



## *SOUTH FEATHER WATER & POWER AGENCY*

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**TO:** Board of Directors  
**FROM:** Kathy Zancanella, Power Division Manager  
**DATE:** December 15, 2009  
**RE:** PG&E Non-Disclosure Agreement  
Agenda Item for 12/22/09 Board of Directors Meeting

In the past, the Agency has received operating information from PG&E, including electric system diagrams, written standards covering maintenance and operating procedures, and proprietary water management forecasts. PG&E now requests that this type of information sharing be kept confidential and has provided the attached Non-Disclosure Agreement for the Agency's approval. Jeff Meith has reviewed and provided his comments on the agreement, which have been accepted by PG&E's legal staff.

The recommended form of action is:

**"I move approval of, and authorize the General Manager to execute the Non-Disclosure Agreement with Pacific Gas and Electric Company."**

**NON-DISCLOSURE AND USE OF INFORMATION AGREEMENT**

**BETWEEN**

**PACIFIC GAS AND ELECTRIC COMPANY**

**AND**

**SOUTH FEATHER WATER & POWER AGENCY**

This Non-Disclosure and Use of Information Agreement (Agreement) between Pacific Gas and Electric Company ("PG&E") and South Feather Water and Power Agency ("SFWP") (sometimes referred to as a "Party" or the "Parties") is entered into as of [month], [date], 2009 ("Effective Date").

**RECITALS**

1. SFWP is a public agency that supplies water in Butte, Plumas, and Yuba counties. SFWP is the licensee of the South Feather Power Project, Federal Energy Regulatory Commission (FERC) Project No. 2088 (Project). PG&E is a public utility that distributes electricity in California.

2. PG&E and SFWP entered into a power purchase agreement entitled South Fork Project Power Purchase Contract, on June 15, 1960, ("1960 Power Purchase Agreement") whereby PG&E purchases from SFWP the electricity generated by the Project. Pursuant to Appendix C, Section C-1 of the Power Purchase Agreement, PG&E and SFWP agreed to exchange information necessary for the effective and economic operation and maintenance of the hydroelectric project.

3. PG&E and SFWP negotiated and entered into a subsequent power purchase agreement effective July 1, 2010 (2010 Power Purchase Agreement) whereby PG&E will continue to purchase electricity generated by the Project.

4. As a result of PG&E's obligations under the 1960 Power Purchase Agreement and the 2010 Power Purchase Agreement, and to provide for the economic and effective operation and maintenance of the Project, PG&E must provide certain confidential, proprietary, intellectual property, trade secrets and security-oriented information ("Confidential Information") to SFWP on an ongoing and regular basis.

5. PG&E wishes to be able to provide the Confidential Information to SFWP while being assured that such information will be used only for SFWP's economic and efficient operation and maintenance of the Project, will otherwise be kept confidential, and will not be disclosed to any other parties without prior notification and consent from PG&E.

6. An additional purpose of this Agreement is to assure that PG&E is fulfilling its obligations pursuant to law and regulations issued by FERC to protect confidential, proprietary, intellectual property, trade secret and security-oriented information relating to PG&E's hydroelectric projects.

### **TERMS OF AGREEMENT**

THEREFORE, in consideration of the Recitals as stated above, and for valuable consideration, the Parties mutually agree as follows:

1. SFWP acknowledges that during the term of the 1960 and 2010 Power Purchase Agreements, SFWP will receive Confidential Information from PG&E, including but not limited to, operating schedules, outage information, transmission and distribution operating diagrams, drawings and specifications, inspection reports, hydrologic forecasts, operations and hydrologic information, maintenance procedures and standards, and other information related to the

scheduling, maintenance and operations of Project. SFWP agrees to maintain the privacy and confidentiality of all Confidential Information supplied by PG&E to SFWP.

2. SFWP agrees to maintain and hold all Confidential Information in strict confidence and not to disclose it, or otherwise make it available, to any person or third party without the prior written notice and consent of PG&E.

3. All notices, requests, demands, and other communications required or permitted under this Agreement shall be in writing, unless otherwise agreed by the Parties, and shall be delivered in person or sent by electronic mail, by overnight delivery with tracking information, or by facsimile transmission with the original sent immediately thereafter by postage-prepaid U.S. mail, and properly addressed as follows:

To PG&E:

Mr. Kevin Goishi  
Pacific Gas and Electric Company  
343 Sacramento St.  
Auburn, CA 95603

With a copy to:

Ms. Annette Faraglia  
Pacific Gas and Electric Company  
Law Department  
P. O. Box 7442  
San Francisco, CA 94120-7442

To SFWP:

Power Division Manager  
South Feather Water and Power Agency  
2310 Oro Quincy Highway  
Oroville, CA 95966

4. Any Party may from time to time change its representative(s) or address for the purpose of notices to that Party by a similar notice specifying new representative(s) or address, but no such change shall be deemed to have been given until such notice is actually received by the Party being so notified.

5. All Confidential Information disclosed pursuant to this Agreement, and all intellectual property rights related thereto, shall be and remain the property solely of PG&E.

6. Confidential Information created or shared under this Agreement constitutes confidential, proprietary information or trade secrets that are exempt from disclosure to third parties under the provisions of California Public Records Act (including but not limited to California Government Code § 6254(e), 6254(h), and 6254.7, or all of them).

