

STATE OF CALIFORNIA
Department of General Services
Natural Gas Services Program

Gas Services Agreement – PG&E Full Requirements (Rev Aug 25, 2010)

Terms & Conditions Attachment

1. DEFINITIONS:

1.1 Commodity Cost: the monthly cost of natural gas commodity purchased by DGS for the Participant. The cost shall be the actual cost incurred by DGS to acquire gas for Participant, including the gas supplier markup, but without any mark-up by DGS. If the Participant has one or more Special Purchases, the associated costs shall be included in the DGS Commodity Cost.

1.2 DGS Fee: \$.0065 per therm of gas delivered to the Participant, but not to exceed a maximum of \$27,000 per Account per fiscal year, subject to the right of DGS to decrease either sum. These costs are calculated in conformance with the State Administrative Manual (SAM) Section 8752.

1.3 PG&E: the Pacific Gas & Electric Company, which supplies natural gas transportation to the Participant's meter(s).

1.4 PG&E Cost: all costs and charges (including where applicable intrastate transportation costs) from PG&E for natural gas transportation and related services on its system to the Participant's Account. This will be the cost charged by PG&E, without any mark-up by DGS.

1.5 Requirement (s): the amount of natural gas needed by the Participant to service its operations. This is a "full-requirements" agreement, meaning that the Participant will be supplied all the natural gas it requires, without limitation. **Estimated Requirements** shall be established no later than 5 working days before the beginning of the month for which the estimates are made.

1.6 Special Purchase: any gas commodity, gas storage services, or gas transportation services purchased by DGS at the Participant's specific request as an optional service, as specified in one or more Special Purchase Attachments attached hereto and incorporated herein by reference. If there is a Special Purchase(s), the volumes or services in such Special Purchase(s) shall be deemed the first delivered to or used by the Participant.

2. DGS NATURAL GAS SERVICES FOR THE PARTICIPANT:

2.1 DGS shall, via contract(s) with gas supplier(s) and other parties, arrange for the acquisition of gas commodity in accordance with applicable state law and PG&E requirements, for the delivery of all the Participant's Requirements for the Account(s) identified in the Information Attachment of this Agreement.

2.2 DGS will arrange the necessary natural gas nominations and scheduling with PG&E, subject to the PG&E's capability to deliver gas to Participant.

2.3 DGS will provide Participant monthly with reporting of gas usage and detailed invoicing of costs, in a format suitable for auditing of the Participant's gas procurement account and annually, a fiscal year summary showing gas deliveries and costs.

2.4 DGS will make payments to the appropriate entities of the Commodity Cost, the DGS Fee, PG&E Cost, and any special adjustments, as necessary, for Participant's Requirements.

2.5 DGS will monitor, and where it deems necessary or appropriate for the operation of the program, participate in the California Public Utilities Commission (CPUC) and Federal Energy Regulatory Commission (FERC) natural gas related proceedings. This is for the purpose of attempting to modify the impact of regulatory proposals.

2.6 Whenever possible, DGS will provide information, advice, and additional assistance on any matters dealing with the gas supply for the Participant's Account.

3. PARTICIPANT OBLIGATIONS:

3.1 The Participant agrees to purchase the Requirements for the Account(s) listed in Information Attachment from DGS and to pay DGS promptly for those purchases. In no event shall the Participant otherwise acquire gas commodity, financial structures or hedges, storage services, or transportation services for its Account(s) during the term of this Agreement.

3.2 The Participant hereby appoints DGS as the Participant's agent for the term of this Agreement to coordinate the Participant's procurement of natural gas for the Account(s) described in Information Attachment. The Participant also authorizes DGS, on behalf of the Participant, to have PG&E provide to DGS all billing and usage records and all invoices for transportation, storage or balancing services related to those Account(s). The Participant agrees to execute such documents as are reasonably required by DGS, PG&E, or others in order to provide this commodity and services for the Participant.

