

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

POWER PURCHASE AGREEMENT
FOR
LONG-TERM ENERGY AND CAPACITY
BETWEEN
PACIFIC GAS AND ELECTRIC COMPANY
AND
CALIFORNIA-BIO RESOURCES II

13C038

MAY 1984

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

STANDARD OFFER #4:
LONG-TERM ENERGY AND CAPACITY
POWER PURCHASE AGREEMENT

CONTENTS

<u>Article</u>		<u>Page</u>
1	QUALIFYING STATUS	3
2	COMMITMENT OF PARTIES	4
3	PURCHASE OF POWER	5
4	ENERGY PRICE	7
5	CAPACITY ELECTION AND CAPACITY PRICE	10
6	LOSS ADJUSTMENT FACTORS	11
7	CURTAILMENT	12
8	RETROACTIVE APPLICATION OF CPUC ORDERS	12
9	NOTICES	13
10	DESIGNATED SWITCHING CENTER	13
11	TERMS AND CONDITIONS	13
12	TERM OF AGREEMENT	14
Appendix A:	GENERAL TERMS AND CONDITIONS	
Appendix B:	ENERGY PAYMENT OPTIONS	
Appendix C:	CURTAILMENT OPTIONS	
Appendix D:	AS-DELIVERED CAPACITY	
Appendix E:	FIRM CAPACITY	
Appendix F:	INTERCONNECTION	

1 LONG-TERM ENERGY AND CAPACITY
2 POWER PURCHASE AGREEMENT
3 BETWEEN
4 CALIFORNIA-BIO RESOURCES II
5 AND
6 PACIFIC GAS AND ELECTRIC COMPANY
7
8
9

10 CALIFORNIA-BIO RESOURCES II ("Seller"), and PACIFIC GAS
11 AND ELECTRIC COMPANY ("PGandE"), referred to collectively as
12 "Parties" and individually as "Party", agree as follows:
13

14 ARTICLE 1 QUALIFYING STATUS
15

16 Seller warrants that, at the date of first power
17 deliveries from Seller's Facility¹ and during the term of
18 agreement, its Facility shall meet the qualifying facility
19 requirements established as of the effective date of this
20 Agreement by the Federal Energy Regulatory Commission's
21 rules (18 Code of Federal Regulations 292) implementing the
22 Public Utility Regulatory Policies Act of 1978 (16 U.S.C.A.
23 796, et seq.).
24
25
26

27 ¹ Underlining identifies those terms which are defined in Section A-1
28 of Appendix A.

ARTICLE 2 COMMITMENT OF PARTIES

The prices to be paid Seller for energy and/or capacity delivered pursuant to this Agreement have wholly or partly been fixed at the time of execution. Actual avoided costs at the time of energy and/or capacity deliveries may be substantially above or below the prices fixed in this Agreement. Therefore, the Parties expressly commit to the prices fixed in this Agreement for the applicable period of performance and shall not seek to or have a right to renegotiate such prices for any reason. As part of its consideration for the benefit of fixing part or all of the energy and/or capacity prices under this Agreement, Seller waives any and all rights to judicial or other relief from its obligations and/or prices set forth in Appendices B, D, and E, or modification of any other term or provision for any reasons whatsoever.

This Agreement contains certain provisions which set forth methods of calculating damages to be paid to PGandE in the event Seller fails to fulfill certain performance obligations. The inclusion of such provisions is not intended to create any express or implied right in Seller to terminate this Agreement prior to the expiration of the term of agreement. Termination of this Agreement by Seller prior to its expiration date shall constitute a breach of this Agreement and the damages expressly set forth in this

1 Agreement shall not constitute PGandE's sole remedy for such
2 breach.

3
4 ARTICLE 3 PURCHASE OF POWER

5
6 (a) Seller shall sell and deliver and PGandE shall
7 purchase and accept delivery of capacity and energy at the
8 voltage level of _____¹ kV.

9
10 (b) Seller shall provide capacity and energy from its
11 31,000 (2 @ 15,500) kW Facility located near Burney in
12 Shasta County, California at T35N, R2E, Section 24.

13
14 (c) The scheduled operation date of the Facility is
15 June 15, 1987. At the end of each calendar quarter Seller
16 shall give written notice to PGandE of any change in the
17 scheduled operation date.

18
19 (d) To avoid exceeding the physical limitations of the
20 interconnection facilities, Seller shall limit the
21 Facility's actual rate of delivery into the PGandE system to
22 _____² kW.

23
24 ¹ The Seller requests, and PGandE consents, that this blank not be
25 filled in at the time of executing the Agreement because the
26 Seller, recognizing that the information is not yet available to
27 make a definitive determination of the number to be inserted in
28 this blank, shall request PGandE to perform an interconnection
study to be done in its accustomed manner of making such studies to
determine the number to be inserted.

² The appropriate number will be inserted upon completion of an
interconnection study.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

(e) The primary energy source for the Facility is wood waste and slash.

