

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE

SAN FRANCISCO, CA 94102-3298



January 5, 2012

**Advice Letter 2958-G-A/3344-E-A**

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

**Subject: Supplemental – Modifications to ClimateSmart Charity Servicing  
Agreement and Revisions to Gas and Electric ClimateSmart  
Balancing Accounts**

Dear Mr. Cherry:

Advice Letter 2958-G-A/3344-E-A is effective December 15, 2011 per Resolution G-3429.

Sincerely,

A handwritten signature in dark ink, appearing to read "Edward F. Randolph".

Edward F. Randolph, Director  
Energy Division

November 9, 2011

**Advice 2958-G-A/3344-E-A**

(Pacific Gas and Electric Company ID U 39 M)

Public Utilities Commission of the State of California

**Subject: Supplemental: Modifications to ClimateSmart Charity Servicing Agreement and Revisions to Gas and Electric ClimateSmart Balancing Accounts**

Pacific Gas and Electric Company (PG&E) hereby requests authorization to (i) execute a modified Servicing Agreement (Agreement) between PG&E and the ClimateSmart™<sup>1</sup> Charity (Charity) that would implement tax rulings received from the Internal Revenue Service (IRS) and Franchise Tax Board (FTB) that make participating customers' ClimateSmart program payments eligible for a tax deduction as charitable contributions among other things, and (ii) revise PG&E's gas and electric ClimateSmart Balancing Accounts consistent with the terms of the Servicing Agreement.

This supplemental advice letter supersedes Advice 2958-G/3344-E in its entirety.

**Purpose**

In accordance with the Energy Division's (ED) June 27, 2007, approval letter for AL 2813-G/2999-E, this advice filing contains the results of the investigation into the tax-deductibility of ClimateSmart premiums, specified in Ordering Paragraph (OP) 18 of Decision (D.) 06-12-032. Advice 2958-G/3344-E was suspended on October 28, 2008, requiring further staff review. Since the advice letter suspension, PG&E and Energy Division have worked collaboratively to clarify the terms within the Agreement and are reflected herein.

The IRS and FTB rulings approved a structure under which participating customers' ClimateSmart payments are eligible for a tax deduction as charitable contributions. This structure requires PG&E to act as the "billing agent" for the recently-created ClimateSmart Charity. The proposed Servicing Agreement between the utility and the Charity, effectuates this arrangement.

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<sup>1</sup> ClimateSmart™ is the trademarked name for PG&E's Climate Protection Tariff approved by the CPUC in Decision (D.) 06-12-032.

Accordingly, this advice letter includes three main sections. The first section provides a brief procedural background and reports on the results of PG&E's investigation into tax deductibility for customer contributions. The second section summarizes the proposed Servicing Agreement between PG&E and the Charity along with modifications as agreed upon between the ED and PG&E since the suspension of Advice 2958-G/334-E. The third section explains the proposed changes to PG&E's gas and electric ClimateSmart Balancing Accounts to make them consistent with the terms of the Servicing Agreement.

### **Background and Report on Results of Investigation**

In D. 06-12-032, the California Public Utilities Commission (CPUC) approved PG&E's Climate Protection Tariff, later renamed the ClimateSmart program. The ClimateSmart program enables PG&E customers to balance out the greenhouse gas (GHG) emissions associated with their own natural gas and electric energy use by paying a small monthly premium on their PG&E bill. In OP 18 of D.06-12-032, the Commission encouraged PG&E to "investigate the feasibility of residential CPT [Climate Protection Tariff] customers deducting their premiums on their tax returns."

On March 1, 2007, PG&E filed AL 2813-G/2999-E, describing that it was forming a new public charity to implement and administer the ClimateSmart program in order to enable customers to deduct their ClimateSmart premium payments. Under PG&E's proposal, the utility would collect and remit revenues to the Charity, effectively acting as "agent" for the new charity. On that same date, PG&E formed the ClimateSmart Charity as a California Nonprofit Public Benefit Corporation. The Charity was organized, and shall be operated, exclusively for charitable purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986. The specific purpose for which the Charity was organized is to reduce the level of GHG emissions in the earth's atmosphere through forestry sequestration and, as appropriate, other GHG reduction projects. On June 27, 2007, the Energy Division approved PG&E's plan and directed PG&E to file an advice letter no later than 20 days following receipt of both IRS and FTB rulings.

The Charity filed an Application for Recognition of Exemption with the IRS on September 21, 2007, requesting a determination that the Charity is exempt from federal income tax and voluntary contributions to Charity constitute tax-deductible contributions under federal law. On December 17, 2007, the IRS issued a favorable ruling stating, "we have determined that [the Charity is] exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code. Contributions to [the Charity] are deductible under section 170 of the Code." The effective date of the exemption is March 1, 2007.

Under a California law effective January 1, 2008, once the IRS determines that an organization has tax-exempt status under Section 501(c)(3) of the Internal Revenue Code, that determination shall exempt the organization from state taxes

as well. Accordingly, on January 23, 2008, the Charity submitted to the FTB a copy of the determination issued by the IRS, seeking confirmation of state tax exemption. On May 12, 2008, the FTB confirmed that the Charity had tax-exempt status under state law as well.

During this process, on January 31, 2008, after receipt of the IRS ruling, the Charity notified all participating customers that premiums paid during 2007 and in the future, may be eligible for a tax deduction. As well, in early May 2008, PG&E began discussing with the Energy Division the terms of the proposed Servicing Agreement that is attached. In order to allow the Energy Division additional time to review PG&E's proposal, PG&E sought, and the Energy Division approved, various extensions to the deadline for submittal of an advice letter with the proposed Agreement. Advice 2958-G.3344-E was filed on September 24, 2008 with an initial proposed Agreement, but was suspended on October 23, 2008 pending further review and discussion between the ED and PG&E. The Advice Letter being filed today incorporates agreed upon modifications to the Agreement, along with corresponding changes to the ClimateSmart Balancing Accounts.

### **Servicing Agreement**

As mentioned above, the proposed Agreement would define the utility's "agency" role in collecting and remitting to the Charity the premiums paid by participating customers, as well as responsibilities the charity must undertake at the request of the Utility (Attachment 2). The term of the Servicing Agreement is defined to commence when it has been approved by the Commission and thereafter executed by PG&E and the ClimateSmart Charity.

Under the proposed Agreement, the utility will maintain a segregated account for participating customer's contributions to the ClimateSmart program. The utility will remit payments to the Charity from the Segregated Account on a monthly basis. These remittances will be based on billings, less actual uncollectibles.

The utility will continue to pay the Charity interest at the cost of capital rate (as required by the CPUC decision) on amounts collected in the Segregated Account but not yet remitted to the Charity. Interest gained by the Charity at prevailing market rates would be kept by the Charity and used for GHG emission reduction projects.

The scope of the Agreement addresses defined terms and conditions, the billing agency relationship and services, Charity obligations, proprietary information and confidentiality, audit rights by the utility, and identification of certain provisions which will extend beyond the term of the Agreement.

