

**SECOND AMENDMENT TO POWER PURCHASE AGREEMENT BETWEEN
PACIFIC GAS AND ELECTRIC COMPANY AND BURNEY FOREST PRODUCTS**

THIS SECOND AMENDMENT (the "Second Amendment") is made and entered into effective as of the 1st day of April 1998, by and between BURNEY FOREST PRODUCTS, A JOINT VENTURE ("Seller"), a California general partnership, and PACIFIC GAS AND ELECTRIC COMPANY ("PG&E"), a California corporation. PG&E and Seller are sometimes referred to herein individually as "Party" and collectively as the "Parties".

RECITALS

- A. Seller and PG&E are Parties to a Standard Offer No. 4 Long-Term Energy and Capacity Power Purchase Agreement (the "PPA"), that PG&E signed on April 9 1985, and Seller's predecessor, California-Bio Resources II, signed on October 11, 1984, for the 34.23 MVA woodwaste Facility (PG&E Log No. 13C038) located at Burney, California (the "Facility").
- B. The PPA has been amended by the First Amendment signed by PG&E on August 5, 1988 and by Seller on July 8, 1988.
- C. The Facility began initial deliveries under the PPA on April 9, 1990 and has since regularly produced energy and capacity for sale to PG&E under the PPA.
- D. The Parties have negotiated a mutually beneficial suspension of Seller's right to deliver power under the PPA and PG&E's obligation to accept and pay for that power whereby Seller agrees, among other things, to cease deliveries of power to PG&E for the period from April 1, 1998 through April 8, 2000 (Buydown Period), in return for PG&E's agreement to make certain monthly payments to Seller.
- E. The Parties have also agreed to amend the PPA to eliminate the curtailment provisions in Article 7 and Appendix C thereof.
- F. PG&E has reviewed the operating history of the Facility and believes that, in the absence of this Agreement, it is highly probable that the Facility would continue to operate under the PPA through the end of the Buydown Period.

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- G. In Decision 93-01-048 and related decisions to date, the California Public Utilities Commission (CPUC) has encouraged utilities to seek ratepayer savings by negotiating agreements such as this Second Amendment relating to standard offer power purchase agreements.
- H. PG&E wishes to enter into this Second Amendment because it believes that this Second Amendment will produce savings for its ratepayers compared to the continued operation of the Facility under the PPA during the Buydown Period.
- I. PG&E agrees that Seller may make power sales to third parties during the Buydown Period.
- J. To facilitate the preparation of this Second Amendment and to enable the Parties to obtain the regulatory approvals described herein, the Parties have entered into the Bridging Agreement described in paragraph I.A below.

AGREEMENT

THEREFORE, in consideration of the Recitals set forth above and of the benefits and obligations stated herein, the Parties agree as follows:

I. **DEFINITIONS AND INCORPORATION BY REFERENCE**

Whenever used in this Second Amendment, the following terms shall have the following meanings:

- A. **Bridging Agreement**: The Agreement between Seller and PG&E attached as Attachment 1 hereto.
- B. **Buydown Period**: All hours between 0001 hours April 1, 1998, and 2400 hours on April 8, 2000.
- C. **Closing Date**: A date on which the Parties mutually agree, that is not more than 5 days after PG&E notifies Seller in writing that PG&E has accepted the ORA Comfort Letter or waived the ORA Comfort Letter requirement pursuant to the provisions of paragraph V.B below.
- D. **CPUC**: The California Public Utilities Commission

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- E. CTC: The Competition Transition Charge that the CPUC has defined as a non-bypassable charge certain utility customers must pay to recover the costs described in California Public Utilities Code Sections 367 et seq.
- F. ORA Comfort Letter: A written response from the Office of Ratepayer Advocates (“ORA”) of the CPUC, which is sometimes described as a “Comfort Letter” or a “Reasonableness Assessment Letter”, issued after ORA’s review of the terms and conditions of this Second Amendment and addressing issues such as those described in paragraph V.A below.
- G. PPA: The Power Purchase Agreement, as amended, entered into between PG&E and Seller and signed by PG&E on April 9, 1985.
- H. PURPA: The Public Utility Regulatory Policies Act of 1978, as amended, and all regulations issued hereunder.

