

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



November 10, 2009

Advice Letters 3447-E/E-A

Brian K. Cherry
Vice President, Regulatory Relations
Pacific Gas and Electric Company
77 Beale Street, Mail Code B10C
P.O. Box 770000
San Francisco, CA 94177

**Subject: Revision to SC-to-SC Trades in the Capacity Bidding
Program Tariffs and Supplemental Filing**

Dear Mr. Cherry:

Advice Letters 3447-E and 3447-E-A are effective November 9, 2009.

Sincerely,

A handwritten signature in blue ink that reads "Julie A. Fitch".

Julie A. Fitch, Director
Energy Division



April 3, 2009

Advice 3447-E

(Pacific Gas and Electric Company ID U 39 E)

Public Utilities Commission of the State of California

**Subject: Revision to SC-to-SC Trades in the Capacity Bidding Program
Tariffs**

Pacific Gas and Electric Company (PG&E) hereby submits revisions to its electric demand response (DR) rate schedule E-CBP – Capacity Bidding Program, Form 79-1074 – *Agreement for Customers Participating Directly in the Capacity Bidding Program*, and Form 79-1076 - *Agreement for Aggregators Participating in the Capacity Bidding Program*. The affected tariff sheets are listed on the enclosed Attachment 1.

Purpose

The purpose of this filing is to modify language in PG&E's E-CBP and standard form agreements as described below. This proposed changes resolve concerns raised by the Alliance for Retail Energy Markets (AREM) in its protest to PG&E's Application for Approval of its 2009-2011 DR Programs and Budgets (Application 08-06-003), specifically AREM's request that Scheduling Coordinator Trades (SC-to-SC trades) for direct access (DA) and Community Choice Aggregation (CCA) service participation in CBP be justified or eliminated. The proposed changes also make E-CBP and the form agreements more compatible with the Market Redesign and Technology Upgrade (MRTU) of the California Independent System Operator (CAISO).

Background

On September, 29, 2008, AREM filed its protest to the investor-owned utilities (IOUs) applications, requesting that the SC-to-SC trade requirement be justified or eliminated. On November 10, 2008, the Assigned Commissioner and Administrative Law Judge issued a Scoping Memo and Ruling in A. 08-06-003, et al., (Ruling) that acknowledged the issues raised by AREM. The Ruling found the issues to be "technical and logistical" in nature, and questioned whether the issue may be appropriate for resolution through a less formal process than hearings and litigation. The Ruling

directed the IOUs and AReM work together in an effort to resolve the issues. AReM, PG&E, Southern California Edison ((SCE), and San Diego Gas and Electric (SDG&E), filed a Joint Status Report on December 16, 2008 that resolved several issues raised by AReM and committed the parties to “use their best efforts to resolve, before MRTU is implemented, through the California Independent System Operator’s (CAISO) DR Working Group or other groups as appropriate: (a) any identified technical or regulatory barriers to DA customer participation in MRTU DR Programs; (b) whether an SC-to-SC trade or a similar mechanism should continue after MRTU; and (c) any ongoing concerns (financial, logistical or other) regarding ending or continuing of SC-to-SC trades or similar mechanisms with ESPs as a result of DA customers’ participation in a DR program.”¹ SCE filed Advice 2332-E on March 18, 2009, proposing a resolution to this issue with AReM’s support. PG&E’s proposal in this advice letter is the same as SCE’s proposal.

Scheduling Coordinators (SCs) are the intermediaries between the CAISO and the retailers who serve end-use customers. They submit energy schedules to the CAISO with the specifics of where they plan to generate, transmit, and consume electricity the next day. When a DR event is called, directly-enrolled DA or CCA service customers participating in the CBP and those DA or CCA customers participating in CBP through an aggregator’s portfolio, are now required to make a SC-to-SC trade with PG&E’s scheduling agent, otherwise no incentive payment will be made for their specific DR participation. However, under MRTU the nature of SC-to-SC trades will be fundamentally different from those before MRTU. SC-to-SC trades under MRTU will be more complex with a number of specific requirements associated with the available SC-to-SC trade options including choices of physical or financial trades, choices of trade locations and choice of markets. Considering the timelines of CBP event notifications and the timelines and added complexity of the SC-to-SC trades under MRTU, PG&E proposes a more efficient alternative.

PG&E proposes to modify rate Schedule E-CBP and its associated agreements (Forms 79-1074 and 79-1076) to eliminate the SC-to-SC trade requirement and to eliminate the energy payment due from PG&E to DA or CCA service customers enrolled in CBP, either directly or through an Aggregator, for load reductions during CBP events and test events (\$0/kWh). DA or CCA service customers or their aggregators will still receive capacity payments from PG&E as applicable under CBP, based on their specific performance under the program. This modification does not prevent DA or CCA service customers from entering into arrangements with their respective Energy Service Providers (ESPs) to receive part or all of the energy benefits derived from the DA customers’ load reductions during CBP events.

¹ JOINT STATUS REPORT ON ENERGY SERVICE PROVIDER ISSUES filed December 22, 2008 in A.08-06-001 et al.

