Pacific Gas and Electric Company

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Energy Division Tariff Unit
California Public Utilities Commission
Energy Division
505 Van Ness Avenue
San Francisco, CA 94102

Re: Pacific Gas and Electric Company's (PG&E's) Response to Protests of Advice 3349-G/4158-E, Revisions to PG&E's Gas and Electric Tariffs Per Decision 11-07-056, Decision 12-08-045, and Resolution E-4535; and Advice 4170-E, Revisions to Electric Rule 22, Direct Access, In Compliance With Decision 12-08-045

Dear Energy Division Tariff Unit:

PG&E hereby responds to the protests of the City and County of San Francisco; EnerNOC, Inc.; and The Alliance for Retail Energy Markets, Direct Access Customer Coalition, and School Project for Utility Rate Reduction (Protesting Parties) to PG&E's Advice Letters 3349-G/4158-E and 4170-E.

I. Response to Protest of City and County of San Francisco

The City and County of San Francisco (CCSF) raises two concerns regarding the limitation of liability language contained in Section 9(f) of PG&E's proposed Electric and Gas Rules 27: (1) that the limitation of liability applies to releases made pursuant to "legal process," and (2) that the limitation of liability would cover PG&E's own "reckless conduct." (CCSF Protest, p. 3.)

CCSF's concern is misplaced and an incorrect reading of the Privacy Rules. Section 6(c)(4) of the California Public Utilities Commission (CPUC or Commission) Privacy Rules exempts utilities from liability where the Commission orders the transfer of covered

data to a third party or a customer authorizes the transfer to a third party, as long as the transfer is secure. Section 6(d)(1) also expressly exempts transfer of covered data from the requirement for customer authorization where provided pursuant to the legal process described in Rule 4(c). Thus, the reference to a utility acting "recklessly" in the last sentence in Section 6(c)(4) does not negate these exemptions from liability in the preceding sentences of Section 6(c)(4) and in Section 6(d)(1). Otherwise, the "exception would swallow up the rule," and the immunity from liability where disclosure is ordered by the Commission, by legal process or with the consent of the customer would be totally negated.

CCSF also expresses concern regarding the customer indemnification of PG&E contained in the updated standard Electric and Gas Forms 79-1147, arguing that the indemnification would include PG&E's conduct in addition to the customer's or third-party's conduct. (CCSF Protest, pp. 3- 4.) Again, CCSF misreads the language; PG&E's indemnification language relates solely to the conduct of "my Third Party" regarding disclosure of the customer's data, and only applies to the utility's own conduct in connection with customer-directed revocation of the authorized release of the customer's data. This is not a broad exculpation of the utility, but only a very narrow limitation relating to the conduct of the customer and third parties receiving the customer's data.

II. Response to Protest of EnerNOC, Inc.

EnerNOC, Inc. ("EnerNOC") raises two concerns in its protest: (1) The Privacy Rules themselves do not provide a formal process and "paper trail" by which a customer decision to revoke a third party's access to the customer's data is evaluated; and (2) PG&E's customer energy usage authorization form only covers energy usage data, not billing data; uses terms

different than the Privacy Rules; and fails to include electronic authorization. (EnerNOC Protest, pp. 3- 4.)

EnerNOC's concerns are easily addressed.

First, the Privacy Rules give customers the absolute discretion to revoke their authorization of third-party access at any time through any means; there is no reason for the CPUC to establish a formal process or "paper trail" for such a customer decision. In fact, PG&E's standard Electric and Gas Form 79-1147 provides a clear and simple way for the customer to revoke their authorization and for that revocation to be documented; no further process or "paper trail" is justified.

Second, Form 79-1147 by definition covers only energy usage data, not other data about a customer such as billing history, because the CPUC's Privacy Rules only cover energy usage data, not other customer data. At some point, PG&E expects that it will consolidate its customer authorization forms for all customer-specific data, but the CPUC's compliance requirements are limited to energy usage data. Likewise, PG&E used "plain English" terms in its Form 79-1147 for better understanding by customers and third-parties; the terms are intended to be identical to the technical term "covered information" used in the Privacy Rules.

Finally, PG&E agrees with EnerNOC that it is a worthy goal for the utilities to provide an electronic "point and click" authorization method similar to the written Form 79-1147. PG&E is working toward that goal, but must evaluate the billing system and IT requirements in order to achieve that further enhanced customer service. PG&E would be happy to discuss scope and schedule with EnerNOC on an informal basis.

III. Response to Protest of Protesting Parties

The Alliance for Retail Energy Markets, Direct Access Customer Coalition, and School Project for Utility Rate Reduction are collectively the "Protesting Parties". Protesting Parties raise similar concerns to EnerNOC, including requesting that the utilities move toward electronic authorization forms and include billing and other data within the scope of their customer authorization forms. (Protesting Parties, p. 5, items 1, 3 and 7.) As such, PG&E's response to EnerNOC applies equally to Protesting Parties. Protesting Parties also request that the customer authorization forms make customer release of their covered information indefinite "by default." (Protesting Parties, pp. 3 and 5.) This request should be rejected as contrary to the rights of customers and the need for customer flexibility in controlling access to their customer data. Moreover, contrary to Protesting Parties, nothing in Rule 6(e) of the CPUC's Privacy Rules precludes a customer from specifying the duration of their authorization in advance as part of their consent to disclosure of their data. The phrase in Section 6(e)(3) referenced by Protesting Parties only clarifies that a customer's consent does not automatically expire but continues in accordance with the customer's own authorization, except that the third party receiving the customer data is required to remind the customer of their authorization at least annually. Interpreting Rule 6(e) as *prohibiting* a customer from specifying a duration for their consent in advance would turn the Privacy Rules on their head.

Finally, Protesting Parties' request that the utilities' tariffs add references to and revisions to the tariffs and rules directly governing electric service providers and Community Choice Aggregators is outside the scope and applicability of the utility's privacy tariffs, which by their terms apply the verbatim rules adopted by the Commission for utilities. This request should be rejected.

Sincerely,

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cc: Edward Randolph, Director – Energy Division
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Mona Tierney-Lloyd, EnerNOC, Inc.
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