

December 30, 2008

Advice 3391-E

(Pacific Gas and Electric Company ID U 39 E)

Public Utilities Commission of the State of California

Subject: Agreement between Pacific Gas and Electric Company and East Bay Municipal Utilities District Pursuant to PUC §2829

Purpose

Pacific Gas and Electric Company (PG&E) submits this Advice Letter to seek approval of an Agreement between Pacific Gas and Electric Company (PG&E) and East Bay Municipal Utilities District (EBMUD) whereby EBMUD may provide electricity generated by EBMUD-owned hydroelectric generation facilities to designated EBMUD service accounts. PG&E is required by Public Utilities Code §2829 to file the Agreement (Attachment 1) with the Commission on or before January 1, 2009.

Background

Senate Bill Number 1017 was approved by Governor Schwarzenegger on October 13, 2007, and codified at Public Utilities Code (PUC) §2829. PUC §2829 requires that every electrical corporation that owns and operates transmission and distribution facilities that deliver electricity to EBMUD service accounts shall use the same facilities to deliver electricity generated by EBMUD. PUC §2829 specifies that EBMUD may elect to designate specific hydroelectric generation facilities owned by EBMUD for the generation of electricity to be delivered to EBMUD service accounts provided specified conditions are met.

In order for EBMUD generation to be eligible under PUC §2829, the amount of all electricity delivered to the electric grid by the designated EBMUD hydroelectric generation facilities must be the property of EBMUD. In addition, ownership and use of the environmental attributes associated with the electricity delivered to the electric grid by EBMUD designated hydroelectric generation is retained by EBMUD.

PUC §2829 specifies that PUC §365 and 366 (i.e. PUC establishing direct access) are not applicable to electricity generated by EBMUD, that is delivered to EBMUD for its own use and that is transported over the transmission and distribution system of an electrical corporation pursuant to an election made by EBMUD

pursuant to PUC §2829. PUC §2829 specifies that EBMUD shall pay applicable rates approved by the Commission for transmission and distribution or transmission rates approved under federal law. PUC §2829 further specifies that the Commission shall ensure that no cost shifting to bundled service customers will result from implementation of the Agreement.

PUC §2829 requires that PG&E file the Agreement implementing PUC §2829 on or before January 1, 2009, and that the Commission approve the Agreement within 150 days or specify conforming changes to be made within 60 days.

Tariff Structure

In order to ensure that no costs are shifted to other PG&E customers as a result of providing this service (as is required by PUC §2829(g)), PG&E modeled the Agreement generally after the Direct Access tariffs. PG&E recognizes that PUC §2829(d) specifies that PUC §365 and 366 (i.e. establishing direct access) are not applicable to electricity generated by EBMUD. However, PG&E has used the Direct Access tariffs only as a model in order to comply with PUC Section 2829(g), which prohibits shifting costs to other customers. Additionally, by using the Direct Access model, we can take advantage of existing account management and billing procedures, thus reducing the costs of implementation and operations. However, in working with EBMUD, PG&E understands that EBMUD asserts that use of the Direct Access model for billing purposes does not in any way constitute a waiver by EBMUD of PUC Section 2829(d)(1) or Section 2829 (d)(2), nor a waiver by EBMUD of its status as a non-CPUC-jurisdictional entity.

Supplemental Advice Letter

PG&E and EBMUD have made considerable progress in reaching consensus on the details of the Agreement. However, PG&E and EBMUD are continuing work on the Agreement and PG&E expects to file a supplemental advice letter filing a revised Agreement on or before January 29, 2009. PG&E respectfully requests that Commission staff not spend time and effort reviewing the attached Agreement with the understanding that PG&E will file a supplemental advice letter. In addition, at EBMUD's request, PG&E is seeking approval for an extended protest period on this Advice Letter.

Protests

Anyone wishing to protest this filing may do so by letter sent via U.S. mail, by facsimile or electronically, any of which must be received no later than February 13, 2009, which is 45¹ days after the date of this filing. Protests should be mailed to:

¹ EBMUD has requested an extended timeline for protests to be submitted.

CPUC Energy Division
Tariff Files, Room 4005
DMS Branch
505 Van Ness Avenue
San Francisco, California 94102

Facsimile: (415) 703-2200
E-mail: jnj@cpuc.ca.gov and mas@cpuc.ca.gov

Copies of protests also should be mailed to the attention of the Director, Energy Division, Room 4004, at the address shown above.

The protest also should be sent via U.S. mail (and by facsimile and electronically, if possible) to PG&E at the address shown below on the same date it is mailed or delivered to the Commission:

Brian K. Cherry
Vice President, Regulatory Relations
Pacific Gas and Electric Company
77 Beale Street, Mail Code B10C
P.O. Box 770000
San Francisco, California 94177
Facsimile: (415) 973-7226
E-mail: PGETariffs@pge.com

Effective Date

PG&E requests that this advice filing become effective consistent with PUC Code §2829.

Notice

In accordance with General Order 96-B, Section IV, a copy of this advice letter is being sent electronically and via U.S. mail to parties shown on the attached list. Address changes to the General Order 96-B service list should be directed to Rose de la Torre at (415) 973-4716. Send all electronic approvals to PGETariffs@pge.com. Advice letter filings can also be accessed electronically at: <http://www.pge.com/tariffs>



Vice President, Regulatory Relations

Attachments

CALIFORNIA PUBLIC UTILITIES COMMISSION

ADVICE LETTER FILING SUMMARY

ENERGY UTILITY

MUST BE COMPLETED BY UTILITY (Attach additional pages as needed)

Company name/CPUC Utility No. Pacific Gas and Electric Company (ID39E)

Utility type:

ELC

GAS

PLC

HEAT

WATER

Contact Person: David Poster

Phone #: (415) 973- 1082

E-mail: dxpu@pge.com

EXPLANATION OF UTILITY TYPE

ELC = Electric

GAS = Gas

PLC = Pipeline

HEAT = Heat

WATER = Water

(Date Filed/ Received Stamp by CPUC)

Advice Letter (AL) #: 3391-E

Subject of AL: Agreement between Pacific Gas and Electric Company and East Bay Municipal Utilities District Pursuant to PUC § 2829

Keywords (choose from CPUC listing): Sample Electric Forms, Agreements

AL filing type: Monthly Quarterly Annual One-Time Other

If AL filed in compliance with a Commission order, indicate relevant Decision/Resolution: Public Utilities Code (PUC) §2829

Does AL replace a withdrawn or rejected AL? If so, identify the prior AL: N/A

Resolution Required? Yes No

Requested effective date: PG&E requests that this advice filing become effective consistent with PUC Code 2829 No. of tariff sheets: 3

Estimated system annual revenue effect: (%):N/A

Estimated system average rate effect (%): N/A

When rates are affected by AL, include attachment in AL showing average rate effects on customer classes (residential, small commercial, large C/I, agricultural, lighting).

