



Gas Sample Form No. 79-1209B
Attachment B - To Services Agreement Confidentiality Agreement

Sheet 1

(N)

(N)

**Please Refer to Attached
Sample Form**

(Continued)

Advice 4366-G
Decision 20-12-031

Issued by
Robert S. Kenney
Vice President, Regulatory Affairs

Submitted January 20, 2021
Effective February 19, 2021
Resolution _____



ATTACHMENT B – TO SERVICES AGREEMENT CONFIDENTIALITY AGREEMENT

Services Agreement between _____
and _____

This Confidentiality Agreement (“Agreement”) is made and entered into effective as of the latest date in the signature block (“Effective Date”) by and between [Company name], a [state, entity type] located at [address] (“Company”), and Pacific Gas and Electric Company, a California corporation, located at [address] (“Utility”). Company and Utility are sometimes referred to individually as a “Party” and collectively as the “Parties.”

In consideration of the mutual covenants herein, and the disclosures to be made in connection herewith, the Parties agree as follows:

1. Company is considering engaging in developing a _____ (“Project”) that would connect with Utility’s gas pipeline system in California and wishes to discuss with Utility certain aspects of the Project and the possible future relationship of the Parties concerning the Project (the “Subject Matter”). Because of the competitive nature of the Project and the Subject Matter, which may be discussed by the Parties concerning the Project, the Parties agree to keep all Subject Matter identified in writing as “Proprietary Information” confidential in accordance with the terms of this Agreement. “Proprietary Information” shall mean confidential information, “trade secrets” as defined in the Uniform Trade Secret Act of California, and/or critical energy infrastructure information, as defined in 18 CFR § 388.113(c) (“Critical Energy Infrastructure Information”) unless considering information as non-Proprietary would pose a serious safety risk. For the purposes of this Agreement, the Party receiving Proprietary Information from the other Party in connection herewith is the “Receiving Party,” and the Party providing Proprietary Information to the other Party hereunder is the “Disclosing Party.” Any information designated by a Party as Proprietary Information, if in tangible form, must be marked clearly as “Proprietary Information”; or if communicated orally, it must be identified in writing as “Proprietary Information” in reasonable detail within five (5) business days after disclosure. This Agreement does not require either Party to disclose any particular “Proprietary Information,” or to disclose it in any particular form or format. No representation is made that any Proprietary Information disclosed is free from error, or suitable for any use or purpose. Company understands that, as a California public utility company, Utility is obligated to provide service in a non-discriminatory manner and this Agreement in no way prevents, restricts or limits Utility’s discussions or relationships with other companies considering other projects other than not disclosing the Proprietary Information of Company.

† Information collected on this form is used in accordance with PG&E’s Privacy Policy.
The Privacy Policy is available at pge.com/privacy.

ATTACHMENT B – **TO SERVICES AGREEMENT** **CONFIDENTIALITY AGREEMENT**

2. Except as otherwise provided in this Agreement, no part of the Proprietary Information may be disclosed or delivered to third parties or used by the Receiving Party for any purpose other than for the purpose stated in Paragraph 1 above, without the prior written consent of the Disclosing Party, which may be refused. Except as authorized in writing by the Disclosing Party, the Receiving Party shall not copy, disclose, or use the Disclosing Party's Proprietary Information or any part thereof and shall return to the Disclosing Party or destroy (with such destruction to be certified in writing by an authorized officer of the Receiving Party), upon the Disclosing Party's request, all Proprietary Information provided by the Disclosing Party in tangible form, and all copies, photographs, reproductions, and all other duplications thereof, including any summaries, extracts and other information derived from the Proprietary Information, regardless of the form of media. Notwithstanding the foregoing sentence, no later than the expiration or earlier termination of this Agreement, and without any obligation of Utility to make a request therefor, Company shall return or destroy (with such destruction to be certified in writing by an authorized officer of Company) any and all Critical Energy Infrastructure Information (and all copies, photographs, reproductions, and all other duplications thereof, including any summaries, extracts and other information derived from the Critical Energy Infrastructure Information, regardless of the form of media) provided or otherwise made available to it by Utility.
3. The Receiving Party shall take all reasonable measures to prevent unauthorized disclosure of the Proprietary Information and shall restrict access to the Proprietary Information to those Representatives who have a need to know in the course of their duties; provided, however, that if the Receiving Party finds it necessary for the purpose set forth in Paragraph 1 above to disclose any Proprietary Information to a Representative that is not directly employed by, or is not a director or officer of, the Receiving Party, such Representative shall first agree in writing to comply with the provisions of this Agreement. For purposes of this Agreement: (a) "Representative" means, with respect to a Party, such Party's Affiliates, and the directors, officers, employees, subcontractors, vendors, agents, and/or advisors of such Party or its Affiliates; (b) "Affiliate" means any company or legal entity which (i) controls, either directly or indirectly, a Party, or (ii) is controlled directly or indirectly by such Party, or (iii) is directly or indirectly controlled by a company or entity which directly or indirectly controls such Party; and (c) "control" means the right to exercise fifty percent (50%) or more of the voting rights in the appointment of the directors or similar representatives of such company or entity. Notwithstanding anything to the contrary set forth in this Agreement, each Party shall be responsible for any breach of this Agreement by its Representatives.
4. Notwithstanding any of the other provisions herein, Utility will not disclose any Proprietary Information disclosed pursuant to this Agreement to any of its Affiliates not regulated by the California Public Utility Commission ("CPUC"), if applicable, without the prior written consent of Company.
5. All Proprietary Information disclosed hereunder shall be and remain the exclusive property of the Disclosing Party. This Agreement shall not be construed to grant to the Receiving Party any license or other rights to the Proprietary Information except as specifically noted herein.

