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BEFORE THE
PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Redwood Resources Marketing, LLC, Complainant, vs. Pacific Gas and Electric Company (U39G), Defendant	Case No. 09-10-016 (Filed October 14, 2009)

PACIFIC GAS AND ELECTRIC COMPANY'S (U39G)
ANSWER TO COMPLAINT

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Pacific Gas and Electric Company ("PG&E"), a California corporation, by and through its attorneys, answers the complaint filed with the California Public Utilities Commission ("Commission") by Redwood Resources Marketing, LLC ("Complainant" or "Redwood").

ANSWER TO COMPLAINT

I. SUMMARY OF ANSWER

In its Complaint, Redwood alleges that PG&E caused Redwood to deliver natural gas to non-Redwood customers, referred to in the Complaint as the "Improper Deliveries", and caused Redwood to over-deliver the amount of natural gas needed for Redwood's actual customers, referred to in the Complaint as the "Over-Deliveries." Redwood asserts that it has been damaged as a result of the alleged Improper Deliveries and Over-Deliveries and seeks more than $1.2 million in damages, including alleged actual damages, attorney's fees and costs.[1] Redwood's assertions are unfounded and its Complaint should be dismissed.

[1] Complaint, ¶¶ 40-41.

First, with regard to the alleged Improper Deliveries, PG&E acknowledges that Redwood was required to provide some gas for non-Redwood customers over a period of time as a result of a previously undiscovered programming omission in PG&E's gas balancing system. This system issue was initially caused by Redwood in October 2005, when it improperly submitted enrollments to PG&E for another Core Transport Agent's ("CTA") customers which resulted in these customers being switched in PG&E's billing system from the other CTA to Redwood. Because Redwood's unauthorized enrollments were discovered after the switches to Redwood already occurred, PG&E was required to manually return the affected customers from Redwood to the proper CTA. PG&E's manual adjustment corrected the billing records for these customers, but was not recognized in the system interface between PG&E's customer billing system and the gas balancing system. From that point forward, as a result of Redwood's initial, unauthorized customer enrollments, the unintended consequence of PG&E's action to correct this problem resulted in a mismatch between PG&E's customer billing system and the gas balancing system.

For years, PG&E consistently sent monthly files to Redwood which, for gas balancing purposes, listed all of the customer accounts and corresponding gas usage in Redwood's core transport group; these monthly files listed the non-Redwood customers along with their monthly usage for gas balancing. Redwood did not notify PG&E of this error or seek to have the non-Redwood customers removed from its monthly usage files. In Fall 2008, when Redwood was preparing to sell its California business, including all of the PG&E gas customers in its core transport group, it performed an audit of its gas accounts and at that time raised the issue of the errors related to non-Redwood customers. Once notified, PG&E worked diligently with Redwood to identify the root cause and the extent of the errors. After the extent of the errors was

quantified, PG&E complied with its Commission-approved Gas Schedule G-BAL, "Gas Balancing Service for Intrastate Transportation Customers" ("Schedule G-BAL") and returned in-kind the gas used by the non-Redwood customers. Because Redwood had sold its California business to another party, PG&E remedied the errors through an in-kind transfer to Redwood's successor-in-interest. Thus, because PG&E's errors have already been remedied, Redwood's claim for damages is duplicative and should be dismissed.

Second, Redwood claims it is entitled to damages for alleged Over-Deliveries. However, Redwood's Complaint is noticeably vague regarding this claim. Redwood's Complaint includes a single spreadsheet that identifies two customers that are the subject of the alleged Over-Deliveries, each for a period of approximately a month. Redwood does not explain how the alleged Over-Deliveries occurred, or provide any further detail concerning the basis of its claim. PG&E has propounded discovery regarding the alleged Over-Delivery claims. As it stands, however, Redwood's claim for alleged Over-Deliveries is unsupported and should be dismissed because it is overly vague.

Concurrent with this Answer, PG&E is filing a motion to dismiss Redwood's Complaint or, alternatively, to dismiss the Second Cause of Action. PG&E's motion to dismiss is based on undisputed facts and clear contractual and tariff language that bar Redwood's claims.

If the Commission denies PG&E's motion to dismiss, Redwood's Complaint will need to proceed to hearings. Redwood has requested that its Complaint be addressed on an expedited schedule, which would require testimony in January and hearings in February. There is no need for an expedited schedule and Redwood has not alleged any facts that would demonstrate undue hardship if a more reasonable schedule is adopted. In this Answer, PG&E proposes a schedule that will allow the parties to fully address the issues in the Complaint, and the Administrative

Law Judge ("ALJ") and the Commission to fully consider the parties' positions, all within the twelve month period required by the Commission's rules.

Finally, Redwood asserts that the Commission's Alternative Dispute Resolution ("ADR") Program will not resolve the issues raised in the Complaint and that ADR is therefore "unnecessary."[2] PG&E disagrees. PG&E fully supports the Commission's efforts to promote ADR as a means of reducing litigants' costs and expenses, while saving the litigants' and the Commission's time and resources by resolving disputes rather than engaging in protracted litigation. PG&E believes that the litigants in this proceeding would benefit from ADR and requests that the ALJ instruct the parties to proceed with ADR before commencing formal litigation. ADR is included in the schedule proposed by PG&E in this Answer.

II. FACTUAL BACKGROUND

A. Redwood Executes The CTA Agreement And Becomes A CTA

From July 16, 2004 until December 1, 2008, Redwood had an effective Core Gas Aggregation Service Agreement ("CTA Agreement") with PG&E, and acted as a Core Transport Agent or "CTA" for a group of gas customers located in PG&E's service territory. As a CTA, Redwood purchased natural gas and then provided it to PG&E for delivery to Redwood's customers. In addition to providing transportation services, PG&E also offers to CTAs consolidated customer billing, gas storage, and other services as part of CTAs' participation in PG&E's Core Gas Aggregation Program. All of these services are provided under Commission-approved agreements, Gas Rules and Gas Schedules. CTAs are required to comply with PG&E's gas transportation rules, core gas aggregation rules, and other applicable Commission-approved tariffs.

