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Decision 88-12-095 December 19, 1988

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
Pacific Gas and Electric Company for)
an order approving an agreement with)
U.S. Windpower, Inc., regarding the)
purchase of energy and capacity from)
windfarms to be located in Solano)
County, California.)

ORIGINAL

Application 88-08-002
(Filed August 1, 1988)

OPINION

Pacific Gas and Electric Company (PG&E) requests Commission approval of a Solano Deferral Agreement (Agreement) dated May 27, 1988 and amended October 27, 1988, between PG&E and U.S. Windpower Inc. (USW). The Agreement settles a dispute concerning two of USW's interim Standard Offer No. 4 (ISO4) power purchase agreements (PPAs). PG&E requests an order finding the Agreement, as amended, to be reasonable and authorizing recovery in rates of all payments made under the Agreement. PG&E also requests an order affirming that the Qualifying Facility Milestone Procedure (QFMP) start of operation milestone may be extended for these deferred projects.¹

A. PG&E's Application

On August 1, 1988, PG&E filed Application (A.) 88-08-002 requesting ex parte approval of the Solano Deferral Agreement between PG&E and USW. The Agreement was amended on October 27, 1988 (First Amendment). USW is a qualifying facility (QF)

¹ The QFMP is a procedure to establish interconnection priority among QFs. This procedure was originally adopted in Decision (D.) 85-01-038 and modified in subsequent decisions in I.84-04-077, the investigation into transmission constraints affecting QF development.

developing windplants in PG&E's service territory. The Solano Deferral Agreement concerns two ISO4 contracts, and the development under these contracts of two projects in PG&E's northern transmission constrained area.

1. Background

As described in PG&E's Application, the Agreement was negotiated between PG&E and USW as part of a comprehensive restructuring of USW's undeveloped ISO4 agreements. Negotiations concluded on May 27, 1988, when the Solano Deferral and the Altamont Renegotiation Agreements were signed.²

As part of the negotiation process, PG&E and USW attempted to resolve a dispute regarding the siting provisions under the two PPAs addressed in the Solano Agreement. In both PPAs, the space in Article 3(b) to specify the facility's location was left blank and footnoted to allow amendment when the parties entered into a Special Facilities Agreement.³ PG&E's position is that the PPAs can only be developed in specific portions of Solano County. USW maintains that this provision was negotiated in order to give itself flexibility to locate optimum sites, in Solano

2 The Altamont Renegotiation Agreement is not being submitted to the Commission for prior approval. It is briefly described on pages 7-8 of PG&E's application. PG&E estimates that the Altamont Renegotiation Agreement provides ratepayer benefits totaling \$40 million (in net present value, 1988 dollars) as compared to development by USW of its undeveloped ISO4s.

3 Specifically, the footnote reads:

"To be amended when the Parties enter into a Special Facilities Agreement. Seller shall notify PG&E in writing as to the special facilities location(s) at least one year prior to the scheduled operation date of each Windplant. Failure by Seller to so notify PG&E shall release PG&E from any obligation to supply special facilities within any period less than one year from the date of said notification." (Underlining in original.)

County or Altamont Pass, and that the Article 3(b) language provides that flexibility. PG&E and USW have agreed to the terms of the Solano Agreement (see below) as a settlement of this dispute, subject to Commission approval.

2. Terms Of The Agreement

The Solano Agreement and First Amendment are attached to this order as Appendix A. The Agreement concerns the following two PPAs:

- o A 10 MW ISO4, signed by USW on October 30, 1984 and by PG&E on November 5, 1984, effective for 28 years from January 1, 1988 (referred to as "PPA1");
- o A 70 MW ISO4, signed by USW on March 5, 1984 and by PG&E on March 2, 1984, effective for 28 years from January 1, 1988 (referred to as "PPA2").

The terms of the Agreement, as amended, are summarized as follows:

1. Deferral of the on-line requirement for PPA1 (10 MW) up to 3 years. Deferral of the on-line requirement for 50 MW of PPA2 up to 3 3/4 years (in 20 MW and 30 MW stages);⁴ all energy deliveries under PPA1 and PPA2 must commence no later than December 31, 1992;
2. Payment of Standard Offer No. 1 prices for any project beginning operation prior to January 1, 1990;⁵
3. Termination of each PPA for any megawatts not operational by December 31, 1992;

4 The parties effectively agreed to divide the 70 MW PPA2 into two portions. A 50 MW portion will be developed pursuant to the Solano Agreement. The remaining 20 MW portion will be developed under separate terms and conditions contained in the Altamont Renegotiation Agreement.

5 For the 30 MW phase of PPA2, this date is January 1, 1991.

4. Payment during the fixed price period of ISO4 1988-1996 fixed energy and capacity prices (rather than the higher prices contained in the ISO4 price tables for the deferred start date);
5. Deletion of the "tenth" year of fixed energy and capacity prices (only nine years of fixed prices are provided, after which short-run avoided costs determine prices for the remainder of the contract term);
6. Application of the deferred 50 MW ISO4 to a project of Wind Generator Parks, Inc. ("WGP"). The WGP project already has a capacity allocation for 50 MW under a Standard Offer 1 (SO1) in PG&E's northern transmission constrained area in Solano County. USW claims control of WGP. Pursuant to the Agreement, USW will exercise its control to terminate WGP's SO1, and use WGP's 50 MW QFMP allocation with the 50 MW PPA2 (ISO4). USW has previously been assigned a 10 MW transmission priority which it will use for the 10 MW deferred ISO4; and
7. Amendment of PPA1 and PPA2 to restrict the siting of USW projects to the Solano County location already chosen by WGP plus additional locations in the adjacent Montezuma Hills area of the County. USW is required to interconnect with the PG&E system at a point on the original WGP site.

3. Project Viability

In its application, PG&E noted the Commission's prior directives that a utility evaluate the viability of a project before agreeing to contract amendments. Accordingly, PG&E investigated USW's ability to develop the projects under the

unamended PPAs.⁶ PG&E concludes that the disputed PPAs were viable in Altamont and "at least partially viable in Solano":

- o Based on USW's prior production records and its manufacturing facilities in Livermore, USW could have manufactured and installed sufficient turbines to have met the unamended five-year operation dates in the PPAs;
- o Based on USW's prior experience, it appears that financing was not a barrier to the development of the unamended PPAs;
- o If USW's interpretation of the siting provisions had prevailed, it had sufficient permits in the Altamont Pass to accommodate all 80 MW of the proposed windplants.
- o If USW's interpretation of the siting provisions had prevailed, it is unlikely that transmission access would have posed any barrier to development.

PG&E notes that there is some uncertainty regarding project viability under PG&E's interpretation of contract terms. Specifically, it cannot be stated with certainty that USW would have been able to obtain permits from Solano County covering development of the PPAs within the unamended five-year operation date. However, PG&E argues that uncertainties like this are likely to appear in any inquiry into a QF's viability. On the whole, PG&E believes that this showing of viability is sufficient, particularly in view of the possibility that USW's position would have prevailed or that USW could have developed a portion of the PPA's within the unamended five-year deadline.

6 See A.88-08-002, pp. 11-16, Appendices D and E.

7 PG&E states in its application that the Altamont Pass area (unlike Solano) is not currently subject to bulk transmission constraints.