Tariff schedules affected:

Pending advice letters that revise the same tariff sheets: N/A

Protests and all other correspondence regarding this AL are due no later than 20 days after the date of this filing, unless otherwise authorized by the Commission, and shall be sent to:

CPUC, Energy Division

Attention: Tariff Unit

505 Van Ness Ave.,

San Francisco, CA 94102

mas@cpuc.ca.gov and jnj@cpuc.ca.gov

Utility Info (including e-mail)

Attn: Brian K. Cherry

Vice President, Regulatory Relations

77 Beale Street, Mail Code B10C

P.O. Box 770000

San Francisco, CA 94177

E-mail: PGETariffs@pge.com

**ATTACHMENT 1
Advice 3391-E**

**Cal P.U.C.
Sheet No.**

Title of Sheet

**Cancelling Cal
P.U.C. Sheet No.**

28008-E Electric Sample Form No. 79-1015
Agreement Between East Bay Municipal Utility
District And PG&E For Specified CPUC
Jurisdictional Electrical Services
Sheet 1

28009-E ELECTRIC TABLE OF CONTENTS
Sheet 1

28002-E

28010-E ELECTRIC TABLE OF CONTENTS
SAMPLE FORMS
Sheet 17

27880-E



Electric Sample Form No. 79-1015
Agreement Between East Bay Municipal Utility District And PG&E For Specified
CPUC Jurisdictional Electrical Services

Sheet 1

**Please refer to Attached
Sample Form**

Advice Letter No: 3391-E
Decision No.

Issued by
Brian K. Cherry
Vice President
Regulatory Relations

Date Filed December 30, 2008
Effective _____
Resolution No. _____



**Agreement Between
East Bay Municipal Utility District
And
Pacific Gas and Electric Company
For Specified CPUC Jurisdictional Electrical Services**

Section 1: General Description of Agreement

- 1.1 This Agreement is made by and between Pacific Gas and Electric Company (PG&E) and East Bay Municipal Utility District (EBMUD) pursuant to Public Utilities Code Section 2829. PG&E and EBMUD may be referred to collectively as the "Parties" or individually as "Party". This Agreement is for the sole benefit of the Parties and provisions of this Agreement shall apply exclusively to this Agreement and the services contemplated hereunder. This Agreement is a legally binding contract. The Parties named in this Agreement are bound by the terms set forth herein and otherwise incorporated herein by reference. This Agreement shall govern the business relationship between the Parties hereto by which East Bay Municipal Utility District (EBMUD) shall provide electrical energy and capacity from hydroelectric generation facilities owned by EBMUD for designated EBMUD electric service accounts located in the Pacific Gas and Electric Company (PG&E) service area and PG&E will deliver such electrical energy to EBMUD's designated service accounts via PG&E's electrical transmission and distribution system. EBMUD, by agreeing to undertake specific activities and responsibilities for EBMUD service accounts acknowledges that EBMUD shall relieve and discharge PG&E of the responsibilities for said activities and responsibilities with respect to the designated EBMUD service accounts listed in Attachment B. Except where explicitly defined herein (including Attachment A hereto), the definitions controlling this Agreement are contained in PG&E's applicable rules and tariffs.
- 1.2 This Agreement has been filed and approved by the California Public Utilities Commission (CPUC) for use between PG&E and EBMUD and may not be waived, altered, amended or modified, except as provided herein or as may otherwise be authorized by the CPUC.

Section 2: Representations

- 2.1 Each Party represents that it is and shall remain in compliance with all applicable laws and tariffs, including applicable CPUC, the Federal Energy Regulatory Commission (FERC), and California Independent System Operator (CAISO) requirements.

- 2.2 Each person executing this Agreement for the respective Parties expressly represents and warrants that he or she has authority to bind the entity on whose behalf this Agreement is executed.
- 2.3 Each Party represents that (a) it has the full power and authority to execute and deliver this Agreement and to perform its terms and conditions; (b) the execution, delivery and performance of this Agreement have been duly authorized by all necessary corporate or other action by such Party; and (c) this agreement constitutes such Party's legal, valid and binding obligation, enforceable against such Party in accordance with its terms.
- 2.4 Each Party shall (a) exercise all reasonable care, diligence and good faith in the performance of its duties pursuant to this Agreement; and (b) carry out its duties in accordance with applicable recognized professional standards in accordance with the requirements of this Agreement.

Section 3: Term of Service

The term of this Agreement shall commence on the date of execution by both Parties hereto (the "Effective Date") and shall remain in effect unless: (a) EBMUD provides a minimum of twelve (12) months written notice of EBMUD's intent to terminate the Agreement; or, (b) this Agreement is superseded by a successor agreement; or, (c) the Agreement terminates pursuant to Section 4 hereof.

Section 4: Events of Default and Remedy for Default

- 4.1 An Event of Default under this Agreement shall include either Party's material breach of any provision of this Agreement, including those incorporated by reference herein, and failure to cure such breach within thirty (30) calendar days of receipt of written notice thereof from the non-defaulting Party; or such other period as may be provided by this Agreement or PG&E's tariffs.
- 4.2 In the event of such an Event of Default, the non-defaulting Party shall be entitled (a) to exercise any and all remedies available under PG&E's tariffs; (b) to the extent not inconsistent with PG&E's tariffs, to exercise any and all remedies provided for by law or in equity; and (c) in the event of a material Event of Default, to terminate this Agreement upon written notice to the other Party, which shall be effective upon the receipt thereof.
- 4.3 Breach by any Party hereto of any provision of PG&E's tariffs shall be governed by applicable provisions contained therein and each Party will retain all rights granted thereunder.
- 4.4 Public Utilities Code Section 2829 specifies that EBMUD may elect to designate specific hydroelectric generation facilities owned by EBMUD for the generation of electricity to be delivered to EBMUD service accounts provided: 1) The amount of

all electricity delivered to the electric grid by the designated EBMUD hydroelectric generation is the property of EBMUD; and 2) ownership and use of the environmental attributes associated with the electricity delivered to the electric grid by EBMUD designated hydroelectric generation is retained by EBMUD. Failure of EBMUD to maintain at all times conformance with these requirements of Public Utilities Code Section 2829 shall be considered a material Event of Default under this Agreement.

