

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

Order Instituting Rulemaking to Continue
Implementation and Administration of
California Renewables Portfolio Standard
Program.

**Rulemaking 11-05-005
(Filed May 5, 2011)**

**PACIFIC GAS AND ELECTRIC COMPANY'S (U 39 E)
COMMENTS ON PRELIMINARY STAFF PROPOSAL
TO CLARIFY AND IMPROVE THE CONFIDENTIALITY RULES
FOR RENEWABLES PORTFOLIO STANDARD**

CHARLES M. MIDDLEKAUFF
M. GRADY MATHAI-JACKSON

Pacific Gas and Electric Company
P. O. Box 7442
San Francisco, CA 94120-7442
Telephone: (415) 973-6971
Facsimile: (415) 973-5520
E-Mail: CRMd@pge.com

Attorneys for
PACIFIC GAS AND ELECTRIC COMPANY

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Pacific Gas and Electric Company

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Pacific Gas and Electric Company ("PG&E") respectfully provides these comments in response to the *Administrative Law Judge's Ruling Requesting Comments on Preliminary Staff Proposal to Clarify and Improve Confidentiality Rules for the Renewables Portfolio Standard Program* ("Ruling") issued July 1, 2013 in this proceeding.

I. INTRODUCTION AND OVERVIEW

California statutory law requires that the Commission adopt appropriate procedures to ensure that market sensitive procurement information remains confidential.¹ As the Commission explained when it adopted its seminal confidentiality decision, Decision ("D.") 06-06-066, California's painful experience with market manipulation during 2000 and 2001 resulted in the passage of Public Utilities Code Section 454.5(g), which is intended to "protect consumers from market manipulation and other harm that can arise if market sensitive information is released across the board."² The Commission and active parties in Commission proceedings have now had more than six years of experience implementing D.06-06-066 and, although there are

¹ Cal. Pub. Util. Code § 454.5(g).

² D.06-06-066 at p. 18.

occasional disagreements regarding confidentiality designations, in general the procedures adopted in D.06-06-066 and subsequent decisions appear to be working well and are familiar to parties and the Commission. Nothing has changed in the market for Renewables Portfolio Standard (“RPS”)-eligible resources that would necessitate the substantial overhaul of D.06-06-066 envisioned in the Ruling. The Ruling provides no evidence that the RPS market is, in any way, hampered or detrimentally impacted by the current confidentiality rules. Indeed, as the Ruling acknowledges, the RPS market has thrived with the current confidentiality rules in place.³ While PG&E appreciates the time and effort invested by Staff to review D.06-06-066, there does not appear at this time to be any need for substantial revisions to the confidentiality matrices and protections adopted in that decision, especially given the robust RPS market that has developed with the current confidentiality rules in place.

If the Commission believes that it is necessary to review and revise D.06-06-066, any such review should be done in a comprehensive fashion, rather than a piecemeal approach. A piecemeal approach focused on a specific technology type (*i.e.*, renewable resources) will simply create greater confusion and a more fragmented approach to efforts to protect market sensitive materials. Many of the categories of information addressed in the Staff Proposal included in the Ruling (“Proposal”) are not unique to RPS. For example, information concerning bundled load forecasts would be applicable to both RPS and non-RPS transactions.⁴ There is no reason to narrowly modify D.06-06-066 for RPS-transactions, when many of the proposed modifications will have broader implications. Moreover, narrowly modifying D.06-06-066 for RPS transactions will result in inconsistent and confusing confidentiality designations. In an RPS proceeding, bundled load forecasts would be entitled to certain confidentiality protections that

³ Ruling at p. 11.

⁴ *Id.* at p. 14 (bundled load forecasts).

would be different than the protections in a non-RPS proceeding. Staff acknowledges that the Proposal will only further widen the differing treatment for RPS and non-RPS procurement information⁵, but fails to explain why this differing treatment is appropriate or in the best of interests of customers. If the Commission believes that D.06-06-066 needs to be revised, it should do so comprehensively, not simply through the narrow lens of RPS transactions.

In the comments below, PG&E addresses each of the specific changes and modifications proposed by Staff. Some of these proposed modifications to D.06-06-066 may be appropriate (for all transactions, not just RPS), while others are clearly not appropriate and will only serve to increase the likelihood of market manipulation or other detrimental impacts to customers. As explained above, rather than approaching changes to D.06-06-066 in a piecemeal fashion, PG&E urges that the Proposal be withdrawn and, if the Commission believes that modifications to D.06-06-066 are necessary, that the Commission initiate a process to look more comprehensively and holistically at the D.06-06-066 confidentiality rules.