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[2] Complaint, ¶ 46. Interestingly, later in its Complaint, Redwood urges the Commission to "strongly" encourage PG&E to reach a settlement. *Id.*, ¶ 80.

With regard to billing services, CTAs have three options for billing services to be provided by PG&E.[3] First, a CTA can bill its customers for the natural gas used by the CTA's customers and have PG&E separately bill the CTA's customers for transportation and other services provided by PG&E. Second, a CTA can bill its customers for natural gas and the services provided by PG&E, and then remit to PG&E the customer payments related to PG&E's services. Third, a CTA can elect to have PG&E bill the CTA's customers for the natural gas provided by the CTA and PG&E's services, and then have PG&E remit to the CTA the portion of the customer payments associated with the CTA's purchase of natural gas.

PG&E provides CTAs with information so that they can deliver the appropriate amount of gas into the PG&E system for the CTAs' customers, and to ensure that they can properly bill their customers and account for their costs. First, with regard to the amount of gas to deliver, PG&E provides a daily forecast to CTAs that forecasts the amount of natural gas that is expected to be used by the CTAs' customers the next day based on prior usage patterns, weather forecasts and other forecasting tools ("Daily Forecast"). The Daily Forecast assists CTAs, such as Redwood, so that they can make sure they have procured and delivered to PG&E a sufficient supply of natural gas to meet their customers' needs. Second, PG&E also provides CTAs with monthly imbalance statements. These statements include a Cumulative Imbalance Statement, which is the difference between the Daily Forecast for an entire month and the gas volumes scheduled to a CTA's customers for that month, as well as the Operating Imbalance Statement, which is the difference between the Daily Forecast for an entire month and the actual metered usage for a CTA's customers. The two imbalances statements are necessary because core customer meters are read on a serial or intermittent basis, rather than on a monthly or calendar

[3] *See* PG&E Gas Rule 23, Sheet 7.

basis, as is the case for PG&E's noncore customers. In addition, CTAs are sent a "Monthly Usage for Balancing" file, used to create the monthly Operating Imbalance Statements, which identifies all of the CTAs' customers and the customers' corresponding usage amounts for gas balancing.

In July 2004, Redwood Energy Marketing, LLC, the predecessor to Redwood, executed a Core Gas Aggregation Service Agreement ("CTA Agreement") with PG&E. The CTA Agreement was subsequently assigned to Redwood effective February 1, 2006. Under its CTA Agreement, Redwood agreed to procure natural gas for its customers and to have this gas delivered to PG&E. Redwood elected to have PG&E provide a monthly consolidated bill to Redwood's customers, and then to remit to Redwood the portion of the customer payment related to Redwood's services. Like all CTAs, Redwood received the Daily Forecast, the monthly Cumulative Imbalance Statement, the monthly Operating Imbalance Statement, and the Monthly Usage for Balancing file. The Monthly Usage for Balancing file reflects actual metered usage for customers served by the CTA.

B. Redwood Erroneously Submits Enrollments for Certain SPURR Customers

In October 2005, Redwood submitted Direct Access Service Requests ("DASRs") to PG&E to enroll and switch several gas customers to Redwood's core transport group that were being served by the School Project for Utility Rate Reduction ("SPURR"), another CTA participating in the Core Gas Aggregation Program. As a direct result of Redwood's submission of DASRs, this triggered a sequence of automated events in PG&E's billing and gas balancing system, among others, to transfer these customers from SPURR to Redwood. PG&E subsequently learned that the switches requested by Redwood were not authorized by the

affected customers who had not elected to switch from SPURR to Redwood.[4] Redwood acknowledged this mistake. However, because PG&E was notified after its systems completely processed Redwood's DASRs, and near the time that customer invoices were being prepared, in order to keep the customers from being impacted by Redwood's error, PG&E had to manually cancel Redwood's DASRs to switch back the customers from Redwood to SPURR.

The manual cancellations were processed and accepted by PG&E's customer billing system, but unknown to PG&E at the time, the manual cancellations were not recognized by PG&E's separate gas balancing system. As a result, SPURR, without interruption, continued to bill these customers for its gas charges, for PG&E's transportation charges and continued to remit PG&E's portion of the customers' payments to PG&E, but, moving forward, the forecasted amount of natural gas for the SPURR customers was included in the Redwood forecast instead of SPURR's forecast. Thus, the Daily Forecasts that Redwood received were higher than they should have been because these forecasts included some non-Redwood customers (*i.e.*, the SPURR customers).

The customers that were being properly billed by SPURR were also included in the Monthly Usage for Balancing files provided by PG&E to Redwood each month. If Redwood had compared the customers listed in the Monthly Usage for Balancing files to Redwood's list of its own customers, it should have readily been able to determine that some non-Redwood customers were included on these monthly balancing files. Despite monthly access to this detailed data, Redwood did not notify PG&E that its Monthly Usage for Balancing files included non-Redwood customers. For purposes of this Answer, the erroneous Daily Forecasts and

[4] In a December 1, 2008 e-mail, Redwood Vice President Patricia Salvo stated that Redwood's "call center signed up this customer without following the formal procedure in place. When this was discovered, most of the accounts were returned to PG&E."

Monthly Usage for Balancing files provided to Redwood, that included non-Redwood customers, are referred to as the "Incorrect Gas Balancing Amounts."

C. Redwood Assigns The CTA Agreement To Tiger And Requests PG&E's Assistance To Reconcile Its Accounts

In November 2008, Redwood notified PG&E that Redwood was planning to sell its CTA business. Between November and December 2008, Redwood requested PG&E's assistance on a number of issues concerning the sale, including PG&E's assistance to reconcile Redwood accounts, preparing a Consent to Assignment agreement ("Consent to Assignment"), and organizing the transfer of Redwood customers.[5] On December 1, 2008, Redwood transferred its customers to Tiger Natural Gas, Inc. ("Tiger") and assigned its CTA Agreement to Tiger ("Redwood-Tiger Transaction"). PG&E was not a party to the Redwood-Tiger Transaction and was not provided with copies of the transaction documents. However, PG&E's consent to the assignment of the CTA Agreement was required. PG&E consented to the assignment on December 3, 2009, and worked with both Redwood and Tiger to ensure a smooth transition for the affected customers. Redwood is no longer a CTA and no longer has gas customers in PG&E's service territory.