(f) If Seller does not begin construction of its Facility by June 15, 1985 PGandE may reallocate the existing capacity on PGandE's transmission and/or distribution system which would have been used to accommodate Seller's power deliveries to other uses. In the event of such reallocation, Seller shall pay PGandE for the cost of any upgrades or additions to PGandE's system necessary to accommodate the output from the Facility. Such additional facilities shall be installed, owned and maintained in accordance with the applicable PGandE tariff.

(g) The transformer loss adjustment factor is _____¹.

¹ If Seller chooses to have meters placed on Seller's side of the transformer, an estimated transformer loss adjustment factor of 2 percent, unless the Parties agree otherwise, will be applied. This estimated transformer loss figure will be adjusted to a measurement of actual transformer losses performed at Seller's request and expense.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ARTICLE 4 ENERGY PRICE

PGandE shall pay Seller for its net energy output¹ under the energy payment option checked below²:

_____ Energy Payment Option 1 - Forecasted Energy Prices

During the fixed price period, Seller shall be paid for energy delivered at prices equal to _____³ percent of the prices set forth in Table B-1, Appendix B, plus _____⁴ percent of PGandE's full short-run avoided operating costs.

For the remaining years of the term of agreement, Seller shall be paid for energy delivered at prices equal to PGandE's full short-run avoided operating costs.

¹ Insert either "net energy output" or "surplus energy output" to show the energy sale option selected by Seller.

² Energy Payment Option 2 is not available to oil or gas-fired cogenerators.

³ Insert either 0, 20, 40, 60, 80, or 100, at Seller's option. If Seller's Facility is an oil or gas-fired cogeneration facility, either 0 or 20 must be inserted.

⁴ Insert the difference between 100 and the percentage selected under footnote 3 above.

1 If Seller's Facility is not an oil or gas-fired
2 cogeneration facility, Seller may convert from Energy
3 Payment Option 1 to Energy Payment Option 2 and be
4 subject to the conditions therein, provided that Seller
5 shall not change the percentage of energy prices to be
6 based on PGandE's full short-run avoided operating
7 costs. Such conversion must be made at least 90 days
8 prior to the date of initial energy deliveries and must
9 be made by written notice in accordance with
10 Section A-17, Appendix A.

11
12 X Energy Payment Option 2 - Levelized Energy Prices
13

14 During the fixed price period, Seller shall be
15 paid for energy delivered at prices equal to 80¹
16 percent of the levelized energy prices set forth in
17 Table B-2, Appendix B for the year in which energy
18 deliveries begin and term of agreement, plus 20²
19 percent of PGandE's full short-run avoided operating
20 costs. During the fixed price period, Seller shall be
21 subject to the conditions and terms set forth in
22 Appendix B, Energy Payment Option 2.

23
24
25
26
27 ¹ Insert either 20, 40, 60, 80, or 100, at Seller's option.

28 ² Insert the difference between 100 and the percentage selected under
 footnote 1 above.

1 For the remaining years of the term of agreement,
2 Seller shall be paid for energy delivered at prices
3 equal to PGandE's full short-run avoided operating
4 costs.

5
6 Seller may convert from Energy Payment Option 2 to
7 Energy Payment Option 1, provided that Seller shall not
8 change the percentage of energy prices to be based on
9 PGandE's full short-run avoided operating costs. Such
10 conversion must be made at least 90 days prior to the
11 date of initial energy deliveries and must be made by
12 written notice in accordance with Section A-17,
13 Appendix A.

14
15 _____ Energy Payment Option 3 - Incremental Energy Rate

16
17 Beginning with the date of initial energy
18 deliveries and continuing until _____¹, Seller
19 shall be paid monthly for energy delivered at prices
20 equal to PGandE's full short-run avoided operating
21 costs, provided that adjustments shall be made annually
22 to the extent set forth in Appendix B, Energy Payment
23 Option 3.

24
25
26 _____
27 ¹ Specified by Seller. Must be December 31, 1998 or prior.
28

1 The Incremental Energy Rate Band Widths specified
2 by Seller in Table I below shall be used in determining
3 the annual adjustment, if any.
4

5 Table I

6 <u>Year</u>	<u>Incremental Energy Rate Band Widths</u> (must be multiples of 100 or zero)
7 1984	
8 1985	_____
9 1986	_____
10 1987	_____
11 1988	_____
12 1989	_____
13 1990	_____
14 1991	_____
15 1992	_____
16 1993	_____
17 1994	_____
18 1995	_____
19 1996	_____
20 1997	_____
21 1998	_____

22 After _____, Seller shall be paid for
23 energy delivered at prices equal to PGandE's full
24 short-run avoided operating costs.
25

26 ARTICLE 5 CAPACITY ELECTION AND CAPACITY PRICE
27

28 Seller may elect to deliver either firm capacity or
as-delivered capacity, and Seller's election is indicated
below. PGandE's prices for firm capacity and as-delivered
capacity are derived from PGandE's full avoided costs as
approved by the CPUC.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

X Firm capacity - 24,000 kW for 30 years from the firm capacity availability date with payment determined in accordance with Appendix E. Except for hydro-electric facilities, PGandE shall pay Seller for capacity delivered in excess of firm capacity on an as-delivered capacity basis in accordance with As-Delivered Capacity Payment Option 2 set forth in Appendix D.