7. SFWP agrees that Confidential Information received from PG&E:

(a) shall be used only for purposes related to the 1960 and 2010 Power Purchase Agreements, or, as required for performing other existing agreements with PG&E;

(b) shall not be reproduced or copied, in whole or in part, except as specifically authorized by PG&E and in conformance with PG&E's instructions when necessary for the purposes set forth in (a), above; and

(c) shall, together with any copies, reproductions, or other records thereof, in any form, and all information and materials containing copies of the Confidential Information, be returned to PG&E when no longer needed for the performance of the agreements or other work between PG&E and SFWP; or otherwise upon written request of PG&E. Such written request by PG&E shall be provided pursuant to paragraph 3 above.

8. Notwithstanding paragraph 2 above, SFWP shall not have breached any obligation under this Agreement if Confidential Information received hereunder is disclosed to third party where the Confidential Information:

(a) was in the public domain at the time of such disclosure or was subsequently made available to the public consistent with the terms of this Agreement and applicable laws and regulations;

(b) has been received at the time of disclosure through other means without restriction on its use by SFWP, or had been independently developed by SFWP as shown by adequate documentation;

(c) is subsequently disclosed to SFWP by a third party without restriction on use and without breach of any agreement or legal duty; or

(d) is disclosed pursuant to an order, subpoena, or other lawful process of a court or other governmental authority of competent jurisdiction. Notwithstanding the foregoing if SFWP is served with a request for Confidential Information under the California Public Records Act, it shall forward a copy thereof to PG&E upon receipt. PG&E shall review and respond, within ten days of receipt, as to whether the request relates to information protected from disclosure under the California Public Records Act, including the reasons and basis therefore under the law. If SFWP reasonably is under the opinion that such request relates to information that is subject to disclosure under said statute, it shall so advise PG&E, and it shall not be obligated to defend non disclosure thereof unless PG&E jointly, with SFWP, appears in opposition to such disclosure.

9. This Agreement shall terminate simultaneously upon the termination of the 2010 Power Purchase Agreement. Provided, however, any Party may terminate this Agreement if

ordered to do so by a regulatory agency or court of competent jurisdiction over the Party, by giving the other Party at least ninety (90) days written notice of termination. Termination shall not extinguish the obligations of this Agreement to maintain the confidentiality of previously obtained Confidential Information, and termination shall not extinguish any claim, liability, or cause of action arising under this Agreement existing at the time of termination.

10. Each Party shall use its own resources in asserting its rights and performing its obligations under this Agreement. A Party shall not be required to reimburse the other Party for any expense or cost incurred in protecting Confidential Information except to the extent that the Power Purchase Agreement provides for such reimbursement between the Parties.

11. No Party shall be liable to any other Party for any special and direct damages arising out of or in connection with this Agreement, whether based on contract, tort, including negligence and strict liability, or otherwise.

12. The Parties incorporate by reference the dispute resolution provisions and rights of the Power Purchase Agreement as contained in paragraph 20 of the June 15, 1960 South Fork Power Purchase Contract. However, in addition, the Parties agree that a court of competent jurisdiction is authorized to issue a temporary, preliminary and/or permanent injunction against a Party who is in breach of this Agreement. The Parties agree that PG&E will suffer irreparable injury and there is no adequate remedy at law arising from an actual or threatened disclosure of Confidential Information in violation of this Agreement. Therefore a temporary, preliminary and/or permanent injunction is necessary and appropriate to prevent such an actual or threatened disclosure in breach of this Agreement.

13. By entering into this Agreement and upon receipt of any Confidential Information, PG&E shall not be considered to have granted, expressly or by implication, any rights to SFWP,

by license or otherwise, to such information or to any copyright or copyrighted material, or to any invention, patent or patent application now or hereafter owned or controlled by PG&E.

14. This Agreement contains the complete and exclusive agreement of the Parties with respect to the subject matter of this Agreement and supersedes all discussions, negotiations, representations, warranties, commitments, offers, and writings prior to the date of this Agreement, with respect to its subject matter. No change to this Agreement shall be effective unless agreed to in writing by the Parties.

15. This Agreement is not intended to create any rights and/or obligation of any party or third party other than those expressly stated herein.

16. Any Confidential Information disclosed under this Agreement carries no warranty or representation of any kind, either express or implied. SFWP shall not make any claim in the future that it relied to its detriment or damage on any Confidential Information supplied pursuant to this Agreement.

17. This Agreement is made in the State of California, and shall be governed by and interpreted in accordance with its laws.

18. This Agreement shall be binding upon the Parties, their successors, and assigns. No Party shall assign this Agreement without the other Party's prior written consent. SFWP shall not have the authority to and shall not assign Confidential Information without PG&E's prior written consent.

19. Ambiguities or uncertainties in the wording of this Agreement shall not be construed for or against any Party, but shall be construed in the manner that most accurately reflects the Parties' intent as of the date they executed this Agreement.

20. Each person signing below warrants that he or she has been duly authorized by the Parties for whom he or she signs to execute this Agreement on behalf of that Party.

**IN WITNESS WHEREOF,**

Pacific Gas and Electric Company and South Feather Water and Power Agency, through their duly authorized representatives, have caused this Agreement to be executed as of the date set forth in this Agreement.

**SOUTH FEATHER WATER AND POWER AGENCY**

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Michael C. Glaze, General Manager

**PACIFIC GAS AND ELECTRIC COMPANY**

\_\_\_\_\_  
By \_\_\_\_\_  
(Print Name) (Title)