3.3 Participant agrees to assist DGS in estimating the future monthly Requirements for the Participant's Account(s) and approve those projections for use by DGS and its supplier(s) in procuring and scheduling gas supply.

3.4 Participant agrees to notify DGS in advance whenever possible, or as soon as known, of any scheduled or unscheduled changes in operations that would significantly affect the Estimated Requirements approved by Participant. Significant changes in operations would include, but not be limited to, shutting off of major equipment, scheduled or unscheduled outages, new facilities being added to the load, etc. Should the Participant fail to advise DGS of any changes in operations as soon as such changes become known, and if there are extra costs to the DGS Program as a result, the Participant will be liable to DGS for any increased costs incurred.

3.5 Participant agrees to promptly notify DGS of any changes in the Participant Contact Information provided in Information Attachment.

4. PAYMENT:

4.1 DGS shall provide the Participant with monthly invoice(s) of the cost for natural gas service to the Participant Account(s) served under this Agreement. The invoice will specify the Commodity Cost, DGS Fee, PG&E Cost, and any special adjustment(s), with supporting documentation.

4.2 The Participant shall make payment directly to DGS no later than thirty (30) days from the date the invoice is received. If available, payment shall be made by state intrafunds transfer or electronic funds transfer. If such payment methods are not available, payment shall be by other

means mutually agreeable to the parties that will ensure receipt of payment of the invoiced sums no later than thirty (30) days from the date the invoice is received.

4.3 Any interest charges incurred and paid by DGS according to Government Code 926.19 that are a direct result of late payment by Participant shall be charged to the Participant.

5. ERRORS IN BILLING AND DISPUTE OF PAYMENT AMOUNT:

5.1 Errors: If either DGS or the Participant believes that there is an error in the amount billed to the Participant, the other party should be notified immediately. Upon notification or discovery of any error, DGS shall review the bill for errors and calculate what correction needs to be made. DGS will incorporate any needed correction in the next available invoicing cycle. The Participant understands that DGS billings are based on PG&E's reports of its meter readings. If as a result of changes to meter readings or other adjustments from by PG&E, DGS needs to acquire additional volumes of gas or incurs credits for excess volumes delivered in prior periods or fiscal years, said costs or credits will be passed through by DGS to the Participant.

5.2 Continued Performance: Both DGS and the Participant shall continue to perform their respective obligations under this Agreement until any such error or dispute of error is resolved as herein provided. The Participant agrees that full payment will be made for all DGS invoices, without reduction for any error or alleged error in billing.

5.3 Good Faith Resolution: If there is a dispute between the Participant and DGS as to either (i) the existence of a billing error or (ii) the amount of a billing error, both the Participant and DGS shall endeavor in good faith to resolve any dispute concerning a bill by mutual agreement within thirty (30) days after the matter arises. If a settlement cannot be made within 30 days, either party may pursue whatever remedies it so chooses in law or equity.

6. BUDGET CONTINGENCY:

6.1 DGS and Participant understand that due to constitutional limitations (California State Constitution, Article XVI, Section 1) pertaining to multiple-year contracts, if the final official budget appropriations of any year covered under this Agreement do not appropriate funds for the procurement of natural gas by DGS ("defunding") or for the procurement of utility services for Participant ("defunding"), this Agreement shall be of no further force and effect.

6.2 If DGS is defunded, DGS shall have no liability and shall not be obligated to perform any provisions of this Agreement. If the Participant is defunded, it shall have no liability to pay any funds for natural gas delivered and DGS shall not be obligated to perform any provisions of this Agreement.

6.3 DGS and Participant understand that if the final official budget appropriations of any subsequent year covered under this Agreement does not appropriate adequate utility funds for procurement of utility services for the Participant, DGS shall have the option to reduce the quantities of natural gas purchased for and provided to Participant to the limit of the budget for utility services, with no further liability occurring to either DGS or to the Participant.