OR

_____ As-delivered capacity with payment determined in accordance with As-Delivered Capacity Payment Option _____ set forth in Appendix D.

ARTICLE 6 LOSS ADJUSTMENT FACTORS

Capacity Loss Adjustment Factors shall be as shown in Appendix D and Appendix E, dependent upon Seller's capacity election set forth in Article 5 of this Agreement.

Energy Loss Adjustment Factors shall be considered as unity for all energy payments related to Energy Payment Options 1 and 2 set forth in Appendix B for the entire fixed price period of this Agreement, except for the percentage of payments that Seller elected in Article 4 to have calculated based on PGandE's full short-run avoided operating costs. Energy Loss Adjustment Factors for all payments related to

1 PGandE's full short-run avoided operating costs are subject
2 to CPUC rulings for the entire term of agreement.

3
4 ARTICLE 7 CURTAILMENT

5
6 Seller has two options regarding possible curtailment
7 by PGandE of Seller's deliveries, and Seller's selection is
8 indicated below:

9 Curtailment Option A - Hydro Spill and Negative Avoided
10 Cost

11 X Curtailment Option B - Adjusted Price Period

12
13 The two options are described in Appendix C.

14
15 ARTICLE 8 RETROACTIVE APPLICATION OF CPUC ORDERS

16
17 Pursuant to Ordering Paragraph 1(f) of CPUC Decision
18 No. 83-09-054 (September 7, 1983), after the effective date
19 of the CPUC's Application 82-03-26 decision relating to line
20 loss factors, Seller has the option to retain the relevant
21 terms of this Agreement or have the results of that decision
22 incorporated into this Agreement. To retain the terms
23 herein, Seller shall provide written notice to PGandE within
24 30 days after the effective date of the relevant CPUC
25 decision on Application 82-03-26. Failure to provide such
26 notice will result in the amendment of this Agreement to
27 comply with that decision.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

As soon as practicable following the issuance of a decision in Application 82-03-26, PGandE shall notify Seller of the effective date thereof and its results.

ARTICLE 9 NOTICES

All written notices shall be directed as follows:

To PGandE: Pacific Gas and Electric Company
Attention: Vice President -
Electric Operations
77 Beale Street
San Francisco, CA 94106

To Seller: California-Bio Resources II
Research Resources, Inc.
2420 Camino Ramon Road
Bishop Ranch
San Ramon, CA 94583

ARTICLE 10 DESIGNATED SWITCHING CENTER

The designated PGandE switching center shall be, unless changed by PGandE:

Pit 3 Powerhouse
Burney, California
(916) 335-2266

ARTICLE 11 TERMS AND CONDITIONS

This Agreement includes the following appendices which are attached and incorporated by reference:

- Appendix A - GENERAL TERMS AND CONDITIONS
- Appendix B - ENERGY PAYMENT OPTIONS
- Appendix C - CURTAILMENT OPTIONS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- Appendix D - AS-DELIVERED CAPACITY
- Appendix E - FIRM CAPACITY
- Appendix F - INTERCONNECTION

ARTICLE 12 TERM OF AGREEMENT

This Agreement shall be binding upon execution and remain in effect thereafter for 30 years¹ from the firm capacity availability date²; provided, however, that it shall terminate if energy deliveries do not start within five years of the execution date.

¹ The minimum contract term is 15 years and the maximum contract term is 30 years.

² Insert "firm capacity availability date" if Seller has elected to deliver firm capacity or "date of initial energy deliveries" if Seller has elected to deliver as-delivered capacity.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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.

CALIFORNIA-BIO RESOURCES II

PACIFIC GAS AND ELECTRIC COMPANY

BY: *Orin J. Hampton*

BY: *H. M. Howe*
H. M. HOWE

ORIN J. HAMPTON
(Type Name)
TITLE: President

Chief -
TITLE: Siting Department

DATE SIGNED: October 11, 1984

DATE SIGNED: *April 9, 1985*

Howe
[Signature]

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

APPENDIX A
GENERAL TERMS AND CONDITIONS
CONTENTS

<u>Section</u>		<u>Page</u>
A-1	DEFINITIONS	A-2
A-2	CONSTRUCTION	A-7
A-3	OPERATION	A-11
A-4	PAYMENT	A-14
A-5	ADJUSTMENTS OF PAYMENTS	A-15
A-6	ACCESS TO RECORDS AND PGandE DATA	A-15
A-7	INTERRUPTION OF DELIVERIES	A-16
A-8	FORCE MAJEURE	A-16
A-9	INDEMNITY	A-18
A-10	LIABILITY; DEDICATION	A-19
A-11	SEVERAL OBLIGATIONS	A-20
A-12	NON-WAIVER	A-20
A-13	ASSIGNMENT	A-20
A-14	CAPTIONS	A-21
A-15	CHOICE OF LAWS	A-21
A-16	GOVERNMENTAL JURISDICTION AND AUTHORIZATION	A-21
A-17	NOTICES	A-22
A-18	INSURANCE	A-22

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

APPENDIX A
GENERAL TERMS AND CONDITIONS

A-1 DEFINITIONS

Whenever used in this Agreement, appendices, and attachments hereto, the following terms shall have the following meanings:

Adjusted firm capacity price - The \$/kW-year purchase price for firm capacity from Table E-2, Appendix E for the period of Seller's actual performance.

