

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



July 19, 2018

Advice Letter 5079-E

Erik Jacobson
Director, Regulatory Relations
Pacific Gas and Electric Company
77 Beale Street, Mail Code B10C
P.O. Box 770000
San Francisco, CA 94177

SUBJECT: Request for Approval of Non-Bypassable Charge Agreement between Pacific Gas and Electric Company (PG&E) and Phillips 66 Company

Dear Mr. Jacobson:

Advice Letter 5079-E is effective as of June 21, 2018 per Resolution E-4902 per Ordering Paragraph.

Sincerely,

A handwritten signature in cursive script that reads "Edward Randolph".

Edward Randolph
Director, Energy Division



Erik Jacobson
Director
Regulatory Relations

Pacific Gas and Electric Company
77 Beale St., Mail Code B23A
P.O. Box 770000
San Francisco, CA 94177

Fax: 415-973-1448

June 2, 2017

Advice 5079-E

(Pacific Gas and Electric Company ID U 39 E)

Public Utilities Commission of the State of California

Subject: Request for Approval of Non-Bypassable Charge Agreement between Pacific Gas and Electric Company (PG&E) and Phillips 66 Company.

Purpose

Pursuant to Section 8.5.6 of General Order 96-B, PG&E requests approval of a non-bypassable charge (NBC) agreement between Pacific Gas and Electric Company (PG&E) and Phillips 66 Company for electric service at the oil refinery located at 1290 San Pablo Avenue, Rodeo, California (NBC Agreement). The Agreement requires Phillips 66 to pay certain NBCs to PG&E based on net electricity delivered to Phillips 66 from a combined heat and power waste heat recovery generation unit owned and operated by Air Liquide. As discussed below, PG&E believes it is in the interests of PG&E's customers, and the general public to resolve an ongoing dispute between Phillips 66 and PG&E related to the applicability of NBCs to the Phillips 66 load served by the waste heat recovery unit under current California Public Utilities Commission (CPUC or Commission) decisions and PG&E Rate Schedule E-DCG. The specific terms of the NBC Agreement are included as Appendix A.

Background

Phillips 66 (formerly ConocoPhillips) owns and operates the Rodeo Refinery (Refinery) where it manufactures transportation fuels and takes bundled service from PG&E. The service is provided under Electric Rate Schedule E-DCG.

In 2009, the refinery completed an expansion project. As part of this project, the refinery added a 20,000 barrel per day hydrocracking complex. These modifications changed the refinery's load. The complex included the installation of a new hydrogen plant which is owned and operated by Air Liquide, and located next to the refinery. The Air Liquide Hydrogen Plant also includes a bottom-cycling CHP waste heat recovery generator that can produce 10-11 MW, while using about 6-7 MW to serve Air Liquide facilities as part of the manufacturing process and selling 3-4 MW "over the fence" to Phillips 66. The electricity produced by excess steam from the waste heat recovery generator both serves load within the hydrogen plant and is shipped over the fence and through a meter to the Refinery.

Commission decisions issued in Rulemaking (R.) 02-01-011 provide that PG&E shall bill and collect NBCs from certain electric customers located within PG&E's service area that meet part or all of their own electric load using distributed generation. PG&E Rate Schedule E-DCG, which implements current Commission decisions, requires PG&E to bill and collect NBCs from these electric customers who are defined as Customer Generators. PG&E's Rate Schedule E-DCG also identifies the specific NBCs for which Customer Generators shall be billed, as well as exemptions from and exceptions to such NBCs.

PG&E and Phillips 66 have had a disagreement regarding Phillips 66's responsibility for NBCs on the load served by the Air Liquide CHP generator. Phillips 66 believes the CHP waste heat recovery unit falls within the "normal course of business" exception to the E-DCG tariff. PG&E's position is that the "normal course of business" exception in E-DCG does not apply to the Phillips 66 facts and all the electricity from the generator is subject to NBCs, except for the very small portion of generation that would be termed "station power" because it serves the generator itself. Under Electric Schedule E-DCG, the NBCs applicable to Phillips 66 include the DWR Bond charge, Public Purpose Program (PPP) charge and nuclear decommissioning (ND).

After lengthy negotiations, PG&E and Phillips 66 agreed that it would be in their respective interests, the interests of PG&E's other customers, as well as in the greater public interest, to resolve the disputed issues surrounding billing and collection of NBCs from Phillips 66. Accordingly, the Parties entered into the NBC Agreement, which provides that Phillips 66 shall pay PG&E NBCs on the net electricity delivered to it "over the fence" from Air Liquide. This compromise was based on the fact that the waste heat facility could not run unless the hydrogen plant (which provides the fuel for the waste heat facility) is operating. As a consequence, the load served at the Air Liquide facility is always there when the waste heat facility is operating. The parties agree that the NBC Agreement is reasonable and ask the Commission to approve it.

Non Bypassable Charge Agreement

The following section describes the key provisions of the NBC Agreement between PG&E and Phillips 66.