This program modification is intended to be temporary while experience with DR in MRTU is gained. The parties propose to continue to work with the CAISO DR Working Groups or other groups as appropriate to ensure that any on-going scheduling coordinator issues are addressed in MRTU as it evolves. This program modification is not meant to set precedent for future DA or CCA service participation in PG&E's DR programs.

Revisions to Existing Rate Schedules and Standard Forms

PG&E proposes to modify rate Schedule E-CBP to remove or revise language that is now out-of-date because of MRTU. PG&E also proposes to replace the SC-to SC trade requirements with the following paragraph:

PG&E will not provide energy payments to directly-enrolled DA or CCA service customers, or Aggregator on behalf of a DA or CCA service customer, for load reductions during CBP events (\$0/kWh). Customers and Aggregators will still receive capacity payments from PG&E for DA or CCA customers' load as applicable under this Schedule.

PG&E also proposes to remove the SC-to-SC trade language from the following standard forms, and language referring DA or CCA service customers to the rate schedule were added.

- *Form 79-1074 – Agreement for Customers Participating Directly in the Capacity Bidding Program*
- *Form 79-1076 - Agreement for Aggregators Participating in the Capacity Bidding Program*

Protest Period

Anyone wishing to protest this filing may do so by sending a letter by **April 23, 2009**, which is **20 days** from the date of this filing. The protest must state the grounds upon which it is based, including such items as financial and service impact, and should be submitted expeditiously. Protests should be mailed to:

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

Facsimile: (415) 703-2200
E-mail: ijnj@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

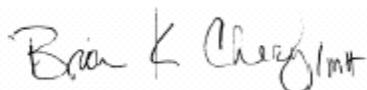
Facsimile: (415) 973-7226
E-mail: PGETariffs@pge.com

Effective Date

PG&E requests that this advice filing become effective on regular notice, **May 4, 2009**, which is 30 calendar days after the date of filing.

Notice

In accordance with General Order 96-B, Section IV, a copy of this Advice Letter is being sent electronically or via U.S. mail to parties shown on the attached list and to the service lists for A.08-06-003 and A.07-01-041. Address changes should be directed to Rose De La Torre at (415) 973-4716. Advice Letter filings can also be accessed electronically at: <http://www.pge.com/tariffs>.



Vice President - Regulatory Relations

Attachments

cc: Service Lists – A.08-06-003; A.07-01-041

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 (ID U39 M)**

Utility type:

ELC

GAS

PLC

HEAT

WATER

Contact Person: Megan Lawson

Phone #: (415) 973-1877

E-mail: mehr@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) #: 3447-E

Tier: [2]

Subject of AL: Revision to SC-to-SC Trades in the Capacity Bidding Program Tariffs

Keywords (choose from CPUC listing): demand side management

AL filing type: Monthly Quarterly Annual One-Time Other _____

If AL filed in compliance with a Commission order, indicate relevant Decision/Resolution #:

Does AL replace a withdrawn or rejected AL? If so, identify the prior AL: No

Summarize differences between the AL and the prior withdrawn or rejected AL:

Is AL requesting confidential treatment? If so, what information is the utility seeking confidential treatment for: No

Confidential information will be made available to those who have executed a nondisclosure agreement: N/A

Name(s) and contact information of the person(s) who will provide the nondisclosure agreement and access to the confidential information:

Resolution Required? Yes No

Requested effective date: May 4, 2009

No. of tariff sheets: 9

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: Electric Rate Schedule E-CBP, Sample Forms 79-1074 and 79-1076

Service affected and changes proposed:

Protests, dispositions, 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

Tariff Files, Room 4005

DMS Branch

505 Van Ness Ave., San Francisco, CA 94102

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

Pacific Gas and Electric Company

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 3447-E**

Cal P.U.C. Sheet No.	Title of Sheet	Cancelling Cal P.U.C. Sheet No.
28272-E	ELECTRIC SCHEDULE E-CBP CAPACITY BIDDING PROGRAM Sheet 3	25933-E
28273-E	ELECTRIC SCHEDULE E-CBP CAPACITY BIDDING PROGRAM Sheet 7	25937-E
28274-E	ELECTRIC SCHEDULE E-CBP CAPACITY BIDDING PROGRAM Sheet 8	25938-E
28275-E	ELECTRIC SCHEDULE E-CBP CAPACITY BIDDING PROGRAM Sheet 10	27220-E
28276-E	Electric Sample Form No. 79-1074 Agreement for Customers Participating Directly in the Capacity Bidding Program	27874-E
28277-E	Electric Sample Form No. 79-1076 Agreement for Aggregators Participating in the Capacity Bidding Program	27876-E
28278-E	ELECTRIC TABLE OF CONTENTS Sheet 1	28263-E
28279-E	ELECTRIC TABLE OF CONTENTS RATE SCHEDULES Sheet 5	28174-E
28280-E	ELECTRIC TABLE OF CONTENTS SAMPLE FORMS Sheet 17	28036-E



ELECTRIC SCHEDULE E-CBP
CAPACITY BIDDING PROGRAM

Sheet 3

CAPACITY NOMINATIONS:

Capacity Nominations must be submitted by directly-enrolled customers and Aggregators no later than 5 calendar days prior to the operating month. Capacity Nominations must specify for each SA both an Option (Day-Ahead or Day-Of) and a Product. All Capacity Nominations are fixed for their associated operating month. All operating months begin and end at the beginning and ending of its corresponding calendar month.