During the reconciliation process, just prior to the closing of the Redwood-Tiger Transaction, Redwood notified PG&E that certain non-Redwood customers had been included on Redwood's Monthly Balancing for Usage files. Because of Redwood's need to close the Redwood-Tiger Transaction, PG&E and Redwood were unable to resolve the Incorrect Gas Balance Amount issue quickly and instead continued to work on reconciling gas amounts after the Redwood-Tiger Transaction closed. Redwood and PG&E worked diligently to reconcile the

[5] Redwood's efforts to reconcile its accounts with PG&E may have started earlier than November 2008. PG&E is currently conducting discovery concerning when Redwood started its reconciliation project.

Incorrect Gas Balancing Amounts as well as many other historical billing and payment issues concerning Redwood's former customers, not affected by the Incorrect Gas Balancing Amounts, which consumed a great deal of PG&E's time and resources both prior to the Redwood-Tiger Transaction and after it closed. In fact, Redwood employees acknowledged the significant work that PG&E did on this "challenging project" and that PG&E employees did a "super job" providing Redwood with information.[6] Toward the end of April 2009, PG&E believed that it provided all the historical billing and payment files requested by Redwood, and that its role in assisting with Redwood's reconciliation project had concluded. Then, PG&E expected to hear from both Tiger and Redwood that PG&E should commence the in-kind balancing adjustments so that gas usage associated with the non-Redwood customers, and previously debited from Redwood's gas balancing account could be returned in-kind to Redwood through Tiger's balancing account.

D. PG&E Remedies The Incorrect Gas Balance Amounts

Under PG&E's Schedule G-BAL, which is incorporated into the CTA Agreement, gas usage adjustments as a result of errors by PG&E are made in-kind (therms) to the account of the affected CTA(s).[7] The Consent to Assignment between PG&E, Redwood and Tiger provided that any payments due under the CTA Agreement were to be made to Tiger, the party that had been assigned the CTA Agreement, and that Redwood released PG&E from all liability for

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[6] E-Mail from Patricia Salvo (Redwood) to Bill Chen (PG&E) dated January 30, 2009 ("Thank you for moving this forward. Please tell the department that researched each account and put the spreadsheet together they did a super job."); E-Mail from Lori Rappucci (High Sierra, which is the majority owner of Redwood) to Ken Bohn (Redwood Consultant) and Bill Chen (PG&E) dated February 17, 2009 ("We want to acknowledge the great work that Patricia [Salvo] and all the PGE Staff have accomplished on this challenging project that goes back to 2005.")

[7] *See* G-BAL Gas Schedule, Sheet 14, Accounting Adjustments.

making payments to Tiger.[8] Because any adjustment for the Incorrect Gas Balance Amount required an in-kind adjustment under Schedule G-BAL, Redwood no longer had an account in PG&E's gas balancing system, and the Consent to Assignment indicated that Tiger should receive any payments under the CTA Agreement, PG&E processed in-kind usage adjustments in July, September, and October 2009.

Before PG&E provided the in-kind adjustment to Tiger, it notified Redwood that it would be making this adjustment. On January 30, 2009, PG&E employee Bill Chen e-mailed Redwood's Vice President of Operations, Patricia Salvo, and its consultant Ken Bohn and indicated:

> I'd like to get your advice regarding how best to effectuate the credit to Redwood as we may need to involve Tiger as well. Per the Gas Balancing team, the normal process is that PG&E would apply the credit to Redwood's next balancing statement. However, since November 2008 was Redwood's last balancing month, Redwood doesn't have a balance to apply the credit. My initial thought is whether we can apply the credit to Tiger's balancing account and then have Tiger reimburse Redwood similar to what Redwood and Tiger have agreed to for any other necessary adjustments for the period pre-12/1/08.

Redwood's consultant Ken Bohn replied on February 16, 2009:

> Regarding Bill's second question, about possibly effectuating a credit directly to Redwood, as I discussed with Bill and separately with you today, PG&E's systems will not allow PG&E to do these adjustments without involving Tiger. They need to be processed like all CTA Group 10057 adjustments and Tiger and Redwood will need to track them through the billing, balancing and adjustment process.

Lori Rappucci, the current Vice President and Controller for High Sierra[9] (the majority owner of Redwood), e-mailed Ken Bohn and Bill Chen the following day, February 17, 2009, regarding the status of the reconciliation project. She indicated in part that:

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[8] Complaint, Ex. B, ¶ 7.

[9] Ms. Rappucci was High Sierra's external Senior Finance Consultant at the time of the email communications in February 2009.

> As Ken mentioned in his message below, I am hoping that we can accumulate all adjustments and put them through one billing file, this way it will be easier for all concerned (Redwood, Tiger and PG&E) to track and we will not have to look at numerous future billing files.

On March 26, 2009, PG&E employee Bill Chen notified Redwood:

> PG&E understands that per the assignment of Redwood's Core Gas Aggregation Services Agreement to Tiger Natural Gas effective December 1, 2008, that Tiger will allow PG&E to issue any therm adjustments to Redwood for periods prior to December 1, 2008, via Tiger's monthly balancing process for its core pool. . . . PG&E will work with High Sierra and Tiger to coordinate the process once we complete and agree on the amount of therms that should be credited to Redwood.

Mr. Chen also indicated that PG&E hoped to have the reconciliation process completed in April.

Toward the end of April 2009, PG&E believed that it had completed its work on the reconciliation process. Meanwhile, Tiger had made several requests for PG&E to correct the Incorrect Gas Balancing Amounts for the post Redwood-Tiger Transaction period (*i.e.*, beginning on December 1, 2008). The Incorrect Gas Balancing Amount adjustments, including billing periods prior to the closing of the Redwood-Tiger Transaction on December 1, 2008, were made to Tiger's account in July, September, and October, 2009.