Section 5: Billing, Franchise Fees, Metering and Payment

- 5.1 **Billing:** In accordance with applicable PG&E and FERC rates and tariffs, PG&E will calculate and bill EBMUD for PG&E charges, based upon the charges established for comparable services to customers being served under the terms and conditions of Direct Access Service, for each service account subject to this Agreement.
- 5.2 **Franchise Fees And Other Charges:** EBMUD will be responsible to pay all applicable fees, surcharges and taxes as authorized by law. PG&E will bill EBMUD for franchise fees as set forth in Public Utilities Code Sections 6350 to 6354, and for fees as set forth in Public Utilities Code Sections 401 to 410. EBMUD and PG&E will each be responsible for calculating other fees, taxes, and surcharges for their respective services. PG&E will be responsible for billing EBMUD for charges calculated by PG&E. PG&E shall not have any responsibility regarding the calculation or remittance of applicable taxes, charges, surcharges, fees, or similar obligations associated with the fair market value of EBMUD self-service energy and capacity subject of this agreement. EBMUD is solely responsible to establish the fair market value of its self-provided energy and capacity services and to remit any and all taxes, charges, surcharges, fees, or similar lawful levees.
- 5.3 **Metering and Metering Services:** PG&E will provide meters, metering services, and meter data management agent (MDMA) services at each EBMUD designated service account in accordance with the PG&E electric rules and rate schedules applicable to each designated service account. Charges for meters and metering services, including but not limited to meter installation, meter testing, meter removal, and meter data management agent (MDMA) services will be in accordance with the PG&E electric rules and rate schedules applicable to each designated service account.
- EBMUD is responsible for providing metering of EBMUD hydroelectric generation facilities subject of this Agreement. Such metering will be in accordance with the interconnection agreement, all applicable laws and tariffs, including CPUC, FERC, and CAISO requirements, and applicable provisions of PG&E's Rules and Rate Schedules.
- 5.4 **Payment:** EBMUD will be subject to the payment requirements of applicable PG&E Electric Rules and Rates.
- 5.5 **Disputed Bills:** PG&E Electric Rules and Rates will apply to bills disputed by EBMUD to be in error except as otherwise provided in Section 15 of this

agreement.

Section 6: Limitation of Liability

In no event shall either Party be liable to the other Party for any indirect, special, consequential, or punitive damages of any kind whatsoever, whether in contract, tort or strict liability.

Section 7: Indemnification

7.1 To the fullest extent permitted by law, each Party (the "Indemnifying Party") shall indemnify and hold harmless the other Party, and its current and future direct and indirect parent companies, affiliates and their shareholders, officers, directors, employees, agents, servants and assigns (collectively, the "Indemnified Party") from and against any and all claims and/or liabilities for losses, expenses, damage to property, injury to or death of any person, including, but not limited to, the Indemnified Party's employees and its affiliates' employees, subcontractors and subcontractors' employees, or any other liability incurred by the Indemnified Party, including reasonable expenses, legal and otherwise, which shall include reasonable attorneys' fees, caused wholly or in part by any negligent, grossly negligent or willful act or omission by the Indemnifying Party arising out of this Agreement, except to the extent caused by any negligent, grossly negligent or willful act or omission of the Indemnified Party.

7.2 If any claim covered by Section 7.1 is brought against the Indemnified Party, then the Indemnifying Party shall be entitled to participate in and assume the defense of such claim, with counsel reasonably acceptable to the Indemnified Party, unless in the opinion of counsel for the Indemnified Party, a conflict of interest between the Parties may exist with respect to such claim. If the Indemnifying Party does not assume the defense of the Indemnified Party, or if a conflict precludes the Indemnifying Party from assuming the defense, then the Indemnifying Party shall reimburse the Indemnified Party on a monthly basis for the Indemnified Party's defense through separate counsel of the Indemnified Party's choice. Even if the Indemnifying Party assumes the defense of the Indemnified Party with acceptable counsel, the Indemnified Party, at its sole option, may participate in the defense, at its own expense, with counsel of its own choice without relieving the Indemnifying Party of any of its obligations hereunder..

7.3 The Indemnifying Party's obligation to indemnify under this Section 7 shall survive termination of this Agreement.

Section 8: Assignment and Delegation

8.1 Neither Party to this Agreement shall assign any of its rights or obligations under this Agreement.

8.2 Notwithstanding the provisions of this Section 8, either Party may subcontract its duties under this Agreement to a subcontractor, provided that the subcontracting Party shall remain fully responsible as a principal and not as a guarantor for performance of any subcontracted duties, and shall serve as the point of contact between its subcontractor and the other Party. If either Party subcontracts any of its duties hereunder, it shall cause its subcontractors to perform in a manner which is in conformity with that Party's obligations under this Agreement.

Section 9: Independent Contractors

Each Party shall perform its obligations under this Agreement (including any obligations performed by a Party's designees as permitted under Section 8 of this Agreement) as an independent contractor.

Section 10: Entire Agreement

This Agreement consists of, in its entirety, this Agreement Between East Bay Municipal Utility District and Pacific Gas and Electric Company For Specified CPUC Jurisdictional Electrical Services and all attachments hereto, all DASR Forms submitted pursuant to this Agreement and PG&E's applicable tariffs. Parties agree this Agreement satisfies the requirements of PUC §2829. This Agreement supersedes all other agreements or understandings, written or oral, between the Parties related to the subject matter hereof. This Agreement may be modified from time to time only by an instrument in writing, signed by both Parties and as further provided in Section 21 herein.