Phillips 66 agrees to pay PG&E the three NBCs (ND, PPP and DWR Bond) for all electricity in excess of Air Liquide's electric load that is delivered "over the fence" from Air Liquide to Phillips 66. Electricity flows between Phillips 66 and Air Liquide at two locations, each served by a meter. On a monthly basis, Phillips 66 shall provide PG&E with confidential hourly readings of the two meters. For each calendar month, Phillips 66 shall deliver an excel file not later than the 15th day of each month with data from the previous month. The file shall include hourly net metered data from the two meters. PG&E shall first net the two meters for each hour. Whenever the net of the two meters is positive, indicating a net flow for that hour from Air Liquide to Phillips 66, PG&E shall multiply the kWhs exported by the sum of the current values for the three NBCs in

PG&E's electric rate schedule applicable to Phillips 66's bundled electric service. PG&E shall submit an invoice totaling the calculated charges for all hours in the month where the net flow was from Air Liquide to Phillips 66. Phillips 66 shall remit the invoiced amount within 30 days of the date on the invoice.

Requested Relief

PG&E and Phillips 66 Company have engaged in good faith discussions to resolve Phillips 66's issues regarding their departing load obligations under Electric Schedule E-DCG and whether the load from new hydrogen plant is within the "normal course of business" and should be exempt from being classified as departing load. In the agreement Phillips 66 agrees to pay departing load charges for the power shipped over the fence to the refinery and in return PG&E agrees not to bill for the power used in the hydrogen plant. The agreement deviates from the standard tariff language in Schedule E-DCG - "Departing Customer Generation".

PG&E and Phillips 66 believe this to be a reasonable compromise of their respective litigation positions and in the public interest.

Protests

Anyone wishing to protest this filing may do so by letter sent via U.S. mail, facsimile or E-mail, no later than June 22, 2017 which is 20 days after the date of this filing. Protests must be submitted to:

CPUC Energy Division
ED Tariff Unit
505 Van Ness Avenue, 4th Floor
San Francisco, California 94102

Facsimile: (415) 703-2200
E-mail: EDTariffUnit@cpuc.ca.gov

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

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

Erik Jacobson
Director, Regulatory Relations
c/o Megan Lawson
Pacific Gas and Electric Company
77 Beale Street, Mail Code B23A
P.O. Box 770000
San Francisco, California 94177

Facsimile: (415) 973-1448
E-mail: PGETariffs@pge.com

Any person (including individuals, groups, or organizations) may protest or respond to an advice letter (General Order 96-B, Section 7.4). The protest shall contain the following information: specification of the advice letter protested; grounds for the protest; supporting factual information or legal argument; name, telephone number, postal address, and (where appropriate) e-mail address of the protestant; and statement that the protest was sent to the utility no later than the day on which the protest was submitted to the reviewing Industry Division (General Order 96-B, Section 3.11).

Effective Date

PG&E requests that this tier 3 advice filing become effective upon commission approval.

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 the parties on the service list for R.02-01-011. Address changes to the General Order 96-B service list should be directed to PG&E at email address 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. Send all electronic approvals to PGETariffs@pge.com. Advice letter filings can also be accessed electronically at: <http://www.pge.com/tariffs/>.

/S/

Erik Jacobson
Director, Regulatory Relations

Attachments

cc: Service List R.02-01-011
Nora Sheriff (Alcantar & Kahl)

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 E)**

Utility type:

ELC GAS
 PLC HEAT WATER

Contact Person: Annie Ho

Phone #: (415) 973-8794

E-mail: AMHP@pge.com and PGETariffs@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) #: **5079-E**

Tier: 3

Subject of AL: **Request for Approval of Non-Bypassable Charge Agreement between Pacific Gas and Electric Company (PG&E) and Phillips 66 Company.**

Keywords (choose from CPUC listing): Compliance, Agreements

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

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

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

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

Is AL requesting confidential treatment? If so, what information is the utility seeking confidential treatment for: Yes. See the attached matrix that identifies all of the confidential information.

Confidential information will be made available to those who have executed a nondisclosure agreement: Yes No

Name(s) and contact information of the person(s) who will provide the nondisclosure agreement and access to the confidential information: Jana Corey, 415-973-9310

Resolution Required? Yes No

Requested effective date: **Upon Commission Approval**

No. of tariff sheets: N/A

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: N/A

Service affected and changes proposed: N/A

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

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:

California Public Utilities Commission

Energy Division

EDTariffUnit

505 Van Ness Ave., 4th Flr.

San Francisco, CA 94102

E-mail: EDTariffUnit@cpuc.ca.gov

Pacific Gas and Electric Company

Attn: Erik Jacobson

Director, Regulatory Relations

c/o Megan Lawson

77 Beale Street, Mail Code B23A

P.O. Box 770000

San Francisco, CA 94177

E-mail: PGETariffs@pge.com

Cal P.U.C. Sheet No.	Title of Sheet	Cancelling Cal P.U.C. Sheet No.
40275-E	LIST OF CONTRACTS AND DEVIATIONS (Continued) Sheet 8	12003-E
40276-E	ELECTRIC TABLE OF CONTENTS Sheet 1	40273-E
40277-E	ELECTRIC TABLE OF CONTENTS Sheet 21	37960-E



LIST OF CONTRACTS AND DEVIATIONS
(Continued)