III. RESPONSE TO MATERIAL ALLEGATIONS IN COMPLAINT

PG&E denies each and every material allegation made in the Complaint, except as expressly admitted below. PG&E responds to each allegation in the Complaint in the same paragraph order as included in the Complaint. PG&E is continuing to investigate the Complaint, including conducting discovery, and reserves the right to amend and/or modify in whole or in part its responses to the material allegations in the Complaint. PG&E incorporates by reference into this Section III all of the material facts alleged in Section II of the Answer.

SUMMARY OF COMPLAINT

1. This paragraph does not include any material allegations.

2. PG&E admits that that it entered into the CTA Agreement with Redwood Energy Marketing, LLC. The CTA Agreement became effective July 16, 2004. The CTA Agreement was assigned to Redwood effective February 1, 2006. PG&E further admits that Redwood acted as a CTA under the CTA Agreement. PG&E further admits that the CTA Agreement was assigned to Tiger effective December 1, 2008. PG&E's responsibilities under the CTA Agreement are defined by the terms of that agreement, including the appendices and incorporated Gas Schedules and Gas Rules.

3. PG&E admits that it was informed by Redwood in Fall 2008 that Redwood was performing an audit of activities associated with the CTA Agreement. PG&E was not informed as to when this audit started and, on information and belief, understands that this audit was in connection with the transaction between Redwood and Tiger. The audit, also referred to as the reconciliation effort, concluded toward the end of April 2009. PG&E actively assisted Redwood in the audit process, providing Redwood with a significant amount of information and data, which involved significant PG&E employee time and effort. PG&E admits that as the result of the parties' reconciliation efforts, Redwood and PG&E discovered that starting in late 2005, as described in more detail above in Section II.B, PG&E mistakenly provided incorrect Daily Forecasts and Monthly Usage for Balancing files to Redwood that included customers that were not Redwood customers (*i.e.*, the Incorrect Gas Balance Amount). PG&E remedied the Incorrect Gas Balance Amounts in a manner consistent with the CTA Agreement and applicable gas schedules and rules, as described above in Section II.D.

4. PG&E denies that on numerous occasions it "erroneously caused Redwood to over-deliver natural gas to PG&E's pipeline that was then delivered to Redwood's non-core customers." The Complaint only identifies two alleged instances in which this happened for

approximately a one-month period for each instance, and both customers identified in the Complaint were Redwood's core customers, not non-core customers.[10] PG&E denies that these alleged Over-Deliveries occurred because of inaccuracies in PG&E's operating gas balance system. Redwood's Complaint does not sufficiently describe how the alleged Over-Deliveries occurred. PG&E has propounded discovery intended to obtain further detail from Redwood regarding its allegations.

5. PG&E incorporates its responses to Paragraphs 3-4 in response to the allegations in paragraph 5 of the Complaint.

6. PG&E disputes the alleged Over-Deliveries and, as described in more detail in its response to Paragraph 3 and in Section II.D, has remedied the alleged Improper Deliveries (*i.e.*, the Incorrect Gas Balance Amounts). PG&E denies that it has refused to acknowledge and provide an adequate remedy for its errors. In fact, as explained above in Section II.D, PG&E has remedied Incorrect Gas Balance Amounts.

7. PG&E admits that it has been unable to resolve the dispute with Redwood. However, PG&E denies that the three letters from Redwood's counsel to PG&E were an adequate attempt to negotiate a resolution of the dispute. As explained in Section I above, PG&E believes the parties would benefit from the Commission's ADR process.

8. PG&E denies that Redwood is entitled to the damages alleged in Paragraph 8 of the Complaint. PG&E has complied with the CTA Agreement, and incorporated gas schedules and rules, and has remedied the Incorrect Gas Balance Amounts. In addition, Redwood is not entitled to be reimbursed for any audit fees or related costs, as PG&E explains in Section IV.H, below.

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[10] *See* Complaint, Exhibit H, Attachment 1.

THE PARTIES AND THEIR RELATIONSHIPS

9. On information and belief, PG&E admits that Redwood Resources Marketing, LLC is a limited liability corporation incorporated in Delaware with its principal place of business in Denver, Colorado.

10. On information and belief, PG&E admits that High Sierra Energy, LP is a limited partnership organized in Delaware with its principal place of business in Denver, Colorado. On information and belief, PG&E also admits that High Sierra is the majority owner and manager of Redwood.

11. This paragraph does not include any material allegations.

12. PG&E admits that it is a California corporation with its principal place of business at 77 Beale Street, San Francisco, California, 94105.

FACTS

Redwood and PG&E's Relationship Pursuant to the CTA Agreement

13. PG&E incorporates by reference its response to Paragraph 2 of the Complaint.

14. PG&E denies that the CTA Agreement attached as Exhibit A to the Complaint is the CTA Agreement between PG&E and Redwood. Exhibit A to the Complaint is an unexecuted form CTA Agreement. The CTA Agreement between Redwood and PG&E became effective on July 16, 2004, and was filled in by the parties and executed. PG&E admits that under the CTA Agreement, the parties agreed to assume specific responsibilities. Under the CTA Agreement, PG&E agreed to bill and collect from Redwood's customers and to transmit the appropriate amount of these payments to Redwood.

15. PG&E admits that it provided to Redwood Daily Forecasts of the amount of natural gas that would be needed by Redwood customers. PG&E also provided Redwood with

monthly Cumulative and Operating Imbalance Statements which show the natural gas usage by Redwood customers. In addition, PG&E provided Redwood with a Monthly Usage for Balancing file, used to create the monthly Operating Imbalance Statements, which identifies all of the CTAs' customers and the customers' corresponding usage amounts for gas balancing. On information and belief, PG&E understands that Redwood used these documents, and other information that may have been developed by Redwood, to make decisions regarding the amount of natural gas that Redwood needed to purchase and deliver into the PG&E system in order for Redwood to serve its customers.