A directly-enrolled customer cannot submit a Capacity Nomination until all requirements specified herein have been met.

An Aggregator can include only those SAs that are in its portfolio.

A directly-enrolled customer must nominate capacity in the following category for each enrolled SA:

Option (Day-Ahead or Day-Of)

Product

An Aggregator must nominate capacity in the following categories:

Option (Day-Ahead or Day-Of)

Product

Bundled/Direct Access

(D)

No later than 5 calendar days prior to the first day of the operating month, an Aggregator must specify the SAs from its portfolio that shall be included in the aggregated group associated with each Capacity Nomination. The characteristics of selected SAs must match the categories of its associated Capacity Nomination. These aggregated groups will be used to determine the CSEB and performance during the operating month. A SA can be included in only one aggregated group and only one CSEB for a given operating month.

RATES:

The payments under this rate schedule will be determined from the following components.

1. Capacity Price
2. Capacity Payment and Capacity Penalty
3. Energy Payment

(Continued)



**ELECTRIC SCHEDULE E-CBP
 CAPACITY BIDDING PROGRAM**

Sheet 7

**ENERGY
 PAYMENT:**

All Energy Payments will be determined separately for each Capacity Nomination.

If no CBP Events were called during the operating month, then the monthly Energy Payment is zero (0).

If one or more CBP Events were called during the operating month, then the monthly Energy Payment is obtained by summing the Hourly Energy Payments. The Hourly Energy Payments will be determined as follows:

$$\begin{aligned} \text{Nominated Energy}_{HR} &= \text{Nominated Capacity}_{HR} \\ \text{Delivered Energy}_{HR} &= \text{lesser of Delivered Capacity}_{HR} \text{ or } 1.5 * \text{Nominated Energy}_{HR} \\ \text{If Delivered Energy}_{HR} &\geq \text{Nominated Energy}_{HR} \\ \text{Energy Payment}_{HR} &= \text{Delivered Energy}_{HR} * \text{Energy Price}_{HR} \\ \text{If Delivered Energy}_{HR} &< \text{Nominated Energy}_{HR} \\ \text{Energy Payment}_{HR} &= \text{Delivered Energy}_{HR} * \text{Energy Price}_{HR} \text{ less } \\ &\quad (\text{Nominated Energy}_{HR} - \text{Delivered Energy}_{HR}) * \\ &\quad \text{the higher of the ex-post energy price for the} \\ &\quad \text{event hour or the Energy Price}_{HR} \\ \text{Where the Energy Price}_{HR} &= 15,000 \text{ BTU/kWh} * \text{PG\&E citygate midpoint gas} \\ &\quad \text{price as published by Platts Gas Daily for the} \\ &\quad \text{date of the CBP Event } (\$/\text{BTU}) \end{aligned}$$

See section below for special conditions regarding DA and CC service customers' energy payments. (N)
 (N)

**SPECIAL
 CONDITIONS
 FOR DIRECT
 ACCESS AND
 CCA SERVICE
 CUSTOMERS:**

DA or CCA service customers enrolling directly with the PG&E must make the necessary arrangements with their ESP before enrolling in this program. Directly-enrolled DA or CCA service customers must notify their ESP when a CBP Event has been scheduled. (T)
 |
 (T)

Aggregators must make the necessary arrangements with the ESP of its DA or CCA service customers before enrolling DA or CCA service customers in this program. Aggregators must notify the ESP of its DA or CCA service customers when a CBP Event has been scheduled. (T)
 |
 (T)
 (D)

PG&E will not provide energy payments to directly-enrolled DA or CCA service customers, or Aggregator on behalf of a DA or CCA service customer, for load reductions during CBP events (\$0/kWh). Customers and Aggregators will still receive capacity payments from PG&E for DA or CCA customers' load as applicable under this Schedule. (N)
 |
 |
 (N)

(Continued)



**ELECTRIC SCHEDULE E-CBP
 CAPACITY BIDDING PROGRAM**

Sheet 8

SPECIAL
 CONDITIONS
 FOR DIRECT
 ACCESS
 CUSTOMERS:
 (Cont'd.)

See Agreement For Customers Participating Directly In The Capacity Bidding Program (Form 79-1074) and Agreement For Aggregators Participating In The Capacity Bidding Program (Form 79-1076) for additional information.

(D)

METERING AND
 COMMUNI-
 CATIONS
 EQUIPMENT:

Each customer must have an approved interval meter and approved meter communications equipment installed and operating prior to participating on this program in order to establish a valid CSEB. See Baseline section for additional details.

An approved interval meter is capable of recording usage in 15-minute intervals and being read remotely by PG&E and by PG&E's Program Coordinator. If the customer is receiving DA service, then a Meter Data Management Agent (MDMA) may also read the customer's meter on behalf of the customer's ESP.

For bundled service customers with a maximum demand of 200 kW or greater for three consecutive months in the past 12 billing months, PG&E will provide and install the metering and communication equipment at no cost to the customer if metering and communication equipment are required. For other bundled service customers, PG&E will, if required, provide and install the metering equipment at the customer's expense pursuant to Electric Rule 2, Special Facilities.