Finally, PG&E points out that it has compensated for this uncertainty in one way by placing the permit risk on USW under the Solano Agreement. If Solano County refuses to issue permits for some or all of these turbines, the deferred PPAs will not be developed to that same extent.

4. Estimated Savings

PG&E estimates that the Solano Agreement saves ratepayers an estimated \$14 million (net present value, in 1988 dollars) relative to the unamended PPAs.⁸ These savings result from the price concessions agreed upon by USW, coupled with deferral of the projects to a date when ISO4 prices will be closer to expected avoided costs. In developing these estimates, PG&E assumes that the projects come on line at the earliest possible dates the fixed price period can begin.⁹ PG&E argues that these benefits, coupled with the benefits of settling potential litigation, justify the Commission's approval of the Agreement.

5. QFMP Issues

PG&E identifies two QFMP-related issues raised by the Solano Agreement. The first relates to the way USW will obtain transmission allocation for the 50 MW portion of PPA2 (see

8 This figure represents the difference in forecast overpayments (i.e., relative to Standard Offer No. 1 provisions) between the unamended PPAs and the Solano Agreement. See A.88-08-002, Exhibit F.

9 See A.88-08-002, Exhibit F, page 6. The earliest date for start of the fixed price period is January 1, 1990 for PPA1 (10 MW) and the first 20 MW under PPA2. The earliest date for start of the fixed price period for the second 30 MW increment under PPA2 is January 1, 1991. As indicated in Section 2 above, under either 30 MW increments, the projects can have an on-line date as late as December 31, 1992. The later the actual on-line date, the greater the ratepayer benefits because the start of the fixed period is deferred further into the future.

Section 2 above). The second relates to the QFMP five-year operation milestone.

PG&E argues that assuring USW access to transmission capacity, as provided for in the Solano Agreement, was a key element in reaching the compromises agreed to in the Solano and Altamont Renegotiation Agreements. PG&E requests that the Commission find this arrangement to be reasonable, solely in the context of this application, and without establishing a precedent.

PG&E also requests Commission confirmation of its interpretation of Milestone 12 (start of operation requirement) of the QFMP. Specifically, PG&E requests that the Commission find reasonable a deferral of Milestone 12 to reflect the start of operation amendments contained in the Agreement.

B. DRA's Position

On September 6, 1988, the Division of Ratepayer Advocates (DRA) filed comments on PG&E's Application. DRA stated that the Solano Agreement appears to benefit PG&E ratepayers, but that additional information was needed regarding the viability of the projects under contract and regarding compliance with the QFMP.

Specifically, DRA asked for additional financial data and information regarding sites and transmission allocations in Altamont. DRA stated that this information was needed to determine whether the projects were viable in either Solano County or Altamont Pass.

In addition, DRA made inquiries to determine whether the site and project remain essentially the same under the terms of the Agreement. In DRA's view, this determination was needed to confirm

that the proposed transfer of transmission priority was in compliance with the QFMP. DRA also noted that an amendment of the Agreement could provide this assurance.¹⁰

DRA requested the opportunity to file supplemental comments on PG&E's Application within three weeks of receiving from PG&E either an amendment to the Application, or responses to DRA's outstanding data request, whichever was later. This request was granted by Administrative Law Judge Gottstein's ruling on September 15, 1988.

PG&E and USW completed their responses to DRA's data requests on October 7, 1988. DRA filed its Supplemental Comments on October 27, 1988. DRA reviewed PG&E's responses, interviewed USW corporate officers and conducted a field investigation of USW's facilities in Livermore. Based on this information, DRA concludes that USW has satisfactorily demonstrated its financing, manufacturing, construction, and land acquisition capabilities in both Altamont Pass and Solano County.

DRA also reviewed a draft First Amendment to the Solano Agreement. A copy of the final First Amendment, dated October 27, 1988, is included in Appendix A. These amendments alter the original language of the Agreement with regard to siting and interconnection provisions. The modified language is more restrictive than the original siting provisions (see Appendix A), but still allows for expansion of the project site into parcels adjacent to WPG's original location. In its Supplemental Comments, DRA provides the following information regarding these provisions:

"Glen Ikemoto, Director of Project Finance for USW explained that the interconnection would be only seven poles away from the point originally

¹⁰ The original terms of the Agreement essentially permitted USW to change the site of a project at any location within Solano County without loss of transmission priority (see Section 6(A)(iii) of the unamended Solano Agreement, attached in Appendix A).

specified by WGP. Mr. Ikemoto also explained that adjacent parcels will be added to the site to optimally array USW's own 100 Kw turbines rather than employ larger turbines of another manufacturer. USW expects that approximately 22 MW will be generated on the original WGP site." (DRA Supplemental Comments, page 3.)

DRA concludes that expansion of the site onto adjacent parcels is not a significant change of location, and that the redistribution of turbines does not render the project an essentially new one. Therefore, DRA believes that USW's acquisition of transmission allocation, as part of the acquisition of the WGP project, is in compliance with the QFMP.

DRA reviewed PG&E's economic analysis of the Agreement, and concurs with PG&E's estimate of \$14 million (net present value, in 1988 dollars) in ratepayer savings. DRA concludes that the price concessions provided by USW and the value of the deferral to the ratepayers are commensurate with the contract modifications.

C. Discussion

The Solano Agreement is a negotiated settlement of a dispute regarding the interpretation of certain provisions in USW's standard offer contracts (PPA1 and PPA2) with PG&E. The dispute revolves around the issue of whether or not USW has a contractual right under its unamended PPAs to develop windplants in either Solano County or Altamont Pass. USW maintains that it does, while PG&E argues that USW must develop its windplants within the Solano County sites identified in its original project descriptions. The negotiated Agreement restricts project location to the existing sites in Solano, while allowing for limited expansion into adjacent parcels. The Agreement grants deferral of the required on-line dates, in exchange for price concessions estimated at \$14 million (in NPV, 1988 dollars).

In D.88-10-032, we adopted final guidelines (Guidelines) to govern our consideration of proposed settlements between

electric utilities and QFs.¹¹ A copy of these guidelines are attached as Appendix B to this order. Accordingly, we will evaluate the Agreement within the context of our Guidelines, where applicable.

Although we have not decided the merits of the parties' positions in this dispute, we are persuaded that a genuine dispute does exist. We will therefore examine the proposed settlement in light of the possibility that, absent a settlement, either party might prevail.

1. Viability

As acknowledged by both PG&E and DRA, the threshold issue in our evaluation of the Agreement is project viability. Ratepayer benefits from this Agreement hinge on the assumption that USW could have developed its windplants under the unamended terms of its PPAs.

Our discussion in D.88-10-032, as reflected in the Guidelines, clearly emphasizes the importance of determining project viability before agreeing to contract modifications:

"Nonviable QFs that signed up under standard offers reflecting relatively high projections of energy and capacity needs should not be able to "hold on to" or "broker" their contracts as updates to the standard offers yield less favorable terms. We agree with DRA that, from a resource planning perspective, the ratepayer would prefer terminating the failed project. The utility would then pursue negotiations with another resource (including QFs) at prices and terms that reflect the current resource planning realities. Further, the importance of viability is consistent with our intention in the QF program that ratepayers be generally

¹¹ PG&E, DRA and USW provided information addressing the Draft Guidelines under R. 88-06-007, which were issued for comment on June 8, 1988. The final Guidelines adopted in D.88-10-032 were issued on October 14, 1988.

insulated from development risks."
(D.88-10-032, mimeo., p. 17.)