16. PG&E admits that, as a part of the service provided to Redwood, it charged Redwood for the transportation of natural gas to Redwood customers. Transportation services are included in the CTA Agreement, and the Gas Schedules and Rules incorporated into the CTA Agreement. PG&E admits that, to the extent non-Redwood customers were represented in the Daily Forecast, and to the extent that Redwood delivered supply for the Daily Forecast number that included non-Redwood customers, then Redwood did pay transportation charges for Incorrect Gas Balance Amounts. PG&E denies the alleged Over-Deliveries and thus denies that Redwood was charged any transportation costs related to the alleged Over-Deliveries.

Redwood's Assignment Of Its Customers To Tiger Natural Gas, Inc.

17. PG&E cannot admit or deny the specifics of the transaction between Redwood and Tiger as PG&E was not a party to that transaction. PG&E has requested in discovery documents and information related to the Redwood-Tiger transaction.

18. PG&E admits that it consented in writing to the assignment of Redwood's rights, title and interest in the CTA Agreement from Redwood to Tiger on December 3, 2008. PG&E

also admits that a true and correct copy of the Consent to Assignment is attached as Exhibit B to the Complaint.

19. PG&E admits that, following the assignment of the CTA Agreement from Redwood to Tiger, Redwood has no longer continued to serve customers in PG&E's service territory. PG&E also admits that, after the CTA Agreement was assigned, PG&E could no longer provide in-kind balancing to Redwood because Redwood does not have any continuing customers in PG&E's service territory, and, therefore, it no longer has a balancing account with PG&E. As PG&E explained in Section II.D, above, to remedy the Incorrect Gas Balance Amounts discovered during the reconciliation process, PG&E provided an in-kind adjustment to Tiger, which is the entity that is the current counterparty on the CTA Agreement. PG&E does not have information about the transaction between Tiger and Redwood. The value of the in-kind adjustment provided to Tiger for Incorrect Gas Balance Amounts for periods prior to December 1, 2008 could be transferred to Redwood by Tiger.

PG&E's Alleged Billing Errors, The Alleged Improper Deliveries To Non-Redwood Customers And The Alleged Over-Deliveries To Redwood Customers

20. PG&E incorporates by reference its response to Paragraph 3 of the Complaint. PG&E further states that reconciliation activities and discussions between Redwood and PG&E continued until approximately the end of April 2009. PG&E cannot admit or deny whether Redwood's audit included "a thorough review of daily billing files to customers and gas fulfillment obligations prescribed by PG&E."

21. PG&E cannot admit or deny the conclusions of the audit because Redwood has not provided a copy of the audit to PG&E. PG&E has requested the audit, and documents related to the audit, in discovery. PG&E admits that it did provide gas balance amounts to

Redwood that incorrectly included non-Redwood customers, as described in more detail in Section II.B and II.C, above.

22. PG&E denies that it billed and collected from non-Redwood customers' payments associated with the Incorrect Gas Balance Amounts that were provided to Redwood. PG&E denies that it "retained all of the payments that it billed and collected for the Improper Deliveries." Instead, as explained in Section II.B, above, another CTA, SPURR, billed the non-Redwood customers for PG&E's transportation costs, and remitted PG&E's portion of the customers' payments to PG&E. PG&E admits that as a result of the Incorrect Gas Balance Amounts, Redwood provided natural gas for non-Redwood customers.

23. PG&E cannot admit or deny the conclusions of the audit because Redwood has not provided a copy of the audit to PG&E. PG&E has requested the audit, and documents related to the audit, in discovery. PG&E denies that it erroneously caused the alleged Over-Deliveries. *See* PG&E's response to Paragraph 4 of the Complaint.

24. PG&E incorporates by reference its response to Paragraph 16 of the Complaint.

25. PG&E admits that it assisted Redwood with Redwood's audit. Between November 2008 and the end of April 2009, PG&E personnel in its DA Billing/Payment, EDI, Records, Payment Research & ISTS Business Intelligence departments spent an estimated 200 + hours researching Redwood's billing and payment inquiries concerning Redwood's audit, which included resending historical billing and payment files previously provided by PG&E. In February 2009, Redwood representatives acknowledged the "great work" done by PG&E personnel "on this challenging project that goes back to 2005." In February, 2009, Bill Chen from PG&E had a telephonic meeting with Lori Rappucci and Chris Philpott (Redwood representatives) concerning the Redwood audit project. The parties agreed that it would be a

good idea to have weekly teleconferences that included PG&E personnel working on Redwood's audit-related requests. However, PG&E and Redwood did not have consistent weekly meetings. PG&E and Redwood representatives did meet via teleconference on the following dates: March 11, 2009, March 18, 2009, and April 8, 2009.

26. PG&E denies that it agreed in April 2009 with "Redwood's assessment that PG&E incorrectly charged Redwood for 894K Therms of natural gas (not including shrinkage)."

Redwood's Alleged Attempt To Amicably Resolve The Situation With PG&E

27. Redwood frequently notified PG&E concerning alleged billing errors that Redwood and PG&E Staff would then work to resolve, either by determining that there was no error or by correcting the error. In September 2008, Redwood notified PG&E that it had identified certain accounts that were included on Redwood's Monthly Usage for Balancing file that were for non-Redwood customers. In November 2008, there was further communications between Redwood and PG&E personnel regarding non-Redwood customers being included in Redwood's Monthly Usage for Balancing file. PG&E incorporates by reference the factual allegations in Sections II.C and II.D concerning PG&E's involvement in Redwood's audit and the reconciliation process.

28. PG&E denies that it has failed to correct the Incorrect Gas Balance Amounts. PG&E has corrected the error in its systems and has provided an in-kind balance amount to Tiger that covers the period from August 2006 to June 2009 to remedy the Incorrect Gas Balance Amounts.