Finally, before undertaking a comprehensive review of D.06-06-066, if this is determined to be appropriate, the Commission should first act on pending confidentiality issues. Specifically, in D.11-07-028, the Commission required the investor-owned utilities (“IOUs”) and other interested parties work together and draft and submit a Model Non-Disclosure Agreement (“NDA”) and Model Protective Order (“MPO”). After a lengthy stakeholder process, in November 2011, the IOUs jointly filed an NDA and MPO by advice letters.⁶ The NDA and MPO were largely uncontested, and there was only a limited protest on a few provisions in these model agreements. The advice letters have now been pending for more than a year and a half.

⁵ *Id.* at p. 12, n. 20.

⁶ *See* PG&E Advice Letter 3943-E; Southern California Edison Company Advice Letter 2653-E; San Diego Gas & Electric Company Advice Letter 2301-E.

Before undertaking a comprehensive review of D.06-06-066, the Commission should first act on the proposed NDA and MPO so that these documents can be utilized in Commission proceedings.

II. RESPONSES TO STAFF PROPOSAL⁷

The Ruling includes a list of seven issues that parties are asked to consider when developing their comments on the Proposal.⁸ Some of these issues, such as transparency, the appropriate level of protection, and legal issues are relatively straightforward and are addressed below in PG&E's comments on specific aspects of the Proposal. Other issues are less clear or appear to be more readily answered by the Commission, rather than parties.

For example, Issue #2 is whether the Proposal will contribute to improved decision-making at the Commission. The Commission currently receives both public and confidential information related to RPS transactions and it presumably reviews the confidential information before rendering a decision. Thus, it is unclear how additional disclosure of protected information will improve Commission decision-making when the Commission already has any information that is marked confidential.

Another issue that is not entirely clear is whether disclosure of confidential information will "improve the value received by customers."⁹ It is unclear what "value" is being referenced in this question and whether this "value" applies to specific transactions, or RPS procurement generally.

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⁷ For ease of reference, the headings in this section of PG&E's Comments mirror the headings included in the Ruling.

⁸ Ruling at pp. 5-6.

⁹ *Id.* at p. 6, Item #4.

Finally, Issue #3 addresses whether additional disclosure of RPS transactional information will facilitate coordination between the Commission and other governmental entities. It would be difficult for any party to knowledgeably comment on this issue given that the parties are typically not involved in communications between the Commission and other governmental entities.

A. Guiding Principles

The Ruling includes five guiding principles that provide a framework for the Proposal. PG&E generally agrees with these guiding principles, but believes that an additional principle needs to be included to address the potential misuse of confidential information by market participants. As the Commission explained in D.06-06-066, consistent with Section 454.5(g), the purpose for confidentiality rules is “to protect consumers from market manipulation and other harm that can arise if market sensitive information is released across the board.”¹⁰ None of the five guiding principles included in the Ruling appears to adequately address this concern. Therefore, PG&E proposes adding the following additional guiding principle:

6. Confidentiality rules should ensure that consumers are protected from market manipulation and other harm that can arise if market sensitive information is released.

B. Proposal Background

The Proposal appears to be based on several general presumptions:

- As a result of confidentiality protections, the Commission is currently limited in its ability to carry out its responsibilities to report to the Legislature on the progress of the RPS program.¹¹
- Planning efforts across agencies are limited in their use due to the current confidentiality limitations.¹²

¹⁰ D.06-06-066 at p. 18.

¹¹ See *e.g.* Ruling at p. 15

¹² *Id.* at p. 16.

- Growth of the RPS market.
- The change from an annual to multi-year compliance period makes load-serving entities (“LSEs”) less vulnerable to potentially negative market behavior.

However, these presumptions are not entirely accurate and require further scrutiny and consideration. For example, the existing confidentiality treatment of LSEs’ net short position and bundled load forecast do not appear to limit the Commission’s ability to report to the Legislature on the progress of the RPS program or to complete planning efforts across agencies. The Commission currently reports the outlook for retail sellers’ net open positions in its quarterly reports to the Legislature and there has not been any indication that this report is hampered by confidentiality protections. Most recently, the Commission’s *CPUC Renewable Portfolio Standard Quarterly Report; 3rd and 4th Quarter 2012* highlighted IOU progress towards meeting the 33% requirement by clearly showing annual progress and a visual approximation of the IOUs collective net open position. Moreover, it is unclear that there have been any significant limitations on planning across agencies as a result of confidentiality protections. The Proposal fails to provide any specific examples of inter-agency coordination challenges being caused by confidential materials.