Further, in D.88-10-032, we discussed the importance of demonstrating project viability in situations where transmission access is constrained. Otherwise, negotiations could "breath life into failed projects that are precluding viable ones from access to limited transmission." ¹²

As described in Section 3 of the Guidelines (see Appendix B), the utility should examine various aspects of the QF's project development in order to assess project viability. These aspects include: site control, status of interconnection-related milestones, permit status, feasibility of project construction and operation within the five-year deadline, project financing, cash flow and prior track record in project development. For negotiated deferrals (paid or non-paid), Guideline 6 adds that "in general, deferrals...should be considered only with QFs who have obtained all of the permits and certification necessary to go forward with their projects."

Our task in evaluating overall project viability is complicated by the fact that the dispute in question directly impacts one aspect of project viability, namely, permit status. We are convinced from the information provided that USW currently has sufficient permits and site control to accommodate all 80 MW of the windplants under PPA1 and PPA2 in the Altamont Pass. USW's permit status in Solano County is, however, less certain. While USW's conditional use permit has been accepted for filing in Solano County, and PG&E considers it likely that the EIR will be approved, there is some uncertainty as to whether or not the permits would be issued in sufficient time to meet the unamended on-line dates.

¹² D.88-10-032, mimeo., page 37.

We agree with PG&E that some uncertainties are likely to appear in any inquiry into a QF's viability. As we discussed in D.88-10-032, the individual aspects of project viability must be considered as a whole, and not be administered as an "all or nothing" screening device. When considered in the context of USW's overall showing on project viability, the residual uncertainty over permitting status in Solano County appears negligible for several reasons.

First, any uncertainty over permit status disappears entirely under one plausible outcome of litigation, namely, one in which USW's position prevails. Second, PG&E and USW have made a strong showing that, in either Altamont Pass or Solano County, USW has sufficient land easements, manufacturing, and construction capabilities to develop the projects under its unamended PPAs. USW's track record in project development is also impressive. It is also evident that USW "opened its books" to PG&E and DRA to demonstrate sufficient financial backing and cash flow to meet the unamended on-line dates. We also note that, under the Solano Agreement, USW bears all of the risk of delays or refusals by Solano County to issue permits. In view of all these factors, we believe that PG&E has met the "threshold test" of viability in negotiating an on-line date deferral to settle this dispute.

2. Ratepayer Benefits

Guideline III, paragraph 7, states that "on-line date deferrals...may be considered only if the ratepayers' interests will be served demonstrably better by such deferral". Further, our Guidelines require contract modifications to be accompanied by price and/or performance concessions that are "commensurate in value" with the degree of the change in the contract.

(Guideline I.)

We consider any on-line date deferral of ISO4 to represent a major contract modification. Therefore, we expect the price/performance concessions to be substantial in instances of

negotiated deferrals. PG&E estimates, and DRA concurs, that the Agreement saves ratepayers an estimated \$14 million in NPV, relative to the unamended PPAs. Ratepayers receive these benefits without any "upfront payments" or risk that they must pay ISO4 prices if the full MWS do not materialize by December 31, 1992. In addition, the Agreement is a final resolution of this dispute, which conserves the Commission's time and resources and protects PG&E and its ratepayers from any exposure to liability. In our view, the value of the deferral and price concessions provided by USW are commensurate in value with the contract modifications. We conclude that ratepayers will derive substantial monetary benefits under the terms of the Agreement.

3. QFMP Issues

This is the first deferral negotiated by PG&E with a QF project within a transmission constrained area. QFs in these areas must comply with the QFMP in order to retain interconnection priority. One of the QFMP issues raised by PG&E in its application, namely, extension of the "start of operation" milestone when deferrals are negotiated, was addressed by this Commission subsequent to PG&E's filing:

"Milestone #12 of the QFMP requires the QF to start operation within five years of the date of execution of the Power Purchase Agreement (PPA), "subject to the provisions of the PPA." We agree with PG&E that the current language of the QFMP contemplates changes to the on-line date. If deferral of a QF located in a transmission constrained area is in the ratepayers' best interests, it is reasonable to allow deferral of milestone #12. The QF is still obligated, however, to comply with all requirements and milestones under the QFMP in order to retain its priority." (D.88-10-032, mimeo., page 38.)

The second QFMP issue raised by PG&E's application relates to the method by which USW obtains transmission allocation for the 50 MW portion of PPA2. DRA accurately interprets our prior

orders. We have consistently specified in the QFMP that transmission interconnection priority is "site and project specific and may not be transferred to other projects or locations".¹³ The Solano Agreement, as amended, provides for an expansion of the project's original site into adjacent parcels without other changes in the project description. We agree with DRA that this type of expansion is not a significant change in location, and does not render the project an essentially new one.¹⁴ We conclude that USW's acquisition of transmission allocation, as part of the acquisition of the WGP project, is in compliance with the QFMP.¹⁵

We are persuaded that, in light of all the circumstances, the Solano Agreement and resulting PPA amendments are reasonable and that PG&E should be allowed to recover in rates all payments properly made under the Agreement.

Findings of Fact

1. On May 28, 1988, PG&E and USW signed the Solano Deferral and Altamont Renegotiation Agreements.

13 D.87-04-039, Appendix A, p. 2. See also Appendix A, p. 2 of D.86-11-005, D.86-04-053, D.85-11-017, and D.85-08-045.

14 We note that the contract modifications expand only the site, and not the MW size of the project. As a result, the relative ranking of other QF projects on PG&E's interconnection priority list is unaffected.

15 Our Guidelines also prohibit contract modifications in instances where they represent an "essentially new project." See Appendix B, Section II, paragraph 3.

2. The Solano Agreement settles a dispute involving two of USW's ISO4 contracts, and was negotiated as part of a comprehensive restructuring of USW's undeveloped ISO4 agreements.

3. The Agreement concerns a 10 MW ISO4 (PPA1) and 50 MW of a second ISO4 (PPA2), both signed in 1984.

4. The dispute revolved around the issue of whether or not, under the unamended terms of PPA1 and PPA2, USW had a contractual right to develop windplants in either Solano County or Altamont Pass.

5. On August 1, 1988, PG&E filed A. 88-08-002 requesting advance approval of the Solano Deferral Agreement, on an ex parte basis.

6. On September 6, 1988, DRA filed comments on PG&E's application, and requested the opportunity to file supplemental comments on PG&E's application after receiving responses to DRA's outstanding data requests.

7. DRA's request was granted by ALJ ruling on September 15, 1988.

8. On September 7, 1988, PG&E and USW completed their responses to DRA's data requests. DRA reviewed PG&E's responses, interviewed USW corporate officers and conducted a field investigation of USW's facilities in Livermore, California.

9. DRA also reviewed a draft First Amendment to the Solano Agreement, developed by PG&E and USW in response to DRA's original comments.

10. DRA filed its Supplemental Comments on October 27, 1988.

11. PG&E and USW finalized the First Amendment to the Solano Agreement on October 27, 1988.

12. Under the Agreement, as amended, USW may defer the on-line dates of PPA1 (10 MW) and PPA2 (50 MW) until December 31, 1992.