II. SUSPENSION OF PPA/PURPA RIGHTS

- A. Effective as of 0000 hours (Pacific Time) on the Closing Date, and retroactive to April 1, 1998 and for the duration of the Buydown Period, Seller, for itself, and any of its successors and subsequent owners or lessees of the existing Facility, waives any and all rights under either the PPA or PURPA or other relevant law or regulations to require PG&E to accept or pay for the output of the Facility.
- B. Effective as of 0000 hours (Pacific Time) on the Closing Date, and retroactive to April 1, 1998 and for the duration of the Buydown Period, Seller, for itself and any of its successors and assigns, further waives any right to require PG&E to purchase power from any new, repowered or modified electric generation Facility located at the same site as the Facility and PG&E shall have no obligation to pay any future owner for power from the Facility.
- C. Seller agrees that the Buydown Period waivers contained in paragraphs II. A and B above shall be included as a condition of any sale, lease or other transfer of the Facility.
- D. Seller shall resume operations of the Facility in accordance with the PPA beginning on 0001 hours (Pacific Time), on April 9, 2000.

III. PPA CURTAILMENT PROVISIONS

- A. Effective upon the Closing Date, and retroactive to April 1, 1998, and continuing for the remaining term of the PPA, the PPA is amended to delete Article 7, entitled "Curtailement" and to delete Appendix C entitled "Curtailement Options."

IV. PAYMENTS BY PG&E

- A. Effective as of 0000 (Pacific Time) on the Closing Date, PG&E shall be obligated to pay Seller the amounts and on the dates specified in paragraph IV.C below.
- B. The payments PG&E makes to Seller pursuant to this Second Amendment shall be the sole compensation due to Seller from PG&E for the Buydown Period.

C. Buydown Payment Schedule:

May 15, 1998	\$1,900,000	February 15, 1999	\$2,000,000	November 15, 1990	\$2,000,000
June 15, 1998	\$1,900,000	March 15, 1999	\$2,000,000	December 15, 1999	\$2,000,000
July 15, 1998	\$1,900,000	April 15, 1999	\$2,000,000	January 14, 2000	\$1,200,000
August 14, 1998	\$1,900,000	May 14, 1999	\$2,000,000	February 15, 2000	\$1,200,000
September 15, 1998	\$1,900,000	June 15, 1999	\$2,000,000	March 15, 2000	\$1,200,000
October 15, 1998	\$1,900,000	July 15, 1999	\$2,000,000	April 14, 2000	\$1,200,000
November 13, 1998	\$1,900,000	August 13, 1999	\$2,000,000	May 15, 2000	\$ 500,000
December 15, 1998	\$1,900,000	September 15, 1999	\$2,000,000		
January 15, 1999	\$1,900,000	October 15, 1999	\$2,000,000		

- D. Any payments PG&E makes to Seller under the Bridging Agreement shall be subtracted from the amounts paid to Seller under paragraph IV.C above.

V. CONDITIONS

- A. PG&E's obligations hereunder are conditioned upon the CPUC's Office of Ratepayer Advocates (ORA) providing a Comfort Letter that, in terms satisfactory to PG&E, states that the ORA believes that the terms of this Amendment are reasonable and prudent, that payments to Seller under this Amendment should be recoverable in rates at the time such payments are made, and that such payments should be deemed consistent with the CPUC's Electric Industry Restructuring Order Instituting Rulemaking/Order Instituting Investigation (R. 94-04-031, I. 94-04-032) and related CPUC decisions that address QF power purchase costs.