The Proposal also presumes that growth in RPS markets means that confidentiality is no longer as important. However, it is unclear how the size of a market alone prevents parties from misusing confidential information. For example, an RPS seller that has been shortlisted could assert that it was entitled to a higher price than initially bid if that seller discovers after it is shortlisted that PG&E has recently agreed to a higher price for another Power Purchase Agreement (“PPA”) or higher prices than select groups of PPAs. Moreover, the RPS market itself is segmented and some segments are not particularly competitive. For example, while the number of photovoltaic (“PV”) facilities has increased dramatically, the number of other

renewable facilities have generally remained the same or, in fact, decreased. The growth of the overall RPS market does not necessarily justify loosening the Commission’s confidentiality protections. Buyers and sellers may also enter into agreements under very different terms and conditions that warrant different pricing. These terms are typically very market sensitive.

Finally, it is unclear why multi-year compliance periods would limit the potential use of confidential information by market participants to seek price increases and contract terms that ultimately result in increased customer costs. A market participant can use confidential information from other PPAs as leverage to negotiate beneficial contract and price terms regardless of the number or length of compliance periods. Thus, the fact that Senate Bill (“SB”) 2 (1x) creates several multi-year compliance periods does not mean that confidential information should not be protected.

C. Staff Proposal Regarding Compliance Reporting

1. The Confidentiality Treatment of Information From Compliance Reports Should Be The Same For All Retail Sellers

PG&E agrees with the Proposal that the treatment of confidential information should be the same for all LSEs. This principle should apply not only to compliance reports, but should extend to all LSE information and reports filed with the Commission. Public Utilities Code section 380(e) provides that “[e]ach load-serving entity shall be subject to the same requirements for . . . the renewables portfolio standard program that are applicable to electrical corporations pursuant to this section, or otherwise required by law, or by order or decision of the commission.” Moreover, there is no reasoned basis for differing treatment between LSEs with regard to confidential information. Electric Service Provider (“ESP”) and Community Choice Aggregation (“CCA”) data and information submitted to the Commission should be accorded identical protection as IOU-submitted data and information. There is no reason that ESPs and

CCAs should be afforded more, or less, protection for confidential information than the protections provided to the IOUs.

2. Information for the “Front Two Years” of the Retail Seller’s Energy Forecast of Bundled Load Should Be Kept Confidential

PG&E does not agree with the proposal to reduce confidentiality protections from the current front three years to the front two years. The need to protect an LSE’s bundled load forecast is tied to its net open position; if market participants know the specific timing and amount of an LSE’s need to buy or sell, these market participants can behave less competitively, undermining the LSE’s ability to purchase or sell RPS-eligible power under the most favorable terms for customers. Moreover, given the length of time required to implement changes to the confidentiality rules, it is not prudent to simply focus on current market conditions. If market conditions change, which they inevitably will, it would take some time to go through the regulatory process to adopt confidentiality rules to address the changed market. In D.06-06-066, the Commission was not focused on current market conditions, but instead was focused on striking an appropriate balance between customer interests and transparency. This careful balance should not be modified each time market conditions change. In the future, PG&E and other LSEs may have substantial net short positions for RPS resources in certain years. Making this information public may give market participants the incentive to increase their prices if they are aware that a specific LSE is short of RPS resources in the near-term, and that the LSE needs to procure these resources to remain in compliance with SB 2 (1x).

3. The “Front Two Years” of a Retail Sellers’s RPS Net Short Position May Be Kept Confidential

PG&E addressed why this proposal should not be adopted in its response to Section III.C.2.

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4. The Compliance Reporting Tool Should Be Redesigned To Provide A Self-Contained Report of Past Compliance Performance, Independent Of Any Present Performance or Future Procurement Projections And Should Be Publicly Available

PG&E presently reports all past compliance performance data publicly when aggregated at an annual level of reporting. However, PG&E suggests that all proposals to redesign the RPS Compliance Report be coordinated with current efforts to update the report's structure in order to meet the reporting requirements outlined in D. 12-06-038. Re-designing the RPS Compliance Reporting Tool should not be done in the context of a ruling on confidentiality.