As-delivered capacity - Capacity delivered to PGandE in excess of firm capacity or in lieu of a firm capacity commitment.

CPUC - The Public Utilities Commission of the State of California.

Current firm capacity price - The \$/kW-year capacity price from PGandE's firm capacity price schedule effective at the time PGandE derates the firm capacity pursuant to Section E-4(b), Appendix E or Seller terminates performance under this Agreement, for a term equal to the period from

1 the date of deration or termination to the end of the term
2 of agreement.

3
4 Designated PGandE switching center - That switching
5 center or other PGandE installation identified in
6 Article 10.

7
8 Facility - That generation apparatus described in
9 Article 3 and all associated equipment owned, maintained,
10 and operated by Seller.

11
12 Firm capacity - That capacity, if any, identified as
13 firm in Article 5 except as otherwise changed as provided
14 herein.

15
16 Firm capacity availability date - The day following
17 the day during which all features and equipment of the
18 Facility are demonstrated to PGandE's satisfaction to be
19 capable of operating simultaneously to deliver firm capacity
20 continuously into PGandE's system as provided in this
21 Agreement.

22
23 Firm capacity price - The price for firm capacity
24 applicable for the firm capacity availability date and the
25 number of years of firm capacity delivery from the firm
26 capacity price schedule, Table E-2, Appendix E.

1 Firm capacity price schedule - The periodically
2 published schedule of the \$/kW-year prices that PGandE
3 offers to pay for firm capacity. See Table E-2, Appendix E.
4

5 Fixed price period - The period during which
6 forecasted or levelized energy prices, and/or forecasted
7 as-delivered capacity prices, are in effect; defined as the
8 first five years of the term of agreement if the term of
9 agreement is 15 or 16 years; the first six years of the term
10 of agreement if the term of agreement is 17, 18, or 19
11 years; or the first ten years of the term of agreement if
12 the term of agreement is anywhere from 20 through 30 years.
13

14 Forced outage - Any outage resulting from a design
15 defect, inadequate construction, operator error or a
16 breakdown of the mechanical or electrical equipment that
17 fully or partially curtails the electrical output of the
18 Facility.
19

20 Full short-run avoided operating costs -
21 CPUC-approved costs which are the basis of PGandE's
22 published energy prices. PGandE's current energy price
23 calculation is shown in Table B-5, Appendix B. PGandE's
24 published off-peak hours' prices shall be adjusted, as
25 appropriate, if Seller has selected Curtailment Option B.
26
27
28

1 Interconnection facilities - All means required and
2 apparatus installed to interconnect and deliver power from
3 the Facility to the PGandE system including, but not limited
4 to, connection, transformation, switching, metering,
5 communications, and safety equipment, such as equipment
6 required to protect (1) the PGandE system and its customers
7 from faults occurring at the Facility, and (2) the Facility
8 from faults occurring on the PGandE system or on the systems
9 of others to which the PGandE system is directly or
10 indirectly connected. Interconnection facilities also
11 include any necessary additions and reinforcements by PGandE
12 to the PGandE system required as a result of the
13 interconnection of the Facility to the PGandE system.

14
15 Net energy output - The Facility's gross output in
16 kilowatt-hours less station use and transformation and
17 transmission losses to the point of delivery into the PGandE
18 system. Where PGandE agrees that it is impractical to
19 connect the station use on the generator side of the power
20 purchase meter, PGandE may, at its option, apply a station
21 load adjustment.

22
23 Prudent electrical practices - Those practices,
24 methods, and equipment, as changed from time to time, that
25 are commonly used in prudent electrical engineering and
26
27
28

1 operations to design and operate electric equipment lawfully
2 and with safety, dependability, efficiency, and economy.

3
4 Scheduled operation date - The day specified in
5 Article 3(c) when the Facility is, by Seller's estimate,
6 expected to produce energy that will be available for
7 delivery to PGandE.

8
9 Special facilities - Those additions and
10 reinforcements to the PGandE system which are needed to
11 accommodate the maximum delivery of energy and capacity from
12 the Facility as provided in this Agreement and those parts
13 of the interconnection facilities which are owned and
14 maintained by PGandE at Seller's request, including metering
15 and data processing equipment. All special facilities shall
16 be owned, operated, and maintained pursuant to PGandE's
17 electric Rule No. 21, which is attached hereto.

18
19 Station use - Energy used to operate the Facility's
20 auxiliary equipment. The auxiliary equipment includes, but
21 is not limited to, forced and induced draft fans, cooling
22 towers, boiler feed pumps, lubricating oil systems, plant
23 lighting, fuel handling systems, control systems, and sump
24 pumps.