**Preliminary Statement Changes**

The Gas Preliminary Statement Part BS and Electric Preliminary Statement Part EM (Attachment 1) have been revised in accordance with the proposed Servicing Agreement as follows:

- Purpose and Applicability sections are updated to reflect that under the provisions of the Servicing Agreement, the ClimateSmart program contributions will be remitted on a monthly basis to the Charity.
- Rate section has been revised to clarify that the ClimateSmart Charge is associated with the Premium Subaccount, and is not a rate component that recovers the balance in the account. The ClimateSmart rate of 0.00254 per kWh and 0.06528 per therm will remain in effect until December 31, 2011 as authorized in D.10-10-025.
- Premium Subaccount entries have been revised to:
  - clarify that ClimateSmart Charges are recorded in this account, net of actual customer accounts written-off (4.a.i)
  - add a provision to record donations made to the ClimateSmart Charity (4.a.ii)
  - add an entry to transfer monthly billed ClimateSmart Charges and donations to the ClimateSmart Charity(4.a.iii)
  - add an entry to record a transfer into or out of this subaccount, as authorized by the CPUC (4.a.iv)
  - add an entry if PG&E incurs an expense for GHG-reduction projects to the extent that contracts are not assigned to the ClimateSmart Charity, as described under the Servicing Agreement (4.a.v)
  - clarify the interest entry that is used in this calculation (4.a.vi)

**Balancing Account Continuation**

The ClimateSmart Program will cease on January 1, 2012 in accordance with the two year extension authorized by D.10-10-025 on October 28, 2010. However, the gas and electric ClimateSmart Balancing Accounts will continue in effect to record other program expenses including the annual Charitable tax letters and Comprehensive Program Evaluation as ordered by the Commission in D.10-10-025 (Ordering Paragraph 5), and to handle any billing adjustments in accordance with Rule 17.

**Protests**

Energy Division staff has informed PG&E that because there were no protests to Advice 2958-G/3344-E as originally filed that pursuant to GO 96-B General Rule 7.5.1 Energy Division will not be reopening the protest period for this supplemental advice letter filing.

**Effective Date**

PG&E requests the changes to the Preliminary Statements be effective as of October 30, 2008, as originally requested in Advice 2958-G/3344-E.

**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 and on the service list for A.09-05-016. Address changes to the General Order 96-B service list and all electronic approvals should be sent to e-mail [PGETariffs@pge.com](mailto:PGETariffs@pge.com). For changes to any other service list, please contact the Commission's Process Office at (415) 703-2021 or at [Process\\_Office@cpuc.ca.gov](mailto:Process_Office@cpuc.ca.gov). Advice letter filings can also be accessed electronically at <http://www.pge.com/tariffs/>.

A handwritten signature in cursive script that reads "Brian Cherry". To the right of the signature, there is a small, less legible handwritten mark that appears to be "HAB".

Vice President, Regulatory Relations

Attachment 1: Preliminary Statement Revisions

Attachment 2: Servicing Agreement between ClimateSmart Charity and  
Pacific Gas and Electric Company

cc: Service List A.09-05-016

# 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: Greg Backens

Phone #: 415-973-4390

E-mail: gab4@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) #: **2958-G-A/3344-E-A**

**Tier: 2**

Subject of AL: **Supplemental: Modifications to ClimateSmart Charity Servicing Agreement and Revisions to Gas and Electric ClimateSmart Balancing Accounts**

Keywords (choose from CPUC listing): Compliance, Balancing Account

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: N/A

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: N/A

Resolution Required? ☐ Yes ☒ No

Requested effective date: **October 30, 2008**

No. of tariff sheets: 8

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: Gas Preliminary Statement Part BS, Electric Preliminary Statement Part EM

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 - Regulation and Rates**

**77 Beale Street, Mail Code B10C**

**P.O. Box 770000**

**San Francisco, CA 94177**

**E-mail: PGETariffs@pge.com**

**ATTACHMENT 1  
Advice 2958-G-A**

| <b>Cal P.U.C.<br/>Sheet No.</b> | <b>Title of Sheet</b>                                                          | <b>Cancelling Cal<br/>P.U.C. Sheet No.</b> |
|---------------------------------|--------------------------------------------------------------------------------|--------------------------------------------|
| 29338-G                         | GAS PRELIMINARY STATEMENT PART BS<br>CLIMATESMART BALANCING ACCOUNT<br>Sheet 1 | 24741-G*                                   |
| 29339-G                         | GAS PRELIMINARY STATEMENT PART BS<br>CLIMATESMART BALANCING ACCOUNT<br>Sheet 2 |                                            |
| 29340-G                         | GAS TABLE OF CONTENTS<br>Sheet 1                                               | 29320-G                                    |
| 29341-G                         | GAS TABLE OF CONTENTS<br>Sheet 5                                               | 28779-G                                    |





**GAS PRELIMINARY STATEMENT PART BS**  
**CLIMATESMART BALANCING ACCOUNT**

Sheet 1

**BS. CLIMATESMART BALANCING ACCOUNT – GAS (CSBA-G)**

- |      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                                       |
|------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------|
| 1.   | PURPOSE: The purpose of the gas ClimateSmart Balancing Account (CSBA) is to track ClimateSmart Contributions related to the ClimateSmart program, as authorized in California Public Utilities Commission (CPUC) Decision (D.) 06-12-032, D.10-10-025 and under the provisions of the Servicing Agreement between PG&E and ClimateSmart Charity. The 'Premium Subaccount' will track ClimateSmart charges, donations, and remittances to ClimateSmart Charity for green house gas (GHG)-reduction projects as per the Charity By-Laws. The 'Administration and Marketing Subaccount' will compare administration and marketing (A&M) expenses associated with PG&E's ClimateSmart program to the program budget authorized by the CPUC. Pursuant to D.06-12-032, the gas portion of the A&M revenue requirement, including an allowance for Franchise Fees and Uncollectibles (FF&U), will be collected via distribution rates and recovered in the Core Fixed Cost Account (CFCA) and the Noncore Distribution Fixed Cost Account (NDFCA). | (T)<br> <br> <br> <br> <br>(T)<br>(T) |
| 2.   | APPLICABILITY: The Premium Subaccount of the CSBA-G shall apply to all customers who sign-up for the voluntary ClimateSmart program or persons who otherwise make ClimateSmart program donations that are recorded in this subaccount. The Administration and Marketing Subaccount shall apply to all customer classes, except those specifically excluded by the Commission.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | (T)<br> <br>(T)                       |
| 3.   | RATES: The gas ClimateSmart charge rate associated with the Premium Subaccount of the CSBA is \$0.06528 per therm, or as otherwise approved by the CPUC. The ClimateSmart Charge rate does not include an allowance for FF&U, which is not applicable, and the rate does not recover the balance in this subaccount. The Administrative and Marketing Subaccount does not have a specific rate component.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | (T)<br> <br> <br>(T)                  |
| 4.   | ACCOUNTING PROCEDURE: The following entries shall be made at the end of each month or as applicable:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | (T)<br>(T)                            |
| a.   | Premium Subaccount                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                       |
| i.   | A credit entry equal to the gas ClimateSmart Charges billed to participating ClimateSmart program customers, net of actual customer accounts written off, as applicable.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | (T)<br>(T)                            |
| ii.  | A credit entry equal to ClimateSmart donations not recorded in 4.a.i;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | (T)                                   |
| iii. | A debit entry to record on a monthly basis a transfer of ClimateSmart Contributions from this subaccount to ClimateSmart Charity, equal to the amount recorded in 4.a.i and 4.a.ii and 4.a.vi;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | (T)<br> <br>(T)                       |
| iv.  | A debit or credit entry, as appropriate, to record the transfer into or out of this subaccount as authorized by the CPUC.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | (N)<br>(N)                            |
| v.   | A debit entry equal to the gas portion of expense for GHG-reduction projects incurred by PG&E for contracts entered into by PG&E and not assigned to the ClimateSmart Charity, as applicable under the Servicing Agreement; and                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | (N)<br> <br>(N)                       |
| vi.  | A debit or credit entry, as necessary, equal to the interest on the average of the balance at the beginning of the month and the balance for entries 4.a.i to 4.a.v above at a rate equal to one-twelfth the cost-of-capital rate adopted in PG&E's latest cost-of-capital proceeding.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | (T)<br>(T)                            |

(Continued)



**GAS PRELIMINARY STATEMENT PART BS**  
**CLIMATESMART BALANCING ACCOUNT**

Sheet 2

BS. CLIMATESMART BALANCING ACCOUNT – GAS (CSBA-G) (cont'd)