D. Staff Proposal On Price Disclosure

PG&E cautions the Commission about making broad conclusions based on the current state of the market, where some segments such as solar PV projects are currently quite competitive. While releasing certain data may not be perceived as harmful to the IOUs' competitive position at this time, market conditions may change. Although there may be less perceived harm about releasing individual PPA prices as prices generally are declining, there may be more concern about creating a seller's market if prices rise. An analogy is helpful to illustrate this point. If a buyer goes to a car dealer to negotiate a price, with the car dealer knowing exactly what is in the buyer's bank account and how much the buyer has recently offered to pay or has paid for a similar car, the dealer will have better information on what it will be able to charge the buyer more than it otherwise would have if the dealer had not possessed this confidential information. In this case, the car buyer represents IOU customers. If market participants know how much the customers need and what the customers have been paying and are willing to pay, these sellers may well increase their prices above what they otherwise would have offered, knowing that the RPS resource is needed and what prices other sellers are being

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paid for similar products. Ultimately, this kind of disclosure of information can increase customer costs and will provide few, if any, benefits to the buyer.

The Proposal asserts that there is only a “slight risk” of market impact from the release of RPS price information.¹³ However, there is no evidence to support this statement. Moreover, even if the release of price information only impacts a single PPA, which is unlikely, RPS PPAs are often for 20+ years and involve millions of dollars in payments a year making even a slight risk potentially very costly. Customers could be required to pay millions of dollars more a year for 20+ years than they otherwise would have had to pay if a RPS seller is able to use price information to negotiate a price that, but for the disclosure of that information, the seller would not have requested. Even in this single example, the impact is certainly not “slight.”

Finally, keeping contract prices confidential does not harm the Commission’s ability to make decisions, nor does it affect the ability of the Commission to report costs to the Legislature. Non-market participants representing customers and other groups already have the ability to see confidential price data, and those parties regularly participate in and comment on Commission decisions. This structure has worked very effectively for the past 10 years of the RPS program. Moreover, the Commission can and does report on price data in an aggregated form to the Legislature. In short, there is no proven benefit associated with additional disclosure of confidential information, but there are significant potential harms to customers.

1. For RPS Procurement Contracts Requiring Commission Approval Via Resolution, The Contract Price Is Publicly Disclosed In the Draft Resolution And In The Final Resolution Adopted By The Commission

PG&E does not agree with the proposal to release the contract price of PPAs filed via Tier 3 advice letter as part of the draft resolution and in the final resolution. This would apply to

¹³ Ruling at p. 22.

most negotiated RPS contracts and bilaterals, including those that are executed from the 2012 and 2013 RPS Solicitation. Since RPS PPAs are generally negotiable, the contract price alone is not a good measure of the PPA’s overall value, nor does it help make meaningful comparisons between IOU PPAs, or between PPAs of different technologies, because the terms and conditions may be substantially different, and present substantially different risks to customers.

The Proposal asserts that part of the justification for releasing price information in a draft resolution is that PPA negotiations are complete when the resolution is issued. Thus, the Proposal concludes, there is no “danger to the utility on that project” if the price is released.¹⁴ The Proposal is correct that there is no impact on the negotiation of the particular PPA in question. However, release of the contract price does present a “danger” to future negotiations by impacting PG&E’s negotiating position going forward and undermining PG&E’s negotiating leverage to purchase power under the most favorable terms for its customers. Releasing price information will make it easier for other market participants to infer how much PG&E is willing to pay, and may make sellers less willing to agree to a reasonable price. Ultimately, it is likely that customers will pay higher prices as a result of the release of confidential pricing information. Alternatively, releasing price information may also discourage sellers who own and operate multiple facilities from offering low prices for a specific project. If a seller believes that once it has agreed to a lower price for one project, the price will be disclosed and other LSEs will request the same price, the seller may be less willing to compromise on a lower price in negotiations for a specific project. This will also have the affect of increasing customer costs.

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¹⁴ Ruling at p. 20.

2. For RPS Procurement Contracts Submitted For Commission Approval Via Advice Letter But Not Submitted Through A Tier 3 Advice Letter That Requires Commission Approval By Resolution, The Contract Price Is Publicly Disclosed At The Time The Advice Letter Is Filed

PG&E is concerned with the release of contract price information at the time an advice letter is filed for contracts submitted for Commission approval via non-Tier 3 advice letters for the same reasons as above. The risk of price disclosure in this situation could be further magnified because the IOUs have limited flexibility in terms of what projects to select and how much to procure in some RPS programs, such as the Renewable Auction Mechanism (“RAM”) Program.

In addition, in the RAM Program, there are some projects that are deliverable and some that are energy-only. With public price data, it will be a straightforward calculation to determine how much the IOU is willing to pay for deliverability, or how much the utility is willing to pay for a diverse product mix. Sellers that have a deliverable project, or a less competitive technology, could then use this information to adjust upward their own prices, given that they now are aware what an LSE is willing to pay for deliverability or a specific technology type.

