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Edward Randolph, Director
 Energy Division
 California Public Utilities Commission
 505 Van Ness Avenue
 San Francisco, CA 94102
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Re: PG&E’s Comments on Draft Resolution E-4636

Dear Mr. Randolph:

Pacific Gas and Electric Company (“PG&E”) submits the following comments on Draft Resolution E-4636 (“Draft Resolution”), which was circulated on January 8, 2014 for public review and comment in advance of the California Public Utilities Commission’s (“Commission”) consideration and potential vote on February 27, 2014.

The Draft Resolution denies PG&E’s Advice Letter 3862-E, as supplemented by Advice Letters 3862-E-A, 3862-E-B, and 3862-E-C, (“Advice Letter”), which requests Commission approval of a REC purchase agreement with TransAlta Corporation (“TransAlta Agreement”) on the ground that the contract price is not competitive. PG&E requests that the Commission withdraw the Draft Resolution and approve the Advice Letter without modification for the reasons discussed below.

The Draft Resolution’s primary basis for rejection of the TransAlta Agreement is that the proposed contract price compares unfavorably to REC purchase agreements with two other sellers – SPI and Barclays -- “executed around the same time” as the TransAlta Agreement.¹ However, the TransAlta Agreement compares quite favorably to the SPI and Barclays agreements that were executed around the same time as the TransAlta Agreement, as follows:

Counterparty	Contract Execution Date	Price (\$/REC) at Time of Contract Execution	Contract Amendment Date	Price (\$/REC) Post Contract Amendment
TransAlta	9/15/09 ²		None	N/A
Barclays	2/10 ³		7/16/13	
SPI	9/23/09 ⁴		11/1/12	

¹ See Draft Resolution, p. 4.
² See Advice Letter 3862-E, Appendix F.
³ See Appendix F of Advice Letters 3600-E and 3632-E.
⁴ See Appendix F of Advice Letter 3854-E.

While the TransAlta Agreement does not compare favorably to SPI and Barclays contract amendments executed in 2012 and 2013, for the reasons discussed below, the Commission should limit its review to alternatives available at the time of contract execution and not include alternatives available three or more years later.

Rejecting the TransAlta Agreement based upon a comparison to options not available at the time of negotiation and execution has important policy considerations. California has been at the forefront of efforts to promote development of renewable resources. The Commission plays a critical role in the development of renewable resources to support the state's goals through the review and approval of power and REC sales and purchase agreements, as well as through policy decisions regarding the structure of the RPS program. Rejecting proposed transactions based on comparisons not available at the time of negotiation and execution of a contract creates a new standard that will result in additional regulatory uncertainty for all potential transactions. Sellers will face this uncertainty when projects that seem competitive when proposed may later be rejected in comparison to a standard that did not exist at the time of evaluation, negotiation, and execution of the contract. A retroactive evaluation approach increases the regulatory risk for potential projects. It could also lead to perverse bidding strategies by sellers who want to be successful in solicitations but are also aware that approval of their offers may be based on a market situation that does not exist at the time of their proposal. Consequently, the Commission should limit the consideration of proposed transactions to comparison of alternatives available at the time of execution, rather than create a new, retroactive standard for review.

Sincerely,

Handwritten signature of Brian Cherry in black ink.

Vice President - Regulatory Relations

cc: President Michael R. Peevey
Commissioner Michel P. Florio
Commissioner Catherine J.K. Sandoval
Commissioner Carla J. Peterman
Edward Randolph – Director, Energy Division
Karen Clopton – Chief Administrative Law Judge
Frank Lindh – General Counsel
Energy Division Tariff Unit
Paul Clanon – Executive Director
Jason Simon – Energy Division
Paul Douglas – Energy Division
Lewis Bichkoff – Energy Division
Service List R.11-05-005

Limited Access to Confidential Material:

The redacted portions of this protest reply are submitted under the confidentiality protection of Section 583 and 454.5(g) of the Public Utilities Code and General Order 66-C. This material is protected from public disclosure because it consists of, among other items, the Amendment itself, price information, and analysis of the proposed RPS Amendment, which are protected pursuant to D.06-06-066 and D.08-04-023.