BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF CALIFORNIA

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Redwood Resources Marketing, LLC, Complainant vs. Pacific Gas And Electric Company (U39G), Defendant.	C.09-10-016 (filed October 14, 2009)

REDWOOD RESOURCES MARKETING, LLC'S RESPONSE TO PACIFIC GAS AND ELECTRIC COMPANY'S PROPOSED AMENDMENTS TO JOINT JURISDICTIONAL STATEMENT

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Dated: January 15, 2010

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In accordance with the authorization of Administrative Law Judge Sean Wilson ("ALJ Wilson"), as indicated by the *Administrative Law Judge's Ruling Granting Motion to File Amendment to Joint Jurisdictional Statement*, issued January 6, 2010, Redwood Resources Marketing, LLC ("Redwood") hereby files its response to *Pacific Gas and Electric Company's Proposed Amendments to Joint Jurisdictional Statement*, filed January 8, 2010.

Redwood and Pacific Gas and Electric Company ("PG&E") previously agreed upon and submitted on December 18, 2009 the *Joint Jurisdictional Statement of Redwood Resources Marketing, LLC and Pacific Gas and Electric Company (U39G)* (the "Joint Statement") regarding the Commission's jurisdiction to address all of Redwood's claims against PG&E in this matter. The Joint Statement was the result of specific negotiations and an agreement between the parties. However, subsequent to filing the Joint Statement, PG&E unilaterally determined that it no longer supported the language it had previously agreed to and that it wished to amend the Joint Statement with respect to the Commission's jurisdiction to hear Redwood's claims. On January 8, 2010, PG&E filed *Pacific Gas and Electric Company's (U39G) Proposed*

Amendments to Joint Jurisdictional Statement ("Proposed Amendments"). Redwood does not agree to the amendments proposed by PG&E and therefore does not support the Amended Joint Statement submitted by PG&E as Attachment 1 to its Proposed Amendments. If the Commission accepts PG&E's Proposed Amendments, then Redwood accordingly withdraws its support for the Joint Statement as amended by PG&E and instead submits its own *Jurisdictional Statement of Redwood Resources Marketing, LLC*, included here as Attachment 1.

Dated: January 15, 2010

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Attachment 1

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)

JURISDICTIONAL STATEMENT OF REDWOOD RESOURCES MARKETING, LLC

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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)

JURISDICTIONAL STATEMENT OF REDWOOD RESOURCES MARKETING, LLC

Pursuant to Administrative Law Judge ("ALJ") Wilson's request at the December 7, 2009 pre-hearing conference in this proceeding, Redwood Resources Marketing, Inc. ("Redwood") hereby submits this statement regarding the California Public Utilities Commission's ("Commission") jurisdiction to adjudicate the issues in this proceeding.

I. THE COMMISSION HAS BROAD JURISDICTION TO REGULATE PG&E'S PERFORMANCE OF ITS OBLIGATIONS AS A PUBLIC UTILITY.

The Commission's jurisdiction in this matter broadly stems from the allegations in Redwood's Complaint that PG&E's actions violated the Public Utilities Code and PG&E's tariffs.[1] The errors in PG&E's accounting system, which PG&E has openly admitted,[2] led to the Improper Deliveries and the Over-Deliveries that are at issue in Redwood's Complaint.

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[1] Tariffs duly published and filed with the Commission have the force and effect of a statute and any deviation therefrom is unlawful and void. D.86714, *Sunland Refining Corp. (Shipper) Denied Relief Against Southern Tank Lines, Inc. (Carrier) Where Shipper Sought a Declaration that an Agreement Between It and Defendant Was Void, Unduly Prejudicial, and to the Disadvantage of Shipper. Shipper Was Denied an Order Requiring Carrier to Cease and Desist From Seeking to Require Shipper to Comply With the Agreement and to Cease and Desist From Maintaining Court Action Based Upon the Agreement*, 1976 Cal. PUC LEXIS 1012, *6.

[2] PG&E's Answer at p. 7.

Redwood stated four specific claims that provide the legal basis upon which the Commission may grant relief. Without addressing those specific claims, the facts alleged by Redwood in its Complaint and admitted by PG&E in its answer clearly indicate that PG&E has violated several of its tariffs by improperly requiring Redwood to deliver natural gas into its pipeline system and then misappropriating that natural gas to non-Redwood customers. At a minimum, PG&E has violated the provisions of Gas Rule 23 (Gas Aggregation Service For Core Transport Customers) and Gas Schedule G-CT (Core Gas Aggregation Service) by failing to perform its obligations as a public utility providing CTA services. The CTA program is a Commission-regulated program that involves complex tariffs and Commission rules that are not appropriately considered by a California Superior Court in the first instance. Redwood's Complaint alleges substantial systematic errors in PG&E's performance of its obligations as a public utility, and it goes far beyond mere contract and tort claims that would be appropriate for California Superior Court. As such, the Commission should properly continue to assume jurisdiction of this matter.

II. THE COMMISSION HAS JURISDICTION TO ADJUDICATE EACH OF REDWOOD'S CLAIMS IN THIS PROCEEDING.

The Commission has jurisdiction to resolve each of the specific claims included in Redwood's Complaint: (1) violation of California Public Utilities Code section 734; (2) violation of the Commission's authorized Core Gas Aggregation Service Agreement (the "CTA Agreement"); (3) violation of PG&E's tariff Gas Schedule G-Bal; and, (4) violation of California law regarding conversion of personal property. California Public Utilities Code section 1702 provides that any corporation may bring a complaint against a public utility for the alleged violation of any California provision or law, or any Commission order or rule. Redwood's alleged causes of action against PG&E fall within the purview of section 1702, and the Commission has jurisdiction to adjudicate each of those claims.