ATTACHMENT B – **TO SERVICES AGREEMENT** **CONFIDENTIALITY AGREEMENT**

6. The obligations set forth in this Agreement shall not apply to information that the Receiving Party can establish is:
- a. Information which is in the public domain as of the Effective Date, or which later enters the public domain from a source other than the Receiving Party;
 - b. Information which the Receiving Party has written evidence of knowing prior to the execution of this Agreement;
 - c. Information which the Receiving Party receives from a bona fide third party source not under any obligation of confidentiality;
 - d. Information approved for release by the Disclosing Party in writing; and/or
 - e. Information, which is required by law (including, without limitation, court order or governmental agency subpoena) to be disclosed. If either Party or any of its Representatives is required by applicable law, regulation or legal process (by oral question, interrogatories, requests for information or documents, subpoena, civil investigative demand or similar process) to disclose any Proprietary Information of the other Party provided to it under this Agreement, such Party or its Representative shall promptly notify the other Party of such requirement so that it may seek an appropriate protective order or elect, in its sole discretion, to grant a waiver of compliance with the provisions of this Agreement. If, in the absence of a protective order or the receipt of a waiver hereunder within a reasonable time after such notice, a Party or any of its Representatives is, in the reasonable opinion of such Party, compelled to disclose any Proprietary Information, then the disclosing Party may disclose only such of the Proprietary Information to the person compelling disclosure as is required by law. The Party being forced to disclose any Proprietary Information will provide all commercially reasonable assistance to enable the other Party to obtain a protective order or other reliable assurance that the Proprietary Information will be accorded confidential treatment. Notwithstanding the foregoing or anything to the contrary set forth in this Agreement, Utility may without providing notice thereof to Company disclose Confidential Information to regulatory agencies with jurisdiction over Company and their staffs, including, but not limited to, the CPUC.
 - f. Either Party may disclose, without providing notice thereof to the other Party, to any governmental entity (including, without limitation, a court) or its representatives or other persons as required by such entity, the tax treatment and tax structure of any transaction arising at any time in connection with this Agreement or related hereto, as well as all materials provided to either Party of any kind (including opinions or other tax analyses) relating to the tax treatment or tax structure of such transaction.
7. If the Receiving Party breaches or defaults in the performance of any of its covenants contained herein or violates any of the restrictions set forth herein, the Disclosing Party shall be entitled to all remedies available at law or in equity. The Parties acknowledge that the Proprietary Information is valuable and unique, and that damages would be an

ATTACHMENT B – TO SERVICES AGREEMENT CONFIDENTIALITY AGREEMENT

inadequate remedy for breach of this Agreement and the obligations of each Party and its Representatives are specifically enforceable. Accordingly, the Parties agree that in the event of a breach or threatened breach of this Agreement by either Party, the Disclosing Party shall be entitled to seek an injunction limiting or preventing such breach, without the necessity of proving damages or posting any bond. Any such relief shall be in addition to, and not in lieu of, money damages or any other available legal or equitable remedy.