Installation of an approved interval meter and approved meter communications equipment for a DA customer is the responsibility of the customer's ESP or its MDMA. The meter and associated equipment must be installed in accordance with Electric Rule 22. If PG&E is the MDMA on behalf of the DA customer's ESP, then no additional fees will be required. If the DA customer uses a third-party MDMA, then the customer will be responsible for any and all costs associated with providing PG&E acceptable interval data on a daily basis, including any additional metering or communication equipment and any additional fees assessed by the customer's ESP.

Prior to customer's participation in the program, the customer must be able to successfully transfer meter data according to PG&E's specification on a daily basis for a period of no less than ten (10) calendar days.

For small and medium sized commercial customers enrolled through the San Francisco Community Power (SFCP) Small Customer Aggregation Pilot Program, PG&E will, pursuant to D.06-03-024, provide interval meters and communication equipment at no cost to the participant or SFCP.

All measurements for the CSEB and performance will be determined using the customer's electric revenue interval meter without loss factor adjustments.

(Continued)



**ELECTRIC SCHEDULE E-CBP
 CAPACITY BIDDING PROGRAM**

Sheet 10

PROGRAM
 TRIGGER AND
 NOTIFICATION:

Day-Ahead Option:

PG&E may trigger a Day-Ahead CBP Event when PG&E's procurement stack is expected to require the dispatch of electric generation facilities with heat rates of 15,000 BTU/kWh or greater for the day-ahead market, or when PG&E, in its sole opinion, forecasts that resources may not be adequate. PG&E reserves the right not to call an event even when these thresholds are reached when PG&E, in its sole opinion, forecasts that resources may be adequate. (T)

PG&E will notify directly-enrolled customers and Aggregators by 3:00 p.m. on a day-ahead basis of a CBP Event for the following business day. Notices will be issued by 3:00 p.m. on the business day immediately prior to a PG&E holiday or weekend if a CBP Event is planned for the first business day following the PG&E holiday or weekend.

PG&E may call up to two (2) test Day-Ahead CBP Events per calendar year. Test CBP Events will be treated as actual CBP Events, including payments and penalties, and will count towards the product limits.

Day-Of Option:

PG&E may trigger a Day-Of Event when PG&E's procurement stack is expected to require the dispatch of electric generation facilities with heat rates of 15,000 BTU/kWh or greater for the hour-ahead market, or when PG&E, in its sole opinion, forecasts that resources may not be adequate. PG&E reserves the right not to call an event even when these thresholds are reached when PG&E, in its sole opinion, forecasts that resources may be adequate. (T)

PG&E will notify directly-enrolled customers and Aggregators on a day-of basis, with up to approximately three hours notice prior to the start of a Day-Of Event. (T)

PG&E may call two (2) test Day-Of CBP Events per calendar year. Test Day-Of CBP Events will be treated as actual CBP Events, including payments and penalties, and will count towards the product limits.

PROGRAM
 RESEARCH AND
 ANALYSIS:

All customers participating on this program agree to allow personnel from the California Energy Commission (CEC), PG&E, and their contracting agents, reasonable access to conduct a site visit for measurement and evaluation, access to the customer's interval meter data, and agree to complete any surveys needed to enhance this program.

(Continued)



Electric Sample Form No. 79-1074
Agreement for Customers Participating Directly in the Capacity Bidding Program

**Please Refer to Attached
Sample Form**

Advice Letter No: 3447-E
Decision No.

Issued by
Brian K. Cherry
Vice President
Regulatory Relations

Date Filed April 3, 2009
Effective November 9, 2009
Resolution No. _____

**AGREEMENT FOR CUSTOMERS PARTICIPATING DIRECTLY
IN THE CAPACITY BIDDING PROGRAM**

This Agreement (Agreement) for Customers participating directly in the Capacity Bidding Program (CBP) is entered into by and between Pacific Gas and Electric Company (PG&E), a California corporation, and _____ (Customer), a _____ PG&E and Customer may sometimes be referred to herein as a “Party” and collectively as the “Parties”.

WHEREAS, the California Public Utilities Commission (CPUC) has authorized the CBP, a capacity bidding program as set forth in PG&E’s Schedule E-CBP, (Schedule E-CBP), which is attached hereto as **Attachment A** and incorporated herein by this reference, whereby PG&E pays eligible customers for participating in the CBP; and

WHEREAS, Customer desires to participate directly in the CBP for the service agreements listed on **Attachment B** subject to the applicable PG&E tariff rules and rate schedules.