6.4 Notwithstanding the foregoing, if natural gas is used by Participant after it has been either defunded or had its funding reduced, the first gas used shall be the gas procured under this Agreement and such gas will be paid for under this Agreement on the terms and conditions specified.

6.5 Participant and DGS agree that both, as to their respective budget authorizing bodies, shall use best efforts to seek continuing appropriation for utility services for all Requirements that are a part of this Agreement.

6.6 DGS and Participant agree that this Section 6 shall not be utilized by Participant to terminate the obligation of the Participant to take and/or pay for gas based upon the price of natural gas commodity or transportation services. The provisions of this Section 6 shall only be utilized by Participant or DGS in the event of the de-funding or restricted funding of the operations of the facility, program and/or department and not as it relates solely to natural gas procurement

7. FORCE MAJEURE:

7.1 Excuse of Performance: Neither DGS nor the Participant shall be liable to the other for failure to perform to the extent such failure was caused by Force Majeure. The term "Force Majeure" as employed herein means any cause not reasonably within the control of the party claiming suspension, as further defined in this section.

7.2 Force Majeure shall include, but not be limited to, the following: (i) physical events such as acts of God, landslides, lightning, earthquakes, fires, storms or storm warnings, such as hurricanes, which result in evacuation of the affected area, floods, washouts, explosions, breakage or accident or necessity of repairs to machinery or equipment or lines of pipe; (ii) weather related events affecting an entire geographic region, such as low temperatures which cause freezing or failure of wells or lines of pipe; (iii) interruption and/or curtailment of firm transportation and/or storage by transporters; (iv) acts of others such as strikes, lockouts or other industrial disturbances, riots, sabotage, insurrections or wars; and (v) governmental actions such as necessity for compliance with any court order, law, statute, ordinance, regulation, or policy having the effect of law promulgated by a governmental authority having jurisdiction. DGS and Participant shall make reasonable efforts to avoid the adverse impacts of a Force Majeure and to resolve the event or occurrence once it has occurred in order to resume performance.

7.3 Neither party shall be entitled to the benefit of the provisions of Force Majeure to the extent performance is affected by any or all of the following circumstances: (i) the curtailment of transportation, or if acquired, storage services, unless all transportation to the Participant is curtailed; (ii) the party claiming excuse failed to remedy the condition and to resume the performance of such covenants or obligations with reasonable dispatch; or (iii) economic hardship, (iv) the Participant's inability to use or resell gas purchased hereunder; or (v) the loss or failure of DGS's gas supply or depletion of reserves, except as provided in this Section. The party claiming Force Majeure shall not be excused from its responsibility for PG&E imbalance charges.

7.4 The party whose performance is prevented by Force Majeure must provide Notice to the other party. Initial Notice may be given orally; however, written Notice with reasonably full particulars of the event or occurrence is required as soon as reasonably possible. Upon providing written Notice of Force Majeure to the other party, the affected party will be relieved of its obligation, from the onset of the Force Majeure event, to make or accept delivery of gas, as applicable, to the extent and for the duration of Force Majeure, and neither party shall be deemed to have failed in such obligations to the other during such occurrence or event.

7.5 In the event the Participant claims an event of Force Majeure has occurred at any of its Account(s), it shall advise DGS and DGS shall advise its gas supplier(s) and other parties as necessary. If the supplier disputes the claim, the Participant agrees to indemnify, defend and hold DGS harmless from any claims arising from such a dispute. DGS shall include a parallel provision in its purchase transaction with its gas supplier(s) and other parties as necessary.

7.6 In the case of a disputed claim of Force Majeure, the volumes of gas from any special purchase during the period of the alleged period of Force Majeure will be liquidated by DGS. The funds collected from the liquidation shall be escrowed by DGS in an interest bearing account and segregated from the other funds. Any proceeds or losses from such liquidation plus interest will be allocated as agreed by the Parties and gas supplier or in the absence of an agreement pursuant to the decision of the arbitration of the dispute over Force Majeure.