3. For IOUs’ RPS Procurement Contracts That Are Submitted For Commission Approval Via Application, Specific Information Is Publicly Disclosed At The Time It Is Submitted In The Proceeding.

PG&E’s concerns about release of confidential data for projects filed via application are similar to those expressed above with regard to advice letters. Contracts filed via application are likely to be unique, and a release of price data absent information about terms and conditions is not likely to yield meaningful information to the public, but may be used by market participants in subsequent negotiations as a starting point for price negotiations. The Commission and non-market participants already have access to the confidential data, so that decision making can

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proceed without delay. Because disclosure of this price information is likely to have little value, but could result in customer harm, this portion of the proposal should not be adopted.

4. For RPS Procurement Contracts That Do Not Require Specific Commission Approval, The Contract Price Is Publicly Available Six Months After The Contract Is Signed Or 30 Days After Deliveries Of Energy and/or RECs Under The Contract Commence, Whichever Is First.

PG&E's concerns about release of confidential data for projects filed through the Energy Revenue Recovery Account ("ERRA") are similar to those expressed above with regard to advice letters and applications.

E. Staff Proposal On The Costs of RPS Contracts

1. Actual Total MWh Of RPS-Eligible Electricity Procured In Any Prior Year By Each Retail Seller Are Public

PG&E agrees with this portion of the Proposal. PG&E is presently reporting this information publicly in instances where the release of total megawatt-hours ("MWh") and procurement costs does not provide the data necessary to reveal individual contract price data prior to its established date for public release under current confidentiality rules. For example, PG&E reported historical renewable costs and procured energy by resource type category in its Draft 2013 Renewable Procurement Plan with one exception regarding unbundled Renewable Energy Credits ("RECs"). Presenting total MWh and procurement cost data for unbundled RECs in 2011 and 2012 would have released confidential contract price data to market participants and thus this information was not publicly disclosed. This portion of the Proposal should be modified to clarify that actual total MWh for the prior year can be disclosed, but only if doing so does not indirectly result in the disclosure of confidential price information.

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2. Annual Information On Total RPS Procurement Costs Incurred By Each Retail Seller In Any Prior Year Is Public

PG&E also agrees with this portion of the Proposal, subject to the clarification above in Section II.E.1 that releasing this information does not indirectly result in the disclosure of confidential price information.

3. RPS Procurement Contract Generation Cost Forecasts Of Each Retail Seller Are Public When Aggregated By Resource Category (e.g., Wind, Solar, Geothermal, etc.), So Long As There Are More Than Two Contracts Or Facilities In The Resource Category

PG&E does not agree with the proposal to release RPS procurement and generation costs forecasts when aggregated by resource category. When combined with public forecasts of RPS-eligible deliveries, releasing this information makes it easier for other market participants to infer how much PG&E is willing to pay for RPS-eligible deliveries by resource type and may make sellers less willing to agree to a reasonable price for future purchases. Furthermore, without equal treatment among LSEs, the Commission only weakens the IOUs' ability to competitively serve bundled load. For example, renewable procurement plans provide a reasonable opportunity for all LSEs to offer projections of their renewable procurement and generation costs. However, presently only IOUs are required to provide future projections of renewable costs. IOUs, ESPs, and CCAs seek to serve the same bundled load and participate in the same competitive energy markets to buy and sell energy in a manner that meets their customer requirements in the most competitive manner possible. By requiring only IOUs to divulge their renewable cost data, known to be a key driver of the generation rate retail sellers compete against, the Commission places IOUs at a disadvantage.

4. Certain General Information About Bids Received In Response To IOUs' RPS Solicitations Is Public

The Proposal is silent on timing of the release of this data. PG&E generally does not oppose the public release of total number of bids as soon as reasonably practicable after the close

of a Request for Offers (“RFO”). However, PG&E opposes the release of shortlist data in certain circumstances. For example, release of information about the number of offers submitted into a solicitation should be limited to those situations in which the market response to the solicitation is highly robust, *i.e.* a large volume of offers are submitted. Doing so in less competitive situations would provide information to the market that could be used to advantage sellers’ negotiating positions or how they price their product in future RFOs. The strength of market response may depend on the product being solicited. While there may be competitive market conditions for a general RPS RFO, the situation might be different if an IOU is conducting a more targeted RFO for a specific product for which the supply of offers are not a large multiple of the demand.

PG&E believes the number of shortlisted bidders, as well as all other information about the parties on the shortlist, should remain confidential. Providing this information to the market will inform shortlisted sellers of how many parties they are negotiating against, and could be potentially harmful to PG&E’s negotiating position.