- |      |                                                                                                                                                                                                                                                                                                                                                              |                       |
|------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------|
| b.   | Administration and Marketing Subaccount                                                                                                                                                                                                                                                                                                                      | (L)                   |
| i.   | A credit entry equal to one-twelfth of the annual Administrative and Marketing amount authorized by the CPUC, excluding FF&U (see corresponding debit entries in the NDFCA and the Distribution Cost Subaccount of the CFCA).                                                                                                                                | (L)<br>I<br>(L)       |
| ii.  | A debit entry equal to the allocated gas portion of administration expenses, including CPUC-authorized expenses for the Climate Action Reserve (CAR, the successor organization to the California Climate Action Registry (CCAR)).                                                                                                                           | (L)<br>(L,T)<br>(L,T) |
| iii. | A debit entry equal to the allocated gas portion of marketing expenses.                                                                                                                                                                                                                                                                                      | (L)                   |
| iv.  | A debit or credit entry, as appropriate, to record the transfer to or from this subaccount as authorized by the CPUC.                                                                                                                                                                                                                                        | (L)<br>(L)            |
| v.   | A debit or credit entry, as necessary, equal to the interest on the average of the balance at the beginning of the month and the balance for entries 4.b.i to 4.b.iv at a rate equal to one-twelfth the interest rate on three-month Commercial Paper for the previous month, as reported in the Federal Reserve Statistical Release, H.15 or its successor. | (L)<br>I<br>I<br>(L)  |



**Pacific Gas and Electric Company**  
San Francisco, California  
U 39

Revised  
Cancelling Revised

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

29340-G  
29320-G

## GAS TABLE OF CONTENTS

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(Continued)

Advice Letter No: 2958-G-A  
Decision No.

Issued by  
**Brian K. Cherry**  
Vice President  
Regulation and Rates

Date Filed November 9, 2011  
Effective December 15, 2011  
Resolution No. G-3429



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(T)

(Continued)

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

**Title of Sheet**

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

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|         |                                                                                        |          |
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# **ELECTRIC PRELIMINARY STATEMENT PART EM** **CLIMATESMART BALANCING ACCOUNT**

Sheet 1

## **EM. CLIMATESMART BALANCING ACCOUNT – ELECTRIC (CSBA-E)**

1. **PURPOSE:** The purpose of the electric ClimateSmart Balancing Account (CSBA-E) is to track ClimateSmart Contributions related to the ClimateSmart program, as authorized in California Public Utilities Commission (CPUC) Decision (D.) 06-12-032, D.10-10-025 and under the provisions of the Servicing Agreement between PG&E and ClimateSmart Charity. The 'Premium Subaccount' will track ClimateSmart charges and donations and remittances to ClimateSmart Charity for greenhouse gas (GHG)-reduction projects as per the Charity By-Laws. The 'Administration and Marketing Subaccount' will compare administration and marketing (A&M) expenses associated with PG&E's ClimateSmart program to the program budget authorized by the CPUC. Pursuant to D.06-12-032, the electric portion of the A&M revenue requirement, including an allowance for Franchise Fees and Uncollectibles (FF&U), will be collected via distribution rates and recovered in the Distribution Revenue Adjustment Mechanism (DRAM). (T)  
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 (T)
2. **APPLICABILITY:** The Premium Subaccount of the CSBA-E shall apply to all customers who sign-up for the voluntary ClimateSmart program or persons who otherwise make ClimateSmart program donations that are recorded in this subaccount. The Administration and Marketing Subaccount shall apply to all customer classes, except those specifically excluded by the Commission. (T)  
 I  
 (T)
3. **RATES:** The electric ClimateSmart Charge rate associated with the Premium Subaccount of the CSBA is \$0.00254 per kWh, or as otherwise approved by the CPUC. The ClimateSmart Charge rate does not include an allowance for FF&U, which is not applicable, as the rate does not recover the balance in this subaccount. The Administrative and Marketing Subaccount does not have a specific rate component. (T)  
 I  
 I  
 (T)
4. **ACCOUNTING PROCEDURE:** The following entries shall be made at the end of each month or as applicable: (T)  
 (T)  
 a. Premium Subaccount  
 i. A credit entry equal to the electric ClimateSmart Charges billed to participating ClimateSmart program customers, net of actual customer accounts written-off, as applicable;. (T)  
 (T)  
 ii. A credit entry equal to ClimateSmart donations not recorded in 4.a.i; (T)  
 iii. A debit entry to record, on a monthly basis a transfer of ClimateSmart Contributions from this subaccount to ClimateSmart Charity, equal to the amount recorded in 4.a.i, 4.a.ii and 4.a.vi; (T)  
 I  
 (T)  
 iv. A debit or credit entry, as appropriate, to record a transfer into or out of this subaccount, as authorized by the CPUC; (T)  
 (T)  
 v. A debit entry equal to the electric portion of expense for GHG-reduction projects incurred by PG&E for contracts entered into by PG&E and not assigned to the ClimateSmart Charity, as applicable under the Servicing Agreement; and (T)  
 I  
 (T)  
 vi. A debit or credit entry, as necessary, equal to the interest on the average of the balance at the beginning of the month and the balance for entries 4.a.i to 4.a.v above at a rate equal to one-twelfth the cost-of-capital rate adopted in PG&E's latest cost-of-capital proceeding. (T)  
 I  
 (T)

(Continued)



**ELECTRIC PRELIMINARY STATEMENT PART EM**  
**CLIMATESMART BALANCING ACCOUNT**

Sheet 2

EM. CLIMATESMART BALANCING ACCOUNT – ELECTRIC (CSBA-E) (cont'd)

- |      |                                                                                                                                                                                                                                                                                                                                                              |                                        |
|------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------|
| b.   | Administration and Marketing Subaccount                                                                                                                                                                                                                                                                                                                      | (L)                                    |
| i.   | A credit entry equal to one-twelfth of the annual Administrative and Marketing amount authorized by the CPUC, excluding FF&U (see corresponding debit entry in the DRAM).                                                                                                                                                                                    | (L)<br>(L,T)                           |
| ii.  | A debit entry equal to the allocated electric portion of administration expenses, including CPUC-authorized expenses for the Climate Action Reserve (CAR, the successor organization to the California Climate Action Registry (CCAR)).                                                                                                                      | (L)<br>(L,T)<br>(L,T)<br>(L,T)         |
| iii. | A debit entry equal to the allocated electric portion of marketing expenses.                                                                                                                                                                                                                                                                                 | (L)<br>(L)                             |
| iv.  | A debit or credit entry, as appropriate, to record the transfer to or from this subaccount as authorized by the CPUC.                                                                                                                                                                                                                                        | (L)<br>(L)                             |
| v.   | A debit or credit entry, as necessary, equal to the interest on the average of the balance at the beginning of the month and the balance for entries 4.b.i to 4.b.iv at a rate equal to one-twelfth the interest rate on three-month Commercial Paper for the previous month, as reported in the Federal Reserve Statistical Release, H.15 or its successor. | (L)<br>I<br>(L)<br>(L,T)<br>(L)<br>(L) |



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SERVICING AGREEMENT

BETWEEN

CLIMATESMART CHARITY

And

PACIFIC GAS AND ELECTRIC COMPANY

THIS AGREEMENT HAS BEEN FILED WITH AND APPROVED BY THE CALIFORNIA PUBLIC UTILITIES COMMISSION (“COMMISSION”) FOR USE BETWEEN CLIMATESMART CHARITY (“CHARITY”) AND PACIFIC GAS AND ELECTRIC COMPANY (“UTILITY”).