13. Payments for any projects coming on line prior to January 1, 1990 (January 1, 1991 for 30 MW of PPA2) are based on SO1 prices.

14. The PPAs for any megawatts not developed by December 31, 1992 will be terminated.

15. Payments under the fixed price period are based on the 1988-1996 ISO4 fixed energy and capacity prices.

16. The fixed price period is reduced to nine years, rather than the ten years provided for in the unamended PPAs.

17. USW represents that it controls WGP, which is a party to a 50 MW SO1 PPA for a wind project to be located at specific sites in Solano County. WGP has a 50 MW QFMP allocation which it may use with the WGP PPA.

18. The Agreement, as amended, provides for an expansion of the WGP project site into adjacent land parcels.

19. Under the Agreement, as amended, USW is required to interconnect with the PG&E system at a point on the original WGP site.

20. USW has previously been assigned a 10 MW transmission priority which it will use for the 10 MW deferred PPAL.

21. Under the Agreement, USW will acquire interconnection priority for the 50 MW PPA2 by terminating WGP's SO1 contract and assuming that transmission allocation for PPA2.

22. D.88-10-032 establishes project viability as the threshold test in any evaluation of a standard offer contract modifications.

23. USW has sufficient land easements, manufacturing and construction capabilities to develop the projects under its unamended PPAs.

24. USW's track record in project development is impressive.

25. USW currently has sufficient permits and site control to accommodate all 80 MW of the windplants under PPAL and PPA2 in the Altamont Pass.

26. USW's conditional use permit has been accepted for filing in Solano County.

27. There is some residual uncertainty as to whether or not USW could have obtained all the necessary permits in Solano in time to meet the unamended on-line date.

28. Under the Solano Agreement, USW bears all of the risk of delays or refusal by Solano County to issue permits.

29. Under one plausible outcome of litigation (i.e., USW's interpretation prevails), any uncertainty over permit status disappears.

30. PG&E estimates, and DRA concurs that the Agreement saves ratepayers an estimated \$14 million in NPV (1988 dollars) relative to the unamended PPAs.

31. Under the Agreement, ratepayers receive these benefits without any upfront payments or risk that they must pay ISO4 prices if the full megawatts do not materialize by December 31, 1992.

32. The Agreement is a final resolution of this dispute, and conserves the Commission's time and resources and protects PG&E and its ratepayers from any exposure to liability.

33. QFs in transmission constrained areas must comply with the QFMP.

34. The QFMP prohibits the transfer of transmission interconnection priority to other projects or locations.

35. Our Guidelines adopted in D.88-10-032 also prohibit contract modifications in instances where they represent an essentially new project.

36. The Agreement, as amended, provides for an expansion of the WGP project's original site into adjacent parcels without other changes in the project description.

37. The changes in project site under the Agreement are not significant, and do not render the project an essentially new one.

38. The relative ranking of other QF projects on PG&E's interconnection priority list is unaffected by the terms of the Agreement.

39. In D.88-06-007 we found reasonable an extension of the "start of operation" milestone when on-line deferrals are negotiated.

Conclusions of Law

1. PG&E has met the threshold test of project viability, consistent with our adopted guidelines in D.88-10-032, in negotiating an on-line date deferral to settle its dispute with USW.

2. The value of the deferral and price concessions provided by USW are commensurate in value with the degree of change in the Contract.

3. Ratepayers will derive substantial monetary benefits under the terms of the Solano Deferral Agreement.

4. USW's acquisition of transmission allocation, as part of the acquisition of the WGP project, under the Agreement is in compliance with the QFMP.

5. The Solano Deferral Agreement, as amended, entered into between PG&E and USW is reasonable, and PG&E should be authorized to recover all payments properly made under the Agreement and the amended PPAs.

6. Because USW needs Commission action to move forward with project development, this decision should be effective on the date signed.

ORDER

IT IS ORDERED that:

1. The Solano Deferral Agreement, as amended by the First Amendment, entered into by Pacific Gas and Electric Company (PG&E) and U.S. Windpower, Inc. (USW) in connection with USW's Power

Purchase Agreements (PPA1 and PPA2) for windplants in Solano County is reasonable and is approved.


2. PG&E is authorized to recover in rates all payments properly made under the Agreement, as amended.

This order is effective today.

Dated DEC 19 1988, at San Francisco, California.

STANLEY W. HULETT
President
DONALD VIAL
FREDERICK R. DUDA
G. MITCHELL WILK
JOHN B. OHANIAN
Commissioners

I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS TODAY.


Victor Weiszer, Executive Director

APPENDIX A

FIRST AMENDMENT TO
SOLANO DEFERRAL AGREEMENT

This Amendment is by and between PACIFIC GAS AND ELECTRIC COMPANY ("PG&E"), a California corporation, and U.S. WINDPOWER, INC. ("USW"), a Delaware corporation. PG&E and USW are sometimes referred to herein collectively as the "Parties" and individually as "Party".

A. The Solano Deferral Agreement was signed by USW on May 22, 1988 and by PG&E on May 27, 1988 (the "Agreement"). All capitalized terms used herein without definition have the meaning ascribed to them in the Agreement.

B. In comments filed in Application 88-08-002 by the Division of Ratepayer Advocates ("DRA") of the California Public Utilities Commission, DRA recommended that the Agreement be amended to provide for an expansion of the site originally established by Wind Generator Parks ("WGP").

C. WGP originally established the following project site boundaries: Sections 2, 3, 10, 11, Township 3N, Range 1E, MDB&M, and Sections 34 and 35, Township 4N, Range 1E, MDB&M, in the Montezuma Hills area of Solano County, California (the "WGP Property").

D. In response to DRA's comments, the Parties wish to clarify certain portions of the Agreement.

Therefore, PG&E and USW hereby agree to amend the Agreement as follows:

1. PPA 1 Project Description. The following language shall be deleted from paragraph 5(A) (i):

. . . "(b) USW may submit to PG&E a new project description form listing site locations within Solano County, California, different from and/or in addition to those Solano County sites previously specified by USW." . . .

The following language shall be inserted into paragraph 5(A) (i) in place of the deleted language:

. . . "(b) USW shall submit to PG&E a revised project description form identifying as the project location properties in the Montezuma Hills area of Solano County, California, within the boundaries specifically identified in Attachment A, attached hereto and incorporated herein." . . .

APPENDIX A

2. 50 MW PPA 2 Project Description. The following language shall be deleted from paragraph 6 (A)(iii):

. . ."(b) USW may submit to PG&E a new project description form listing site locations within Solano County, California, different from and/or in addition to those Solano County sites previously specified by WGP." . . .

The following language shall be inserted into paragraph 6(A)(iii) in place of the deleted language:

. . ."(b) USW shall submit to PG&E a revised project description form identifying as the project location properties of USW's choice within the WGP Property plus additional properties in the Montezuma Hills area of Solano County, California, within the boundaries specifically identified in Attachment A." . . .

3. The following paragraph is added to the Agreement:

"19. Interconnection. The projects developed under PPA 1 and the 50 MW PPA 2 shall each be interconnected to PG&E's system at a substation located on the WGP Property."