F. Staff Proposal on the Commission Review of RPS Contracts and Planning Requirements

PG&E can understand the value to governmental agencies of being aware of proposed RPS-eligible generation projects for future planning purposes. However, only a small subset of the offers submitted in an RPS solicitation will ultimately be executed, approved, and built. As such, using the entire set of offers from a solicitation would be of little use for governmental planning purposes. Further, if projects that are not shortlisted can be assumed to be less likely to ultimately come online than those that are shortlisted but not executed, information regarding these projects is even less likely to be meaningful for planning purposes. PG&E proposes that the disclosure requirements and timing for offers not shortlisted be the same as for those that are

shortlisted but not executed. Eliminating the distinction in disclosure timing for both types of offers would also mitigate the ability for the market to gain unintended information about shortlisted offers. Below PG&E addresses the specific proposals regarding various categories of information.

1. Certain Information About Each Bid Received In Response To Each IOU's RPS Solicitation, But Not Shortlisted, Is Public The Day After The Commission Approves The IOU's Shortlist For That Solicitation

PG&E is opposed to this portion of the Proposal. PG&E notes that the RAM project information listed in this section is public when the RAM RFO is complete and the PPAs are filed for Commission approval. PG&E recommends that if information about individual offers received is released, it should occur when the solicitation is complete, not upon finalization of the shortlist. The information would reflect all offers, whether or not they were shortlisted. Moreover, information concerning bids received in an RFO, but not shortlisted, has little value for planning purposes. Thus, there is simply no reason to release this confidential information.

2. Certain Information About Each Shortlisted Bid Received In Response To Each IOU's RPS Solicitation, But Not Resulting In An Executed Contract, Is Public The Day After The Shortlist For That Solicitation Expires

See Response to Section II.F.1 above.

3. Bid Prices Of All Bids Received In Response To Each IOU's RPS Solicitation Are Public When Aggregated By Resource Category, So Long As There Are More Than Two Bids In A Category, The Day After The Commission Approves The IOU's Shortlist For That Solicitation

PG&E opposes the release of the simple average of all bid prices received in response to an RFO after the Commission approves PG&E's shortlist for that solicitation. As explained above in Section II.E, the release of pricing information can have a significant and detrimental impact on an LSE's ability to negotiate with other parties and to obtain the best terms,

conditions, and price for customers, even with some form of aggregation. For example, bidders on the shortlist could use the aggregated price information during negotiations to seek higher prices than they originally proposed in their offer. The Proposal provides no countervailing benefit in the release of this price information that would justify the release of bid information before the negotiating process with shortlisted bidders even begins. Even if the price information is aggregated, shortlisted bidders may use the aggregated price as a floor that they are willing to agree to or, if their price is below the aggregated amount, may seek to raise their price to get closer to the aggregated price.

4. Information About Generation Forecast In Each Approved RPS Procurement Contract of An IOU Or UOG Authorization To An IOU Is Public

RPS-eligible energy forecasts, RECs retired by facility and by year, project size, location and technology information are currently publicly reported in the RPS Compliance Report. For information related to the emissions associated with RPS procurement contracts that PG&E has executed and PG&E's RPS-eligible utility-owned generation ("UOG") facilities, PG&E recommends that the Commission align any public disclosure and reporting policy with the structures currently in place at the California Air Resources Board ("CARB"). PG&E does not generally maintain or track information related to the emissions of air and/or water pollutants for each individual RPS PPA, but understands that required generators do report general emissions information to the CARB on an annual basis.

For PG&E's RPS-eligible UOG facilities that meet the greenhouse gas ("GHG") reporting threshold, emissions data is made publicly available on an annual basis after this information is verified by a third-party and reported to the CARB. To adopt a different public disclosure and reporting policy would compromise an entity's negotiating position as it seeks to procure compliance instruments to meet its GHG obligation and potentially facilitate market

manipulation. Additionally, applying a different confidentiality policy would lead to the release of unverified and potentially inaccurate information to the public if disclosure is required outside of the existing annual process.

5. The RPS Generation Forecast Is Public For RPS Procurement Offers That Have Been Shortlisted In The Solicitation Process of An IOU, Or That Are The Subject Of Bilateral Negotiations Between An IOU And A Generation Developer, If Aggregated By Resource Category, And There Are More Than Two Contracts In A Category

As noted above, all information about the shortlist, including the generation forecast, should remain confidential. PG&E's concern applies whether or not the information is aggregated.