Date of Commission Approval:

Effective Date:

November 8, 2011

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## SERVICING AGREEMENT

**THIS SERVICING AGREEMENT** ( “Servicing Agreement”) concerns the ClimateSmart Charity, a California Nonprofit Public Benefit Corporation (“Charity”), and Pacific Gas and Electric Company, a California corporation (“Utility”). Charity and Utility are sometimes collectively referred to as the “Parties” and individually referred to as a “Party.”

### BACKGROUND

WHEREAS, on December 14, 2006, the California Public Utilities Commission (“Commission”) approved Utility’s request to establish a Climate Protection Tariff, now known as the ClimateSmart<sup>TM</sup> Program, under which participants make voluntary contributions toward projects to reduce or avoid greenhouse gas emissions typically in order to make those participants’ electricity and gas use “climate neutral”;

WHEREAS, on March 1, 2007, Utility formed Charity as the first step in the process of implementing a directive from the Commission to investigate and, as appropriate, obtain tax deductible status under federal and state laws for voluntary residential contributions made pursuant to the ClimateSmart<sup>TM</sup> Program;

WHEREAS, the Articles of Incorporation of Charity define its purpose as to pursue “the ClimateSmart program authorized by the California Public Utilities Commission in order to reduce the level of greenhouse gases in the earth’s atmosphere through forestry sequestration and, as appropriate, other greenhouse gas projects”;

WHEREAS, in May 2007, Utility commenced offering the ClimateSmart<sup>TM</sup> Program to its employees, and in June 2007, Utility commenced offering the ClimateSmart<sup>TM</sup> Program to its other customers;

WHEREAS, on December 17, 2007, the Internal Revenue Service (“IRS”), issued its determination that Charity is exempt from federal income tax and voluntary contributions to Charity constitute tax-deductible charitable contributions under federal law;

WHEREAS, on December 21, 2007, Utility and Charity created an escrow account and, on December 27, 2007, Utility transferred into that escrow account an estimate of 2007 ClimateSmart<sup>TM</sup> Program contributions in order to enhance the tax-deductibility of such contributions in 2007;

WHEREAS, for each calendar year since 2007, Utility has transferred into the above-mentioned escrow account an estimate of the ClimateSmart<sup>TM</sup> Program contributions for such years in order to enhance the tax-deductibility of such contributions in these years;

WHEREAS, Utility has executed contracts with third-parties for greenhouse gas reductions under the ClimateSmart<sup>TM</sup> Program that may eventually be assigned to Charity; and

WHEREAS, Utility and Charity seek through this Servicing Agreement to establish a formal arrangement under which Utility would act as billing agent for Charity, and Utility would segregate and transfer to Charity customer contributions to the ClimateSmart<sup>TM</sup> Program,

**NOW, THEREFORE,** Charity and Utility agree as follows:

## **Section 1. Definitions.**

The following terms, when used herein (and in the attachment hereto) with initial capitalization, shall have the meaning specified in this Section 1. Certain additional terms are defined in the attachments hereto. The singular shall include the plural and the masculine shall include the feminine and neuter, and *vice versa*. “Includes” or “including” shall mean “including without limitation.” References to a section or attachment shall mean a section or attachment of this Servicing Agreement, as the case may be, unless the context requires otherwise, and reference to a given agreement or instrument shall be a reference to that agreement or instrument as modified, amended, supplemented or restated through the date as of which such reference is made (except as otherwise specifically provided herein). Unless the context otherwise requires, references to Applicable Laws or Applicable Tariffs shall be deemed references to such laws or tariffs as they may be amended, replaced or restated from time to time. References to the time of day shall be deemed references to such time as measured by prevailing Pacific time.

- 1.1. ACH** – Automated Clearing House, a nationwide payment and collection system which provides for the electronic distribution and settlement of funds.
- 1.2. Applicable Commission Orders** – Such rules, regulations, decisions, opinions or orders as the Commission may issue or promulgate from time to time, which further define the rights and obligations of the Parties under this Servicing Agreement.
- 1.3. Applicable Law** – Applicable Commission Orders and any other applicable statute, constitutional provision, rule, regulation, ordinance, order, decision or code of a Governmental Authority.
- 1.4. Applicable Tariffs** – Utility’s tariffs, including all rules, rates, schedules and preliminary statements, governing electric energy service to Customers in Utility’s service territory, as filed with and approved by the Commission.
- 1.5. Assign(s)** – Assign(s) shall refer to any party or parties to whom this Servicing Agreement has been duly assigned pursuant to Section 15.1.
- 1.6. Business Days** -- Regular Monday through Friday weekdays which are customary working days, excluding holidays.

- 1.7. Business Hours** – The period on a Business Day from 9:00 a.m. until 5:00 p.m.
- 1.8. Charity’s Agent** – Charity’s Agent shall have the meaning set forth in Section 9.2(b).
- 1.9. Not Used.**
- 1.10. ClimateSmart™ Charges** – Amounts authorized to be collected from Customers pursuant to the Climate Protection Tariff, or its successor(s).
- 1.11. ClimateSmart™ Donations** – Donations made by persons to the ClimateSmart™ Program separate from the payments made by Customers attributable to the ClimateSmart™ Charges presented on Customer bills.
- 1.12. ClimateSmart™ Program** – the program, adopted by the Commission in Decision 06-12-032 and extended by the Commission in Decision 10-10-025, previously known as the Climate Protection Tariff, now known as the ClimateSmart™ Program, under which participants can make voluntary contributions toward projects to reduce or avoid greenhouse gas emissions.
- 1.13. ClimateSmart™ Contributions** – ClimateSmart™ Charges, less Write-off, collected from Customers and ClimateSmart™ Donations.
- 1.14. Commission** – The California Public Utilities Commission.
- 1.15. Confidential Information** – Confidential Information shall have the meaning set forth in Section 7.1(b).
- 1.16. Customer** – An end-use customer in Utility’s service area, including the Utility.
- 1.17. Discloser** – Discloser shall have the meaning set forth in Section 7.1(b).
- 1.18. Effective Date** – The date this Servicing Agreement is effective in accordance with Section 15.11, as such date is set forth on the cover page hereof.
- 1.19. Escrow** – Escrow shall have the meaning set forth in Section 4.4.
- 1.20. Escrowed Amounts** – Escrowed Amounts shall have the meaning set forth in Section 4.4.
- 1.21. Not Used.**
- 1.22. Governmental Authority** – Any nation or government, any state or other political subdivision thereof, and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to a government, including the Commission.
- 1.23. Not Used.**

- 1.24. Not Used.**
- 1.25. Not Used.**
- 1.26. Interest Rate** – Interest Rate shall have the meaning set forth in Section 4.2.
- 1.27. Officers** – The Chief Executive Officer, the Chief Financial Officer and such other officers of the Charity as may be prescribed by the bylaws of the Charity.
- 1.28. Premium Subaccounts** – The Premium Subaccounts under the ClimateSmart Balancing Accounts for Electricity and Gas (CSBA-E and CSBA-G) approved by the Commission for the Utility’s use in comparing collections from persons participating in the ClimateSmart™ Program against expenses for greenhouse gas reduction projects.
- 1.29. Recipient** – Recipient shall have the meaning set forth in Section 7.1(b).
- 1.30. Remittance** – A payment by Utility to Charity or its Assign(s) in accordance with this Servicing Agreement.
- 1.31. Segregated Account** – Segregated Account shall have the meaning set forth in Section 4.1.
- 1.32. Servicing Agreement** – This Servicing Agreement, including all attachments hereto.
- 1.33. State** – The State of California.
- 1.34. Term** – The term of this Servicing Agreement as set forth in Section 6.1.
- 1.35. Utility’s Agent** – Utility’s Agent shall have the meaning set forth in Section 9.3(b).
- 1.36. Utility Charges** – Charges incurred by a Customer for services and products provided by Utility to the Customer, as approved by the Commission and, as applicable, the Federal Energy Regulatory Commission or other Governmental Authority.
- 1.37. Write-off** – Write-off shall have the meaning set forth in Section 4.1.