25
26 Surplus energy output - The Facility's gross output,
27 in kilowatt-hours, less station use, and any other use by
28

1 Seller, and transformation and transmission losses to the
2 point of delivery into the PGandE system.

3
4 Term of agreement - The number of years this
5 Agreement will remain in effect as provided in Article 12.

6
7 Voltage level - The voltage at which the Facility
8 interconnects with the PGandE system, measured at the point
9 of delivery.

10
11 A-2 CONSTRUCTION

12
13 A-2.1 Land Rights

14
15 Seller hereby grants to PGandE all necessary rights
16 of way and easements, including adequate and continuing
17 access rights on property of Seller, to install, operate,
18 maintain, replace, and remove the special facilities.
19 Seller agrees to execute such other grants, deeds, or
20 documents as PGandE may require to enable it to record such
21 rights of way and easements. If any part of PGandE's
22 equipment is to be installed on property owned by other than
23 Seller, Seller shall, at its own cost and expense, obtain
24 from the owners thereof all necessary rights of way and
25 easements, in a form satisfactory to PGandE, for the
26 construction, operation, maintenance, and replacement of
27 PGandE's equipment upon such property. If Seller is unable
28

1 to obtain such rights of way and easements, Seller shall
2 reimburse PGandE for all costs incurred by PGandE in
3 obtaining them. PGandE shall at all times have the right of
4 ingress to and egress from the Facility at all reasonable
5 hours for any purposes reasonably connected with this
6 Agreement or the exercise of any and all rights secured to
7 PGandE by law or its tariff schedules.

8
9 A-2.2 Design, Construction, Ownership, and Maintenance

10
11 (a) Seller shall design, construct, install, own,
12 operate, and maintain all interconnection facilities, except
13 special facilities, to the point of interconnection with the
14 PGandE system as required for PGandE to receive capacity and
15 energy from the Facility. The Facility and interconnection
16 facilities shall meet all requirements of applicable codes
17 and all standards of prudent electrical practices and shall
18 be maintained in a safe and prudent manner. A description
19 of the interconnection facilities for which Seller is solely
20 responsible is set forth in Appendix F, or if the
21 interconnection requirements have not yet been determined at
22 the time of the execution of this Agreement, the description
23 of such facilities will be appended to this Agreement at the
24 time such determination is made.

25
26 (b) Seller shall submit to PGandE the design and all
27 specifications for the interconnection facilities (except
28 special facilities) and, at PGandE's option, the Facility,

1 for review and written acceptance prior to their release for
2 construction purposes. PGandE shall notify Seller in
3 writing of the outcome of PGandE's review of the design and
4 specifications for Seller's interconnection facilities (and
5 the Facility, if requested) within 30 days of the receipt of
6 the design and all of the specifications for the
7 interconnection facilities (and the Facility, if requested).
8 Any flaws perceived by PGandE in the design and
9 specifications for the interconnection facilities (and the
10 Facility, if requested) will be described in PGandE's
11 written notification. PGandE's review and acceptance of the
12 design and specifications shall not be construed as
13 confirming or endorsing the design and specifications or as
14 warranting their safety, durability, or reliability. PGandE
15 shall not, by reason of such review or lack of review, be
16 responsible for strength, details of design, adequacy, or
17 capacity of equipment built pursuant to such design and
18 specifications, nor shall PGandE's acceptance be deemed to
19 be an endorsement of any of such equipment. Seller shall
20 change the interconnection facilities as may be reasonably
21 required by PGandE to meet changing requirements of the
22 PGandE system.

23
24 (c) In the event it is necessary for PGandE to
25 install interconnection facilities for the purposes of this
26 Agreement, they shall be installed as special facilities.
27
28

1 (d) Upon the request of Seller, PGandE shall provide
2 a binding estimate for the installation of interconnection
3 facilities by PGandE.
4

5 A-2.3 Meter Installation
6

7 (a) PGandE shall specify, provide, install, own,
8 operate, and maintain as special facilities all metering and
9 data processing equipment for the registration and recording
10 of energy and other related parameters which are required
11 for the reporting of data to PGandE and for computing the
12 payment due Seller from PGandE.
13

14 (b) Seller shall provide, construct, install, own,
15 and maintain at Seller's expense all that is required to
16 accommodate the metering and data processing equipment, such
17 as, but not limited to, metal-clad switchgear, switchboards,
18 cubicles, metering panels, enclosures, conduits, rack
19 structures, and equipment mounting pads.
20

21 (c) PGandE shall permit meters to be fixed on
22 PGandE's side of the transformer. If meters are placed on
23 PGandE's side of the transformer, service will be provided
24 at the available primary voltage and no transformer loss
25 adjustment will be made. If Seller chooses to have meters
26 placed on Seller's side of the transformer, an estimated
27 transformer loss adjustment factor of 2 percent, unless the
28 Parties agree otherwise, will be applied.