- B. PG&E shall immediately commence and use all reasonable efforts to obtain the ORA Comfort Letter. Within five (5) business days after receiving a Comfort Letter from the ORA, PG&E shall notify Seller in writing, by overnight delivery service, that PG&E has accepted the Comfort Letter, rejected the Comfort Letter or waived the Comfort Letter requirement. If the Comfort Letter is not received and accepted by PG&E on or before November 1, 1998 and in the absence of such receipt and acceptance, provided that PG&E has not waived the Comfort Letter requirement, Seller or PG&E may at any time after such date terminate this Agreement by written notice to the other.
- C. During the Buydown Period, Seller may perform maintenance of any kind on the Facility without a reduction in payments under this Second Amendment.
- D. The Buydown Period shall not constitute a forced outage or scheduled maintenance pursuant to the terms of the PPA.
- E. The Buydown Period will not be included in the rolling five-year record of actual performance used in computing the performance bonus factor payable from PG&E to Seller when the PPA resumes effect on April 9, 2000. The rolling five-year record of actual performance will thus span whatever period of time is necessary to obtain five years of actual non-Buydown Period peak months performance data.
- F. In the event Seller fails to return the Facility to operation as described in paragraph II.D of this Second Amendment, then each hour, beginning at 0001 hours on April 9, 2000, and continuing thereafter until Seller has demonstrated to PG&E's satisfaction that the Facility is available for operation, shall be deemed an hour of forced outage pursuant to the PPA. For the purpose of this paragraph "available for operation" shall be defined as when either 1) the Facility is paralleled to the grid with both boilers on line on April 9, 2000 or 2) Seller provides written notice that the Facility is available for operation and able to generate at the firm capacity. PG&E shall have the right to inspect the Facility to determine whether the Seller has demonstrated that the Facility is available for operation under this paragraph V.F.
- G. All Special Facilities, Interconnection, and Operating agreements and permits shall remain unchanged.
- H. At the end of the Buydown Period, PG&E shall make a one-time payment to Seller in an amount equal to the Special Facilities' charges paid by Seller during

the Buydown Period plus accrued interest calculated using an interest rate of the Federal Reserve Board 3-month Prime Commercial Paper rate. Interest shall accrue from the date each monthly Special Facilities' charge is invoiced to Seller until the date the one-time payment is made.

- I. As of the Closing Date, each Party shall have obtained all necessary consents and approvals required for it to perform its obligations hereunder.

VI. CLOSING

A. On the Closing Date:

1. The Parties shall execute and deliver to each other the Mutual Release attached hereto as Attachment 2 (the Mutual Release).
2. The Tolling Agreement between the Parties signed by Seller on June 19, 1995 and by PG&E on June 20, 1995 shall terminate.
3. Seller shall deliver to PG&E a statement executed by authorized representatives of Seller that, to Seller's knowledge, as of the Closing Date, there are no actions, suits, or other proceedings, pending or threatened, against Seller in any court or before any administrative agency arising out of or relating to the Seller, the PPA, the Facility, or this Second Amendment, including any shutdown of the Facility arising out of this Second Amendment, which seeks to enjoin or would materially adversely affect Seller's ability to consummate this Second Amendment.
4. The Bridging Agreement shall terminate pursuant to Section 2.5(b) of that agreement.

VII. POWER SALES DURING THE BUYDOWN PERIOD

- A. During the Buydown Period, Seller, at its discretion, may sell and deliver power to any entity which agrees voluntarily to purchase such power subject only to the conditions below
 1. If such sales require use of PG&E's transmission system, Seller shall be responsible for acquiring transmission service through the California Independent System Operator (ISO) in accordance with the ISO's

established tariffs or in the event Seller desires to make such sales if the ISO is not operational, Seller may request transmission service from PG&E using PG&E's Open Access tariff. This Buydown Agreement does not confer on Seller any right to schedule or transmit power within, into, or out of PG&E's or the ISO-controlled electric transmission and or distribution system.

2. Seller shall act as its own scheduling coordinator or obtain such services from a third party; nothing in this Second Amendment obligates PG&E to act as Seller's scheduling coordinator for making power sales pursuant to this paragraph VII.
3. PG&E shall have no cost responsibility associated with sales of power pursuant to this paragraph VII provided that all of PG&E's utility obligations to operate and maintain its transmission and distribution system remain in effect.
4. Seller's right to sell power under this Second Amendment to parties other than PG&E shall terminate coincident with the termination of the Buydown Period.