4. Except as expressly modified by this Amendment, all other terms and conditions of the Agreement remain unchanged.

IN WITNESS WHEREOF, the Parties have each caused this Amendment to be executed by their duly authorized representatives, and it is effective as of the last date set forth below; provided, however, that it shall be null and void on the effective date of a CPUC Denial pursuant to paragraph 9 of the Agreement.

U.S. WINDPOWER, INC.



By:

Name: Gerald R. Alderson

Title: President

Signed: October 26, 1988

PACIFIC GAS AND ELECTRIC COMPANY

By:

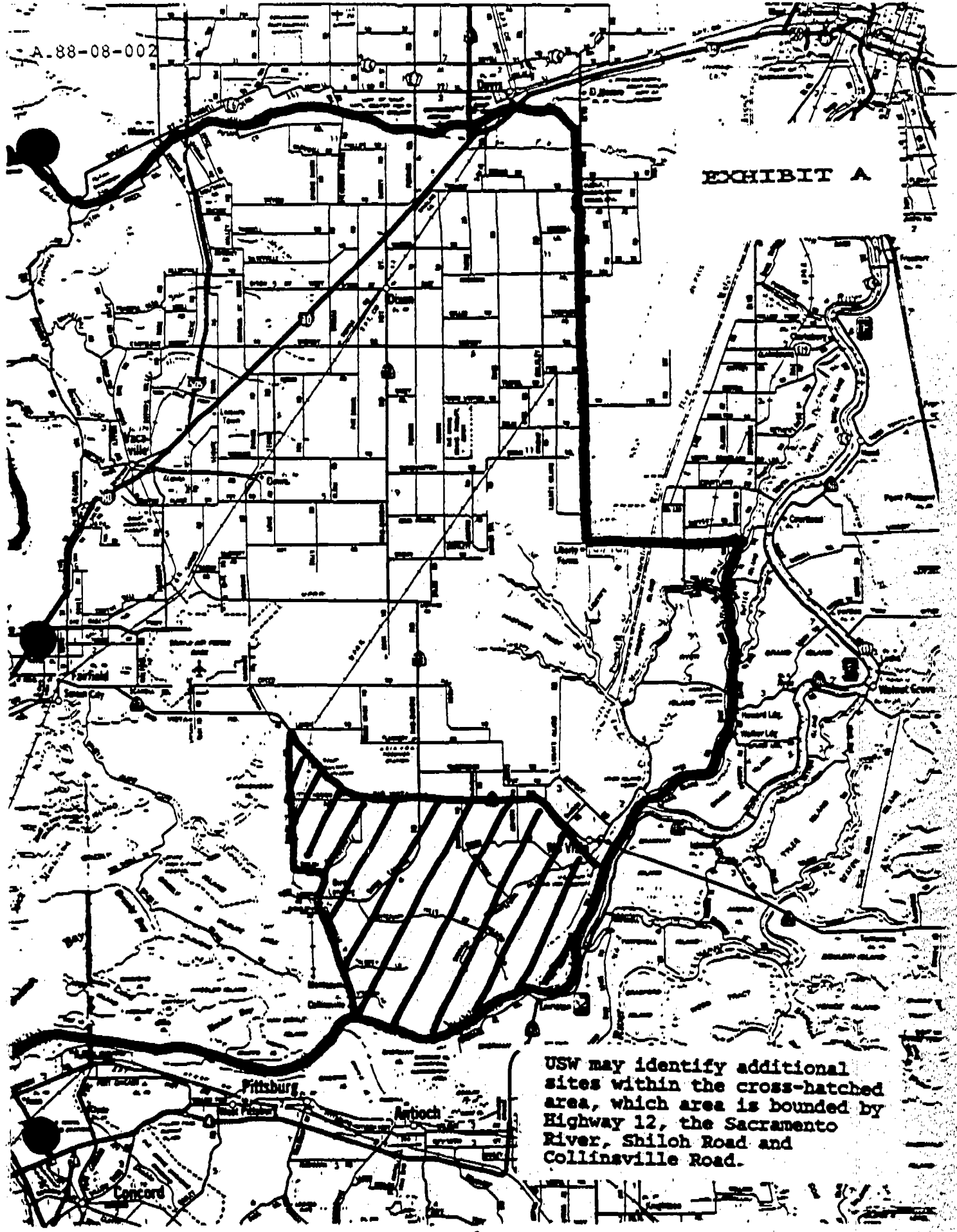


Name: Robert J. Haywood

Title: Vice President, Power Planning and Contracts

Signed: October 27, 1988

EXHIBIT A



USW may identify additional sites within the cross-hatched area, which area is bounded by Highway 12, the Sacramento River, Shiloh Road and Collinsville Road.

APPENDIX A

SOLANO DEFERRAL AGREEMENT

This Agreement is by and between Pacific Gas and Electric Company ("PG&E"), a California corporation, and U.S. Windpower, Inc. ("USW"), a Delaware corporation. PG&E and USW are sometimes referred to herein collectively as the "Parties" and individually as "Party".

A. There is an interim Standard Offer No. 4 ("SO4") agreement signed by USW on October 30, 1984 and by PG&E on November 5, 1984 for a 10 megawatt ("MW") facility and identified by PG&E Log #06W148 ("PPA 1"); and

B. There is an interim SO4 agreement signed by USW on March 5, 1984 and by PG&E on March 2, 1984 for a 70 MW facility with an initial operation date of January 1, 1988 and identified by PG&E Log #06W146 ("PPA 2"); and

C. A disagreement has arisen between PG&E and USW regarding the interpretation of PPA 1 and PPA 2; and

D. It is PG&E's position that USW has identified and committed to certain portions of Solano County, California as the locations at which PPA 1 and PPA 2 will be sited; and

E. It is USW's position that PPA 1 and PPA 2 do not specify a site and so may be developed at any location USW may choose; and

F. The Parties have each agreed that it is in their best interest to settle this disagreement amicably and expeditiously; and

G. In connection with this Agreement USW and PG&E have entered into an Altamont Renegotiation Agreement of even date herewith (the "Renegotiation Agreement"); and

H. The Renegotiation Agreement restructures USW's Altamont Pass power purchase agreements and proposed wind projects; and

I. Pursuant to the Renegotiation Agreement, portions of PPA 2 totaling 20 MW will be developed under negotiated terms and conditions described in the Renegotiation Agreement.

Therefore, in consideration of the agreements contained herein, PG&E and USW hereby agree as follows:

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1. Site Location

Contingent on approval by the California Public Utilities Commission ("CPUC"), as discussed in paragraphs 7, 8 and 9 below, the Parties will sign amendments to PPA 1 and a 50 MW portion of PPA 2 (the "50 MW PPA 2") providing that these power purchase agreements may only be applied to deliveries from wind projects sited at any location in Solano County, California.

2. PPA 1 Amendment

Contingent on CPUC approval, as discussed in paragraphs 7, 8 and 9 below, the Parties will sign an agreement amending PPA 1 as follows:

A) Initial energy deliveries to PG&E under PPA 1 may not commence before January 1, 1990 nor after December 31, 1992.

B) The Fixed Price Period (as defined in PPA 1) will commence as of the date of initial energy deliveries to PG&E under PPA 1 and continue for only nine (9) years, provided such deliveries occur as required by paragraph 2(A) above.