NOW, THEREFORE, in consideration of the mutual undertakings set forth below, the Parties agree as follows:

1. For the term of this Agreement, Customer shall receive service in accordance with Schedule E-CBP and Customer’s Otherwise Applicable Schedule filed with the CPUC, as such schedules now exist or may hereafter be amended or superseded. If the CPUC approves any modification to Schedule E-CBP, any such modification shall be incorporated herein and this Agreement will continue in full force and effect as to Schedule E-CBP as so modified, unless and until the Parties execute a new agreement, or unless and until PG&E or Customer terminates this Agreement.
2. Customer understands that Schedule E-CBP is a voluntary program whereby Customer receives Capacity and Energy Payments for delivered Capacity and delivered Energy during CBP Events. Customer understands that the Customer may receive penalties for non-performance under Schedule E-CBP.
3. PG&E reserves the right to contact Customer to confirm its Capacity Nominations, to clarify possible errors, and to remove Customer from Schedule E-CBP if Customer does not comply with the terms and conditions of Schedule E-CBP or this Agreement.
4. Schedule E-CBP has an initial term of 12 months. A directly-enrolled customer may request to terminate its participation in this program by submitting to PG&E a completed Cancellation of Contract (Form 62-4778). The termination will be effective on the later of 1) the beginning of the calendar month that is immediately after the initial 12 month term, and 2) the beginning of the calendar month that is closest to but at least thirty (30) calendar days after PG&E received the Cancellation of Contract. Unless Customer or PG&E terminates Customer’s participation in the CBP, the Customer shall remain enrolled unless and until the CBP is terminated as the result of a CPUC ruling.
5. See Schedule E-CBP for special arrangements necessary for Direct Access (DA) and CCA service customers.
6. PG&E shall not be liable to Customer for any damages caused by PG&E’s conduct in compliance with, or as permitted by, Schedule E-CBP or other tariffs, this Agreement and associated legal and regulatory requirements related to the CBP. PG&E shall not be liable for any damages caused by Customer’s failure to comply with PG&E’s tariffs, this Agreement and associated legal and regulatory requirements.
7. Customer shall not assign this Agreement without prior written consent of PG&E.

8. PG&E may immediately terminate this Agreement upon written notice to Customer if Customer breaches any material obligation under this Agreement and fails to cure such breach within fifteen (15) calendar days after receiving written notice of the breach. Customer must notify PG&E upon curing the identified breach.
9. Customer agrees to allow personnel from the California Energy Commission (CEC), PG&E and their contracting agents' reasonable access to conduct a site visit for measurement and evaluation, access to the Customer's interval meter data, and agree to complete any surveys needed to enhance this program.
10. This Agreement shall at all times be subject to the changes or modifications by the CPUC as the CPUC may, from time to time, direct in the exercise of its jurisdiction.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized agents to be effective on the date of PG&E's signature below provided all necessary requirements of Schedule E-CBP have been met.

Customer		Pacific Gas and Electric Company	
Signature:	_____	Signature:	_____
Print Name:	_____	Print Name:	_____
Title:	_____	Title:	_____
Date:	_____	Date:	_____

The following attachments are attached hereto and incorporated by reference:

Attachment A:	Schedule E-CBP
Attachment B:	Customer Information

ATTACHMENT A
Schedule E-CBP

**ATTACHMENT B
Customer Information**

Site Information:

Site Name: _____
Service Address: _____

Service Agreement Number: _____
Electric Meter Number: _____

Site Contact:

Name: _____
Title: _____
Mailing Address: _____

Telephone Number: _____
Pager Number: _____
Email Address: _____

Primary CBP Event Contact:

Name: _____
Title: _____
Mailing Address: _____

Telephone Number: _____
Pager Number: _____
Email Address: _____

Secondary CBP Event Contact:

Name: _____
Title: _____
Mailing Address: _____

Telephone Number: _____
Pager Number: _____
Email Address: _____



Electric Sample Form No. 79-1076
Agreement for Aggregators Participating in the Capacity Bidding Program

**Please Refer to Attached
Sample Form**

Advice Letter No: 3447-E
Decision No.

Issued by
Brian K. Cherry
Vice President
Regulatory Relations

Date Filed April 3, 2009
Effective November 9, 2009
Resolution No. _____

**AGREEMENT FOR AGGREGATORS PARTICIPATING IN THE
CAPACITY BIDDING PROGRAM**

This Agreement (Agreement) for Aggregators participating in the Capacity Bidding Program (CBP) is entered into by and between Pacific Gas and Electric Company (PG&E), a California corporation, and _____ (Aggregator), a _____ . PG&E and Aggregator may sometimes be referred to herein as a “Party” and collectively as the “Parties”.

WHEREAS, the California Public Utilities Commission (CPUC) has authorized the CBP, a capacity bidding program as set forth in PG&E’s Schedule E-CBP, (Schedule E-CBP), which is attached hereto as **Attachment A** and incorporated herein by this reference, whereby PG&E pays eligible Aggregators for participating in the CBP; and

WHEREAS, the CPUC has authorized the participation of Aggregators in the CBP, and Aggregator desires to participate in the CBP subject to the applicable PG&E tariff rules and rate schedules.

NOW, THEREFORE, in consideration of the mutual undertakings set forth below, the Parties agree as follows:

I. AGGREGATOR’S OBLIGATIONS

A. Status; Subject to Applicable PG&E Tariffs. Aggregator’s status in the CBP shall be as an “Aggregator” under Schedule E-CBP. Aggregator shall be subject to all applicable tariff rules and regulations (which rules and regulations are hereby incorporated herein as an integral part of this Agreement), including, but not limited to, the rates, terms and conditions set forth in Schedule E-CBP, as such rules and regulations may be amended from time to time.