Section 11: Nondisclosure

11.1 Neither Party may disclose any Confidential Information obtained pursuant to this Agreement to any third party, including affiliates of such Party, without the express prior written consent of the other Party. As used herein, the term "Confidential Information" shall include, but not be limited to, all business, financial, and commercial information pertaining to the Parties, customers of either or both Parties, suppliers for either Party, personnel of either Party, any trade secrets, and other information of a similar nature, whether written or in intangible form that is marked proprietary or confidential with the appropriate owner's name. Confidential Information shall not include information known to either Party prior to obtaining the same from the other Party, information in the public domain, or information obtained by a Party from a third party who did not, directly or indirectly, receive the same from the other Party to this Agreement or from a party who was under an obligation of confidentiality to the other Party to this Agreement or information developed by either Party independent of any Confidential Information. The receiving Party shall use the higher of the standard of care that the receiving Party uses to preserve its own confidential information or a reasonable standard of care to prevent

unauthorized use or disclosure of such Confidential Information. Each receiving Party shall, upon termination of this Agreement or at any time upon the request of the disclosing Party, promptly return or destroy all Confidential Information of the disclosing Party then in its possession.

11.2 Notwithstanding the preceding, Confidential Information may be disclosed to any governmental, judicial or regulatory authority requiring such Confidential Information pursuant to any applicable law, regulation, ruling, or order, provided that: (a) such Confidential Information is submitted under any applicable provision, if any, for confidential treatment by such governmental, judicial or regulatory authority; and (b) prior to such disclosure, the other Party is given prompt notice of the disclosure requirement so that it may take whatever action it deems appropriate, including intervention in any proceeding and the seeking of any injunction to prohibit such disclosure.

Section 12: Enforceability

If any provision of this Agreement or the application thereof, is to any extent held invalid or unenforceable, the remainder of this Agreement and the application thereof, other than those provisions which have been held invalid or unenforceable, shall not be affected and shall continue in full force and effect and shall be enforceable to the fullest extent permitted by law or in equity.

Section 13: Notices

13.1 Except as otherwise provided in this Agreement, any notices under this Agreement shall be in writing and shall be effective upon delivery if delivered by (a) hand; (b) U.S. Mail, first class postage pre-paid, or (c) facsimile, with confirmation of receipt to the Parties as follows:

If the notice is to EBMUD:

Contact Name: _____

Business Address: _____

Facsimile: _____

If the notice is to PG&E:

Contact Name: Director - Bay Region Sales and Service

Business Address:

Mail Code B19C

P.O. Box 770000
San Francisco, CA 94177

- 13.2 Each Party shall be entitled to specify as its proper address any other address in the United States upon written notice to the other Party.
- 13.3 Each Party shall designate on Attachment A the person(s) to be contacted with respect to specific operational matters relating to services under this Agreement. Each Party shall be entitled to specify any change to such person(s) upon written notice to the other Party.

Section 14: Time of Essence

The Parties expressly agree that time is of the essence for all portions of this Agreement.

Section 15: Dispute Resolution

- 15.1 The form of this Agreement has been filed with and approved by the CPUC. Except as provided in Section 15.2 and 15.3, any dispute arising between the Parties relating to interpretation of the provisions of this Agreement or to the performance of PG&E's obligations hereunder (including the performance of Billing Services and Metering Services by PG&E) shall be reduced to writing and referred to the Parties' representatives identified on Attachment A for resolution. Should such a dispute arise, the parties shall be required to meet and confer in an effort to resolve their dispute. Pending resolution, the Parties shall proceed diligently with the performance of their respective obligations under this Agreement, except if this Agreement has been terminated under Section 4.2. If the Parties fail to reach an agreement within a reasonable period of time, the matter shall, upon demand of either Party, be submitted to resolution before the CPUC in accordance with the CPUC's rules, regulations and procedures applicable to resolution of such disputes.
- 15.2 Any dispute arising between the Parties relating to interpretation of the provisions of this Agreement or to the performance of the EBMUD's obligations hereunder (including Payment performance by EBMUD) shall be reduced to writing and referred to the Parties' representatives identified on Attachment A for resolution. Should such a dispute arise, the parties shall be required to meet and confer in an effort to resolve their dispute. Pending resolution, the Parties shall proceed diligently with the performance of their respective obligations under this Agreement, except if this Agreement has been terminated under Section 4.2. If the Parties fail to reach an agreement within a reasonable period of time, the parties may mutually agree to pursue mediation or arbitration to resolve such issues.
- 15.3 Notwithstanding the provisions of Paragraph 15.1 and 15.2 above: (a) all disputes between the Parties relating to payment by EBMUD of any PG&E fees or charges

shall be subject to the provisions of PG&E's applicable tariffs governing disputes over customer bills; (b) all disputes between the Parties regarding Competition Transition Charges payable by EBMUD shall be subject to the provisions of PG&E's applicable tariffs; and (c) PG&E may pursue available remedies for unauthorized electrical use by EBMUD in a court of competent jurisdiction.

15.4 If the dispute involves a request for damages, parties are notified that the Commission has no authority to award damages. To resolve such issues, the parties may mutually agree to pursue mediation or arbitration to resolve such issues, or if no agreement is reached, to pursue other legal remedies that are available to the parties.

Section 16: Applicable Law and Venue

This Agreement shall be interpreted, governed by and construed in accordance with the laws of the State of California, and shall exclude any choice of law rules that direct the application of the laws of another jurisdiction, irrespective of the place of execution or of the order in which the signatures of the parties are affixed or of the place or places of performance. Except for matters and disputes with respect to which the CPUC is the initial proper venue for dispute resolution pursuant to applicable law or this Agreement, the federal and state courts located in San Francisco County, California shall constitute the sole proper venue for resolution of any matter or dispute hereunder, and the Parties submit to the exclusive jurisdiction of such courts with respect to such matters and disputes.

Section 17: Force Majeure

Neither Party shall be liable for any delay or failure in the performance of any part of this Agreement (other than obligations to pay money) due to any event of force majeure or other cause beyond its reasonable control, including but not limited to, unusually severe weather, flood, fire, lightning, epidemic, quarantine restriction, war, sabotage, act of a public enemy, earthquake, insurrection, riot, civil disturbance, strike, work stoppage caused by jurisdictional and similar disputes, restraint by court order or public authority, or action or non-action by or inability to obtain authorization or approval from any governmental authority, or any combination of these causes, which by the exercise of due diligence and foresight such Party could not reasonably have been expected to avoid and which by the exercise of due diligence is unable to overcome. It is agreed that upon the Party so affected giving written notice and reasonably full particulars of such force majeure to the other Party within a reasonable time after the cause relied on, then the obligations of the Party, so far as they are affected by the event of force majeure, shall be suspended during the continuation of such inability and circumstance and shall, so far as possible, be remedied with all reasonable dispatch. In the event of force majeure, as described herein, both Parties shall take all reasonable steps to comply with this Agreement and PG&E's applicable tariffs despite occurrence of a force majeure event.