C) The Fixed Price Period will be adjusted as follows so that the end of each of the first eight (8) years of the Fixed Price Period will coincide with the end of a monthly billing period:

- i) if the anniversary of the date of initial energy deliveries is exactly the middle of the monthly billing period, the first year of the Fixed Price Period will be extended by one half (1/2) of a monthly billing period.
- ii) if the anniversary of the date of initial energy deliveries is between the middle and the end of the monthly billing period, the first year of the Fixed Price Period will be extended by the appropriate amount (up to one half (1/2) of a monthly billing period).
- iii) if the anniversary of the date of initial energy deliveries is between the beginning and the middle of a monthly billing period, the first year of the Fixed Price Period will be decreased by the appropriate amount (up to one half (1/2) of a monthly billing period).

(a) For example, if the Windplant (as defined in

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PPA 1) begins initial energy deliveries on April 17, 1990, and the monthly billing period coinciding with April 1991, ran from April 1 through April 30, 1991, the first year prices of the Fixed Price Period would extend until April 30, 1991. However, if the Windplant began initial energy deliveries on April 13, 1990, the first year prices of the Fixed Price Period would end on March 31, 1991.

- iv) The final year of the Fixed Price Period will be adjusted in the opposite direction from the first year so that the term of the Fixed Price Period will equal exactly nine (9) years. All other years of the Fixed Price Period will each last 12 monthly billing periods.

D) Energy and capacity prices paid during the Fixed Price Period will be the prices provided by PPA 1 for the Fixed Price Period 1988 to 1996.

E) If less than 10 MW are installed and operational under PPA 1 by December 31, 1992, PPA 1 shall terminate as to those MW not so installed and operational.

3. 50 MW PPA 2 Amendment

A) Contingent on CPUC approval, as discussed in paragraphs 7, 8 and 9 below, a 20 MW portion of the 50 MW PPA 2 will be amended as follows:

- i) initial energy deliveries to PG&E under this 20 MW portion of the 50 MW PPA 2 may not commence before January 1, 1990 nor after December 31, 1992; and
- ii) the Fixed Price Period (as defined in the 50 MW PPA 2) will commence as of the date of initial energy deliveries to PG&E under this 20 MW portion of PPA 2 from each Windplant (as defined in the 50 MW PPA 2) and continue for only nine (9) years, provided such deliveries occur as required by paragraph 3(A)(1) above; and
- iii) the Fixed Price Period for each Windplant will be adjusted as follows so that the end of each of the first eight (8) years of the Fixed Price Period will coincide with the end of a monthly billing period:
 - (a) if the anniversary of the date of initial energy deliveries is exactly the middle of the monthly billing period, the first year of the

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Fixed Price Period will be extended by one half (1/2) of a monthly billing period.

- (b) if the anniversary of the date of initial energy deliveries is between the middle and the end of the monthly billing period, the first year of the Fixed Price Period will be extended by the appropriate amount (up to one half (1/2) of a monthly billing period).
- (c) if the anniversary of the date of initial energy deliveries is between the beginning and the middle of a monthly billing period, the first year of the Fixed Price Period will be decreased by the appropriate amount (up to one half (1/2) of a monthly billing period).
 - (1) For example, if the Windplant begins initial energy deliveries on April 17, 1990, and the monthly billing period coinciding with April 1991, ran from April 1 through April 30, 1991, the first year prices of the Fixed Price Period would extend until April 30, 1991. However, if the Windplant began initial energy deliveries on April 13, 1990, the first year prices of the Fixed Price Period would end on March 31, 1991.
- (d) The final year of the Fixed Price Period will be adjusted in the opposite direction from the first year so that the term of the Fixed Price Period will equal exactly nine (9) years. All other years of the Fixed Price Period will each last 12 monthly billing periods.

- iv) Energy and capacity prices paid during the Fixed Price Period will be the prices provided by the 50 MW PPA 2 for the Fixed Price Period 1988 to 1996.
- v) If less than 20 MW are installed and operational under this 20 MW portion of the 50 MW PPA 2 by December 31, 1992, this 20 MW portion of the 50 MW PPA 2 shall terminate as to those MW not so installed and operational.

B) Contingent on CPUC approval, as discussed in paragraphs 7, 8 and 9 below, the remaining 30 MW portion of the 50 MW PPA 2 will be amended as follows:

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- i) Initial energy deliveries to PG&E under this 30 MW portion of the 50 MW PPA 2 may not commence before January 1, 1991 nor after December 31, 1992.
- ii) The Fixed Price Period (as defined in the 50 MW PPA 2) will commence as of the date of initial energy deliveries to PG&E under this 30 MW portion of the 50 MW PPA 2 from each Windplant (as defined in the 50 MW PPA 2) and continue for only nine (9) years, provided such deliveries occur as required by paragraph 3(B)(i) above.
- iii) The Fixed Price Period for each Windplant will be adjusted as follows so that the end of each of the first eight (8) years of the Fixed Price Period will coincide with the end of a monthly billing period:
 - (a) if the anniversary of the date of initial energy deliveries is exactly the middle of the monthly billing period, the first year of the Fixed Price Period will be extended by one half (1/2) of a monthly billing period.
 - (b) if the anniversary of the date of initial energy deliveries is between the middle and the end of the monthly billing period, the first year of the Fixed Price Period will be extended by the appropriate amount (up to one half (1/2) of a monthly billing period).
 - (c) if the anniversary of the date of initial energy deliveries is between the beginning and the middle of a monthly billing period, the first year of the Fixed Price Period will be decreased by the appropriate amount (up to one half (1/2) of a monthly billing period).
 - (1) For example, if the Windplant begins initial energy deliveries on April 17, 1990, and the monthly billing period coinciding with April 1991, ran from April 1 through April 30, 1991, the first year prices of the Fixed Price Period would extend until April 30, 1991. However, if the Windplant began initial energy deliveries on April 13, 1990, the first year prices of the Fixed Price Period would end on March 31, 1991.
 - (d) The final year of the Fixed Price Period will

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be adjusted in the opposite direction from the first year so that the term of the Fixed Price Period will equal exactly nine (9) years. All other years of the Fixed Price Period will each last 12 monthly billing periods.

- iv) Energy and capacity prices paid during the Fixed Price Period will be the prices provided by the 50 MW PPA 2 for the Fixed Price Period 1988 to 1996.
- v) If less than 30 MW are installed and operational under this 30 MW portion of the 50 MW PPA 2 by December 31, 1992, this 30 MW portion of the 50 MW PPA 2 shall terminate as to those MW not so installed and operational.

4. Standard Offer No. 1

A) The amendments described in paragraphs 2 and 3 above defer commencement of interim SO4 prices but do not necessarily require USW to defer the actual financing and construction of its projects. To accommodate deliveries from the projects, if any, which are installed and operational prior to the applicable commencement dates for PPA 1 and the 20 MW and 30 MW portions of the 50 MW PPA 2, USW and PG&E agree, contingent on CPUC approval as discussed in paragraphs 7, 8 and 9 below, to sign Standard Offer No. 1 ("SO1") power purchase agreements as described below:

- i) A 10 MW SO1 terminating December 31, 1989; and
- ii) A 20 MW SO1 terminating December 31, 1989; and
- iii) A 30 MW SO1 terminating December 31, 1990.