29. PG&E denies that it "refuses to compensate Redwood for the losses Redwood suffered . . ." Consistent with the CTA Agreement and incorporated tariffs and gas schedules,

PG&E has remedied the Incorrect Gas Balance Amounts by providing an in-kind balance amount to Tiger, as described in more detail in Section II.D.

30. PG&E admits that it has acknowledged the Incorrect Gas Balance Amounts associated with non-Redwood customers. PG&E denies that it has acknowledged the alleged Over-Deliveries to Redwood customers. PG&E further denies that it "does not accept liability for its errors . . .." *See* Section II.D, above.

31. PG&E denies that its remedy providing an in-kind balance amount to Tiger is "wholly inadequate." Instead, PG&E's remedy is entirely consistent with the CTA Agreement and incorporated Gas Schedules and Tariffs. Tiger is the current counter-party under the CTA Agreement, and thus was the appropriate party to receive the in-kind balance amount. This is also consistent with the Consent to Assignment entered into by Redwood, Tiger and PG&E. As PG&E indicated in communications in early 2009, Tiger and Redwood will need to resolve the appropriate accounting for the value of the in-kind balance amount for periods prior to December 1, 2008, pursuant to the terms of the Redwood-Tiger Transaction.

32. PG&E admits that on or about July 13, 2009, it received the letter from David Huard to William Chen that is attached as Exhibit C to the Complaint ("July 13th Letter"). The letter speaks for itself.

33. This paragraph of the Complaint summarizes Redwood's July 13th Letter. The letter, which is attached as Exhibit C to the Complaint, speaks for itself.

34. PG&E admits that on or about July 15, 2009, it sent the letter from Lawrence Witalis to David Huard that is attached as Exhibit D to the Complaint ("July 15th Letter").

35. PG&E admits that on or about July 21, 2009, it received the letter from David Huard to Lawrence Witalis attached as Exhibit E to the Complaint ("July 21st Letter"). This paragraph of the Complaint summarizes Redwood's July 21st Letter. The letter speaks for itself.

36. PG&E admits that it requested additional time to respond to Redwood's July 21st Letter, and that Redwood agreed that PG&E could respond on or before August 14, 2009.

37. PG&E admits that on or about August 13, 2009, it sent the letter from Lawrence Witalis to David Huard that is attached as Exhibit F to the Complaint ("August 13th Letter").

38. PG&E denies that it has asserted an "intractable position" and that PG&E's July 15th Letter and August 13th Letter left Redwood "no choice" but to file the Complaint.

39. PG&E admits that on or about August 14, 2009, it received the letter from David Huard to Lawrence Witalis attached as Exhibit G to the Complaint ("August 14th Letter"). This paragraph of the Complaint summarizes Redwood's August 14th Letter. The letter speaks for itself.

40. Based on the factual allegations in Section II and paragraphs 1-39 in Section III above, PG&E denies that it has any liability to Redwood for the Incorrect Gas Balance Amounts and that it has any liability to Redwood for the alleged Over-Deliveries or the gas transportation charges. PG&E also denies that Redwood is entitled to be reimbursed "auditing and other costs" that it allegedly incurred.

41. PG&E incorporates by reference its response to Paragraph 40 of the Complaint. In addition, in discovery PG&E has asked for specific information regarding Redwood's calculation of its alleged damages.

42. PG&E incorporates by reference its response to Paragraph 40 of the Complaint.

43. This paragraph does not include any material allegations.

GROUNDS FOR RELIEF

Jurisdiction

44. PG&E admits that the Commission has jurisdiction over Redwood's Complaint.

45. This Paragraph summarizes Redwood's Complaint. The Complaint speaks for itself regarding Redwood's allegations and claims.

46. PG&E denies that Redwood has "repeatedly attempted to resolve this issue with PG&E informally." Redwood's attorney sent PG&E three letters, all of which essentially re-stated Redwood's position in the Complaint. PG&E supports the Commission's ADR Program and believes the parties would benefit by participating in ADR before proceeding with litigation of the Complaint.

47. PG&E does not dispute that Redwood's Complaint is timely filed.

First Cause of Action: Violation Of Public Utilities Code §734

48. This paragraph does not include any material allegations.

49. Based on the material facts alleged in PG&E's answer to the Complaint and the terms of the CTA Agreement, the Commission should deny Redwood's request that the Commission determination that PG&E has imposed unreasonable and/or excessive charges on Redwood.

50. This Paragraph summarizes Public Utilities Code section 734. The language of the statute speaks for itself.

51. PG&E denies that it acted unreasonably with respect to the Incorrect Gas Balance Amounts.[11]

52. PG&E denies that it the alleged Over-Deliveries occurred.[12]

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[11] *See e.g.* Section II; PG&E's Response to Paragraphs 1-40 of the Complaint.

53. PG&E denies that it has "refused" to refund charges related to the Incorrect Gas Balance Amount. PG&E further denies that it has benefited "from its own errors at Redwood's expense." PG&E denies that Redwood has suffered any damages as a result of the alleged Over-Deliveries.[13]

54. This paragraph does not include any material allegations.

Second Cause of Action: Violation Of Gas Tariff Schedule G-BAL

55. This paragraph does not include any material allegations.

56. This paragraph does not include any material allegations.

57. PG&E admits that Redwood has attached as Exhibit I to its Complaint a true and correct copy of Sheet 14 of PG&E's Gas Schedule G-BAL.

58. PG&E denies that Redwood terminated the CTA Agreement. The CTA Agreement was assigned by Redwood to Tiger and remains in effect.[14] Under the Consent to Assignment, Tiger has agreed to assume all rights, duties and obligations under the CTA Agreement.

59. PG&E denies that it was required to cash-out the Incorrect Gas Balance Amounts pursuant to the Gas Schedule G-BAL because the CTA Agreement was not terminated, but rather, it was assigned to Tiger. Redwood's assertion that it is entitled to a cash-out is based on the mistaken argument that the CTA Agreement terminated.

60. PG&E denies that it violated the Gas Schedule G-BAL.

Third Cause of Action: Violation Of CTA Agreement

61. This paragraph does not include any material allegations.

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[12] *Id.*

[13] *Id.*

[14] *See* Complaint, Exhibit B.