7.7 Regulatory Changes: The parties recognize that the delivery of natural gas services, including interstate and intrastate transmission services, storage, and other matters is subject to regulatory change. In the event that regulatory changes are implemented which in the opinion of DGS and/or its contractor(s) will affect the terms and conditions of natural gas delivery to California and/or within California, the parties agree to negotiate in good faith amendments to this Agreement in order to re-establish the same relative balance in risk and reward between DGS and the Participant as is currently contemplated in this Agreement. Notwithstanding anything in this section to the contrary, in no event shall a regulatory change relieve the Participant from paying for Requirements received.

8. DEFAULT:

8.1 The failure of either the Participant or DGS to fulfill any duties or obligations under this Agreement or any Attachment or Amendment to this Agreement shall be an event of default. Upon occurrence of an event of default, the non-defaulting party shall give the other party a written Notice of Default.

8.2 Either party shall have 25 days after receipt of such a Notice to cure the default or, if the default cannot be cured within such time, to take steps to commence to cure the default and diligently pursue such cure, provided, however, if the event of default by the Participant is a failure to make payments to DGS as specified, Participant shall have only ten (10) days to cure the default, unless specified otherwise. If upon the passage of the time specified above the defaulting party shall not have cured or commenced the cure as specified, the non-defaulting party may terminate this Agreement. If the non-defaulting party elects to terminate this Agreement, it shall so inform the defaulting party in writing.

8.3 A waiver of a breach or default under this Agreement shall not be deemed to waive any subsequent breach or default. The failure of a party to enforce compliance with any term or condition of this Agreement shall not constitute a waiver of such term or condition by that party.

9. GENERAL CONDITIONS:

9.1 Except as provided in this Agreement, DGS, and the agents and employees of DGS, in the performance of this Agreement, shall act in an independent capacity and not as officers, employees, or agents of the Participant.

9.2 The Participant acknowledges and agrees that to the extent DGS is providing any services via contract with other parties (such as gas suppliers), DGS shall have no liability for the actions of any third party, except those actions specifically directed by DGS.

9.3 DGS agrees that any third party contractor with DGS shall be required by DGS to indemnify, defend and save harmless the State of California, its officers, agents and employees from any and all claims, actions, losses or judgments arising out of or in connection with services provided under this Agreement to Participant.

9.4 If the third party contractor supplying gas defaults, DGS will use its powers to claim indemnity from the gas supplier for the benefit of all Participants, if any such action is needed. Any benefits so derived will be shared with all Participants affected, on a pro-rata share basis, to the degree that they have been harmed. If DGS is not able to provide continuing gas service at the agreed upon prices and level of service, Participant shall have the option of cancellation of this Agreement, 30 days after written notice to DGS of that intention.

9.5 This Agreement is not assignable by either party, either in whole or in part, without the written consent of the other party.

9.6 Time is of the essence in this Agreement.

9.7 No alterations or variations of the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto, and no understanding or Agreement not incorporated herein shall be binding on any of the parties hereto.

9.8 All Parties to this Agreement agree that they, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. DGS agrees to maintain such records for possible audit for a minimum of three (3) years after final payment.

9.9 This Agreement constitutes the final, complete and exclusive statement of the terms of the Agreement between the Participant and DGS as to the matters referenced and supersedes all prior and contemporaneous understandings or Agreements of the Parties.

9.10 If a Participant has several Participant Accounts, this Agreement shall apply to all Participant Accounts that are identified in Information Attachment.

9.11 Notices:

To Participant: as specified in Information Attachment.

To DGS:

Teri Rohrer, Natural Gas Services Program Manager
DGS/ORIM
PO Box 989052
West Sacramento CA 95798-5092

Telephone: 916.375.5990

E-mail: teri.rohrer@dgs.ca.gov