Sheet 8

Name and Location of Customer		Most Comparable Regular Tariff			
PG&E Installation Reference No.	Type or Class of Service	Execution and Expiration Dates	Commission Authorization Number and Date	Schedule or Rule No.	Contract Difference
<u>EAST BAY REGION</u> (Cont'd.)					
<u>Other Customers</u>					
General Electric Co. Nuclear Research Center Vallecitos Alameda County	General Power Service	11-19-68 2-19-69*2	D-75505 4-1-69	Rule 16	Monthly Charge for Special Facilities
Standard Oil Co. of California Richmond	General Service & Standby	9-12-74 5 Years*1	G.O.96-A,X.A. Res. E-1424 10-29-74	Rules 16 and 4	Monthly Charge for Special Facilities
Leslie Salt Company Newark Alameda County	Power Service	4-5-76	G.O.96-A,X.A. Res. E-1630 1-5-77	Rule 15 Sect. E7	Monthly Charge for Special Facilities
Leonard Murphy 5600 Greenville Road Livermore	Domestic Coml	4-27-78 10 Years*1	Res. E-1787 9-6-78	Rule 15 Sect. E7	Cost of Ownership Charge
Peralta Hospital Association, Oakland	Coml	10-9-78 ---	Res. E-1821 2-27-79	Rule 2	Monthly Cost of Ownership Charge
Chevron U.S.A. Corp. Richmond	Industrial	7-12-79 ---	---	Rule 2	Monthly Cost of Ownership Charge - Amending Agreement of 7-13-77
Phillips 66 (formerly ConocoPhillips) Contra Costa County	Industrial	5-30-17	--	E-DCG	Service Agreement (N)

*1 to *4 See last page of Electric Contracts and Deviations Section for explanation of footnotes.

(Continued)

Advice 5079-E
Decision

Issued by
Robert S. Kenney
Vice President, Regulatory Affairs

Date Filed
Effective
Resolution

June 2, 2017



ELECTRIC TABLE OF CONTENTS

Sheet 1

TABLE OF CONTENTS

SCHEDULE	TITLE OF SHEET	CAL P.U.C. SHEET NO.	
Title Page.....		40276-E	(T)
Rate Schedules.....	40115,40116,40190,40118,40274,40120,37981,40236,38141-E		
Preliminary Statements.....	40121,35423,40152,37737,34373,37727,40153-E		
Rules.....	37165,36649,40173-E		
Maps, Contracts and Deviations.....		40277-E	(T)
Sample Forms.....	37166,37631,37180,36604,37632,38236*,35796,37769,37703,36059,37169-E		

(Continued)

Advice 5079-E
Decision

Issued by
Robert S. Kenney
Vice President, Regulatory Affairs

Date Filed June 2, 2017
Effective _____
Resolution _____



ELECTRIC TABLE OF CONTENTS

Sheet 21

TITLE OF SHEET

**CAL P.U.C.
SHEET NO.**

Maps, Contracts and Deviations

SERVICE AREA MAPS

Electric Service Area Map..... 34575-E

LIST OF CONTRACTS AND DEVIATIONS

..... 13819,13794,37604,37465,12000,12001,13672, **40275**,19350,11435, (T)
..... 36755,20977,29590,12006,21635,21636,29591,34524,11191,12010,
..... 11193,11194,11195,12969,31155,12012,29592,33251,29670,31469,
..... 12955,19353,12018,12019,12020,12021,12022,12023,30666,17259,
..... 12026,13092,11211,12027,12028,16703,12030,12031,14035,29593,
..... 12032,23621,11219,12034,20831,12036,11223,11986,11987,37958,
..... 16898,11227-E

(Continued)

Advice 5079-E
Decision

Issued by
Robert S. Kenney
Vice President, Regulatory Affairs

Date Filed June 2, 2017
Effective
Resolution

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

PACIFIC GAS AND ELECTRIC COMPANY (U 39 E)

**DECLARATION SUPPORTING
CONFIDENTIAL DESIGNATION
ON BEHALF OF
PACIFIC GAS AND ELECTRIC COMPANY**

1. I, Jana Corey, am the Director, Clean Energy Programs of Pacific Gas and Electric Company (“PG&E”), a California corporation. Aaron Johnson, the Vice President, Customer Energy Solutions of PG&E, delegated authority to me to sign this declaration. My business office is located at:

Pacific Gas and Electric Company
77 Beale Street
Mailstop N3F
San Francisco, CA 94105

2. PG&E will produce the information identified in paragraph 3 of this Declaration to the California Public Utilities Commission (“CPUC”) or departments within or contractors retained by the CPUC in response to a CPUC audit, data request, proceeding, or other CPUC request.

Name or Docket No. of CPUC Proceeding (if applicable): N/A

3. Title and description of document(s): Request for Approval of Non-Bypassable Charge Agreement between Pacific Gas and Electric Company (PG&E) and Phillips 66 Company.
-

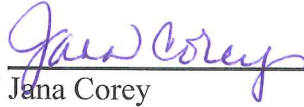
4. These documents contain confidential information that, based on my information and belief, has not been publicly disclosed. These documents have been marked as confidential, and the

basis for confidential treatment and where the confidential information is located on the documents are identified on the following chart:

Check	Basis for Confidential Treatment	Where Confidential Information is located on the documents
<input checked="" type="checkbox"/>	<p>Customer-specific data, which may include demand, loads, names, addresses, and billing data</p> <p>(Protected under PUC § 8380; Civ. Code §§ 1798 <i>et seq.</i>; Govt. Code § 6254; Public Util. Code § 8380; Decisions (D.) 14-05-016, 04-08-055, 06-12-029; and General Order (G.O.) 77-M)</p>	
<input type="checkbox"/>	<p>Personal information that identifies or describes an individual (including employees), which may include home address or phone number; SSN, driver’s license, or passport numbers; education; financial matters; medical or employment history (not including PG&E job titles); and statements attributed to the individual</p> <p>(Protected under Civ. Code §§ 1798 <i>et seq.</i> and G.O. 66-C)</p>	
<input type="checkbox"/>	<p>Physical facility, cyber-security sensitive, or critical energy infrastructure data, including without limitation critical energy infrastructure information (CEII) as defined by the regulations of the Federal Energy Regulatory Commission at 18 C.F.R. § 388.113</p> <p>(Protected under Govt Code § 6254(k), (ab); 6 U.S.C. § 131; 6 CFR §29.2)</p>	
<input type="checkbox"/>	<p>Accident reports</p> <p>(Protected under PUC § 315 and G.O. 66-C, 2.1)</p>	
<input type="checkbox"/>	<p>Commercial records that, if revealed, would place PG&E at an unfair business disadvantage, including market-sensitive data; business plans and strategies; long-term fuel buying and hedging plans; price, load, or demand forecasts; power purchase agreements within three years of execution; and internal financial information</p> <p>(Protected under Govt Code §§ 6254, 6276.44; Evid Code § 1060; Civ. Code § 3426 <i>et seq.</i>; and G.O. 66-C, 2.2 (b))</p>	Page 4

<input type="checkbox"/>	Proprietary and trade secret information or other intellectual property (Protected under Civ. Code § 3426 <i>et seq.</i> ; Govt Code § 6254.15)
<input type="checkbox"/>	Corporate financial records (Protected under Govt Code § 6254.15)
<input type="checkbox"/>	Third-Party information subject to non-disclosure or confidentiality agreements (<i>See, eg.</i> , D.11-01-036)
<input type="checkbox"/>	Other basis: _____ _____ _____

- The importance of maintaining the confidentiality of this information outweighs any public interest in disclosure of this information. This information should be exempt from the public disclosure requirements under the Public Records Act and should be withheld from disclosure.
- I declare under penalty of perjury that the foregoing is true, correct, and complete to the best of my knowledge.
- Executed on this 2 day of June, 2017 at San Francisco, California.



 Jana Corey
 Director, Clean Energy Programs
 Pacific Gas and Electric
 Company

APPENDIX A

**NONBYPASSABLE CHARGE AGREEMENT BETWEEN
PACIFIC GAS AND ELECTRIC COMPANY AND
PHILLIPS 66
(REDACTED)**

**AGREEMENT BETWEEN
PACIFIC GAS AND ELECTRIC COMPANY AND PHILLIPS 66
REGARDING PG&E RATE SCHEDULE E-DCG AND
ASSOCIATED NONBYPASSABLE CHARGE OBLIGATIONS**

This Agreement (“Agreement”), dated as set forth in the signature block of this Agreement, is by and between Phillips 66 Company (“Phillips 66”) and Pacific Gas and Electric Company (“PG&E”) (hereafter, “Party” may refer individually to Phillips 66 or PG&E).

I. RECITALS

- A. **WHEREAS** the California Public Utilities Commission (“CPUC” or “Commission”) issued a series of decisions in Rulemaking (“R.”) 02-01-011 that require PG&E to bill and collect certain non-bypassable charges (“NBCs”) from certain of PG&E’s electric customers;
- B. **WHEREAS** the CPUC and the Legislature provide for several exemptions to the NBCs;
- C. **WHEREAS** PG&E Rate Schedule E-DCG, entitled “Departing Customer Generation CG,” requires PG&E to bill and collect and customers to pay certain NBCs from electric customers that have “Customer Generation Departing Load” (“CGDL”), including customers who displace all or a portion of their load with “Customer Generation” (hereafter, “Customer Generators”);
- D. **WHEREAS** PG&E’s Rate Schedule E-DCG (a) identifies the specific NBCs for which Customer Generators shall be billed and customers shall pay, as well as exemptions from and exceptions to such NBCs, and (b) sets forth the definitions and procedures establishing PG&E’s obligations for metering, data, billing and collection of such NBCs from Customer Generators;

- E. **WHEREAS** Air Liquide built, owns, and operates a hydrogen facility and an associated waste heat recovery (WHR) generation unit which produces electricity from the steam produced by the hydrogen facility. The Air Liquide hydrogen facility and WHR unit are located on a parcel within Phillips 66's property boundaries. Air Liquide's WHR unit provides electricity to Phillips 66 in an "over the fence" electric arrangement as described in California Public Utilities Code 218;
- F. **WHEREAS** when the WHR unit is not operating, but the hydrogen facility is, PG&E provides the electricity to support the hydrogen facility and the Phillips 66 load that would otherwise be served by the WHR unit;
- G. **WHEREAS** in May 2010, Phillips 66 as the "customer of record" and land-owner received permission under a Rule 21 non-export agreement with PG&E to operate the 10.7 MW WHR unit which is operated by Air Liquide;
- H. **WHEREAS** Phillips 66 is the PG&E "customer of record" with financial and operational responsibility for Customer Generation operated by Air Liquide;
- I. **WHEREAS** Phillips 66 and PG&E have discussed the possible applicability of the NBCs and possible application of exemptions to Phillips 66 as well as the circumstances surrounding imposition and collection of NBCs for the load served by electricity from Air Liquide's WHR facility;
- J. **WHEREAS** PG&E and Phillips 66 seek to resolve the uncertainty as to the imposition and collection of the NBCs associated with the Air Liquide WHR facility and agree on the metering, data, billing and collection of these charges from Phillips 66;