The terms used in the attachments, but not specifically defined herein or elsewhere in this Servicing Agreement, should be understood by the Parties to have their ordinary meanings.

## **Section 2. Billing Agency Relationship.**

In accordance with the terms hereof, Utility agrees to act as the billing agent for the Charity with respect to ClimateSmart™ Charges and ClimateSmart™ Donations. All ClimateSmart™ Contributions shall constitute property of the Charity.

### **Section 3. Billing Services.**

#### **3.1. Provision of Services by Utility.**

- (a) For the benefit of Charity, Utility shall provide Billing Services relating to the calculation and presentation to customers of ClimateSmart™ Charges and to the collection of ClimateSmart™ Charges from customers. Such Billing Services shall be performed in accordance with Service Attachment 1 to this Servicing Agreement. If Utility elects to provide Billing Services through a third party, Utility shall bill any applicable ClimateSmart™ Charges through, and collect such charges from, the third party on behalf of Charity, and remit the same to Charity as directed elsewhere in this Servicing Agreement.
- (b) On behalf of Charity, Utility shall also collect, segregate and remit to Charity (as provided for in Section 4) any ClimateSmart™ Donations received by the Utility.
- (c) On behalf of Charity, Utility shall (i) follow its customary standards, policies and procedures in performing its duties hereunder and (ii) perform its duties hereunder using the same degree of care and diligence that Utility exercises for its own account.

#### **3.2. Customer Information.**

Utility shall provide Charity, upon Charity's request, the names, addresses and contact information of persons participating in the ClimateSmart™ Program. Utility shall also provide Charity, upon Charity's request, data concerning the individual contributions made by such persons and the periods during which such contributions were made.

#### **3.3. Customer Inquiries.**

Utility shall address all Customer inquiries regarding the ClimateSmart™ Charges, the ClimateSmart™ Program or the Charity. In extraordinary circumstances, Utility will refer Customer inquiries regarding the Charity to the Charity or its designee in a manner to be agreed upon by the Parties.

### **Section 4. Remittance of ClimateSmart™ Contributions.**

#### **4.1. Calculation and Segregation of ClimateSmart™ Contributions.**

Within ten (10) Business Days of the last calendar day of each calendar month, Utility shall calculate and record into the applicable Premium Subaccounts (collectively, the "Segregated Account") the ClimateSmart™ Contributions corresponding to the prior calendar month. Should Utility make any deposits into the Segregated Account based on the amount of ClimateSmart™ Charges billed to Customers, Utility shall have the



right to reduce those deposits by an amount corresponding to ClimateSmart™ Charges that have not been collected from customers (“Write-off”). The Write-off amount shall be based on actual data, unless the Parties agree in writing to use Write-off amounts of zero instead of the actual amount.

#### **4.2. Interest.**

Utility shall pay interest for the benefit of the Charity on the ClimateSmart™ Contributions held in the Segregated Account at the interest rate prescribed by the Commission in Decision 06-12-032 or such rate as may be later prescribed by the Commission (“Interest Rate”), until such amounts are remitted to the Charity.

#### **4.3. Remittance of ClimateSmart™ Contributions.**

Within fifteen (15) Business Days of the last calendar day of each calendar month, Utility shall remit to Charity all ClimateSmart™ Contributions and applicable interest collected in the Segregated Account.

#### **4.4. Reconciliation of Escrowed Amounts.**

On or about December 27, 2007, Utility transferred to a bank account for disbursement only by Charity and Utility (the “Escrow”) an amount of \$719,000 as an approximation of ClimateSmart™ Contributions collected during calendar year 2007. This amount together with those other amounts placed by Utility into the Escrow shall collectively be referred to as the “Escrowed Amounts.” Within ten (10) Business Days of the effective date of this Servicing Agreement, the Parties shall arrange to have transferred to the Charity the remaining amount, if any, of the Escrowed Amounts. Furthermore, concurrent with the transfer of such remaining amount to the Charity, the Utility shall debit the Segregated Account by the same amount transferred to the Charity.

#### **4.5. Not Used.**

#### **4.6. Remittances in Error.**

If either Party determines that Utility has remitted amounts to Charity in error, the discovering Party shall provide notice of such event to the other Party (accompanied by an explanation of the facts surrounding such erroneous remittance). The Party receiving the notice shall review such notice and information as soon as practicable. In the case of an over-remittance, Charity shall promptly repay such funds if and to the extent Charity agrees with Utility, such agreement not to be unreasonably withheld or delayed. In the case of an under-remittance, Utility shall pay such funds in accordance with Section 4.7 of this Servicing Agreement if and to the extent Utility agrees with Charity, such agreement not to be unreasonably withheld or delayed.

#### **4.7. Under-Remittances and Late Remittances.**

Remittances not made, in whole or in part, to Charity by Utility on the date due shall bear interest at the Interest Rate from the first Business Day after the due date until paid.

#### **4.8. Manner of Remittances.**

Utility shall make Remittances to Charity via ACH or wire transfer, as may be agreed upon by the Parties. Each Remittance shall be accompanied by a written report in a format to be agreed upon by the Parties.

### **Section 5. Charity Obligations.**

Charity shall be required to use the Remittances provided under this Servicing Agreement and all amounts the Charity earns on those Remittances to reduce or avoid greenhouse gas emissions under the ClimateSmart<sup>TM</sup> Program as it was adopted by the Commission in Decision 06-12-032 and extended by the Commission in Decision 10-10-025, and as the ClimateSmart<sup>TM</sup> Program may be modified by the Commission.

### **Section 6. Term and Termination; Events of Default; Survival of Certain Provisions.**

#### **6.1. Term.**

The term of this Servicing Agreement (the “Term”) shall commence on the Effective Date and shall terminate on the earlier of (a) one (1) year after the last date ClimateSmart<sup>TM</sup> Charges are imposed on Customers, or (b) the termination of this Servicing Agreement pursuant to this Section 6.

#### **6.2. Default by Utility.**

Utility agrees that it shall be in default under this Servicing Agreement upon:

- (a) any failure by Utility to remit to Charity or its Assign(s) any required Remittance in the manner and at the time specified in this Servicing Agreement that continues un-remedied for three (3) Business Days after the earlier of the day Utility receives written notice thereof from Charity or the day the responsible manager at Utility first has actual knowledge of such failure; or
- (b) any failure by Utility to duly observe or perform in any material respect any other term or condition of Utility set forth in this Servicing Agreement, which failure (i) materially and adversely affects the interests or rights of Charity or its Assign(s), and (ii) continues un-remedied for a period of sixty (60) calendar days after written notice of such failure has been given to Utility by Charity or its Assign(s).

### **6.3. Consequences of Utility Default.**

Upon any default by Utility, Charity may, in addition to exercising any other remedies available under this Servicing Agreement or under Applicable Law, (i) apply to the Commission for appropriate relief; and (ii) apply to the Commission and, if necessary, any court of competent jurisdiction for sequestration and payment to Charity or its Assign(s) of ClimateSmart<sup>TM</sup> Contributions.

### **6.4. Defaults by Charity.**

Charity agrees that it shall be in default under this Servicing Agreement upon:

- (a) any failure by Charity to ensure that its Board of Directors and Officers are comprised solely of Utility employees in good standing;
- (b) any material revision of Charity's Bylaws that would affect the Charity's commitment to support the ClimateSmart Program authorized by the Commission unless such revision is approved in advance by Utility; or
- (c) any failure by Charity to duly observe or perform in any material respect any other term or condition of Charity set forth in this Servicing Agreement, which failure (i) materially and adversely affects the interests or rights of Utility or its Assign(s), and (ii) continues un-remedied for a period of sixty (60) calendar days after written notice of such failure has been given to Charity by Utility or its Assign(s).