A. Public Utilities Code Section 734

The California Public Utilities Code provides that any unreasonable or excessive charges by a public utility for any service performed by that utility authorizes the Commission to order "the public utility [to] make due reparation to the complainant therefor, with interest from the date of collection..."[3] PG&E clearly acted unreasonably when its gas balance system erroneously required Redwood to deliver natural gas to PG&E's system for non-Redwood customer accounts and when it over-delivered natural gas to Redwood customers. As such, Redwood has grounds to file a complaint seeking an order from the Commission directing PG&E to pay to Redwood reparations, with interest from the time of the Improper Deliveries and the Over-Deliveries and other related costs, for the significant financial damages PG&E inflicted on Redwood.

B. CTA Agreement

Redwood's predecessor in interest, Redwood Energy Marketing, LLC, executed PG&E's standard CTA Agreement on June 4, 2004. The CTA Agreement provides, "Complaints against [PG&E] arising out of the Agreement shall be enforced only under the provisions of Section 1702 of the Public Utilities Code."[4] The Commission exercises jurisdiction over contract disputes where the dispute involves the Commission's regulatory jurisdiction.[5] The CTA Agreement is a form contract (Form No. 79-845) used by PG&E and approved via advice letter by the Commission.[6] The Commission's jurisdiction in the present dispute related to the CTA Agreement is clear because (1) the terms of the CTA Agreement expressly state that the

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[3] Cal. Pub. Util. Code § 734.

[4] CTA Agreement, p.7.

[5] D.00-10-005, *Crystal River Oil and Gas, LLC v. Pacific Gas and Electric Company*, 2000 Cal. PUC LEXIS 817, *5.

[6] *See,* PG&E Advice Letter 2648-G, filed July 19, 2005 (requesting latest revision to Form No. 79-845, Core Gas Aggregation Service Agreement).

Commission has such jurisdiction, and (2) the Commission authorized the form CTA Agreement, including the provision requiring resolution pursuant to Public Utilities Code section 1702.

C. Gas Schedule G-Bal

Redwood contends that Gas Schedule G-BAL requires PG&E to cash-out Redwood for the value of the Improper Deliveries and the Over-Deliveries based on the published Lowest Citygate Index ("LCI") price during the month in which the Improper Deliveries and the Over-Deliveries occurred. The Commission has jurisdiction to resolve this claim because it goes to the propriety of PG&E's performance under its approved tariff.

D. Conversion

PG&E improperly disposed of Redwood's property when it required Redwood to deliver natural gas into PG&E's pipeline system for non-Redwood customer accounts and when it required Redwood to over-deliver natural gas to Redwood customers. Redwood is <u>not</u> seeking tort damages with its claim that PG&E converted its property. Redwood understands that the Commission cannot award damages on the basis of a tort claim.[7] However, PG&E's errors resulted in the misappropriation of Redwood's personal property in the course of PG&E's performance of its obligations as a public utility. PG&E's actions constitute both a violation of California law under the principle of conversion as well as a violation of PG&E's obligations under its tariffs. "The Commission has broad authority to discipline utilities, and to craft appropriate remedies in accord with the relevant circumstances."[8] As such, Redwood's Complaint seeks a finding by the Commission that PG&E converted its personal property. Redwood also seeks an order by the Commission that Redwood pay reparations to Redwood for the financial harms that PG&E inflicted on Redwood.

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[7] D.96-12-060, *Karrison v. A&P Moving, Inc.*, 1996 Cal. PUC LEXIS 1127, *11.

[8] *Id.*

Finally, under Section 1702 and Section 734, the Commission has general jurisdiction to resolve complaints. For these reasons, Redwood asserts that the Commission has jurisdiction to resolve all of the causes of action at issue in this proceeding.

Dated: January 15, 2010

By: _____

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PROOF OF SERVICE

I, Cinthia A. Velez, declare as follows:

I am employed in the City and County of San Francisco, California. I am over the age of eighteen years and not a party to this action. My business address is MANATT, PHELPS & PHILLIPS, LLP, One Embarcadero Center, 30th Floor, San Francisco, California 94111-3719. January 15, 2010, I served the within:

Redwood Resources Marketing, LLC's Response to Pacific Gas and Electric Company's Proposed Amendments to Joint Jurisdictional Statement

on the interested parties in this action addressed as follows:

See attached service list

☒ **(BY CPUC E-MAIL SERVICE)** By transmitting such document electronically from Manatt, Phelps & Phillips, LLP, San Francisco, California, to the electronic mail addresses listed above. I am readily familiar with the practice of Manatt, Phelps & Phillips, LLP for transmitting documents by electronic mail, said practice being that in the ordinary course of business, such electronic mail is transmitted immediately after such document has been tendered for filing. Said practice also complies with Rule 2.3(b) of the Public Utilities Commission of the State of California and all protocols described therein.

☒ **(BY MAIL)** By placing such document(s) in a sealed envelope, with postage thereon fully prepaid for first class mail, for collection and mailing at Manatt, Phelps & Phillips, LLP, San Francisco, California following ordinary business practice. I am readily familiar with the practice at Manatt, Phelps & Phillips, LLP for collection and processing of correspondence for mailing with the United States Postal Service, said practice being that in the ordinary course of business, correspondence is deposited in the United States Postal Service the same day as it is placed for collection.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on January 15, 2010, at San Francisco, California.

Cinthia A. Velez

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C.09-10-016
(Updated January 11, 2010)

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