B. Representation of Customers. Aggregator shall represent those customers in PG&E’s electric service territory eligible to participate in the CBP, who have elected to participate through Aggregator with respect to such customer’s service agreement(s), by having appropriate contractual or other arrangements with each such eligible customer whereby such customer authorizes Aggregator, as its representative, to receive payments and to pay penalty charges on behalf of such customer in connection with the customer’s participation, through Aggregator, in the CBP. Aggregator shall be solely responsible for having the appropriate contractual or other arrangements with each customer whom Aggregator represents in the CBP. PG&E shall not be responsible for monitoring, auditing, reviewing or enforcing such arrangements. Aggregator acknowledges and agrees that, in its representation of PG&E customers for the CBP, Aggregator is subject to the terms and conditions of Schedule E-CBP and this Agreement.

C. Aggregator Service Establishment. Aggregator must submit an executed Agreement for Aggregators Participating in the CBP. The Agreement becomes effective upon execution by PG&E.

D. Required Notice to Add or Delete Customers. Once Aggregator has entered into the appropriate contractual or other arrangements with each customer whom Aggregator represents in the CBP, Aggregator shall deliver to PG&E a “Notice to Add or Delete Customers Participating in the Capacity Bidding Program” in the form attached hereto as **Attachment B**, adding such customer’s service agreement(s) to Aggregator’s portfolio. The Notice shall be executed by the Aggregator and each affected customer. Aggregator shall notify PG&E that it has dropped a customer service agreement from its portfolio by delivering to PG&E a “Notice to Add or Delete Customers Participating in the Capacity

Bidding Program” signed by customer and Aggregator. Aggregator shall deliver such Notices to PG&E as specified in the Notice.

PG&E must approve each Service Agreement before the Service Agreement can be included in the Aggregator’s portfolio. Additions to and deletions from the Aggregator’s portfolio will be effective as specified in the E-CBP Tariff and the Notice.

E. Ensure Necessary Arrangements with Scheduling Coordinators for Direct Access and CCA Service Customers. See Schedule E-CBP

F. Secure Customer Participation in Measurement and Evaluation Activities. Aggregator shall agree, and shall cause each customer whom Aggregator represents on the CBP to agree, to (i) allow personnel from the California Energy Commission, PG&E, and their contracting agents reasonable access to customer’s facilities to conduct a site visit for measurement and evaluation of activities related to the CBP; and (ii) participate in and complete any surveys needed to enhance the CBP. Aggregator’s failure to secure these agreements may result in the termination of this Agreement and/or a determination by PG&E that Aggregator is ineligible to participate in the CBP.

G. Timeliness and Due Diligence. Aggregator shall exercise due diligence in meeting its obligations and deadlines under Schedule E-CBP and this Agreement to facilitate customer participation through Aggregator in the CBP.

II. GENERAL TERMS

A. Definitions. Except where explicitly defined herein, the capitalized terms used in this Agreement shall have the meanings set forth in Schedule E-CBP.

B. Customer-Specific Usage or Meter Data. Upon the addition of a Service Agreement to an Aggregator’s portfolio, Usage or meter data for the Service Agreement will become available on a going forward basis via the format available in PG&E’s CBP Website.

III. LIMITATION OF LIABILITIES

A. PG&E shall not be liable to the Aggregator for any damages caused by PG&E’s conduct in compliance with, or as permitted by, Schedule E-CBP or other tariffs, this Agreement and associated legal and regulatory requirements related to the CBP.

B. PG&E’s liability to Aggregator for any loss, cost, claim, injury, liability or expense, including reasonable attorneys’ fees, relating to or arising from any act or omission in PG&E’s performance of this Agreement shall be limited to the amount of direct damage actually incurred. In no event shall PG&E be liable to Aggregator for any indirect, special, consequential or punitive damages of any kind whatsoever, whether in contract, tort or strict liability.

IV. PAYMENT

A. Payment Terms. During the term of this Agreement, PG&E shall make any payments due to Aggregator (after deducting any amounts due to PG&E) pursuant to the terms and conditions of Schedule E-CBP within sixty (60) calendar days following the end of each operating month by mailing an invoice and check payable to Aggregator to the following address:

Name: _____
Attention: _____
Address 1: _____
Address 2: _____
City, State, Zip: _____

B. Late Payments. PG&E's charges to Aggregator as provided in Schedule E-CBP and Commission rules will be considered past due if it is not paid within 15 calendar days after transmittal of an invoice by PG&E. If an Aggregator does not pay PG&E's invoice within such 15 calendar days, then:

1. A 7-day notice may be mailed to the Aggregator and to each of the customers in the Aggregator's portfolio. If the charges in the notice remain unpaid after the expiration of the 7-day notice, PG&E shall have the right to terminate the Aggregator Agreement and Aggregator's participation in the CBP. If Aggregator's participation in the CBP is terminated, the Aggregator remains responsible for all outstanding charges billed pursuant to Schedule E-CBP, even if such charges are identified after the termination becomes effective.
2. If the Aggregator agreement is not terminated, the Aggregator will be unable to add customers to its portfolio until late payments are cured.
3. PG&E may require full collateral in the form of cash, irrevocable standby letter of credit, security bond or any other security instrument deemed appropriate by PG&E if the Aggregator makes more than one late payment. If such collateral is requested and not provided by the Aggregator to PG&E, the Aggregator's participation will be subject to termination by PG&E.

