BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

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Order Instituting Rulemaking to Revise and Clarify Commission Regulations Relating to the Safety of Electric Utility and Communications Infrastructure Provider Facilities. U 39 E	R.08-11-005 (Filed November 6, 2008)

RESPONSE OF PACIFIC GAS AND ELECTRIC COMPANY (U39E) TO MOTION TO MODIFY ISSUE 20 SET FORTH IN THE ASSIGNED COMMISSIONER'S RULING AND SCOPING MEMO FOR PHASE 2 AND TO CLARIFY APPLICABILITY OF *EX PARTE* RULES

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Dated: December 21, 2008

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Pursuant to Rule 11.1 of the Commission's Rules of Practice and Procedure, Pacific Gas and Electric Company (PG&E) responds to the motion filed by the Joint Moving Parties which seeks to modify Item 20 of the Assigned Commissioner's Ruling and Scoping Memo (Scoping Memo) and to clarify applicability of the Commission's *ex parte* rules.

I. PG&E SUPPORTS THE MODIFICATIONS TO ITEM 20 PROPOSED BY THE JOINT MOVING PARTIES

The Joint Moving Parties make a compelling case for why Item 20 should be modified. If, as they assert, the Commission will necessarily address the current interpretation of the pole loading requirements in the pending Order Instituting Investigation (I.) 09-01-018 (Malibu OII), then it would be problematic for the Commission to also determine the proper interpretation of the pole loading requirements in this proceeding. There is no need for a formal articulation of the interpretation of pole loading requirements in this proceeding. Parties have proposed changes to the pole loading requirements, and while discussion of the basis for the changes will necessarily involve what the current rules require, there is no need for the Commission to issue a formal interpretation of the current pole loading requirements in order for it to adopt modifications to the rules. The changes to Item 20 proposed by the Joint Moving Parties

appropriately clarify the focus of the rules, which is how they should be improved for the future. PG&E supports these changes.

II. PG&E OPPOSES LIMITATIONS ON *EX PARTE* COMMUNICATIONS IN THIS PROCEEDING AS AN UNNECESSARY RESTRAINT ON COMMUNICATIONS IN A RULEMAKING PROCEEDING

In addition to requesting modifications to Item 20 of the Scoping Memo, the Joint Moving Parties also request a ruling that would prohibit *ex parte* communications "regarding the issue of existing pole loading requirements in GO 95 or any other issues that are now before the Commission in I.09-01-018." (Motion, p. 8). This proposed restriction is too broad and unnecessary to address the potential overlap between this proceeding and the Malibu OII. Several parties have proposed changes to the Commission's existing pole loading requirements in this proceeding, and must necessarily justify their proposed changes by comparing the existing rules to the new proposals. Limiting *ex parte* communications regarding these proposed rule changes would inhibit the free exchange of information that the Commission contemplates in rulemaking proceedings. A more appropriate limitation would be to preclude any discussions of existing pole loading requirements as they relate to the factual circumstances in the Malibu OII. This would protect parties' ability to effectively communicate with decisionmakers in a rulemaking proceeding while ensuring that the pending issues in the Malibu OII are not discussed in *ex parte* communications.

The Joint Moving Parties rely heavily on the Commission's recent decision D.07-07-020. That decision involved communications by parties to an adjudicatory proceeding with Decisionmakers in an attempt to convince the Commission to dismiss the adjudicatory proceeding and instead open a rulemaking proceeding to address the issues that were the focus of the adjudicatory proceeding. The circumstances leading to that decision are very different from the current situation in this rulemaking, and do not apply. Indeed, the Commission specifically limited the applicability of its decision:

> Our decision is based on the **narrow** but compelling set of facts presented in these proceedings. Contrary to the commenter's assertions, we are not promulgating new *ex parte* rules. We are interpreting existing rules. We reject the contention that we are creating a rule that puts parties at peril whenever they wish to have *ex parte* communications in quasi legislative proceedings where related complaint proceedings are pending. **The unique facts of these proceedings are what drive us to our conclusion today that *ex parte* violations occurred.** (emphasis added.)

The Joint Moving Parties are understandably concerned about the overlap in issues between the Malibu OII and this rulemaking proceeding. However, the issues are distinguishable. In the Malibu OII, the Commission is evaluating a specific set of facts and applying its rules to those facts to determine whether the rules have been violated. In this proceeding, parties are proposing modifications to pole loading requirements in an effort to improve safety and mitigate fires. While the existing rules will necessarily be discussed, the focus of the discussion in this proceeding will be on how to improve the rules, not on how those existing rules are applied to the circumstances in the Malibu OII.

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III. CONCLUSION

PG&E urges the Commission to modify Item 20 of the Scoping Memo as proposed by the Joint Moving Parties. PG&E also urges the Commission to reject the Joint Moving Parties' request to ban *ex parte* communications regarding pole loading requirements while the Malibu OII is pending. The proposal is unnecessary and unduly restricts parties' ability to effectively communicate with Decisionmakers in this proceeding regarding pole loading requirements.

Respectfully Submitted,

LISE H. JORDAN

By: /s/
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Attorney for
PACIFIC GAS AND ELECTRIC COMPANY

Dated: December 21, 2008

CERTIFICATE OF SERVICE BY ELECTRONIC MAIL

I, the undersigned, state that I am a citizen of the United States and am employed in the City and County of San Francisco; that I am over the age of eighteen (18) years and not a party to the party to the within cause; and that my business address is 77 Beale Street, B30A, San Francisco, California 94105. I hereby certify that I have this day electronically served the foregoing document(s) upon each member of the official service list of **R.08-11-005** and **I.09-01-018** pursuant to Rules 1.9 and 1.10 of the California Public Utilities Commission's Rules of Practice and Procedure:

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to the attached e-mail service list, and if no e-mail address was available, the party was served by U.S. Mail.

I certify and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on December 21, 2009 at San Francisco, California.

/s/

Jennifer Newman
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