5. Priority: PPA 1

A) USW currently has a 10 MW Solano County interconnection priority under the CPUC's Qualifying Facility Milestone Procedure ("QFMP") which it may use with PPA 1. As one condition of retaining its QFMP priority, the PPA 1 project currently must start operation by October 30, 1989.

- i) Consistent with the amendments to PPA 1 specified in paragraphs 1 and 2 above, and contingent on CPUC approval as discussed in paragraphs 7, 8 and 9 below, (a) the QFMP start of operation milestone for the PPA 1 project shall be extended to December 31, 1992, and (b) USW may submit to PG&E a new project description form listing site locations

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within Solano County, California, different from and/or in addition to those Solano County sites previously specified by USW. Such project description form must be submitted to PG&E no later than the latest of the following: six (6) months prior to the scheduled operation date of each Windplant (as defined in PPA 1) or ten (10) calendar days after the issuance of CPUC approval, as described in paragraph 8 below. This QFMP priority shall be applicable to the PPA 1 project whether it begins operation under an SO1 pursuant to paragraph 4(A) above or under PPA 1.

6. Priority: 50 MW PPA 2

A) Currently USW's only QFMP interconnection priority in Solano County is the 10 MW interconnection priority referenced in paragraph 5 above. USW may use a 50 MW QFMP allocation with the 50 MW PPA 2 in the following manner:

- i) USW represents that it controls Wind Generator Parks, Inc. ("WGP"), which is a party to a 50 MW SO 1 power purchase agreement for a wind project to be located at specified sites in Solano County, California (the "WGP PPA"). WGP has a 50 MW QFMP allocation which it may use with the WGP PPA. The WGP project is currently required to start operation by September 17, 1989 as one condition of retaining its priority.
- ii) Contingent on CPUC approval as discussed in paragraphs 7, 8 and 9 below, USW may terminate the WGP PPA and use WGP's 50 MW QFMP allocation with the 50 MW PPA 2.
- iii) Consistent with the amendments to the 50 MW PPA 2 specified in paragraphs 1 and 3 above, and contingent on CPUC approval as discussed below, (a) the QFMP start of operation milestone for the 50 MW PPA 2 project shall be extended to December 31, 1992, and (b) USW may submit to PG&E a new project description form listing site locations within Solano County, California, different from and/or in addition to those Solano County sites previously specified by WGP. Such project description form must be submitted to PG&E no later than the latest of the following: six (6) months prior to the scheduled operation date of each Windplant (as defined in the 50 MW PPA 2) or ten (10) calendar

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days after the issuance of CPUC approval, as described in paragraph 8 below. This QFMP priority may be used by Windplants under the 50 MW PPA 2 whether they begin operation under an SOI pursuant to paragraph 4(A) above or under the 50 MW PPA 2.

B) USW agrees to the procedure described in paragraph 6(A) above. However, USW hereby states that it is USW's position that USW could assign the 50 MW PPA 2 to WGP and WGP could then use its 50 MW QFMP allocation with the 50 MW PPA 2.

7. CPUC Application

A) PG&E will prepare an application to the CPUC for ex parte approval of paragraphs 1 through 6 of this Agreement (the "Application"). Each Party shall bear its own costs and expenses associated with seeking such approval. USW agrees to provide reasonable assistance in preparation of the Application as PG&E may request.

B) USW and PG&E each agrees to use its best efforts to support before the CPUC the reasonableness of paragraphs 1 through 6 of this Agreement, including but not limited to providing testimony should the CPUC require hearings on this matter.

C) To accommodate the parties' desire to finalize the transactions contemplated hereunder as soon as possible, PG&E agrees to file the Application with the CPUC within forty-five (45) calendar days of the effective date of this Agreement.

8. CPUC Approval

Within 30 calendar days of the effective date of a CPUC decision or order which deems paragraphs 1 through 6 of this Agreement and all sums paid by PG&E pursuant thereto reasonable and recoverable in rates, the Parties shall prepare and sign the amendments and agreements described in paragraphs 1, 2, 3 and 4 above, and paragraph 10 below.

9. Failure to Obtain CPUC Approval

In the event the CPUC issues a decision or order not approving paragraphs 1 through 6 of this Agreement as described in paragraphs 7 and 8 above, or if the CPUC fails to issue any decision or order regarding the Application

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within one (1) year after the Application is filed (collectively, a "CPUC Denial") this Agreement shall be null and void as of the effective date of the CPUC Denial.

10. Assignments

Contingent on CPUC approval as described in paragraph 8 above, the 50 MW PPA 2 shall be amended to provide that Windplants (as defined in the 50 MW PPA 2) thereunder shall not exceed three (3) in number and each Windplant shall have a nameplate of at least 10,000 kW.

11. Captions

Paragraph captions are included herein for ease of reference only. The captions are not intended to affect the meaning of the contents or scope of this Agreement.

12. Additional Agreements

The Parties agree to execute additional agreements to implement the terms of this Agreement as described herein. If the CPUC approves the Application, as described in paragraph 8 above, this Agreement supersedes any and all prior negotiations, correspondence, understandings and agreements between the Parties with respect to the specific subject matter hereof.

13. Modification

This Agreement may be amended or modified only by a written instrument signed by both USW and PG&E.

14. Choice of Law

This Agreement shall be construed and interpreted in accordance with the laws of the State of California, excluding any choice of law rules that may direct the application of the laws of another jurisdiction.

15. Non-Waiver

Failure by either Party hereto to enforce any right or obligation with respect to any matter arising in connection with this Agreement shall not constitute a waiver as to that matter or any other matter.

16. Notices

All notices hereunder shall be in writing and shall be deemed received (i) at the close of business on the date of

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receipt, if delivered by hand or (ii) when signed for by recipient, if sent registered or certified mail, postage prepaid, provided such notice was properly addressed to the appropriate address indicated on the signature page hereof or to such other address as a party may designate by prior written notice to the other parties.

17. Severability

Any illegality or invalidity, in whole or in part, of any provision of this Agreement shall not affect the validity of the remaining portions of the Agreement.

18. Interpretation

This Agreement is the result of negotiation. Moreover, each Party and each Party's respective counsel has reviewed this Agreement. Accordingly, the normal rule of construction to the effect that any ambiguities shall be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives, and it is effective as of the last date set forth below, provided it shall become null and void on the effective date of a CPUC Denial pursuant to paragraph 9 above.

U.S. WINDPOWER, INC.

PACIFIC GAS AND ELECTRIC COMPANY

By:

Gerald R. Anderson

By:

Robert J. Maywood

Name:

Gerald R. Anderson

Robert J. Maywood
Vice President

Title:

President

Power Planning and Contracts

Date Signed: May 22, 1988

Date Signed: May 27, 1988

Notice addresses:

U.S. WINDPOWER, INC.
500 Sansome Street, Suite 600
San Francisco, CA 94111
Attn: General Counsel

PACIFIC GAS AND ELECTRIC COMPANY
Attn: Paula G. Rosput
Manager, QF Contracts
77 Beale Street, 23rd Floor
San Francisco, CA 94106

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FINAL GUIDELINES FOR CONTRACT
ADMINISTRATION OF STANDARD OFFERS*

I. GENERAL CONTRACT MODIFICATIONS

1. Contract modifications requested by QFs must be accompanied by price and/or performance concessions (e.g., adders such as dispatchability, voltage support, and emergency availability), commensurate in value with the degree of the change in the contract (from minor to major). The modifications and concessions obtained through negotiation should be valued with reference to the unamended contract and, where appropriate (e.g., deferrals and performance concessions), the current and expected value of the QF's power.