1 A-3 OPERATION

2
3 A-3.1 Inspection and Approval

4
5 Seller shall not operate the Facility in parallel
6 with PGandE's system until an authorized PGandE
7 representative has inspected the interconnection facilities,
8 and PGandE has given written approval to begin parallel
9 operation. Seller shall notify PGandE of the Facility's
10 start-up date at least 45 days prior to such date. PGandE
11 shall inspect the interconnection facilities within 30 days
12 of the receipt of such notice. If parallel operation is not
13 authorized by PGandE, PGandE shall notify Seller in writing
14 within five days after inspection of the reason
15 authorization for parallel operation was withheld.

16
17 A-3.2 Facility Operation and Maintenance

18
19 Seller shall operate and maintain its Facility
20 according to prudent electrical practices, applicable laws,
21 orders, rules, and tariffs and shall provide such reactive
22 power support as may be reasonably required by PGandE to
23 maintain system voltage level and power factor. Seller
24 shall operate the Facility at the power factors or voltage
25 levels prescribed by PGandE's system dispatcher or desig-
26 nated representative. If Seller fails to provide reactive
27 power support, PGandE may do so at Seller's expense.

1 A-3.3 Point of Delivery

2
3 Seller shall deliver the energy at the point where
4 Seller's electrical conductors (or those of Seller's agent)
5 contact PGandE's system as it shall exist whenever the
6 deliveries are being made or at such other point or points
7 as the Parties may agree in writing. The initial point of
8 delivery of Seller's power to the PGandE system is set forth
9 in Appendix F.

10
11 A-3.4 Operating Communications

12
13 (a) Seller shall maintain operating communications
14 with the designated PGandE switching center. The operating
15 communications shall include, but not be limited to, system
16 paralleling or separation, scheduled and unscheduled
17 shutdowns, equipment clearances, levels of operating voltage
18 or power factors and daily capacity and generation reports.

19
20 (b) Seller shall keep a daily operations log for
21 each generating unit which shall include information on unit
22 availability, maintenance outages, circuit breaker trip
23 operations requiring a manual reset, and any significant
24 events related to the operation of the Facility.

25
26 (c) If Seller makes deliveries greater than one
27 megawatt, Seller shall measure and register on a graphic
28 recording device power in kW and voltage in kV at a location

1 within the Facility agreed to by both Parties.

2
3 (d) If Seller makes deliveries greater than one and
4 up to and including ten megawatts, Seller shall report to
5 the designated PGandE switching center, twice a day at
6 agreed upon times for the current day's operation, the
7 hourly readings in kW of capacity delivered and the energy
8 in kWh delivered since the last report.

9
10 (e) If Seller makes deliveries of greater than ten
11 megawatts, Seller shall telemeter the delivered capacity and
12 energy information, including real power in kW, reactive
13 power in kVAR, and energy in kWh to a switching center
14 selected by PGandE. PGandE may also require Seller to
15 telemeter transmission kW, kVAR, and kV data depending on
16 the number of generators and transmission configuration.
17 Seller shall provide and maintain the data circuits required
18 for telemetering. When telemetering is inoperative, Seller
19 shall report daily the capacity delivered each hour and the
20 energy delivered each day to the designated PGandE switching
21 center.

22
23 A-3.5 Meter Testing and Inspection

24
25 (a) All meters used to provide data for the
26 computation of the payments due Seller from PGandE shall be
27 sealed, and the seals shall be broken only by PGandE when
28 the meters are to be inspected, tested, or adjusted.

1 (b) PGandE shall inspect and test all meters upon
2 their installation and annually thereafter. At Seller's
3 request and expense, PGandE shall inspect or test a meter
4 more frequently. PGandE shall give reasonable notice to
5 Seller of the time when any inspection or test shall take
6 place, and Seller may have representatives present at the
7 test or inspection. If a meter is found to be inaccurate or
8 defective, PGandE shall adjust, repair, or replace it at its
9 expense in order to provide accurate metering.

10
11 A-3.6 Adjustments to Meter Measurements

12
13 If a meter fails to register, or if the measurement
14 made by a meter during a test varies by more than two
15 percent from the measurement made by the standard meter used
16 in the test, an adjustment shall be made correcting all
17 measurements made by the inaccurate meter for -- (1) the
18 actual period during which inaccurate measurements were
19 made, if the period can be determined, or if not, (2) the
20 period immediately preceding the test of the meter equal to
21 one-half the time from the date of the last previous test of
22 the meter, provided that the period covered by the
23 correction shall not exceed six months.

24
25 A-4 PAYMENT

26
27 PGandE shall mail to Seller not later than 30 days
28 after the end of each monthly billing period (1) a statement

1 showing the energy and capacity delivered to PGandE during
2 on-peak, partial-peak, and off-peak periods during the
3 monthly billing period, (2) PGandE's computation of the
4 amount due Seller, and (3) PGandE's check in payment of said
5 amount. Except as provided in Section A-5, if within 30
6 days of receipt of the statement Seller does not make a
7 report in writing to PGandE of an error, Seller shall be
8 deemed to have waived any error in PGandE's statement,
9 computation, and payment, and they shall be considered
10 correct and complete.