8. If either Party employs attorneys (in-house and/or outside counsel) to enforce any rights arising out of or related to this Agreement, the prevailing Party in such matter (as determined by the court) shall be entitled to receive its reasonable attorneys' fees, costs and disbursements.
9. The term of this Agreement shall begin on the Effective Date and continue for period of two (2) years from the date of the last disclosure of Proprietary Information in connection herewith; provided, however, that if the Parties enter into a Standard Renewable Gas Interconnection Agreement (Form No. 79-1206) with respect to the Project, the term of this Agreement shall continue for a period of two (2) years from the date of Release to Operations (as such term is defined in such Standard Renewable Gas Interconnection Agreement).
10. Neither this Agreement, nor the disclosure of Proprietary Information under this Agreement, nor the ongoing discussions and correspondence by the Parties regarding the Subject Matter of this Agreement, shall constitute or imply any promise or intention to make any purchase or use of the services, products, facilities, real property or other assets of either Party, or any commitment by either Party with respect to any other present or future arrangement. If, in the future, the Parties elect to enter into binding commitments relating to any of the matters stated herein, they must be stated in a separate executed written contract by the Parties.
11. The Parties agree that Proprietary Information shall not include, and the Parties shall not provide to each other, customer-specific information or "personal information" as defined in California Civil Code Section 1798.140(o).
12. This Agreement shall be governed by and construed under the laws of state the California, without reference to any principles on conflicts of laws. In the event of any litigation to enforce or interpret any terms of this Agreement, the Parties agree that such action will be brought in the Superior Court of the County of _____¹, California (or, if the federal courts have exclusive jurisdiction over the subject matter of the dispute, in the U.S. District Court for the _____² District of California), and the Parties hereby submit to the exclusive jurisdiction of such courts.

¹ For PG&E, insert "San Francisco." For Southwest Gas, insert "San Bernardino." For SDG&E, insert "San Diego." For SoCalGas, insert "Los Angeles."

² For PG&E, insert "Northern." For Southwest Gas, insert "Central." For SDG&E, insert "Southern." For SoCalGas, insert "Central."

ATTACHMENT B – TO SERVICES AGREEMENT CONFIDENTIALITY AGREEMENT

13. Any notice, demand, or request required or authorized in connection with this Agreement shall be deemed properly and duly given when delivered by electronic mail to the person specified below:

If to Company: [Contact Information To Be Supplied]

e-mail Address:

If to Utility: [Contact Information To Be Supplied]

e-mail Address:

ATTACHMENT B – TO SERVICES AGREEMENT CONFIDENTIALITY AGREEMENT

In addition to the notice specified above, notice may also be provided by telephone or e-mail to the telephone numbers and e-mail addresses set out below, but must be immediately followed up by an e-mailed notice delivered pursuant to the above paragraph:

If to Company: [Contact Information To Be Supplied]

Telephone Numbers:

e-mail Address:

If to Utility: [Contact Information To Be Supplied]

Telephone Numbers:

e-mail Address:

Either Party may change the notice information in this Section 13 by giving notice within five (5) Business Days prior to the effective date of the change.

14. This Agreement sets forth the entire understanding of the Parties with respect to the subject matter hereof and supersedes all prior discussions, communications and agreements, both oral and written. This Agreement shall not be amended or modified except by an agreement or amendment in writing signed by both Parties, and shall not be modified by course of performance, course of dealing, or usage of trade. No waiver of any right under this Agreement shall be deemed a subsequent waiver of the same right or any other right. To be effective, any waiver of the provisions hereof shall be in writing. Neither Party may assign (by operation of law or otherwise) any of its rights or obligations hereunder without the prior written consent of the other Party. If any provision of this Agreement or the application thereof to any person, place, or circumstance, shall be held by a court of competent jurisdiction to be invalid, unenforceable, or void, the remainder of the Agreement and such provisions as applied to other persons, places, and circumstances shall remain in full force and effect.

This agreement at all times shall be subject to such modifications as the California Public Utilities Commission may direct from time to time in the exercise of its jurisdiction.



ATTACHMENT B – TO SERVICES AGREEMENT CONFIDENTIALITY AGREEMENT

The authorized signatories of the Parties have executed this Confidentiality Agreement as of the Effective Date.

Pacific Gas and Electric Company

Company Name

Signature

Signature

Print Name

Print Name

Title

Title

Date

Date