- K. **WHEREAS** Phillips 66 has disputed PG&E' obligation to bill and its obligation to pay NBCs from Phillips 66 for the amount of electricity now served by the WHR;
- L. **WHEREAS** in December 2010, PG&E and Phillips 66 entered into negotiations to resolve the issues surrounding metering, data, billing and collection of NBCs from Phillips 66;
- M. **WHEREAS** PG&E and Phillips 66 have executed a number of Tolling Agreements to stop the running of time under any applicable statute of limitations and any laches defense during the pendency of the NBC billing dispute;
- N. **WHEREAS** the current PG&E and Phillips 66 Tolling Agreement expires by its terms on December 31, 2017; and
- O. **WHEREAS** PG&E and Phillips 66 agree that it is in their respective interests, in the interests of PG&E's other customers, as well as in the greater public interest, to resolve all issues surrounding the metering, data, billing and collection of NBCs from Phillips 66.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual terms, obligations, covenants, conditions, and promises contained in this Agreement, PG&E and Phillips 66 (collectively, the "Parties") agree as set forth herein:

II. AGREEMENT-TERMS

- A. **CGDL Charges Applicable to Phillips 66.** The Parties agree that CPUC decisions and implementing Rate Schedule E-DCG provide that PG&E shall bill and collect the following NBCs from Phillips 66:

1. Department of Water Resources (“DWR”) Bond Charge (as defined in Rate Schedule E-DCG, Rates 1)
2. Nuclear Decommissioning (“ND”) Charge (as defined in Rate Schedule E-DCG, Rates 4)
3. Public Purpose Program (“PPP) Charge (as defined in Rate Schedule E-DCG, Rates 6)

B. **Phillips 66’s Payment Obligations.** The Parties agree when the Air Liquide WHR facility is operating, PG&E will not charge NBCs for the generation from the WHR facility that serves the Air Liquide hydrogen facility load. The Parties agree that Phillips 66 shall pay PG&E the following charges associated with the Air Liquide WHR facility:

1. The “retroactive charges,” which consist of the charges accrued for the period May 2010 through March 2017, in the amount of \$ [REDACTED], and shall remit such payment within 30 days of receipt of notice of approval of this Agreement.
2. The “ongoing charges,” which consist of the charges accrued to such customers for the period beginning April 1, 2017, until the expiration of the charges in question (as calculated consistent with Paragraph II.B.3 and II.B.4 hereto).
3. The “ongoing charges” shall be calculated as follows:
 - a. For each month, starting with April 2017, Phillips 66 shall provide confidential hourly readings from each of the two meters that

monitor the flow of electricity between Air Liquide and Phillips 66;

- b. Phillips 66 shall send an excel file not later than the 15th day of each month with data from the previous month. The file shall include hourly net metered data from the two meters. The file should be emailed to DepartedLoadRequests@pge.com;
 - i) Pending CPUC approval of this Agreement, Phillips 66 shall send an excel file as close to the 15th day of each month as possible with data from the previous month;
- c. The Parties agree the existing metered data conforms to the requirements of Rate Schedule E-DCG, including by reference Preliminary Statement BB and Rule 17;
- d. For each hour of the month, PG&E shall net the readings for the two meters;
- e. For all hours of the month where the net reading is positive, indicating a net flow of electricity *from* Air Liquide *to* Phillips 66, PG&E shall calculate the net kWh that flowed to Phillips 66; and
- f. PG&E shall multiply the monthly sum of the hourly positive kWh that flowed to Phillips 66 by the sum of the NBCs identified in II.A, using the current value for each NBC contained in the PG&E electric rate schedule applicable to Phillips 66's bundled electric service.

4. Payment shall be remitted as follows:
 - a. Phillips 66 shall provide the hourly readings for each calendar month by the 15th of the following month;
 - b. PG&E shall invoice Phillips 66 in the total amount of the monthly ongoing charges calculated pursuant to Section II.B.3; and
 - c. Phillips 66 shall remit the invoiced amount within 30 days of the date of receipt of the invoice.

III. ADDITIONAL TERMS

A. Regulatory Approvals.

1. The Parties shall jointly request, through an Advice Letter filing, approval by the CPUC of this Agreement and shall actively support the prompt approval of the Agreement. Active support shall include appropriate means as needed to obtain the requested approval.
2. In the event that the CPUC rejects or modifies this Agreement, the Parties reserve their rights under CPUC Rule 12.4. Should the CPUC reject this Agreement or approve it subject to modifications or conditions, the Parties agree to meet and confer regarding next steps and concerning any whether such modifications or conditions are acceptable.

- #### **B. Compromise of Litigation Positions.**
- This Agreement represents a compromise of the Parties' respective litigation positions, not agreement to or endorsement of disputed facts and/or law presented by any Party in any proceedings, including but not limited to, R.02-01-011 and its related advice letter proceedings. This Agreement does not constitute precedent regarding any principle and/or issue in

any future proceedings, including but not limited to R.02- 01-011 and its related advice letter proceedings, relating to the NBCs identified in implementing Rate Schedule E-DCG which were authorized by the Commission.