6. The RPS Generation Forecast Assumptions Used By Each IOU for Purposes of calculating That IOUs Renewable Net Short (RNS) Are Public, Including Project Viability And Failure Assessment Assumptions

PG&E opposes this portion of the Proposal regarding project viability and failure assessment assumptions. It is in the public's interest to preserve the ability of counterparties to provide LSEs candid information about the status of their projects. Requiring public release of PG&E's viability and failure assessment assumptions may result in sellers being less than forthright regarding the status of their projects. As described in its Draft Renewable Procurement Plan¹⁵, PG&E relies on an extensive project status monitoring program to inform its professional assessment of project success or failure in its portfolio of developing projects presently under contract. Without this program and the detailed data provided through it, PG&E would likely use a less detailed method of forecasting portfolio performance over the long-term, resulting in less informed decisions.

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¹⁵ See PG&E's Draft 2013 Renewable Procurement Plan, Sections 3, 5 and 6.

Public release of PG&E's assessments and the associated failure assessment could provide additional justification for opposition to a project and limit counterparties' ability to meet all of the outstanding development milestones needed to bring a project online. For example, public knowledge that PG&E, in its professional judgment, believes that a specific contract is likely to fail will likely make financing that project more difficult. Knowing this, counterparties are likely to be less candid in their sharing of project status information, making it more difficult for PG&E to forecast portfolio performance and ultimately procurement need at a project level. A less rigorous forecast will ultimately hurt customers as PG&E will be forced to implement less precise RPS procurement strategies that lead to higher customer costs. Additionally, public release of PG&E's interpretation of the information provided by counterparties with an expectation of confidentiality could give rise to legal claims against PG&E. Whether these claims are meritorious or not, they would increase the total cost of RPS Program implementation.

Furthermore, should non-market participants want or need a more-detailed examination of an IOU's generation forecast, PG&E makes this information available to its Procurement Review Group. Additionally, PG&E releases a detailed description of its generation forecast assumptions in its Renewable Procurement Plans, including the projected success rate for its projects not-yet-online on an aggregate basis.

7. The Following Terms Of RPS Procurement Contracts Of IOUs Are Publicly Disclosed In The Advice Letter Submitting The Contract For Commission Approval And Any Other Contract Information Is Public Three Years After Contract Execution Or Upon Contract Expiration, Whichever Comes First

PG&E disagrees with making pricing information public as described in the Proposal as it would release a current price into the market, as explained above in Section II.D. The rest of

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the information listed in this portion of the Proposal, with the exception of delivery point and WECC Bus ID, is already in the public portion of the advice letter.

8. The Following Terms of RPS Procurement Contracts Of ESPs and CCAs Are Publicly Available 30 Days After Deliveries (Energy and/or RECs) Begin Under the Contract, Any Other Contract Information Is Public Three Years After Contract Execution Or Upon Contract Expiration, Whichever Comes First

Whatever rules are ultimately adopted for IOU information in Section II.F.7 above, should apply equally to ESPs and CCAs. *See* Section II.C.1 above regarding the equal treatment of ESP and CCA information.

9. The Following Information In An RPS Procurement Contract Using A Standard Contract Is Public

This portion of the Proposal indicates that published interconnection queue information and progress reports for specific projects should be made public. With regard to interconnection information, published interconnection information is public by definition and thus PG&E does not oppose this proposal.

With regard to progress report, PG&E disagrees with making public information in standard contract progress reports because: (1) it could discourage developers from being forthright in the reports, rendering the process useless; (2) other developers could capitalize on and/or gain negotiating leverage based on perceived shortcomings of a project in PG&E's portfolio; (3) exposing shortcomings of a project could hinder or make more difficult the project's ability to be financed; (4) release of this information could result in legal claims against PG&E if counterparties view their information as having been provided pursuant to non-disclosure provisions of a PPA or if they believe the information has been inaccurately reported; and (5) developers would have insight on how PG&E is administering contracts and to what extent there may be variations. For these reasons, the Commission should not propose

expanding the requirements for disclosure of projects' progress beyond what is currently mandated.

10. Amending An RPS Procurement Contract Does Not Affect The Confidentiality Requirements That Apply To Prior Versions Of The Contract, Including The Time Frame For Making Information Public

PG&E agrees that an amendment to an existing RPS procurement contract does not affect the confidentiality requirements that apply to prior versions of the contract. However, PG&E would clarify that the confidentiality requirements surrounding an amendment would not be dictated by the original contract.