V. REPRESENTATIONS AND WARRANTIES

A. Each Party represents and warrants that it is and shall remain in compliance with all applicable laws.

B. Each Party represents and warrants 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.

C. Each Party shall exercise all reasonable care, diligence and good faith in the performance of its duties pursuant to this Agreement, and carry out its duties in accordance with applicable recognized professional standards in accordance with the requirements of this Agreement.

D. With each submission of a "Notice to Add or Delete Customers Participating in the Capacity Bidding Program," and until such time as Aggregator submits such Notice for the removal of such customer from Aggregator's representation, Aggregator represents and warrants that:

1. Each customer whom Aggregator represents is eligible to participate in the CBP and has elected to participate in the CBP through Aggregator;

2. Aggregator has entered into the appropriate contractual or other arrangements with such customer whereby such customer has authorized Aggregator to receive payments from and to pay penalty charges to PG&E on behalf of such customer in connection with such customer's participation in the CBP.

VI. TERM

A. The term of this Agreement shall commence as of the Effective Date and shall continue in full force and effect unless and until the CBP is terminated or revised by a CPUC ruling or this Agreement is terminated by PG&E as provided in Section VII.

B. An Aggregator may request to terminate its participation in this program by submitting to PG&E a completed Cancellation of Contract (Form 62-4778). The termination will be effective on the later of 1) the beginning of the calendar month that is immediately after the initial 12 month term, and 2) the beginning of the calendar month that is closest to but at least thirty (30) calendar days after PG&E received the Cancellation of Contract.

VII. TERMINATION

A. Termination for Default. PG&E may immediately terminate this Agreement upon written notice to Aggregator if Aggregator breaches any material obligation under this Agreement and fails to cure such breach within fifteen (15) calendar days after receiving written notice of the breach. Customer must notify PG&E upon curing identified breach

B. Effect of Termination. Upon an issuance of a notice to terminate this Agreement, PG&E shall have the right to solicit the direct participation in the CBP of customers represented by Aggregator who are eligible to participate directly in the CBP. All Service Agreements will be removed from the Aggregator's portfolio upon the effective date of the termination.

VIII. INDEMNIFICATION

A. Indemnification of PG&E. To the fullest extent permitted by law, Aggregator shall indemnify, defend and hold harmless PG&E, and its parent company, subsidiaries, affiliates and their respective shareholders, officers, directors, employees, agents, representatives, successors and assigns (collectively, the "Indemnified Parties"), from and against any and all claims, actions, suits, proceedings, losses, liabilities, penalties, fines, damages, costs or expenses, including without limitation reasonable attorneys' fees (Claim), resulting from (a) any breach of the representations, warranties, covenants and obligations of Aggregator under this Agreement, (b) any act or omission of Aggregator, whether based upon Aggregator's negligence, strict liability or otherwise, in connection with the performance of this Agreement, or (c) any third party claims of any kind, whether based upon negligence, strict liability or otherwise, arising out of or connected in any way to Aggregator's performance or nonperformance under this Agreement.

B. Defense of Claim. If any Claim is brought against the Indemnified Parties, Aggregator shall assume the defense of such Claim, with counsel reasonably acceptable to the Indemnified Parties, unless in the opinion of counsel for the Indemnified Parties a conflict of interest between the Indemnified Parties and Aggregator may exist with respect to such Claim. If a conflict precludes Aggregator from assuming the defense, then Aggregator shall reimburse the Indemnified Parties on a monthly basis for the

Indemnified Parties' reasonable defense costs through separate counsel of the Indemnified Parties' choice. If Aggregator assumes the defense of the Indemnified Parties with acceptable counsel, the Indemnified Parties, at their sole option and expense, may participate in the defense with counsel of their own choice without relieving Aggregator of any of its obligations hereunder.

C. Survival. Aggregator's obligation to indemnify the Indemnified Parties shall survive the expiration or termination of this Agreement.

IX. NOTICES

A. Mailing Address. Except for payments, which shall be made pursuant to Section IV, any formal notice, request, or demand required or permitted under this Agreement shall be given in writing by PG&E and Aggregator, and shall be (a) mailed by first-class mail, (b) mailed by registered, certified, (c) mailed by overnight mail, (d) delivered by hand, or (e) faxed with confirmation as set forth below, to the other Party as indicated below, or to such other address as the parties may designate by written notice.

To Aggregator:

Phone: _____
Facsimile: _____

To PG&E:

Phone: _____
Facsimile: _____

B. Notices. Notices delivered by hand shall be deemed received when delivered. Notices sent by facsimile shall be deemed received upon receipt but must be confirmed by mail within seventy-two (72) hours. Notices delivered by first class mail shall be deemed received forty-eight (48) hours (not including weekends and holidays) after deposit, postage prepaid, in the U.S. mail, or if certified, registered or overnight mailing is used, as acknowledged by the signed receipt of mailing.