VIII. COOPERATION

- A. Upon the request of PG&E, Seller shall cooperate with PG&E to support the reasonableness of this Second Amendment before any government authority of competent jurisdiction in a proceeding involving a review of this Second Amendment for purposes of allowance or disallowance in rates charged by PG&E. Each Party shall bear its own costs and expenses associated with such review.

IX. LIABILITY FOR STRANDED COSTS OR LOSS OF CTC

- A. Seller agrees that it will take no action to interfere with the recovery by PG&E of CTC or stranded distribution costs (as determined by the CPUC or other regulatory, legislative, or judicial body of competent jurisdiction) from PG&E's retail customers, and agrees to make PG&E whole for any such loss, including but not limited to CTC lost due to bypass of PG&E's existing transmission and distribution system, caused by Seller (i.e. the loss of CTC would not have occurred

but for the third party transaction with Seller and Seller knew or should have known that such action would result in such loss).

- B. Seller agrees to notify PG&E prior to making any power deliveries from the Facility if such deliveries would be made directly from Seller's Facilities to the third party buyer and therefore result in the recipient of such deliveries bypassing completely the use of PG&E's transmission and distribution facilities; Seller further agrees to notify any third party buyers of the notification provided by PG&E and attached hereto as Attachment 3, regarding the requirement to comply with all applicable PG&E departing load tariffs.
- C. PG&E agrees that if notification by Seller of a proposed transaction is provided hereunder or otherwise and PG&E does not, within 10 working days of such notification, inform Seller that such transaction would result in Seller causing a loss in the recovery of competitive transition charges or stranded distribution costs, Seller's liability under paragraph A above shall be waived.

X. SELLER REPRESENTATIONS

This Second Amendment is made in reliance on the following. Seller hereby warrants and represents to PG&E, each of which representation and warranty is deemed to be a separate warranty and representation:

- A. But for this Second Amendment, Seller believes the Facility would have continued to operate for the full term of the Fixed Price Period. Seller is not aware of any fact it believes would prevent the Facility from continuing to operate; and
- B. To Seller's knowledge, as of the date of execution hereof there are no actions, suits, or proceedings pending or threatened against Seller in any court or before any administrative agency arising out of or relating to the Seller, the PPA, the Facility or this Second Amendment which seeks to enjoin or would materially adversely affect Seller's ability to consummate this Second Amendment.

XI. PG&E REPRESENTATIONS

This Second Amendment is made in reliance on the following. PG&E hereby warrants and represents to Seller, each of which representations and warranties is deemed to be a separate warranty and representation:

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- A. PG&E is a duly formed California corporation, validly existing and qualifies to do business in the State of California; and
- B. PG&E has full corporate authority to enter into this Second Amendment.

XII. CONFIDENTIALITY

- A. The Parties agree that the terms of this Second Amendment are strictly confidential and under no circumstances will they be disclosed to any party, except that the Parties may disclose the terms of this Second Amendment to their attorneys, consultants, partners, equity holders and lenders, who shall maintain the confidentiality of this information, or as otherwise required by law and the Parties may disclose the terms of this Second Amendment to entities possessing regulatory, legislative, or judicial authority over the Parties.

XIII. PUBLIC COMMUNICATIONS

- A. The Parties will cooperate with each other in the preparation and issuance of any public statements or communication regarding this Second Amendment, and each party will bear their own costs. Nothing contained in this provision shall affect any obligations of either Party to disclose facts relating to this transaction to appropriate governmental agencies.

XIV. PAYMENT ALLOCATION CLAUSE

- A. The Parties jointly and severally agree that PG&E payments as described herein are for the suspension of Seller's power deliveries to PG&E under the PPA for the Buydown Period and are solely attributable thereto and that no part of such payments are allocated or attributable to any other matter, right, contract, option, property or claim.

XV. TAX CONSEQUENCES

- A. Neither Party makes any representation or warranty with respect to the tax treatment of this transaction, and neither Party shall have any liability to the other Party for any tax liability the other Party may incur as a result of this transaction.