11
12 A-5 ADJUSTMENTS OF PAYMENTS

13
14 (a) In the event adjustments to payments are
15 required as a result of inaccurate meters, PGandE shall use
16 the corrected measurements described in Section A-3.6 to
17 recompute the amount due from PGandE to Seller for the
18 capacity and energy delivered under this Agreement during
19 the period of inaccuracy.

20
21 (b) The additional payment to Seller or refund to
22 PGandE shall be made within 30 days of notification of the
23 owing Party of the amount due.

24
25 A-6 ACCESS TO RECORDS AND PGandE DATA

26
27 Each Party, after giving reasonable written notice to
28 the other Party, shall have the right of access to all

1 metering and related records including operations logs of
2 the Facility. Data filed by PGandE with the CPUC pursuant
3 to CPUC orders governing the purchase of power from
4 qualifying facilities shall be provided to Seller upon
5 request; provided that Seller shall reimburse PGandE for the
6 costs it incurs to respond to such request.

7
8 A-7 INTERRUPTION OF DELIVERIES

9
10 PGandE shall not be obligated to accept or pay for
11 and may require Seller to interrupt or reduce deliveries of
12 energy (1) when necessary in order to construct, install,
13 maintain, repair, replace, remove, investigate, or inspect
14 any of its equipment or any part of its system, or (2) if it
15 determines that interruption or reduction is necessary
16 because of PGandE system emergencies, forced outages, force
17 majeure, or compliance with prudent electrical practices;
18 provided that PGandE shall not interrupt deliveries pursuant
19 to this section in order to take advantage, or make
20 purchases, of less expensive energy elsewhere. Whenever
21 possible, PGandE shall give Seller reasonable notice of the
22 possibility that interruption or reduction of deliveries may
23 be required.

24
25 A-8 FORCE MAJEURE

26
27 (a) The term force majeure as used herein means
28 unforeseeable causes, other than forced outages, beyond the

1 reasonable control of and without the fault or negligence of
2 the Party claiming force majeure including, but not limited
3 to, acts of God, labor disputes, sudden actions of the
4 elements, actions by federal, state, and municipal agencies,
5 and actions of legislative, judicial, or regulatory agencies
6 which conflict with the terms of this Agreement.

7
8 (b) If either Party because of force majeure is
9 rendered wholly or partly unable to perform its obligations
10 under this Agreement, that Party shall be excused from
11 whatever performance is affected by the force majeure to the
12 extent so affected provided that:

13
14 (1) the non-performing Party, within two weeks
15 after the occurrence of the force majeure, gives the
16 other Party written notice describing the particulars
17 of the occurrence,

18 (2) the suspension of performance is of no
19 greater scope and of no longer duration than is
20 required by the force majeure,

21 (3) the non-performing Party uses its best
22 efforts to remedy its inability to perform (this
23 subsection shall not require the settlement of any
24 strike, walkout, lockout or other labor dispute on
25 terms which, in the sole judgment of the Party
26 involved in the dispute, are contrary to its
27 interest. It is understood and agreed that the
28 settlement of strikes, walkouts, lockouts or other

1 labor disputes shall be at the sole discretion of the
2 Party having the difficulty),

3 (4) when the non-performing Party is able to
4 resume performance of its obligations under this
5 Agreement, that Party shall give the other Party
6 written notice to that effect, and

7 (5) capacity payments during such periods of
8 force majeure on Seller's part shall be governed by
9 Section E-2(c), Appendix E.

10
11 (c) In the event a Party is unable to perform due to
12 legislative, judicial, or regulatory agency action, this
13 Agreement shall be renegotiated to comply with the legal
14 change which caused the non-performance.

15
16 A-9 INDEMNITY

17
18 Each Party as indemnitor shall save harmless and
19 indemnify the other Party and the directors, officers, and
20 employees of such other Party against and from any and all
21 loss and liability for injuries to persons including
22 employees of either Party, and property damages including
23 property of either Party resulting from or arising out of
24 (1) the engineering, design, construction, maintenance, or
25 operation of, or (2) the making of replacements, additions,
26 or betterments to, the indemnitor's facilities. This
27 indemnity and save harmless provision shall apply
28 notwithstanding the active or passive negligence of the

1 indemnatee. Neither Party shall be indemnified hereunder
2 for its liability or loss resulting from its sole negligence
3 or willful misconduct. The indemnitor shall, on the other
4 Party's request, defend any suit asserting a claim covered
5 by this indemnity and shall pay all costs, including
6 reasonable attorney fees, that may be incurred by the other
7 Party in enforcing this indemnity.

8
9 A-10 LIABILITY; DEDICATION

10
11 (a) Nothing in this Agreement shall create any duty
12 to, any standard of care with reference to, or any liability
13 to any person not a Party to it. Neither Party shall be
14 liable to the other Party for consequential damages.

15
16 (b) Each Party shall be responsible for protecting
17 its facilities from possible damage by reason of electrical
18 disturbances or faults caused by the operation, faulty
19 operation, or nonoperation of the other Party's facilities,
20 and such other Party shall not be liable for any such
21 damages so caused.