62. This paragraph does not include any material allegations.

63. PG&E admits that the quoted language included in this Paragraph is a portion of a provision in the CTA Agreement. Redwood did not include all of the language from the quoted section in the CTA Agreement.

64. PG&E admits the Incorrect Gas Balance Amount, but denies the alleged Over-Deliveries.[15] PG&E denies that Redwood was entitled to any revenues for the Incorrect Gas Balance Amount as any revenues associated with the non-Redwood customer accounts were properly remitted to PG&E by SPURR because the non-Redwood customers were in fact SPURR's customers. PG&E has remedied the Incorrect Gas Balance Amount with Tiger by providing Tiger an in-kind gas adjustment.

65. PG&E incorporates by reference its response to Paragraph 16 of the Complaint.

66. This paragraph does not include any material allegations.

Fourth Cause of Action: Conversion of Redwood's Property

67. This paragraph does not include any material allegations.

68. This paragraph does not include any material allegations.

69. This paragraph does not include any material allegations.

70. PG&E denies that it converted Redwood's property. PG&E delivered gas to Redwood customers under the CTA Agreement. In the case of the Incorrect Gas Balance Amounts, PG&E mistakenly delivered gas from Redwood to non-Redwood customers. PG&E has subsequently returned this gas in-kind to Tiger, who is the current counter-party under the CTA Agreement.

[15] *See e.g.* Section II.

71. PG&E denies that it "improperly disposed" of Redwood's property.[16]

72. PG&E denies the alleged Over-Deliveries.[17]

73. PG&E denies that Redwood has been damaged as a result of PG&E's conduct. Moreover, even if Redwood had been damaged, PG&E's liability is limited under the CTA Agreement, which provides that "[n]o Party under this Agreement shall be assessed any special, punitive, consequential, incidental, or indirect damages, whether in contract or tort (including negligence) or otherwise, for any breach, actions or inactions arising from, out of, or related to this Agreement."[18]

74. PG&E denies that Redwood has suffered any transportation related damages as a result of PG&E's conduct.[19]

75. PG&E denies that Redwood has suffered any "damages" as a result of the costs it incurred related to its audit. Moreover, even if Redwood had been damaged, PG&E's liability is limited under the CTA Agreement.

76. PG&E admits that the CTA Agreement includes an express provision limiting liability under the agreement.

77. PG&E denies that its August 13th Letter "blatantly misinterprets and misrepresents" the CTA Agreement's limits on liability. The CTA Agreement speaks for itself with regard to the limitations on liability.

78. This paragraph does not include any material allegations.

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[16] *See* Section II; PG&E's Response to Paragraphs 1-40 of the Complaint.

[17] *Id*.

[18] CTA Agreement at 6.

[19] *See* PG&E's Response to Paragraph 16 of the Complaint.

IV. AFFIRMATIVE DEFENSES.

A. Failure to State A Cause of Action.

The Complaint does not set forth an actionable claim under Public Utilities Code Section 1702 or Commission Rule 4.1 (a) and must be dismissed.

B. Discriminatory Treatment

If Redwood had not assigned the CTA Agreement to Tiger, it would have received an in-kind adjustment to remedy the Incorrect Gas Balance Amounts that occurred before December 1, 2008. This would be consistent with PG&E's form CTA agreements and tariffs, and would be consistent with how PG&E would treat another similarly situated CTA. Because it assigned its CTA Agreement to Tiger in December 2008, Redwood wants to be treated differently than other CTAs by receiving the value of the gas at the time the Incorrect Gas Balance Amounts were recorded, over the period from 2005 to 2008, rather than the value of the in-kind adjustment of natural gas that it would have received if Redwood had remained a party to the CTA Agreement. The impact of Redwood's Complaint would be that, as a result of Redwood's decision to assign its CTA Agreement to Tiger, Redwood would receive different and potentially more favorable treatment for the Incorrect Gas Balance Amounts. The relief requested by Redwood in the Complaint is barred by Public Utilities Code Section 453(a).

C. Limitation of Damages

The CTA Agreement expressly limits PG&E's liability for damages, stating that "[n]o Party under this Agreement shall be assessed any special, punitive, consequential, incidental, or indirect damages, whether in contract or tort (including negligence) or otherwise, for any breach, actions or inactions arising from, out of, or related to this Agreement." Even if Redwood was correct that PG&E breached the CTA Agreement or is otherwise liable for actions resulting from

the relationship between Redwood and PG&E under the CTA Agreement, which PG&E disputes, Redwood's damages are limited under the CTA Agreement.

D. Redwood's Negligence And Failure To Mitigate

As explained in Section II.B, above, the Incorrect Gas Balance Amounts were caused, in part, by Redwood's erroneous attempt to switch customers from SPURR to Redwood. Redwood also received the Monthly Usage for Balancing files, which identified all of the Redwood customers. If Redwood had reviewed these statements, it could have determined that some of the customers included on the Monthly Usage for Balancing file were not Redwood Customers. On this basis, PG&E is informed and believes and thereon alleges that Redwood may have caused or contributed to any injuries, damages or losses, allegedly sustained as a result of the actions alleged in the Complaint. PG&E also believes and alleges that Redwood could have mitigated its alleged damages by reviewing the Monthly Usage for Balancing file and notifying PG&E that it included non-Redwood customers.

E. Remedies For Alleged Damages

PG&E has already remedied any alleged damages by providing an in-kind adjustment to Tiger, as described in Section II.D, above.

F. Unclean Hands

PG&E is informed and believes and thereon alleges that the Complaint is barred by the doctrine of unclean hands.

G. Standing

Redwood lacks standing because under the Consent to Assignment, it assigned "whatever rights, title and interest" it had in the CTA Agreement to Tiger. Thus, Redwood does not have standing to assert any cause of action related to or under the CTA Agreement.