XVI. QUALIFYING FACILITY STATUS

- A. Seller acknowledges and agrees that its PPA with PG&E requires it to meet the qualifying facility requirements established as of the effective date of its PPA by the Federal Energy Regulatory Commission's regulations (18 Code of Federal Regulations, Section 292, *et seq.*) implementing the Public Utility Regulatory Policies Act (PURPA). Seller represents and warrants that, by entering into this Second Amendment and performing thereunder, it is not relying on any representations by PG&E as to what its obligations are to maintain qualifying facility status, and further represents and warrants that, but for this Second Amendment, it believes it would be able to meet all fuel use requirements imposed upon it by Seller's PPA and PURPA for calendar years 1998, 1999 and 2000.
- B. PG&E shall retain the right to monitor and enforce Seller's compliance with all applicable qualifying facility requirements for any calendar year in which Seller resumes deliveries to PG&E under the PPA provided, however, that PG&E agrees that it will not use in any way a failure by Seller during the Buydown Period to meet the qualifying facility requirements established as of the effective date of its PPA by the Federal Energy Regulatory Commission's regulations as a basis for action of any kind under the PPA.

XVII. INDEMNITY

- A. Seller shall indemnify, defend, and hold harmless PG&E, its affiliates, officers, managers, directors, agents and employees from any and all losses, liabilities, damages, claims, demands, suits, actions and proceedings that arise from or are in any way connected with allegations that in substance assert that by entering into this Second Amendment and performing hereunder: (1) Seller's ability to maintain its qualifying facility status has been in any way impaired; or (2) PG&E has acted in a manner that intentionally or negligently (i) interferes with a third party's contractual relationship with Seller; (ii) interferes with a third party's prospective business or economic advantage in connection with the third party's relationship with Seller; or (iii) constitutes an Unfair Business Practice under Business and Professions Code ¶ 17.200 *et seq.*

XVIII. NOTICES

A. Any notice authorized or specified in this Second Amendment shall be given in writing and shall be deemed properly given if delivered personally, sent by a nationally recognized overnight or express mail service, postage prepaid, or by facsimile transmission with receipt confirmed by telephone, to the persons specified below, as appropriate:

1. to Seller:
General Manager
Burney Forest Products
35586-B Highway 299 E
Burney, CA 96013
Facsimile: (530) 335-5028
2. to PG&E:
Manager - Utility Electric Supply
Pacific Gas and Electric Company
P.O. Box 770000 - Mail Code B13B
San Francisco, CA 94177
Facsimile: (415) 973-2151

XIX. GENERAL PROVISIONS

A. Choice of Laws

This Second Amendment shall be governed by and construed in accordance with the laws of the State of California, excluding any choice of law rules that direct the application of the laws of another jurisdiction.

B. Modification

This Agreement may be modified or amended only by a written instrument signed by the authorized representatives of both Parties.

C. Captions

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 Buydown Agreement.

D. Recitals

The recitals set forth above are an integral part of this Second Amendment and shall have the same contractual significance as any other language.

E. Non-Waiver

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

F. Severability

Each provision of this Second Amendment shall be interpreted so as to be valid and enforceable under applicable law. If any term or provision in this Second Amendment shall be held invalid or unenforceable, that provision shall be ineffective only to the extent of such invalidity or unenforceability, without thereby invalidating the remainder of the provision or an other provision in this Second Amendment.

G. Interpretation

No provision of this Agreement shall be interpreted for or against PG&E or Seller because PG&E, Seller, or their respective attorneys drafted the particular provision.

H. No Third Party Beneficiaries

This Second Amendment is entered into for the express benefit of the Parties. This Second Amendment is not intended and shall not be deemed to create any rights or interests whatsoever in any other person, including without limitation, any right to enforce the terms of this Second Amendment.

I. Additional Actions

From time to time, each Party shall without further consideration, execute and deliver such additional documents and instruments and shall take such other actions as reasonably may be requested by the other Party to effect or carry out the transactions contemplated by this Second Amendment.

J. Timing

Unless otherwise stated, all references in this Second Amendment to "days" shall be to calendar days.

K. Entire Agreement

This Second Amendment is intended as a final, complete and exclusive statement of the Second Amendment between the Parties with respect to the terms of this Second Amendment. This Second Amendment integrates and supersedes all previous negotiations, correspondence, understanding and agreements, except the Bridging Agreement, between the Parties with respect to the subject matter thereof.

