Party shall request an order from  
the principal hearing officer in the Proceeding, and PG&E reserves the right to oppose the  
Receiving Party’s request. Except as expressly provided for herein, no use may be made of  
Confidential Material that would fail to protect its confidentiality without such an order from the  
principal hearing officer.

1           **13.** The principal hearing officer retains the discretion to review and evaluate the facts  
2 and circumstances involved in any proposed use of Confidential Material in Commission  
3 hearings, and the flexibility to respond in whatever manner is most appropriate under the  
4 circumstances, including the holding of in camera hearings.

5           **14.** Nothing in this Agreement shall be construed as precluding PG&E from objecting  
6 to the use at hearings of Confidential Material on any legal grounds, including any applicable  
7 privilege.

8           **15.** To the extent that Confidential Material is discussed, analyzed or otherwise the  
9 subject of consideration during any conference or other session held in connection with the  
10 Proceeding, only Reviewing Representatives may be present for such sessions.

11           **16.** The Receiving Party agrees that any release, attempted release, or use of  
12 Confidential Material or Highly Confidential Material other than as contemplated by this  
13 Agreement may cause PG&E irreparable injury which cannot adequately be compensated through  
14 pecuniary damages. Accordingly, PG&E and the Receiving Party agree that any breach or  
15 threatened breach of this Agreement may be enjoined.

16           **17.** The Receiving Party covenants and agrees that the Receiving Party will establish  
17 and maintain good and sound safeguards, to protect against the destruction, loss, disclosure or  
18 alteration of Confidential Material and Highly Confidential Material in the possession of  
19 Receiving Party, which safeguards shall be at least as good and sound as the safeguards  
20 Receiving Party utilizes for its own most confidential and sensitive data and shall in no event be  
21 less than reasonable safeguards. Receiving Party further covenants and agrees that, if Receiving  
22 Party, its personnel discover or are notified of a breach or potential breach of security relating to  
23 Confidential Material and Highly Confidential Material, Receiving Party shall immediately notify  
24 PG&E of such breach or such potential breach and whether the applicable Confidential Material  
25 or Highly Confidential Material was in the possession of Receiving Party at the time of such  
26 breach or potential breach. In addition, Receiving Party shall immediately: (i) investigate such  
27 breach or such potential breach, (ii) inform PG&E of the results of such investigation, and (iii)  
28 assist PG&E in maintaining the confidentiality of such Confidential Material or Highly  
Confidential Information.

18           **18.** The Receiving Party will indemnify, defend, and hold harmless PG&E, PG&E  
19 affiliates, and PG&E's and PG&E affiliates' respective directors, officers, employees,  
20 contractors, agents, successors and assigns (collectively, the "PG&E Indemnitees") from and  
21 against any and all claims, damages, costs, losses, expenses (including reasonable attorneys' fees  
22 and court costs) and liabilities (including settlements) brought or asserted by any third party  
23 against the PG&E Indemnitees, related to, resulting from or arising out of any claim: (a) based  
24 upon the breach or alleged breach of Receiving Party's representations, warranties and covenants  
25 contained in this Agreement; (b) the disclosure of Confidential Material or Highly Confidential  
26 Material.

27           **19.** Failure to designate information or documents as Confidential Material prior to  
28 disclosure shall not be deemed a waiver in whole or in part of PG&E's claim of confidentiality,  
and PG&E shall have the right to designate or re-designate such information and documents at  
any time. Upon receipt of notice from PG&E of any new designation or re-designation, the  
Receiving Party thereafter shall treat said information or documents according to the new  
designation or re-designation, and/or will endeavor to return all copies of any newly designated or  
re-designated documents to PG&E in exchange for copies of the documents with the new  
designation.

**20.** The inadvertent disclosure of any information or documents which are subject to a  
claim of work product, the attorney-client privilege or other legal protection shall not waive the

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1 protection for such information or documents as long as PG&E requests their return and takes  
2 reasonable precautions to avoid such inadvertent disclosure. Upon written request, the Receiving  
3 Party shall return to PG&E any such protected information or documents inadvertently disclosed,  
4 together with all copies and any notes pertaining thereto.

5 **21.** This Agreement shall be governed and construed according to the laws of the State  
6 of California.

7 **22.** This Agreement sets forth the complete understanding of the parties hereto with  
8 respect to the subject matter hereof as of the date set forth above. This Agreement supersedes any  
9 prior understandings, discussions, or course of conduct (oral and written). Any modification or  
10 waiver of the provisions of this Agreement must be written, must be executed by both PG&E and  
11 the Receiving Party, and shall not be implied by any usage of trade or course of conduct.

12 **23.** This Agreement may be executed in separate counterparts by PG&E and the  
13 Receiving Party, each of which shall be fully effective as to the party executing it.

14 **24.** The principal hearing officer in the Proceeding shall resolve any disputes arising  
15 from this Agreement. Prior to presenting any dispute arising from this Agreement to the principal  
16 hearing officer, PG&E and the Receiving Party shall use their best efforts to resolve the dispute.

17 IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date entered  
18 below on behalf of PG&E and the Receiving Party.

19 PACIFIC GAS AND ELECTRIC COMPANY

RECEIVING PARTY

20 Dated: April , 2011

Dated: \_\_\_\_\_

21 By: /s/ Lise H. Jordan

Signature: \_\_\_\_\_

22 LISE H. JORDAN

23 Law Department  
24 Pacific Gas and Electric Company  
25 Post Office Box 7442  
26 San Francisco, CA 94120  
27 Telephone: (415) 973-6965  
28 Fax: (415) 973-0516  
Email: lhj2@pge.com

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Attorney for  
PACIFIC GAS AND ELECTRIC COMPANY

Company/Firm: \_\_\_\_\_

Representing (name of party): \_\_\_\_\_

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**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

Order Instituting Investigation on the  
Commission's Own Motion into the Operations  
and Practices of Pacific Gas and Electric Company  
with Respect to Facilities Records for its Natural  
Gas Transmission System Pipelines.

I. 11-02-016

**NONDISCLOSURE CERTIFICATE**

I certify my understanding that access to Confidential Material is provided to me pursuant to the terms and restrictions of the Nondisclosure Agreement ("Agreement") for use in the above-captioned proceeding. I have been given a copy of and have read the Agreement and agree to be bound by it. I understand that the contents of Confidential Material and Highly Confidential Material (if I may have access to such material as provided in paragraph 9 of the Agreement), including any notes or memorandum or other form of information which copy or disclose such material, shall not be disclosed to anyone other than in accordance with the Agreement and shall be used only for the purpose of the above-captioned proceeding. I agree to honor the confidentiality of Confidential Material and Highly Confidential Material for two (2) years following the conclusion or termination of this proceeding as specified in the Agreement.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Signature: \_\_\_\_\_

\_\_\_\_\_  
Name: \_\_\_\_\_

\_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
Company/Firm: \_\_\_\_\_

\_\_\_\_\_  
Representing (name of party): \_\_\_\_\_

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