X. CONFIDENTIALITY

A. Confidentiality. Aggregator shall not disclose any Confidential Information obtained pursuant to this Agreement to any third party, including any affiliates of Aggregator, without the express prior written consent of PG&E. As used herein, the term "Confidential Information" means proprietary business, financial and commercial information pertaining to PG&E, customer names and other information related to customers, including energy usage data (Customer Information), any trade secrets and any other information of a similar nature, whether or not reduced to writing or other tangible form. Confidential Information shall not include: (a) information known to Aggregator prior to obtaining the same from PG&E; (b) information in the public domain at the time of disclosure by Aggregator; (c) information

obtained by Aggregator from a third party who did not receive the same, directly or indirectly, from PG&E; or (d) information approved for release by express prior written consent of an authorized representative of PG&E.

B. Use of Confidential Information. Aggregator hereby agrees that it shall use the Confidential Information solely for the purpose of performing under this Agreement. Aggregator agrees to use at least the same degree of care Aggregator uses with respect to its own proprietary or confidential information, which in any event shall result in a reasonable standard of care to prevent unauthorized use or disclosure of the Confidential Information.

C. Authorized Disclosure. Notwithstanding any other provisions of this Section Aggregator may disclose any of the Confidential Information in the event, but only to the extent, that, based upon advice of counsel, Aggregator is required to do so by the disclosure requirements of any law, rule, regulation or any order, decree, subpoena or ruling or other similar process of any court, governmental agency or regulatory authority. Prior to making or permitting any such disclosure, Aggregator shall provide PG&E with prompt written notice of any such requirement so that PG&E (with Aggregator's assistance if requested by PG&E) may seek a protective order or other appropriate remedy.

D. Term. The confidentiality provisions set forth in this Section shall remain in full force and effect with respect to any Confidential Information until the date that is five (5) years after the date of PG&E's disclosure of such Confidential Information to Aggregator pursuant to this Agreement; provided, further, that such confidentiality provisions shall remain in full force and effect with respect to any Customer Information in perpetuity.

E. Remedies. The Parties acknowledge that the Confidential Information is valuable and unique, and that damages would be an inadequate remedy for breach of this Section and the obligations of Aggregator are specifically enforceable. Accordingly, the Parties agree that in the event of a breach or threatened breach of this Section by Aggregator, PG&E shall be entitled to seek an injunction 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, monetary damages or any other legal or equitable remedy available to PG&E.

XI. MISCELLANEOUS

A. Assignment. This Agreement, and the rights and obligations granted and/or obtained by Aggregator hereunder, shall not be further transferred or assigned by Aggregator without the prior written consent of PG&E. Any assignment in violation of this section shall be void.

B. Independent Contractor. Aggregator shall perform its obligations under this Agreement as an independent contractor, and no principal-agent or employer-employee relationship or joint venture or partnership shall be created with PG&E.

C. Choice of Law. This Agreement shall be carried out and interpreted under the laws of the State of California, without regard to any conflict of law principles thereof. Except for matters and disputes with respect to which the CPUC is the proper venue for dispute resolution pursuant to applicable law or this Agreement, the federal and state courts located in San Francisco, California shall constitute the sole proper venue for resolution of any matter or dispute hereunder. The Parties submit to the exclusive jurisdiction of such courts with respect to such matters and disputes.

D. Resolution of Disputes. Any dispute arising between the Parties relating to the interpretation of this Agreement or to the performance of a Party's obligations hereunder shall be reduced to writing and

referred to the Parties' designated representative for resolution. The Parties shall be required to meet and confer in an effort to resolve any such dispute.

E. Waiver. Any failure or delay by either Party to exercise any right, in whole or part, hereunder shall not be construed as a waiver of the right to exercise the same, or any other right, at any time thereafter.

F. CPUC Jurisdiction: This Agreement shall be subject to all of PG&E's applicable tariffs on file with and authorized by the Commission and shall at all times be subject to changes or modifications as the Commission may, from time to time, direct in the exercise of its jurisdiction.

G. Entire Agreement; Amendments. This Agreement, including the Attachments listed below, sets forth the entire understanding of the Parties as to the subject matter hereof, and supersedes any prior discussions, offerings, representations or understanding (whether written or oral), and shall only be superseded by an instrument in writing executed by both Parties. This Agreement shall not be modified by course of performance, course of conduct or usage of trade.

Attachment A: Schedule E-CBP

Attachment B: Notice to Add or Delete Customers Participating in the Capacity Bidding Program

H. Survival. Notwithstanding the expiration or termination of this Agreement, the Parties shall continue to be bound by the provisions of this Agreement, which, by their nature, survive completion or termination.

I. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

J. Headings. The headings contained in this Agreement are solely for the convenience of the Parties and shall not be used or relied upon in any manner in the construction or interpretation of this Agreement.

IN WITNESS WHEREOF, the authorized representatives of PG&E and Aggregator have executed this Agreement as of the Effective Date.

AGGREGATOR

PACIFIC GAS AND ELECTRIC COMPANY

Signature: _____

Signature: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

ATTACHMENT A
SCHEDULE E-CBP

ATTACHMENT B

Notice to Add or Delete Customers Participating in the Capacity Bidding Program



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**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	