L. Counterparts

This Second Amendment may be signed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

M. Dispute Resolution

Any dispute of whatever nature that may arise out of or in relation to the interpretation, performance or breach of this Second Amendment shall be resolved at the request of either Party to this Second Amendment through a two-step resolution process. The Parties shall first attempt to resolve the dispute through negotiations. Upon written request of either Party to the other, an officer for each of the Parties (such as a Vice President, Chief Financial Officer, or President) shall, within thirty days of such request, meet and negotiate the dispute. If the Parties cannot resolve the dispute through negotiation within 60 days of the request to negotiate, then within the following 20 days the Parties shall submit the matter to binding arbitration. The arbitration shall be administered by a mutually acceptable single arbitrator from Judicial Arbitration & Mediation Services, Inc. (JAMS) or any other mutually acceptable individual or organization and shall be completed as promptly as is practical considering the issues. The site of any mediation or arbitration shall be in California as determined by the Parties. Seller and PG&E shall respectively bear fifty percent of the fees and expenses charged by any mediator or arbitrator whose services are utilized in connection with this paragraph M. In addition, each Party shall bear its own expenses in regard to any meditation or arbitration arising under this paragraph.

By signing this Second Amendment below, the representatives of the Parties warrant that they have the requisite authority to bind their respective principals.

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PACIFIC GAS AND ELECTRIC
COMPANY INC., a California corporation

BURNEY FOREST PRODUCTS, A JOINT
VENTURE, a California general partnership
By DCTC - Burney, Inc., a general partner

By



By



Name

Gordon R. Smith

Name

Thomas S. Shaw

Title

President and CEO

Title

President

Date of Signature

10/19/98

Date of Signature

September 24, 1998

APPROVED AS TO FORM



ATTACHMENT 2

MUTUAL RELEASE

A. SELLER and PG&E, for themselves, their successors and assigns, and affiliates, hereby waive and release any and all claims, demands, causes of action, losses, expenses, fees, damages (compensatory, punitive, exemplary, statutory or otherwise), or other right to relief, whether based on contract, tort, statute, or other legal or equitable theory of recovery which each had, now has, or may hereafter have against the other or any of its subsidiaries, affiliates, partners, officers, directors, employees, attorneys or shareholders, arising out of or related to PG&E's implementation of Curtailment Option B of the PPA, including Curtailment Orders issued through December 31, 1998.

B. SELLER and PG&E each acknowledge that they execute and agree to this full and final release as a compromise of matters which may involve disputed issues of law and fact, and SELLER and PG&E fully assume the risk that the facts and the law may be other than they believe and SELLER and PG&E EXPRESSLY WAIVE ALL RIGHTS UNDER CALIFORNIA CIVIL CODE SECTION 1542, WHICH PROVIDES AS FOLLOWS:

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

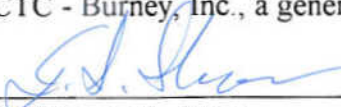
SELLER and PG&E, BEING AWARE OF SUCH CODE SECTION, HEREBY EXPRESSLY WAIVE ANY RIGHTS THEY MAY HAVE THEREUNDER, AS WELL AS UNDER ANY OTHER STATUTES OR COMMON LAW PRINCIPLES OF SIMILAR EFFECT.

C. The mutual release of claims contained in this Mutual Release is a part of a voluntary agreement between the Parties and shall not be considered an admission of liability or responsibility by either SELLER or PG&E.


D. This Mutual Release becomes effective on the Closing Date.

IN WITNESS WHEREOF, the Parties hereto have executed this Mutual Release on the latest signature date written below.

BURNEY FOREST PRODUCTS, A JOINT VENTURE, a California general partnership
By DCTC - Burney, Inc., a general partner

By: 
Name: Thomas S. Shaw
Title: President
Date: September 24, 1998

PACIFIC GAS AND ELECTRIC COMPANY,
a California corporation

By: 
Name: Gordon R. Smith
Title: President and CEO
Date: 10/19/98

APPROVED AS TO FORM