C. **Dispute Resolution.** In the event of a disagreement between the Parties arising out of this Agreement (“Disagreement”), then:

1. Notice. The Party alleging a Disagreement (“Alleging Party”) shall provide written notice to the other Party (“Responding Party”) in which it sets forth the facts giving rise to the Disagreement (“Notice”). Within 20 days of receipt of such Notice, the Responding Party shall respond in writing to the allegations set forth in the Alleging Party’s notice (“Response”).
2. Meet and Confer. If the Parties have not resolved the Disagreement within 20 days of the Response, then business-persons from PG&E and Phillips 66 with sufficient authority to negotiate the Disagreement shall meet and confer in person (the “Business-Person Meet and Confer”) to discuss and in good faith attempt to resolve the Disagreement. Any Party, or all Parties, may choose to have counsel attend the Business-Person Meet and Confer, but attendance of counsel shall not be mandatory.
3. Voluntary Mediation. If the Parties do not resolve the Disagreement during the Business-Person Meet and Confer, or within 20 days thereafter, PG&E and Phillips 66 shall in good faith discuss whether to retain a mediator to help the Parties attempt to resolve the Disagreement; however, neither Party shall be obligated to enter into mediation. In the event that

the Parties do in fact choose to mediate the Disagreement, then they shall bear equally the costs of such mediation, and each party will be responsible for their own attorney's fees.

D. Termination.

1. This Agreement shall terminate upon occurrence of any of the following:
 - a. The Governor's enactment of an Executive Order or the Legislature's enactment of any statute(s) providing that all of the NBCs described in Section II.A. from PG&E Rate Schedule E-DCG do not apply to Customer Generators or WHR units; or
 - b. The CPUC's issuance of a decision providing that the NBCs described in Section II.A. from PG&E Rate Schedule E-DCG do not apply to Customer Generators or WHR units;
 - c. The issuance of a decision by a court or other tribunal with proper jurisdiction (i.e., over the NBCs described in PG&E Rate Schedule E-DCG) (hereafter, "Tribunal") providing that the NBCs described in Section II.A. from PG&E Rate Schedule E-DCG do not apply to Customer Generators or WHR units; or
 - d. The CPUC's rejection of this Agreement, or modification of this Agreement in a manner that is unacceptable to both Parties, consistent with Paragraph III.A.2, supra. If modified, the Parties shall have 30 days from the time of a CPUC decision to deem the decision unacceptable by noticing the other Party and the Commission in writing.

2. If a new law (including but not limited to an Executive Order, statute, CPUC decision, or Tribunal decision) issues that provides that fewer than all of the NBCs described in Section II.A. from PG&E Rate Schedule E-DCG do not apply to Customer Generators or WHR units, then this Agreement shall remain in effect with respect to the NBCs that continue to be applicable and accrue to Customer Generators or WHR units.

E. **Confidentiality.** The Parties hereby acknowledge and agree that the information and documents that the Parties and/or their representatives have exchanged in the course of negotiating, drafting, and/or executing this Agreement are subject to CPUC Rule 12.6, "Confidentiality and Inadmissibility," and shall remain confidential hereafter.

F. **Limited Publicity and Disclosure.**

1. The Parties agree that to the extent they are asked to comment on the Agreement or its terms by any media outlet (whether print, television, radio, or Internet-based source), they will state in substance only that the matter was resolved to the satisfaction of both Parties.
2. **Limited Use/Disclosure.** The Parties expressly agree that in the absence of CPUC approval of this Agreement, no Party may use and/or refer to another Party's agreement herein in any manner whatsoever, including but not limited to use of litigation and/or regulatory proceedings.

G. **Mutual Releases; Scope of Releases.**

1. Upon CPUC approval of this Agreement and receipt of the invoice referenced in paragraph II.B.1 of this Agreement, Phillips 66 does for

itself, its officers, directors, agents, employees, attorneys, consultants, representatives, affiliates, predecessors, successors and assigns hereby release and forever discharge PG&E and its shareholders, officers, directors, agents, employees, attorneys, consultants, representatives, parent corporation, subsidiaries, affiliates, predecessors, successors and assigns from any and all claims, demands, causes of action, obligations or liabilities of any nature whatsoever (including attorneys' fees and costs of suit), whether known or unknown, which, as of the date of this Agreement, it ever had or now has against PG&E relating to the issues surrounding the metering, data, billing and collection, pursuant to current Commission decisions and implementing Rate Schedule E-DCG, of NBCs from Customer Generators, including, without limiting the generality of the foregoing, all such claims, demands, causes of action, obligations or liabilities which in any way relate to or arise out of any action, omission, representation, or proceeding with respect to the matters which were raised or which could have been raised by the Parties related to issues surrounding the metering, data, billing and collection of NBCs from Customer Generators.