Section 18: Unauthorized Use of Energy

- 18.1 EBMUD represents and warrants that for each of its Designated Service Accounts, and at all times during which it provides electric energy and capacity services to such Designated Service Accounts, EBMUD shall completely, accurately, and in a timely manner account for each of its Designated Service Account loads with a duly authorized Scheduling Coordinator. Load data not accounted for in this manner may provide grounds for termination of this Agreement. For verification purposes only, PG&E shall have complete access to the identity of the Scheduling Coordinator and the load data provided to it by EBMUD and the forecasts, schedules and resource adequacy plans submitted to the CAISO by the EBMUD Scheduling Coordinator. Such information is to remain confidential, and shall not be disclosed to any unauthorized person.
- 18.2 PG&E shall notify EBMUD immediately and the EBMUD shall notify PG&E immediately of any suspected unauthorized energy use. The Parties agree to preserve any evidence of unauthorized energy use. Once unauthorized energy use is suspected, PG&E, in its sole discretion, may take any or all of the actions permitted under PG&E's applicable tariffs.

Section 19: Not a Joint Venture

Unless specifically stated in this Agreement to be otherwise, the duties, obligations, and liabilities of the Parties are intended to be several and not joint or collective. Nothing contained in this Agreement shall ever be construed to create an association, trust, partnership or joint venture or to impose a trust or partnership duty, obligation, or liability on or with regard to either Party. Each Party shall be liable individually and severally for its own obligations under this Agreement.

Section 20: Specific Terms

- 20.1. This Agreement shall be governed by all applicable provisions of PG&E's Rules and Rate Schedules and all applicable laws and tariffs, including applicable CPUC, FERC, and CAISO requirements.

The definitions of principal terms used in this Agreement are found either herein or in PG&E Electric Rule 1, Definitions. Unless otherwise stated, all references to "service account" shall refer to individual EBMUD electric meters. Unless otherwise stated, all references to PG&E charges shall include the Trust Transfer Amount (TTA) charges.

The descriptive headings of the various sections of this Agreement have been inserted for convenience of reference only and shall in no way define, modify or restrict any of the terms and provisions thereof.

- 20.2 PG&E Transmission and Distribution Service

Subject to the terms of this Agreement, applicable tariffs and applicable FERC rules and EBMUD's compliance with their terms, PG&E will provide transmission and distribution services under applicable tariffs and contracts for delivery of electric power to EBMUD service accounts.

- 20.3 General Obligations of EBMUD

Timeliness and Due Diligence: EBMUD shall exercise due diligence in meeting its obligations and deadlines under this Agreement and all applicable tariffs. EBMUD shall make all payments owed to PG&E under this Agreement and all applicable tariffs in a timely manner subject to applicable payment dispute provisions.

Scheduling Coordinator: As a requirement of this Agreement, EBMUD shall have one Scheduling Coordinator for the purpose of reporting all of the EBMUD end-use meter readings to the CAISO. EBMUD shall disclose the identity of the Scheduling Coordinator (SC) to PG&E. PG&E shall not be responsible for enforcing requirements applicable to the performance of the Scheduling Coordinator.

- 20.4 EBMUD Responsibility for Electric Power

Subject to Public Utilities Code Section 2829, EBMUD may elect to designate specific hydroelectric generation facilities owned by EBMUD for the generation of electricity to be delivered to EBMUD service accounts provided: 1) The amount of all electricity delivered to the electric grid by the designated EBMUD hydroelectric generation is the property of EBMUD; and 2) ownership and use of the environmental attributes associated with the electricity delivered to the electric grid by EBMUD designated hydroelectric generation is retained by EBMUD. EBMUD is responsible for providing their electric power needs and the delivery of such electric power to their designated receipt points as set forth on the schedules and forecasts submitted to the CAISO by the EBMUD Scheduling Coordinator. The total estimated annual energy usage of the EBMUD service accounts subject to

EBMUD self-service and listed in Attachment B hereto must not exceed the total estimated annual energy output of the designated EBMUD hydroelectric generator(s) listed in Attachment C hereto. Such estimates shall be based on recorded meter registrations or other suitable data agreeable to both parties.

EBMUD shall annually certify in writing to PG&E that EBMUD has complied with Public Utilities Code Section 2829 and with all applicable requirements of the CAISO tariff(s) and Business Practice Manual including, but not limited to, requirements for resource adequacy plans, demand forecasts, and balanced schedules.

20.5 PG&E Not Liable for EBMUD Services

To the extent EBMUD provides its own electric power, PG&E has no obligations to EBMUD with respect to the self-provision of services by EBMUD. EBMUD is solely responsible to carry out the responsibilities associated with that service.

20.6 EBMUD Not Liable for PG&E Services

To the extent EBMUD takes service from PG&E, EBMUD has no obligations with respect to the services provided by PG&E. PG&E is solely responsible to carry out the responsibilities associated with that service.

20.7 Load Aggregation

EBMUD may aggregate individually metered electric loads only for purposes of comparing such metered electric loads with the generator output of designated EBMUD hydroelectric generators. Load aggregation will not be used to compute PG&E charges or for tariff applicability. Any right of EBMUD to physically aggregate by combining multiple accounts into a single metered account as permitted under CPUC-approved tariffs is not restricted by this section.

20.8 Split Loads Not Allowed

EBMUD may not partition the electric loads of a service account subject to this Agreement among electric service options or providers.

20.9 Interval Metering

“Interval Meter” shall refer to a meter device capable of recording the minimum data required. Minimum data requirements include (a) hourly data required for the settlement process; and (b) data required to bill PG&E distribution tariffs, including any communication systems needed to allow PG&E access to meter reading usage data.

20.10 Access to EBMUD Usage Data and Generation Data

PG&E will provide EBMUD, or its designated agent, reasonable and timely access to meter data as required to allow for the proper performance of billing, scheduling, settlement, forecasting and other functions. PG&E will provide

interval usage data only for designated EBMUD service accounts with an installed interval meter.