### **6.5. Consequences of Charity Default.**

Upon any default by Charity under Section 6.4, Utility may exercise any remedies available under this Servicing Agreement or under Applicable Law, including the right to terminate this Servicing Agreement either in whole or in part (including Service Attachment 1) or any obligation hereunder.

### **6.6. Notification of Default.**

PG&E shall notify the Commission if Utility sends a notice of default to Charity pursuant to Section 6.4 or if Utility receives a notice of default from Charity pursuant to Section 6.2.

### **6.7. Survival of Payment Obligations.**

Upon termination of this Servicing Agreement, Charity and Utility shall remain liable to the other Party for all amounts owing under this Servicing Agreement. Utility shall continue to collect and remit, pursuant to the terms of this Servicing Agreement, any ClimateSmart<sup>TM</sup> Charges billed to Customers before the effective date of termination.

## **6.8. Survival of Other Provisions.**

In addition to Section 6.7, the provisions of Sections 5, 6.2, 6.3, 6.4, 6.5, 6.6, 7, 8, 9.3, 9.4, 9.5, 10, 12, 15.1, 15.8 and 15.9 shall survive the termination of this Servicing Agreement. If any of the provisions of this Servicing Agreement that survive its termination require amendment after termination, the Parties shall negotiate a new agreement that shall be subject to the approval of the Commission.

## **Section 7. Proprietary Information and Confidentiality.**

### **7.1. Proprietary Information.**

- (a) Nothing in this Servicing Agreement shall affect the rights of the Commission to obtain from Utility, pursuant to Applicable Law, information requested by the Commission, including Confidential Information provided by Charity to Utility. Applicable Law, and not this Servicing Agreement, will govern what information the Commission may disclose to third parties.
- (b) Each Party may acquire information and material that is the other Party's confidential, proprietary or trade secret information. As used herein, "Confidential Information" means any and all technical, commercial, financial and customer information disclosed by one Party to the other (or obtained from one Party's inspection of the other Party's records or documents), including any patents, patent applications, copyrights, trade secrets and proprietary information, techniques, sketches, drawings, maps, reports, specifications, designs, records, data, models, inventions, know-how, processes, apparati, equipment, algorithms, software programs, software source documents, object code, source code, and information related to the current, future and proposed products and services of each of the Parties, and includes, without limitation, the Parties' respective information concerning research, experimental work, development, design details and specifications, engineering, financial information, procurement requirements, purchasing, manufacturing, business forecasts, sales and merchandising, and marketing plans and information. In all cases, Confidential Information includes proprietary or confidential information of any third party disclosing such information to either Party in the course of such third party's business or relationship with such Party. Utility's Confidential Information also includes any and all lists of Customers, and any and all information about Customers, both individually and aggregated, including but not limited to Customers' names, street addresses of Customer residences and/or facilities, email addresses, identification numbers, Utility account numbers and passwords, payment histories, energy usage, rate schedule history, and allocation of energy uses among Customer residences and/or facilities. Charity and Utility agree that all Confidential Information disclosed by the disclosing Party

("Discloser") will be considered Confidential Information by the receiving Party ("Recipient") if identified as confidential and received from Discloser.

- (c) Charity and Utility agrees to take all steps reasonably necessary to hold in trust and confidence the other Party's Confidential Information. Without limiting the generality of the immediately preceding sentence, Charity and Utility agree (i) to hold the other Party's Confidential Information in strict confidence, not to disclose it to third parties or to use it in any way, commercially or otherwise, other than as permitted under this Servicing Agreement; and (ii) to limit the disclosure of the Confidential Information to those of its employees, agents or directly related subcontractors with a need to know who have been advised of the confidential nature thereof and who have acknowledged their express obligation to maintain such confidentiality.

Charity and Utility agree that the foregoing two paragraphs will not apply to any item of Confidential Information if: (i) it has been published or is otherwise readily available to the public other than by a breach of this Servicing Agreement ; (ii) it has been rightfully received by Recipient from a third party without breach of confidentiality obligations of such third party and outside the context of the provision of services under this Servicing Agreement; (iii) it has been independently developed by Recipient personnel having no access to the Confidential Information; or (iv) it was known to Recipient prior to its first receipt from Discloser.

## **Section 8. Fees and Charges.**

Neither Party shall be entitled to recover any fees or charges from the other Party for the services to be provided under this Servicing Agreement, except that Utility shall reimburse Charity for any reasonable expenses incurred with respect to the obligations undertaken in accordance with this Servicing Agreement, including, but not limited to, those set forth in Sections 9.2 and 9.5.

## **Section 9. Records; Audit Rights; Annual Certification.**

### **9.1. Records.**

Utility shall maintain accurate records and accounts relating to ClimateSmart™ Contributions. Utility shall provide to Charity and its Assign(s) access to such records. Access shall be afforded without charge, upon reasonable request made pursuant to Section 9.2. Charity agrees that access shall be afforded only during Business Hours and in such a manner so as not to interfere unreasonably with Utility's normal operations. Utility shall not treat ClimateSmart™ Contributions as income or assets of the Utility or any affiliate for any tax, financial reporting or regulatory purposes, and the financial books or records of Utility and affiliates shall be maintained in a manner consistent with the absolute ownership of ClimateSmart™

Contributions by Charity and Utility's holding of ClimateSmart™ Contributions in trust for Charity (whether or not held together with other monies).

## **9.2. Charity Audit Rights.**

- (a) Upon thirty (30) calendar days' prior written notice, Charity may request an audit, conducted by Charity or its agents, of Utility's records and procedures, which shall be limited to records and procedures containing information bearing upon: (i) ClimateSmart™ Charges being billed to Customers by Utility (and Customer payments of ClimateSmart™ Charges); (ii) Utility's performance of its obligations under this Servicing Agreement; (iii) the basis of calculation for ClimateSmart™ Charges pursuant hereto or Applicable Law; and (iv) such other matters as may be permitted by Applicable Commission Orders, Applicable Tariffs or as Charity or its Assign(s) may reasonably request. The audit shall be conducted during Business Hours without interference with Utility's normal operations, and in compliance with Utility's security procedures.
- (b) Utility agrees to permit Charity or its designated representative ("Charity's Agent") to review and to copy any non-Confidential records and supporting documentation pertaining to the performance of this Servicing Agreement and to conduct an on-site review of any Confidential Information pursuant to Section 9.4 hereof. Utility shall allow such auditor(s) access to such records during Business Hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Utility shall include a similar right for Charity or Charity's Agent to audit records and interview staff in any contract between Utility and a subcontractor related to performance of this Servicing Agreement.

## **9.3. Utility Audit Rights.**

- (a) Upon thirty (30) calendar days' prior written notice, Utility may request an audit, conducted by Utility or its agents, of Charity's records and procedures, without substantive limitation. The audit shall be conducted during Business Hours without interference with Charity's normal operations, and in compliance with Charity's security procedures.
- (b) Charity agrees to permit Utility or its designated representative ("Utility's Agent") to review and to copy any non-Confidential and Confidential records and supporting documentation pertaining to its finances, operations and commitments. Charity shall allow such auditor(s) access to such records during Business Hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Charity shall provide a similar right for Utility or Utility's Agent to audit records and interview staff in any contract between Charity and a third-party.

#### **9.4. Confidentiality.**

Materials reviewed by either Party or its agents in the course of an audit may contain Confidential Information subject to Section 7 above. The use of all materials provided to Charity or Utility or their agents, as the case may be pursuant to this Section 9, shall comply with the provisions in Section 7 and shall be limited to use in conjunction with the conduct of the audit and preparation of a report for appropriate distribution of the results of the audit consistent with Applicable Law.