22
23 (c) No undertaking by one Party to the other under
24 any provision of this Agreement shall constitute the
25 dedication of that Party's system or any portion thereof to
26 the other Party or to the public or affect the status of
27 PGandE as an independent public utility corporation or
28 Seller as an independent individual or entity and not a

1 public utility.

2

3 A-11 SEVERAL OBLIGATIONS

4

5 Except where specifically stated in this Agreement to
6 be otherwise, the duties, obligations, and liabilities of
7 the Parties are intended to be several and not joint or
8 collective. Nothing contained in this Agreement shall ever
9 be construed to create an association, trust, partnership,
10 or joint venture or impose a trust or partnership duty,
11 obligation, or liability on or with regard to either Party.
12 Each Party shall be liable individually and severally for
13 its own obligations under this Agreement.

14

15 A-12 NON-WAIVER

16

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

21

22 A-13 ASSIGNMENT

23

24 Neither Party shall voluntarily assign its rights nor
25 delegate its duties under this Agreement, or any part of
26 such rights or duties, without the written consent of the
27 other Party, except in connection with the sale or merger of
28 a substantial portion of its properties. Any such

1 assignment or delegation made without such written consent
2 shall be null and void. Consent for assignment shall not be
3 withheld unreasonably. Such assignment shall include,
4 unless otherwise specified therein, all of Seller's rights
5 to any refunds which might become due under this Agreement.
6

7 A-14 CAPTIONS
8

9 All indexes, titles, subject headings, section
10 titles, and similar items are provided for the purpose of
11 reference and convenience and are not intended to affect the
12 meaning of the contents or scope of this Agreement.
13

14 A-15 CHOICE OF LAWS
15

16 This Agreement shall be interpreted in accordance
17 with the laws of the State of California, excluding any
18 choice of law rules which may direct the application of the
19 laws of another jurisdiction.
20

21 A-16 GOVERNMENTAL JURISDICTION AND AUTHORIZATION
22

23 Seller shall obtain any governmental authorizations
24 and permits required for the construction and operation of
25 the Facility. Seller shall reimburse PGandE for any and all
26 losses, damages, claims, penalties, or liability it incurs
27 as a result of Seller's failure to obtain or maintain such
28 authorizations and permits.

1 A-17 NOTICES

2
3 Any notice, demand, or request required or permitted
4 to be given by either Party to the other, and any instrument
5 required or permitted to be tendered or delivered by either
6 Party to the other, shall be in writing (except as provided
7 in Section E-3) and so given, tendered, or delivered, as the
8 case may be, by depositing the same in any United States
9 Post Office with postage prepaid for transmission by
10 certified mail, return receipt requested, addressed to the
11 Party, or personally delivered to the Party, at the address
12 in Article 9 of this Agreement. Changes in such designation
13 may be made by notice similarly given.

14
15 A-18 INSURANCE

16
17 A-18.1 General Liability Coverage

18
19 (a) Seller shall maintain during the performance
20 hereof, General Liability Insurance¹ of not less than
21 \$1,000,000 if the Facility is over 100 kW, \$500,000 if the
22 Facility is over 20 kW to 100 kW, and \$100,000 if the
23 Facility is 20 kW or below of combined single limit or
24 equivalent for bodily injury, personal injury, and property
25 damage as the result of any one occurrence.

26
27 ¹ Governmental agencies which have an established record of
28 self-insurance may provide the required coverage through
self-insurance.

1 (b) General Liability Insurance shall include
2 coverage for Premises-Operations, Owners and Contractors
3 Protective, Products/Completed Operations Hazard, Explosion,
4 Collapse, Underground, Contractual Liability, and Broad Form
5 Property Damage including Completed Operations.
6

7 (c) Such insurance, by endorsement to the
8 policy(ies), shall include PGandE as an additional insured
9 if the Facility is over 100 kW insofar as work performed by
10 Seller for PGandE is concerned, shall contain a severability
11 of interest clause, shall provide that PGandE shall not by
12 reason of its inclusion as an additional insured incur
13 liability to the insurance carrier for payment of premium
14 for such insurance, and shall provide for 30-days' written
15 notice to PGandE prior to cancellation, termination,
16 alteration, or material change of such insurance.
17

18 A-18.2 Additional Insurance Provisions 19

20 (a) Evidence of coverage described above in Section
21 A-18.1 shall state that coverage provided is primary and is
22 not excess to or contributing with any insurance or
23 self-insurance maintained by PGandE.
24

25 (b) PGandE shall have the right to inspect or obtain
26 a copy of the original policy(ies) of insurance.
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

(c) Seller shall furnish the required certificates¹ and endorsements to PGandE prior to commencing operation.

(d) All insurance certificates¹, endorsements, cancellations, terminations, alterations, and material changes of such insurance shall be issued and submitted to the following:

PACIFIC GAS AND ELECTRIC COMPANY
Attention: Manager - Insurance Department
77 Beale Street, Room E280
San Francisco, CA 94106

¹ A governmental agency qualifying to maintain self-insurance should provide a statement of self-insurance.