EBMUD will, upon request, provide PG&E reasonable and timely access to EBMUD hydroelectric generation meter data as required by the EBMUD scheduling coordinator for scheduling, settlement, forecasting and other functions. EBMUD and/or its scheduling coordinator will, upon request, issue instructions to the CAISO to give PG&E access to the electronic meter data (i.e., OMAR web site) from the EBMUD hydroelectric generation resources designated under this Agreement.

20.11 EBMUD SELF-SERVICE ESTABLISHMENT

The following requirements must be satisfied before EBMUD can provide self-service to EBMUD service accounts in PG&E's service territory:

1. The CPUC must approve this Agreement and EBMUD and PG&E must execute this Agreement.
2. EBMUD must satisfy applicable CPUC Electronic Data Exchange requirements, including:
 - a. EBMUD must complete all necessary electronic interfaces for EBMUD and PG&E to communicate for exchange of Direct Access Service Requests (DASR) and general communications.
 - b. EBMUD must have the capability to exchange data with PG&E via the Internet.
 - c. EBMUD must establish and maintain the capability to perform Electronic Data Interchange (EDI) and enter into appropriate agreements related thereto.

20.12 DESIGNATION OF EBMUD SERVICE ACCOUNTS FOR SELF-SERVICE

1. Initial Sixty-Day Period for Designation of Service Accounts:

Commencing thirty (30) calendar days after execution of this Agreement by both parties and continuing for sixty (60) calendar days an initial period for EBMUD to designate service accounts for self-service will transpire during which time EBMUD will submit Direct Access Service Requests (DASR) electronically (unless PG&E has also approved of some alternative means of submittal) to PG&E for each EBMUD service account to be designated for self-service under this agreement. A separate DASR must be submitted for each service account. Upon request, PG&E will provide timely updates to EBMUD on the status of the DASR processing. PG&E will provide an acknowledgment of its receipt of the DASR to EBMUD within three (3) working days of its receipt. PG&E will exercise best efforts to provide, within three (3) working days thereafter (and no later than five (5) working days), EBMUD with a DASR status notification informing them as to whether the DASR has been accepted, rejected or deemed pending further

information. If accepted, DASRs which were received by PG&E on or before the fifteenth (15th) of the month will be switched over no later than the next month's scheduled meter reading date for that service account.. If a DASR is rejected, PG&E will provide the reason for the rejection. If a DASR is held pending further information, it shall be rejected if the DASR is not completed within eleven (11) working days following the status notification. PG&E and EBMUD, on mutual agreement, may agree to a different service change date for the service changes requested in a DASR.

2. Designation of Service Accounts After the Initial Sixty-Day Designation Period:

After the initial sixty (60) calendar-day period for designation of service accounts for self-service, EBMUD requests to place service accounts on EBMUD self-service will require a minimum of six (6) months advance notice in writing to PG&E in accordance with Section 13 of this Agreement. Such notice to PG&E will include sufficient information to readily identify to PG&E the specific service account EBMUD wishes to designate for self-service. Upon request, EBMUD will confirm to PG&E such service account information as determined by PG&E to be necessary to confirm the requested service change.

3. Returning a Designated Service Account to PG&E Bundled Service:

EBMUD requests to return a service account from EBMUD self-service to PG&E Bundled Service will require a minimum of six (6) months advance notice in writing to PG&E in accordance with Section 13 of this Agreement. Such notice to PG&E will include sufficient information to readily identify to PG&E the specific service account EBMUD wishes to designate for return to PG&E Bundled Service. Upon request, EBMUD will confirm to PG&E such service account information as determined by PG&E to be necessary to confirm the requested service change. EBMUD will be responsible for the continued provision of the service account electric supply service until the service change date. Should EBMUD fail to provide the six (6) months advance notice as required in this section prior to an EBMUD service account returning to PG&E Bundled Service, EBMUD shall pay charges specified in PG&E Schedule TBCC – Transitional Bundled Commodity Cost in addition to transmission, transmission rate adjustments, reliability services, distribution, public purpose programs, nuclear, decommissioning, fixed transition amount (where applicable), and the Rate Reduction Bond Memorandum Account (where applicable) on the otherwise applicable tariff for each subject EBMUD service account, and the Direct Access Cost Responsibility Surcharge applicable under Schedule DA CRS – Direct Access Cost Responsibility Surcharge for the duration of the six (6) month period. Each EBMUD service account returned to PG&E Bundled Service shall remain on Bundled Service for a minimum period of thirty-six (36) months before EBMUD will be allowed to return the service account to EBMUD self-service.

Section 21: Amendments or Modifications

- 21.1 Except as provided in Section 21.2 and 21.3, no amendment or modification shall be made to this Agreement, in whole or in part, except by an instrument in writing executed by authorized representatives of the Parties, and no amendment or modification shall be made by course of performance, course of dealing or usage of trade.
- 21.2 This Agreement will be subject to such changes or modifications as the CPUC may from time to time direct or necessitate in the exercise of its jurisdiction, and the Parties may amend the Agreement to conform to changes directed or necessitated by the CPUC. In the event the Parties are unable to agree on the required changes or modifications to this Agreement, their dispute shall be resolved in accordance with the provisions of Section 15 hereof or, in the alternative, EBMUD may elect to terminate this Agreement upon written notice to PG&E, which shall be effective after twelve (12) months. PG&E retains the right to unilaterally file with the CPUC, pursuant to the CPUC's rules and regulations, an application for a change in PG&E's rates, charges, classification, service or rules, or any agreement relating thereto.
- 21.3 Attachment B, List of EBMUD Service Accounts, will be updated from time-to-time by Parties to reflect the status of DASR submittals from EBMUD and DASR implementation by PG&E. Such updates will be exchanged electronically and will be subject to confirmation by the Contacts for EBMUD and PG&E designated in Attachment A hereto.

Section 22: Interconnection of EBMUD Generation Facilities

EBMUD agrees that for EBMUD hydroelectric generation facilities subject of this Agreement it will maintain at all times and fulfill its obligations under Interconnection Agreements executed pursuant to all applicable tariffs, rules and rates of the CAISO, FERC, and PG&E. EBMUD will designate the specific hydroelectric generation facilities to be subject of this Agreement in Attachment C. EBMUD will notify PG&E six (6) months in advance of planned changes in the hydroelectric generation facilities listed in Attachment C.