#### **9.5. Independent Reports.**

Upon Utility's request, Charity shall cause a firm of independent certified public accountants (which may provide other services to Utility) to prepare a report addressed to Charity (which may be included as part of Charity's customary auditing activities), for the information and use of Utility, to the effect that such firm has performed certain procedures (the scope of which shall be agreed upon with Utility) in connection with Charity's operations, identifying the results of such operations and including any exceptions noted. Charity will deliver a copy of each report prepared hereunder to the Utility at the address specified in Section 15.8. Utility shall notify the Commission's Energy Division (or its successor) of the Utility's receipt of any such report and, upon request, Utility shall provide a copy of such report to the Energy Division.

#### **9.6. Additional Applicable Laws.**

Charity and Utility agree to make an effort to promptly notify the other Party in writing to the extent such Party becomes aware of any new Applicable Laws or changes (or proposed changes) in Applicable Tariffs hereafter enacted, adopted or promulgated that may have a material adverse effect on either Party's ability to perform its duties under this Servicing Agreement. Charity and Utility agree that a Party's failure to so notify the other Party pursuant to this Section 9.6 will not constitute a material breach of this Servicing Agreement, and will not give rise to any right to terminate this Servicing Agreement or cause either Party to incur any liability to the other Party or any third party.

### **Section 10. Banking Services.**

Subject to the direction of Charity, Utility shall provide banking and money management services for Charity.

### **Section 11. Amendment.**

- (a) The Parties are informed that compliance with any Commission decision, legislative action or other governmental action (whether issued before or after the Effective Date of this Servicing Agreement) affecting the operation of this Servicing Agreement, including but not limited to dissolution of the

ClimateSmart<sup>TM</sup> Program, may require that amendment(s) be made to this Servicing Agreement. If either Party reasonably determines that such a decision or action would materially affect the Services to be provided hereunder or the reasonable costs thereof, then upon the issuance of such decision or the approval of such action (unless and until it is stayed), Charity and Utility agree to negotiate the amendment(s) to this Servicing Agreement that is (or are) appropriate in order to effectuate the required changes in Services to be provided or the reimbursement thereof. If the Parties are unable to reach agreement on such amendments within sixty (60) days after the issuance of such decision or approval of such action, Charity may, and Utility shall, submit the disagreement to the Commission for proposed resolution, in accordance with Applicable Law. Nothing herein shall preclude either Party from challenging the decision or action which such Party deems may adversely affect its interests in any appropriate forum of the Party's choosing.

- (b) Charity and Utility agree to bring to the other Party's attention any errors or discrepancies that are discovered affecting the operation or implementation of this Servicing Agreement, and Charity and Utility agree to meet and confer upon such event to negotiate any amendments to this Servicing Agreement that are appropriate to correct such errors or discrepancies. If the Parties are unable to reach agreement on such amendments within sixty (60) days after the discovery of such errors or discrepancies, either party may, in the exercise of its sole discretion, submit the disagreement to the Commission for proposed resolution, in accordance with Applicable Law. Nothing herein shall preclude either Party from challenging the decision or action which such Party deems may adversely affect its interests in any appropriate forum of the Party's choosing.
- (c) All material amendments to this Servicing Agreement require approval by the Commission.

## **Section 12. Data Retention.**

All data associated with the provision and receipt of services pursuant to this Servicing Agreement shall be maintained for the retention time required by Applicable Law or Applicable Tariffs for maintaining such information. All data associated with the delivery of greenhouse gas reductions required under the performance guarantee of the ClimateSmart<sup>TM</sup> Program (i.e., 1.5 million tons of carbon dioxide equivalent reductions) shall be maintained for the greater of (a) the retention time required by Applicable Law or Applicable Tariffs for maintaining such information, or (b) four (4) years after the last delivery of greenhouse gas reductions required under the performance guarantee of the ClimateSmart<sup>TM</sup> Program.

## **Section 13. Not Used.**



## **Section 14. Limitations on Liability.**

In no event will either Party be liable to the other Party for any indirect, special, exemplary, incidental, punitive, or consequential damages under any theory.

## **Section 15. Miscellaneous.**

### **15.1. Assignment.**

Neither Party shall assign or otherwise dispose of this Servicing Agreement, its right, title or interest herein or any part hereof to any entity, without the prior written consent of the other Party and approval by the Commission. No assignment of this Servicing Agreement shall relieve the assigning Party of any of its obligations under this Servicing Agreement until such obligations have been assumed by the assignee. When duly assigned in accordance with this Section 15.1 and when accepted by the assignee, this Servicing Agreement shall be binding upon and shall inure to the benefit of the assignee. Any assignment in violation of this Section 15.1 shall be void.

### **15.2. Force Majeure.**

Neither Party shall be liable for any delay or failure in performance of any part of this Servicing Agreement (including the obligation to remit money at the times specified herein) from any 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, restraint by court order or Government 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. Notwithstanding anything to the contrary above, each Party's obligation to pay money hereunder shall continue to the extent such Party is able to make such payment, and any amounts owed by Utility hereunder and received by Utility shall be held in trust for Charity (whether or not held together with other monies) and remitted to Charity as soon as reasonably practicable.

### **15.3. Severability.**

In the event that any one or more of the provisions of this Servicing Agreement shall for any reason be held to be unenforceable in any respect under Applicable Law, such unenforceability shall not affect any other provision of this Servicing Agreement, but this Servicing Agreement shall be construed as if such unenforceable provision or provisions had never been contained herein.

**15.4. Not Used.**

**15.5. Governing Law.**

This Servicing Agreement shall be interpreted, governed and construed under the laws of the State of California as if executed and performed wholly within the State of California.

**15.6. Section Headings.**

Section and paragraph headings appearing in this Servicing Agreement are inserted for convenience only and shall not be construed as interpretations of text.

**15.7. Waivers.**

None of the provisions of this Servicing Agreement shall be considered waived by either Party unless the Party against whom such waiver is claimed gives such waiver in writing. The failure of either Party to insist in any one or more instances upon strict performance of any of the provisions of this Servicing Agreement or to take advantage of any of its rights hereunder shall not be construed as a waiver of any such provisions or the relinquishment of any such rights for the future, but the same shall continue and remain in full force and effect. Waiver by either Party of any default by the other Party shall not be deemed a waiver of any other default.

**15.8. Notices and Demands.**

- (a) Except as otherwise provided under this Servicing Agreement, all notices, demands, or requests pertaining to this Servicing Agreement shall be in writing and shall be deemed to have been given (i) on the date delivered in person, (ii) on the date when sent by facsimile (with receipt confirmed by telephone by the intended recipient or his or her authorized representative) or electronic transmission (with receipt confirmed telephonically or electronically by the intended recipient or his or her authorized representative) or by special messenger, or (iii) seventy-two (72) hours following delivery to a United States post office when sent by certified or registered United States mail postage prepaid, and addressed as set forth below:

Utility: Pacific Gas and Electric Company  
P.O. Box 7442  
San Francisco, California 94120

Attn: TBD

Charity: ClimateSmart Charity  
Mailcode B24A  
77 Beale Street

San Francisco, California 94105

Attn: TBD

- (b) Each Party shall be entitled to specify as its proper address any other address in the United States, or specify any change to the above information, upon written notice to the other Party complying with this Section 15.8.

**15.9. Good Faith.**

Charity and Utility agree to perform all their actions, obligations and duties in connection with this Servicing Agreement in good faith.

**15.10. Not Used.**

**15.11. Effective Date**

This Agreement shall be effective when it has been approved by the Commission and thereafter executed by both Parties.

**15.12. Attachments.**

The following attachments are incorporated in this Servicing Agreement:

- Service Attachment 1.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the Parties have executed this Servicing Agreement on the date or dates indicated below, to be effective as of the Effective Date.