2. Upon CPUC approval of this Agreement and receipt of the payment referenced in paragraph II.B.1 of this Agreement, PG&E does for itself, its shareholders, officers, directors, agents, employees, attorneys, consultants, representatives, parent corporation, subsidiaries, affiliates, predecessors, successors and assigns hereby release and forever discharge Phillips 66

and its officers, directors, agents, employees, attorneys, consultants, representatives, affiliates, predecessors, successors and assigns from any and all claims, demands, causes of action, obligations or liabilities of any nature whatsoever (including attorneys' fees and costs of suit), whether known or unknown, which, as of the date of this Agreement, it ever had or now has against Phillips 66 relating to the issues surrounding the metering, data, billing and collection of charges associated with the Air Liquide WHR facility, pursuant to current Commission decisions and implementing Rate Schedule E-DCG, of NBCs from Customer Generators, including, without limiting the generality of the foregoing, all such claims, demands, causes of action, obligations or liabilities which in any way relate to or arise out of any action, omission, representation, or proceeding with respect to the matters which were raised or which could have been raised by the Parties related to issues surrounding the metering, data, billing and collection of NBCs associated with the Air Liquide WHR facility.

3. Each of the Parties expressly acknowledges that it may have claims against another Party, of which claim(s) it is currently unaware, and nevertheless agrees that this Agreement is intended to and does extend to any and all claims it may have against that other Party, whether known or unknown, that arise from the issues surrounding the metering, data, billing and collection, pursuant to current Commission decisions and implementing Rate Schedule E-DCG, of NBCs from Customer Generator

Phillips 66, and the matters alleged in connection with the Air Liquide WHR facility. As a further inducement and consideration, Phillips 66 and PG&E each expressly and specifically waive any rights or benefits available to them under California Civil Code section 1542, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

4. None of the releases contained in this Agreement is intended to release any Party from any obligation or undertaking called for or to be performed pursuant to this Agreement, all of which obligations and undertakings shall survive the execution and delivery hereof.

H. **Notice; Consent.** Each Party represents and warrants that it has given any and all notices, and obtained any and all consents, powers and authorities, necessary to permit it and the persons executing this Agreement for it, to enter into this Agreement, settle, compromise, and release the claims settled, compromised, and released herein, to do, undertake, or forebear from any act called for herein, and to make this Agreement, and all the provisions hereof, fully binding on and enforceable against that Party, including, without limitation thereto, any necessary notice to or consent or approval from its shareholders, creditors, Board of Directors, partners, members, managers, officers, or any similar person, entity, group or body, except that the Parties expressly acknowledge that approval of this

Agreement must be obtained from the Commission as set forth in greater detail above.

- I. **Mutual Understanding of Effect of Agreement.** Phillips 66 and PG&E acknowledge that the valuable consideration that each is exchanging through the resolution of the issues surrounding the metering, data, billing and collection of NBCs from Phillips 66 and by way of this Agreement is solely for the purpose of preventing further involvement in protracted litigation between them. Based on this mutual understanding, the Parties agree as follows:
1. The Parties agree that at this time and under the circumstances, this Agreement is reasonable in light of the information shared by the Parties, consistent with law, and in the public interest.
 2. Neither the payment of money nor the provision of any other consideration is or shall be construed to be an admission that any of the claims compromised or released by this Agreement is valid.
 3. Neither the existence of this Agreement, nor any element hereof, including but not limited to the component duties, obligations, actions, settlements, and agreements provided for in the Agreement, shall constitute or be deemed to constitute a precedent or have any precedential effect in any contested matter and/or proceeding, including but not limited to judicial, regulatory, administrative, quasi-judicial and/or quasi-legislative proceedings, regardless of whether such proceeding is of federal, state, or local jurisdiction.

4. The Parties agree that neither shall use this Agreement nor any element hereof, including but not limited to the component duties, obligations, actions, settlements, and agreements provided for in the Agreement, as evidence respecting any fact, right, obligation, or alleged liability of either Party or the customers of either Party, except as may be required in an action to enforce the terms of this Agreement.
- J. **Waiver.** A waiver of any provision of this Agreement shall not be effective unless such a waiver is made expressly in writing. An express waiver of any one breach shall not be deemed a waiver of any other breach of the same or any other provision of this Agreement.
- K. **Representation by Counsel.** Each Party represents that it has been represented by counsel of its own choosing regarding the preparation and negotiation of this Agreement and all the matters and claims set forth herein, and that each of them has read this Agreement and is fully aware of its contents and its legal effect.
- L. **Notice.** Delivery of formal notices may be accomplished by hand, via electronic transmission (including but not limited to electronic mail and/or facsimile transmission), by overnight delivery service or courier service, and/or by depositing the item into the United States Mail with the correct address set forth on the envelope and proper postage appended thereto, as follows:
1. To Phillips 66 Company:
Title: Refinery Manager, San Francisco Refinery
Company: Phillips 66
Address: 1290 San Pablo Ave, Rodeo, CA 94572
phone: (510) 245-4415
and

Name: Nora Sheriff, Counsel
Company: Alcantar & Kahl
Address: 345 California Street, #2450, SF, CA 94104
Phone: (415) 421-4143

2. To Pacific Gas and Electric Company:

Attn: Jana Corey
Address: 245 Market Street, Mail Code N3F
San Francisco, CA 94105
Email: JRCj@pge.com

and

Attn: Mary A. Gandesbery, Counsel
Address: P.O. Box 7442, San Francisco, CA 94120
Email: MAGq@pge.com

- M. **Interpretation of Agreement.** The language of all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against any Party. No presumptions or rules of interpretation based upon the identity of the Party preparing or drafting the Agreement, or any part thereof, shall be applicable or invoked. In addition, each provision of this Agreement shall be interpreted in such a manner as to be valid and enforceable under applicable law, but if any provision hereof shall be or become prohibited or invalid under any applicable law, that provision shall be ineffective only to the extent of such prohibition or invalidity, without thereby invalidating the remainder of that provision or of any other provision hereof.
- N. **Choice of Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California.
- O. **Integrated Agreement.** This Agreement constitutes the entire agreement among the Parties and that this Agreement supersedes all prior understandings or agreements with respect to its subject matter.