H. Redwood's Claim For Audit Fees Is Barred By Gas Rule 21.

Redwood seeks the recovery of approximately $110,959 for audit fees.[20] Under Gas Rule 21, that is incorporated into the CTA Agreement, PG&E and Redwood were required to keep accounting records and books and were allowed to examine the accounting records and books of the other party. PG&E worked with Redwood to reconcile the Incorrect Gas Balance Amounts and provided Redwood with voluminous PG&E records and data. However, under Gas Rule 21, "[a]ny examination will be at the examining party's expense . . .."[21] Thus, Redwood is barred from seeking audit fees from PG&E related to its examination of PG&E's books and the reconciliation of the Incorrect Gas Balance Amounts.

V. DEFECTS IN THE COMPLAINT

Commission Rule 4.4 requires a defendant to identify "any defects in the complaint which require amendment or clarification." In addition to the factual and legal issues raised in Sections II-III above, Redwood's complaint is defective with regard to the alleged Over-Deliveries because it is vague as to the nature and extent of this aspect of its Complaint. Redwood states in its Complaint that PG&E "on numerous occasions, erroneously caused Redwood to over-deliver natural gas to PG&E's pipeline . . ."[22] However, Attachment 1 to Exhibit H of the Complaint only identifies <u>two</u> Redwood customers who allegedly were charged incorrect amounts over approximately a one-month period each, and both were core customers, not non-core customers.[23] It is unclear if these two instances are the "numerous occasions" referred to by Redwood in its complaint. Moreover, the therms allegedly charges to Redwood

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[20] Compliant, ¶ 41.

[21] Gas Rule 21, Sheet No. 16, Section D.3.

[22] Complaint, ¶ 4.

[23] Complaint, Exhibit H, Attachment 1 at 9.

specified in the customer spreadsheet do not appear to match the therms identified in Exhibit H, Attachment 1, page 1. Redwood's Complaint needs to be amended and/or clarified to clearly identify with particularity the alleged Over-Deliveries.

VI. CATEGORIZATION, NEED FOR HEARINGS, ISSUES TO BE CONSIDERED AND PROPOSED SCHEDULE

PG&E agrees with Redwood that the Complaint should be categorized as an adjudicatory proceeding.

PG&E disagrees with Redwood's proposed schedule. If the ALJ denies PG&E's concurrently filed Motion to Dismiss, PG&E will need to conduct additional discovery concerning Redwood's factual allegations. PG&E disputes many of Redwood's material allegations and a hearing will be necessary to address the many disputed factual issues raised in the Complaint. Redwood has provided no reason for the expedited schedule it proposed. Redwood has not alleged any financial hardship that would require an expedited resolution, nor has Redwood provided any other reason for the expedited schedule that it has proposed to be adopted. Redwood's allegation that PG&E has used "delaying tactics" is belied by the fact that in February 2009, Redwood's representatives acknowledged PG&E's "great work" and that reconciling balancing statements back to 2005 was a "challenging project."

In addition, as PG&E indicated in Section I above, ADR is appropriate in this proceeding to try to resolve the dispute between the parties and conserve the parties' and the Commission's time and resources. Below, PG&E proposes an alternative schedule that includes both ADR efforts, and, if those efforts are unsuccessful, a procedural schedule to resolve the Complaint. PG&E's proposed schedule is consistent with Rule 4.4, which requires adjudicatory complaints to be resolved within 12 months of filing:

ACTIVITY	PG&E PROPOSED DATE
Prehearing Conference	December 7, 2009
ADR Process	December 2009 – January 2010
Scoping Memo Issued[24]	February 15, 2010
Direct Testimony	March 1, 2010
Rebuttal Testimony	March 31, 2010
Reply Testimony	April 16, 2010
Evidentiary Hearings	May 3-5, 2010
Concurrent Initial Briefs	May 28, 2010
Concurrent Reply Briefs	June 14, 2010
Proposed Decision	September 14, 2010
Final Decision	October 14, 2010

VII. DEFENDANT'S NAME AND ADDRESS

PG&E's business address is 77 Beale Street, San Francisco, California, 94105. The address and telephone number for PG&E's attorney are below:

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E-Mail: crmd@pge.com

VIII. CONCLUSION

Based on the foregoing, PG&E respectfully requests the following relief that:

[24] Activities included in procedural schedule after ADR Process assume that ADR is unsuccessful.

1. The Complainant's request for relief be denied;

2. The Complaint be dismissed with prejudice;

3. PG&E be reimbursed for its attorneys fees and costs related to this proceeding; and,

4. The Commission provide such other relief as it deems appropriate.

Respectfully submitted,

CHARLES R. MIDDLEKAUFF

By: /s/
CHARLES R. MIDDLEKAUFF

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Attorney for
PACIFIC GAS AND ELECTRIC COMPANY

Dated: November 30, 2009

VERIFICATION

I, the undersigned, say:

I am an officer of PACIFIC GAS AND ELECTRIC COMPANY, a corporation, and am authorized, pursuant to Code of Civil Procedure §446, paragraph 3, to make this verification for and on behalf of said corporation, and I make this verification for that reason. I have read the foregoing **PACIFIC GAS AND ELECTRIC COMPANY'S ANSWER TO COMPLAINT** and I am informed and believe the matters therein are true and on that ground I allege that the matters stated therein are true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 30, 2009, at San Francisco, California.

/s/
ALBERT F. TORRES

VICE PRESIDENT
CUSTOMER OPERATION
PACIFIC GAS AND ELECTRIC COMPANY

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 within cause; and that my business address is Pacific Gas and Electric Company, Law Department B30A, 77 Beale Street, San Francisco, CA 94105.

On the 3rd day of December 2009, I caused to be served a true copy of:

PACIFIC GAS AND ELECTRIC COMPANY'S (U39G)
ANSWER TO COMPLAINT

[XX] By Electronic Mail – serving the enclosed via e-mail transmission to each of the parties listed on the official service list for C.09-10-016.

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 this 3rd day of December, 2009 at San Francisco, California.

/s/
DONNA LEE

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA SERVICE LIST

Last Updated: November 19, 2009

CPUC DOCKET NO. C0910016

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