



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