11. For UOG Projects That the Utility Intends To Be RPS-Eligible, The Following Information Is Publicly Disclosed In The Application For Commission Approval of The UOG Project

PG&E is in agreement with this portion of the Proposal.

G. Staff Proposal on General Planning and Disclosure

1. RPS Project Specific Evaluations And Scores For IOUs' Procurement Contracts Approved By The Commission Are Publicly Available 30 Days After Energy And/Or REC Delivery Begins Pursuant To The Contract, Or Three Years After The Commission Approves The Contract, Whichever Comes First, And All Other Evaluation Information May Be kept Confidential For Three Years After the Close Of The IOU's Solicitation

PG&E is strongly opposed to disclosing any of its project specific evaluations and scores for proposed projects. PG&E's evaluations incorporate PG&E's forecasts for the market and are strictly proprietary and confidential. Releasing PG&E evaluation information into the marketplace allows market participants to reconstruct PG&E's forecasts for future market conditions, *i.e.* forward curves for energy, resource adequacy ("RA"), and other attributes, which would prove highly detrimental to PG&E not only in its RPS transactions, but in other procurement transactions as well.

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Specifically, if project specific evaluations are made public:

1. Shaping factors and escalation rates that PG&E uses in developing its forward curves can be inferred, as can the differences between counterparties' and PG&E's forward curves, which can be used by counterparties to replicate PG&E's forward curves.
2. Information extracted from PG&E's forward curves from a competitive process could be used by the market in negotiations with PG&E, even for non-RPS products and bilateral negotiations. PG&E would be disadvantaged in any of its negotiations if counterparties have knowledge of PG&E's curves. Curve information garnered can provide information on both PG&E's forward energy and RA curves that can be used against PG&E in both renewable and non-renewable deals.
3. The information could be outdated and misused by market participants in bidding or negotiating projects. The information could also be used to argue against the evaluation approaches PG&E is using to select projects.

General information relevant to PG&E's RPS procurement criteria is already made publicly available by PG&E during a specific solicitation. The protocol for a solicitation is reviewed and approved by the Commission and subsequently made public. There is little upside in making the more detailed evaluation information public but significant downside. Moreover, PG&E's procurement criteria can and does change over time. It is in PG&E's interest to make its current procurement criteria known to the public in order to receive offers that are the most attractive to PG&E. Given the risks described above, providing project specific evaluations is not an effective means of communicating PG&E's procurement criteria to the market and can lead to decisions or strategies by market participants that use outdated information.

Furthermore, with regards to timing of disclosure, it is not obvious why the evaluation details of a project that has come online should be released earlier than one that has not. If the Commission determines that the information listed in the Proposal should eventually be made public for approved contracts, PG&E proposes that the information be disclosed three years after Commission approval of the contract regardless of when the project comes online.

III. EFFECTIVE DATE AND TRANSITION PROVISIONS

The application of any new confidentiality rules should only impact PPAs that are executed after the effective date of the Commission decision adopting any new confidentiality rules. These rules should not apply retroactively as is currently proposed in the Ruling. Applying these rules retroactively would be detrimental to market stability. For example, PPAs that were signed under the current confidentiality rules were executed with a certain expectation of confidentiality. To retroactively change these rules would not promote market confidence and may discourage bidders going forward if they see that the rules can change at any time.

Respectfully submitted,

CHARLES R. MIDDLEKAUFF
M. GRADY MATHAI-JACKSON

By: /S /Charles R. Middlekauff
CHARLES R. MIDDLEKAUFF

Pacific Gas and Electric Company
P. O. Box 7442
San Francisco, CA 94120-7442
Telephone: (415) 973-6971
Facsimile: (415) 973-5520
E-Mail: CRMd@pge.com

Attorneys for
PACIFIC GAS AND ELECTRIC COMPANY

Dated: August 5, 2013

VERIFICATION

I am an employee of PACIFIC GAS AND ELECTRIC COMPANY, a corporation, and am authorized to make this verification on its behalf. I have read the foregoing *PACIFIC GAS AND ELECTRIC COMPANY'S (U 39-E) COMMENTS ON PRELIMINARY STAFF PROPOSAL TO CLARIFY AND IMPROVE THE CONFIDENTIALITY RULES FOR RENEWABLES PORTFOLIO STANDARD*. The statements in the foregoing document are true of my own knowledge, except as to matters which are therein stated on information and belief, and as to those matters I believe them to be true. I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 5th day of August, 2013 at San Francisco, California.

/s/ Aaron M. Rodehorst

AARON M. RODEHORST
Manager, Renewable Energy Strategy
Pacific Gas and Electric Company