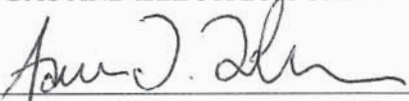
- P. **Amendment.** This Agreement may not be altered, amended, modified or otherwise changed, except in writing duly executed by authorized representatives of each of the Parties and approved by the CPUC.
- Q. **Execution By Counterparts.** This Agreement may be executed in counterparts, which taken together, shall constitute an original. Facsimiles of original pages shall be binding on the Parties to the Agreement. The Parties shall exchange original signed counterparts as soon as possible.
- R. **Benefit of Agreement.** This Agreement is made solely for the benefit of the Parties and it is not made for the benefit of any person, firm, association, corporation, or public entity that is not a Party hereto; and no person, firm, association, corporation or public entity other than the Parties shall have any right to enforce this Agreement.
- S. **Authority to Sign and Implement Agreement.** Each Party represents and warrants that it has the necessary Board, corporate, and/or legal authority to enter into this Agreement and to perform each and every duty and obligation provided for herein, and that this Agreement, when executed by the duly authorized representatives of each Party, represents a valid, binding, and enforceable legal obligation on each Party. Each individual affixing a signature to this Agreement represents and warrants that he or she is duly authorized to execute this Agreement on behalf of the Party represented, and that by signing this Agreement, a valid, binding and enforceable legal obligation of said Party has been created.

IV. EXECUTION

This document may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Agreement shall become effective among the Parties on the date the last Party executes the Agreement, as indicated below, contingent upon CPUC approval of this Agreement without modification. In witness whereof, intending to be legally bound, the Parties hereto have duly executed this Agreement on behalf of the Parties they represent.

The undersigned represent that they are authorized to sign on behalf of the Party represented.

PACIFIC GAS AND ELECTRIC COMPANY

By: 

Name: Aaron J. Johnson

Title: Vice President
Customer Energy Solutions

Date: May 22, 2017

PHILLIPS 66 COMPANY

By: 

Name: Mark Evans

Title: Refinery Manager

Date: 5/30/2017

PG&E Gas and Electric Advice Filing List

AT&T	Don Pickett & Associates, Inc.	OnGrid Solar
Albion Power Company	Douglass & Liddell	Pacific Gas and Electric Company
Alcantar & Kahl LLP	Downey & Brand	Praxair
Anderson & Poole	Ellison Schneider & Harris LLP	Regulatory & Cogeneration Service, Inc.
Atlas ReFuel	Evaluation + Strategy for Social Innovation	SCD Energy Solutions
BART	G. A. Krause & Assoc.	SCE
Barkovich & Yap, Inc.	GenOn Energy Inc.	SDG&E and SoCalGas
Bartle Wells Associates	GenOn Energy, Inc.	SPURR
Braun Blaising McLaughlin & Smith, P.C.	Goodin, MacBride, Squeri, Schlotz & Ritchie	San Francisco Water Power and Sewer
Braun Blaising McLaughlin, P.C.	Green Charge Networks	Seattle City Light
CENERGY POWER	Green Power Institute	Sempra Energy (Socal Gas)
CPUC	Hanna & Morton	Sempra Utilities
California Cotton Ginners & Growers Assn	ICF	SoCalGas
California Energy Commission	International Power Technology	Southern California Edison Company
California Public Utilities Commission	Intestate Gas Services, Inc.	Southern California Gas Company (SoCalGas)
California State Association of Counties	Kelly Group	Spark Energy
Calpine	Ken Bohn Consulting	Sun Light & Power
Casner, Steve	Leviton Manufacturing Co., Inc.	Sunshine Design
Center for Biological Diversity	Linde	Tecogen, Inc.
City of Palo Alto	Los Angeles County Integrated Waste Management Task Force	TerraVerde Renewable Partners
City of San Jose	Los Angeles Dept of Water & Power	TerraVerde Renewable Partners, LLC
Clean Power	MRW & Associates	Tiger Natural Gas, Inc.
Clean Power Research	Manatt Phelps Phillips	TransCanada
Coast Economic Consulting	Marin Energy Authority	Troutman Sanders LLP
Commercial Energy	McKenna Long & Aldridge LLP	Utility Cost Management
Cool Earth Solar, Inc.	McKenzie & Associates	Utility Power Solutions
County of Tehama - Department of Public Works	Modesto Irrigation District	Utility Specialists
Crossborder Energy	Morgan Stanley	Verizon
Crown Road Energy, LLC	NLine Energy, Inc.	Water and Energy Consulting
Davis Wright Tremaine LLP	NRG Solar	Wellhead Electric Company
Day Carter Murphy	Nexant, Inc.	Western Manufactured Housing Communities Association (WMA)
Defense Energy Support Center	ORA	YEP Energy
Dept of General Services	Office of Ratepayer Advocates	Yelp Energy
Division of Ratepayer Advocates	Office of Ratepayer Advocates, Electricity Planning and Policy B	