Section 23: Cost Obligations In as much as PUC §2829(g) prohibits cost shifting to result from implementation of this Agreement, EBMUD agrees it is responsible to pay cost responsibility surcharges (CRS) established pursuant to PUC Section 370 and non-bypassable charges (NBC) as authorized by the CPUC. Such CRS and NBC are specified in the electric rate schedule applicable for each EBMUD service account and are in accordance with PG&E Electric Schedule DA-CRS and, where applicable, Electric Schedule E-RRB. EBMUD acknowledges that PG&E reserves the right to add additional CRS or other NBC or to modify CRS or NBC rates as may be authorized by the CPUC from time to time.

Section 24: Audits

- 24.1 PG&E and EBMUD shall each retain such specific records as may be required to support the accuracy of the transactions encompassed by this Agreement for a period of at least seven (7) years. When either Party reasonably believes that errors related to transactions may have occurred, a Party may request the production of such documents as may be required to verify the accuracy of the transactions. Such documents shall be provided within ten (10) business days of such request. In the event the requesting Party, upon review of such documents, continues to believe that the other Party's duty to accuracy in the transactions under this Agreement has been breached, the requesting Party may direct that an audit be conducted. PG&E and EBMUD shall designate their own employee representative or their contracted representative to audit the other party's records.
- 24.2 Any such audit shall be undertaken by PG&E, EBMUD, or their contracted representative at reasonable times without interference with the audited Party's business operations, and in compliance with the audited Party's security procedures. PG&E and EBMUD agree to cooperate fully with any such audit.
- 24.3 Specific records to support the accuracy of meter data provided in the billings may require examination of billing and metering support documentation maintained by subcontractors. PG&E and EBMUD shall include a similar clause in their agreements with their subcontractors reserving the right to designate their own employee representative, or their contracted representative to audit records related to billing.
- 24.4 The auditing Party will notify the audited Party in writing of any exception taken as a result of an audit. The audited Party shall refund the amount of any undisputed exception to the auditing Party within ten (10) days. If the audited Party fails to make such payment, the audited Party agrees to pay interest, accruing monthly, at a rate equal to the prime rate plus two percent (2%) of Bank of America NT&SA, San Francisco, or any successor institution, in effect from time to time, but not to exceed the maximum contract rate permitted by the applicable usury laws of the State of California. Interest will be computed from the date of written notification of exceptions to the date the audited Party reimburses the auditing Party for any exception. The cost of such audit shall be paid by the auditing Party; provided, however, that in the event an audit verifies overcharges of five percent (5%) or more, then the audited Party shall reimburse the auditing Party for the cost of the audit.
- 24.5 This right to audit shall extend for a period of three (3) years following the date of final payment under this Agreement. Each party and each subcontractor shall retain all necessary records and documentation for the entire length of this audit period.

Section 25: Miscellaneous

- 25.1 Unless otherwise stated in this Agreement: (a) any reference in this Agreement to a section, subsection, attachment or similar term refers to the provisions of this Agreement; (b) a reference to a section includes that section and all its subsections; and (c) the words “include,” “includes,” and “including” when used in this Agreement shall be deemed in each case to be followed by the words “without limitation.” The Parties agree that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of this Agreement
- 25.2 The provisions of this Agreement are for the benefit of the Parties and not for any other person or third party beneficiary. The provisions of this Agreement shall not impart rights enforceable by any person, firm or organization other than a Party or a successor or assignee of a Party to this Agreement.
- 25.3 The descriptive headings of the various sections of this Agreement have been inserted for convenience of reference only and shall in no way define, modify or restrict any of the terms and provisions thereof.
- 25.4 Any waiver at any time by either Party of its rights with respect to a default under this Agreement, or with respect to any other matter arising in connection with this Agreement, shall not be deemed a waiver with respect to any other or subsequent default or matter and no waiver shall be considered effective unless in writing.
- 25.5 Each Party shall be responsible for paying its own attorneys’ fees and other costs associated with this Agreement, except as provided in Sections 6 and 7 hereof. If a dispute exists hereunder, the prevailing Party, as determined by the CPUC, or as may otherwise be determined by the dispute resolution procedure contained in Section 15 hereof, if used, or by a court of law, shall be entitled to reasonable attorneys’ fees and costs.
- 25.6 To the extent that the CPUC has a right under then-current law to audit either Party’s compliance with this Agreement or other legal or regulatory requirements pertaining to Direct Access transactions, that Party shall cooperate with such audits. Nothing in this Section shall be construed as an admission by either Party with respect to the right of the CPUC to conduct such audits or the scope thereof.
- 25.7 Except as otherwise provided in this Agreement, all rights of termination, cancellation or other remedies in this Agreement are cumulative. Use of any remedy shall not preclude any other remedy in this Agreement.

The Parties have executed this Agreement on the dates indicated below, to be effective upon the later date.

On Behalf of EBMUD

By: _____
Name: _____
Title: _____
Date: _____

On Behalf of PG&E

By: _____
Name: _____
Title: _____
Date: _____

ATTACHMENT A

A. Definitions:

Billing Services - The billing services described in PG&E's direct access tariff which are provided by PG&E.

Direct Access Tariff – PG&E's Rule 22 – Direct Access – as filed and approved by the CPUC.

Metering Services - The meter installation, maintenance and related services described in PG&E's direct access tariff which are provided by PG&E.

Meter Reading Services - The meter reading and related services described in PG&E's direct access tariff which are provided by PG&E.

PG&E Charges - Charges (a) for services provided by PG&E; or (b) which are energy-related and which are approved by the CPUC or the Federal Energy Regulatory Commission (including any Competition Transition Charges or Fixed Transition Amount Charges owing to PG&E or its affiliates, as those terms are defined under the California Public Utilities Code). Fixed Transition Amount Charges are also referred to as Trust Transfer Amount (TTA) Charges.