**CLIMATESMART CHARITY**

**PACIFIC GAS AND ELECTRIC  
COMPANY**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**SERVICE ATTACHMENT 1**  
**PACIFIC GAS AND ELECTRIC COMPANY**  
**UTILITY BILLING SERVICES**

| Section   | Title                                                  | Page   |
|-----------|--------------------------------------------------------|--------|
| Section 1 | Establishment and Maintenance of Utility Billing ..... | SA 1-2 |
| Section 2 | Customer Billing Procedures .....                      | SA 1-2 |
| Section 3 | Customer Payments .....                                | SA 1-3 |
| Section 4 | Collection.....                                        | SA 1-3 |
| Section 5 | Taxes and Fees Service.....                            | SA 1-3 |
| Section 6 | Late Payments.....                                     | SA 1-3 |

**SERVICE ATTACHMENT 1**  
**PACIFIC GAS AND ELECTRIC COMPANY**  
**UTILITY BILLING SERVICES**

**Section 1. Establishment and Maintenance of Utility Billing.**

Utility will include the ClimateSmart™ Charges with its Utility Charges on the Customer's Bill.

**Section 2. Customer Billing Procedures.**

**2.1. Presentation of ClimateSmart™ Charges on Consolidated Utility Bill.**

- (a) ClimateSmart™ Charges shall appear on all applicable Utility Bills in the manner and at the time required by Applicable Law and Applicable Tariffs.
- (b) Notwithstanding subsection (a) above, the Utility may change the manner of bill presentation of ClimateSmart™ Charges upon the agreement of Charity or at the request of Charity and upon agreement by the Utility. Such agreement by Charity or Utility is not to be unreasonably withheld.
- (c) Notwithstanding subsections (a) and (b) above, no change shall be made to Utility Bill formats without the approval of the Commission, if the Commission's approval is required under Applicable Law and Applicable Tariffs.

**2.2. Adjustments to ClimateSmart™ Charges.**

Utility will resolve all disputes with Customers relating to ClimateSmart™ Charges consistent with Applicable Tariffs and prevailing industry standards. Utility will not waive any late payment fee or modify the terms of payment of any amounts payable by Customer unless such action is consistent with the action taken with respect to its own Charges and Applicable Tariffs.

**2.3. Format of Utility Bills.**

Utility shall conform to such requirements in respect of the format, structure and text of Utility Bills as Applicable Law and Applicable Tariffs shall from time to time prescribe. Utility shall, subject to the requirements of Sections 1 and 2 of this Service Attachment 1, determine the format and text of Utility Bills in accordance with its reasonable business judgment, and its policies and practices with respect to its own charges.

## **2.4. Delivery.**

Utility shall deliver all Utility Bills (i) by United States Mail in such class or classes as are consistent with policies and practices followed by Utility with respect to its own charges or (ii) by any other means, whether electronic or otherwise, that Utility may from time to time use to present its own charges to its Customers. In the case of Utility Billing Service, Utility shall pay from its own funds all costs of issuance and delivery of Utility Bills, including but not limited to printing and postage costs as the same may increase or decrease from time to time.

## **Section 3. Customer Payments.**

Utility shall permit Customers to pay ClimateSmart<sup>TM</sup> Charges through any of the payment options then offered by Utility to Customers for payment of Utility Charges appearing on the Utility Bill.

## **Section 4. Collection.**

Utility will collect ClimateSmart<sup>TM</sup> Charges in accordance with its standard practices, and will notify Customers of amounts overdue for ClimateSmart<sup>TM</sup> Charges in accordance with such practices. Such collection practices shall conform to all requirements of Applicable Law and Applicable Tariffs.

## **Section 5. Taxes and Fees Service.**

Utility will collect and remit to the various authorities any taxes and fees assessed to Customers on the ClimateSmart<sup>TM</sup> Charges.

## **Section 6. Late Payments.**

In the event that Utility receives late payment interest charges from a Customer, such payment shall be allocated to Charity based upon the same proportion that ClimateSmart<sup>TM</sup> Charges bear to the total Utility Charges on the Utility Bill. Utility shall not allocate to Charity any other late payment service charges or collection fees (including but not limited to disconnection or reconnection services or similar charges related to Customer defaults).

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

|                                          |                                             |                                                            |
|------------------------------------------|---------------------------------------------|------------------------------------------------------------|
| AT&T                                     | Dept of General Services                    | North Coast SolarResources                                 |
| Alcantar & Kahl LLP                      | Douglass & Liddell                          | Occidental Energy Marketing, Inc.                          |
| Ameresco                                 | Downey & Brand                              | OnGrid Solar                                               |
| Anderson & Poole                         | Duke Energy                                 | Praxair                                                    |
| Arizona Public Service Company           | Economic Sciences Corporation               | R. W. Beck & Associates                                    |
| BART                                     | Ellison Schneider & Harris LLP              | RCS, Inc.                                                  |
| Barkovich & Yap, Inc.                    | Foster Farms                                | Recurrent Energy                                           |
| Bartle Wells Associates                  | G. A. Krause & Assoc.                       | SCD Energy Solutions                                       |
| Bloomberg                                | GLJ Publications                            | SCE                                                        |
| Bloomberg New Energy Finance             | GenOn Energy, Inc.                          | SMUD                                                       |
| Boston Properties                        | Goodin, MacBride, Squeri, Schlotz & Ritchie | SPURR                                                      |
| <br>                                     | <br>                                        | <br>                                                       |
| Braun Blaising McLaughlin, P.C.          | Green Power Institute                       | San Francisco Public Utilities Commission                  |
| Brookfield Renewable Power               | Hanna & Morton                              | Seattle City Light                                         |
| CA Bldg Industry Association             | Hitachi                                     | Sempra Utilities                                           |
| CLECA Law Office                         | In House Energy                             | Sierra Pacific Power Company                               |
| CSC Energy Services                      | International Power Technology              | Silicon Valley Power                                       |
| California Cotton Ginners & Growers Assn | Intestate Gas Services, Inc.                | Silo Energy LLC                                            |
| California Energy Commission             | Lawrence Berkeley National Lab              | Southern California Edison Company                         |
| California League of Food Processors     | Los Angeles Dept of Water & Power           | Spark Energy, L.P.                                         |
| California Public Utilities Commission   | Luce, Forward, Hamilton & Scripps LLP       | Sun Light & Power                                          |
| Calpine                                  | MAC Lighting Consulting                     | Sunshine Design                                            |
| Casner, Steve                            | MBMC, Inc.                                  | Sutherland, Asbill & Brennan                               |
| Chris, King                              | MRW & Associates                            | Tabors Caramanis & Associates                              |
| City of Palo Alto                        | Manatt Phelps Phillips                      | Tecogen, Inc.                                              |
| City of Palo Alto Utilities              | McKenzie & Associates                       | Tiger Natural Gas, Inc.                                    |
| City of San Jose                         | Merced Irrigation District                  | TransCanada                                                |
| Clean Energy Fuels                       | Modesto Irrigation District                 | Turlock Irrigation District                                |
| Coast Economic Consulting                | Morgan Stanley                              | United Cogen                                               |
| Commercial Energy                        | Morrison & Foerster                         | Utility Cost Management                                    |
| Consumer Federation of California        | NLine Energy, Inc.                          | Utility Specialists                                        |
| Crossborder Energy                       | NRG West                                    | Verizon                                                    |
| Davis Wright Tremaine LLP                | NaturEner                                   | Wellhead Electric Company                                  |
| Day Carter Murphy                        | Navigant Consulting                         | Western Manufactured Housing Communities Association (WMA) |
| <br>                                     | <br>                                        | <br>                                                       |
| Defense Energy Support Center            | Norris & Wong Associates                    | eMeter Corporation                                         |
| Department of Water Resources            | North America Power Partners                |                                                            |