II. CONTRACT BROKERING AND NEW PROJECTS

1. The Commission recognizes that valid circumstances may arise in which the holder of a standard offer contract may wish to assign that contract to another party. The Commission does not encourage, however, forms of contract brokering which take on a speculative character. Utilities negotiating agreements with new holders of assigned contracts should seek pricing and performance concessions commensurate with the contract modifications requested.

2. Where the project would not be viable under the original terms of the contract, the modifications should not be accepted.

*Additions to the proposed guidelines, issued on July 8, 1988, are underlined. Deletions are struck out.

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3. Where requested contract modifications would result in an essentially new project, the modifications should not be accepted. In considering whether or not the requested modifications represent an essentially new project, the utility must be mindful of its duty to deal in good faith with QFs.

- (a) Modifications such as significant changes in site, thermal load, fuel, plant size, cogeneration thermal host, or prime-mover technology suggest that the project is new.
- (b) Multiple modifications to a contract suggest that the project is new.

III. FIVE-YEAR ON-LINE DATE REQUIREMENT

1. The five-year on-line requirement in standard offer contracts should be enforced, and should begin when both the QF and the utility have signed the contract.

2. Exceptions may be appropriate where the QF has experienced a "force majeure" or "uncontrollable force" within the meaning of the QF's standard offer contract and has complied with all contractual requirements in claiming the protection of the force majeure clause.

3. Any extension of the five-year on-line requirement resulting from the occurrence of a qualifying force majeure will be limited by the duration of the force majeure and the extent to which the force majeure impacted the QF's ability to meet the contract requirements.

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4. Decisions about the applicability of the force majeure clause will be made on a case-by-case basis. Factors to be considered will include an examination of the factual basis of the force majeure claim, the specific language of the contractual force majeure clause, and whether the QF has complied with applicable contractual requirements to give notice of the force majeure and to mitigate the delay caused by the force majeure. The effect of the force majeure on the utility's obligations under the contract will also be considered as cases arise.

5. Events giving rise to valid claims of force majeure may include delay in obtaining required governmental permits (such as EBE siting permits), depending on the circumstances of the individual QF. However, not all project delays resulting from delays in obtaining required governmental permits are valid claims of force majeure. Permitting delays and denials are a regular part of project development and should be anticipated by project developers. Contract deferral conditions imposed by the CEC on projects within its jurisdiction for resource planning purposes, unforeseeable at the time of contract execution, may also be considered force majeure. The inability to obtain transmission capacity in PG&E's designated area of transmission constraints is unlikely to be viewed as a valid force majeure.

6. In general, deferrals (paid or non-paid) and buyouts should be considered only with QFs who have obtained all of the permits and certification necessary to go forward with their projects. As with all other types of contract modifications, deferrals and buyouts are subject to the viability guidelines outlined under Section IV.

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7. On-line date deferrals and/or contract buyouts may be considered only if the ratepayers' interests will be served demonstrably better by such deferral.

8. The reasonableness of contract deferrals and buyouts will be determined by evaluating the need for generating capacity, the length of deferral, the costs avoided by deferring or buying out unneeded capacity, and the benefits (both monetary and non-monetary) granted projects acceding to deferral or buyout.

9. Unless an on-line date deferral is specifically negotiated between the utility and the OF, contract modifications will not extend the five-year on-line date.

10. Prospective reviews by this Commission for paid deferrals and buyouts will be required. Applications for preapproval of paid deferrals or buyouts must include documentation demonstrating that the utility has examined information on project viability, consistent with these guidelines, and that the utility is satisfied that the OF is able to meet the original terms of the contract.

IV. VIABILITY

1. Examination of a QF's viability under the original contract is prerequisite to modifications to power purchase contracts. In considering the QF's viability, the utility must be mindful of its duty to deal in good faith with the QF.

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2. No modifications to a power purchase contract should be made if, after a reasonable examination of the QF's viability, the QF is determined to be nonviable. In the event that a dispute exists between the QF and the utility as to the there is a genuine question of the QF's viability of the QF, then negotiated modifications to the contract may constitute a reasonable settlement of the dispute, or the QF may choose to bring a complaint before the Commission.

3. To determine viability the utility should examine, and the QF should provide information on, various aspects of the QF's project development including, but not limited to, the following. Each aspect examined should be consistent with the terms of the original contract. In assessing a project's viability, the utility should consider these and other aspects as a whole, the reasons behind the current status of individual items, and in light of the requested modifications.

- (a) A completed Project Description and Interconnection Study Cost Request form.
- (b) Proof of site control as defined in the QFMP.
- (c) Commencement of the detailed interconnection study for the project.
- (d) Proof that the \$5/kw project fee has been established in an escrow account or letter of credit for the project pursuant to the QFMP or an explanation of why the QF has chosen not to establish the project fee and interconnection priority.
- (e) Proof of permit status, such as a letter from the permitting agency accepting the QF's permit application for review and any

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additional information pertaining to the permit status.

- (f) Proof of fuel supply, such as evidence of the existence and term of the fuel contracts.
- (g) Evidence of feasibility of project construction and operation within the five-year deadline, such as a construction contract if one exists.
- (h) Status report of equipment procurements including equipment procurement contracts.
- (i) Status report of engineering and design.
- (j) Status report of project financing, including lender's commitment, conditional or otherwise.
- (k) Status of economic viability of the project by submission of a cash flow analysis.
- (l) Evidence of the OF's prior track record on project development.

V. EXEMPTIONS

These guidelines do not apply to "pioneer" OFs. In negotiating contract modifications with pioneers, utilities should follow the guidance provided in D.87-08-047, and any subsequent guidelines specifically developed for pioneers.

(END OF APPENDIX B)

ORIGINAL

Decision 88 12 095 DEC 19 1988

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
Pacific Gas and Electric Company for)
an order approving an agreement with)
U.S. Windpower, Inc., regarding the)
purchase of energy and capacity from)
windfarms to be located in Solano)
County, California.)

Application 88-08-002
(Filed August 1, 1988)

OPINION

Pacific Gas and Electric Company (PG&E) requests Commission approval of a Solano Deferral Agreement (Agreement) dated May 27, 1988 and amended October 27, 1988, between PG&E and U.S. Windpower Inc. (USW). The Agreement settles a dispute concerning two of USW's interim Standard Offer No. 4 (ISO4) power purchase agreements (PPAs). PG&E requests an order finding the Agreement, as amended, to be reasonable and authorizing recovery in rates of all payments made under the Agreement. PG&E also requests an order affirming that the Qualifying Facility Milestone Procedure (QFMP) start of operation milestone may be extended for these deferred projects.¹

A. PG&E's Application

On August 1, 1988, PG&E filed Application (A.) 88-08-002 requesting ex parte approval of the Solano Deferral Agreement between PG&E and USW. The Agreement was amended on October 27, 1988 (First Amendment). USW is a qualifying facility (QF)

¹ The QFMP is a procedure to establish interconnection priority among QFs. This procedure was originally adopted in Decision (D.) 85-01-038 and modified in subsequent decisions in I.84-04-077, the investigation into transmission constraints affecting QF development.