B. Contact Persons (Section 13.3):

PG&E Contact: ESP Services, 1-415-973-5683

EBMUD Contact: _____

C. Parties' Representatives (Section 15.1):

PG&E Representative:

Manager - Service & Sales
Mail Code 8052D
1850 Gateway Blvd.
Concord, CA., 94523

EBMUD Representative: _____

Contact Name _____

Business Address _____

ATTACHMENT B
EBMUD SERVICE ACCOUNTS
SUBJECT TO THIS AGREEMENT

Facility Name	Address	Service Account Number	Annual Energy Usage, kWh	Maximum Demand, kW	Date Service Account Subject to EBMUD Self-Service	Date Service Account Returned to PG&E Bundled Service

ATTACHMENT C

**HYDROELECTRIC GENERATION FACILITIES
OWNED BY EBMUD AND SUBJECT TO THIS AGREEMENT**

Generator Site Name	Site Address	CAISO Meter ID Number	Maximum Generator Capacity, MW	Average Annual Generator Output, MWh	Scheduling Coordinator Name	Date Generator Subject to Agreement



ELECTRIC TABLE OF CONTENTS

Sheet 1

TABLE OF CONTENTS

SCHEDULE	TITLE OF SHEET	CAL P.U.C. SHEET NO.	
	Title Page	28009-E	(T)
	Rate Schedules	28003,28004,28005,28006,27491,27663,27542-E	
	Preliminary Statements	28007,27817,27818,27819-E	
	Rules	27820-E	
	Sample Forms	27821,27583,27822,27823,24958,28010,26295,25059-E	(T)

(Continued)



**ELECTRIC TABLE OF CONTENTS
 SAMPLE FORMS**

Sheet 17

FORM	TITLE OF SHEET	CAL P.U.C. SHEET NO.
Sample Forms Miscellaneous		
79-966	Agreement for Schedule E-OBMC	27809-E
79-976	Interruptible Program Agreement	24749-E
79-984	Interval Meter Installation Service Agreement	18693-E
79-985	Interval Meter Data Management Service Agreement.....	18708-E
79-993	Agreement for Schedule E-POBMC	27810-E
79-995	Agreement for Customers Taking Service on Schedule E-31	19037-E
79-1005	Technical Assistance Incentive Application	20408-E
79-1015	Agreement Between East Bay Municipal Utility District And Pacific Gas and Electric Company For Specified CPUC Jurisdictional Electrical Services.....	28008-E (N)
79-1040	Non-Disclosure and Use of Information Agreement	23601-E
79-1074	Agreement for Customers Participating Directly in the Capacity Bidding Program.....	27874-E
79-1075	Notice to Add or Delete Customers Participating in the Capacity Bidding Program.....	27875-E
79-1076	Agreement for Aggregators Participating in the Capacity Bidding Program	27876-E
79-1006	Municipal Departing Load - Nonbypassable Charge Statement	25892-E
79-1029	Community Choice Aggregator (CCA) Service Agreement	27499-E
79-1031	Community Choice Aggregator (CCA) Non-Disclosure Agreement.....	25582-E
79-1039	Agricultural, Commercial, Residential Rate Schedule Selection Customer Agreement.....	25075-E

(Continued)

**PG&E Gas and Electric
Advice Filing List
General Order 96-B, Section IV**

Aglet	Department of the Army	Northern California Power Association
Agnews Developmental Center	Dept of General Services	Occidental Energy Marketing, Inc.
Alcantar & Kahl	Division of Business Advisory Services	OnGrid Solar
Ancillary Services Coalition	Douglas & Liddell	PPL EnergyPlus, LLC
Anderson & Poole	Douglass & Liddell	Pinnacle CNG Company
Arizona Public Service Company	Downey & Brand	Praxair
BART	Duke Energy	R. W. Beck & Associates
BP Energy Company	Duncan, Virgil E.	RCS, Inc.
Barkovich & Yap, Inc.	Dutcher, John	RMC Lonestar
Bartle Wells Associates	Ellison Schneider & Harris LLP	Recon Research
Blue Ridge Gas	Energy Management Services, LLC	SCD Energy Solutions
Braun & Associates	FPL Energy Project Management, Inc.	SCE
C & H Sugar Co.	Foster Farms	SESCO
CA Bldg Industry Association	Foster, Wheeler, Martinez	SMUD
CAISO	Franciscan Mobilehome	SPURR
CLECA Law Office	G. A. Krause & Assoc.	Santa Fe Jets
CSC Energy Services	GLJ Publications	Seattle City Light
	Goodin, MacBride, Squeri, Schlotz & Ritchie	Sempra Utilities
California Cotton Ginners & Growers Assn	Green Power Institute	Sequoia Union HS Dist
California Energy Commission	Hanna & Morton	Sierra Pacific Power Company
California League of Food Processors	Heeg, Peggy A.	Silicon Valley Power
California Public Utilities Commission	Hitachi	Smurfit Stone Container Corp
Calpine	Hogan Manufacturing, Inc.	Southern California Edison Company
Cameron McKenna	Imperial Irrigation District	St. Paul Assoc.
Cardinal Cogen	Innercite	Sunshine Design
Casner, Steve	International Power Technology	Sutherland, Asbill & Brennan
Cerox	Intestate Gas Services, Inc.	TFS Energy
Chamberlain, Eric	J. R. Wood, Inc.	Tabors Caramanis & Associates
Chevron Company	JTM, Inc.	Tecogen, Inc.
Chris, King	Los Angeles Dept of Water & Power	Tiger Natural Gas, Inc.
City of Glendale	Luce, Forward, Hamilton & Scripps LLP	Tioga Energy
City of Palo Alto	MBMC, Inc.	TransCanada
City of San Jose	MRW & Associates	Turlock Irrigation District
Clean Energy Fuels	Manatt Phelps Phillips	U S Borax, Inc.
Coast Economic Consulting	Matthew V. Brady & Associates	United Cogen
Commerce Energy	McKenzie & Associates	Utility Cost Management
Commercial Energy	Meek, Daniel W.	Utility Resource Network
Constellation	Merced Irrigation District	Utility Specialists
Constellation New Energy	Mirant	Vandenberg Air Force
Consumer Federation of California	Modesto Irrigation District	Verizon
Crossborder Energy	Morgan Stanley	Wellhead Electric Company
Davis Wright Tremaine LLP	Morrison & Foerster	Western Manufactured Housing Communities Association (WMA)
		White & Case
Day Carter Murphy	New United Motor Mfg., Inc.	eMeter Corporation
Defense Energy Support Center	Norris & Wong Associates	
Department of Water Resources	North Coast SolarResources	