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STANDARD OFFER #4  
POWER PURCHASE AGREEMENT  
FOR  
LONG-TERM ENERGY AND CAPACITY  
BETWEEN  
TAXVEST WIND FARMS, INC.  
AND  
PACIFIC GAS AND ELECTRIC COMPANY

Seller: TaxVest Wind Farms, Inc.  
Location: Altamont Pass, Alameda County  
Capacity: 715 kW  
Energy Source: Wind

MAY 1984

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

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LONG-TERM ENERGY AND CAPACITY  
POWER PURCHASE AGREEMENT  
BETWEEN  
TAXVEST WIND FARMS, INC.  
AND  
PACIFIC GAS AND ELECTRIC COMPANY

TAXVEST WIND FARMS, INC. ("Seller"), and PACIFIC GAS AND ELECTRIC COMPANY ("PGandE"), referred to collectively as "Parties" and individually as "Party", agree as follows:

ARTICLE 1 QUALIFYING STATUS

Seller warrants that, at the date of first power deliveries from Seller's Facility<sup>1</sup> and during the term of agreement, its Facility shall meet the qualifying facility requirements established as of the effective date of this Agreement by the Federal Energy Regulatory Commission's rules (18 Code of Federal Regulations 292) implementing the Public Utility Regulatory Policies Act of 1978 (16 U.S.C.A. 796, et seq.).

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<sup>1</sup> Underlining identifies those terms which are defined in Section A-1 of Appendix A.

1 ARTICLE 2 COMMITMENT OF PARTIES

2  
3 The prices to be paid Seller for energy and/or capacity  
4 delivered pursuant to this Agreement have wholly or partly  
5 been fixed at the time of execution. Actual avoided costs  
6 at the time of energy and/or capacity deliveries may be  
7 substantially above or below the prices fixed in this  
8 Agreement. Therefore, the Parties expressly commit to the  
9 prices fixed in this Agreement for the applicable period of  
10 performance and shall not seek to or have a right to  
11 renegotiate such prices for any reason. As part of its  
12 consideration for the benefit of fixing part or all of the  
13 energy and/or capacity prices under this Agreement, Seller  
14 waives any and all rights to judicial or other relief from  
15 its obligations and/or prices set forth in Appendices B, D,  
16 and E, or modification of any other term or provision for  
17 any reasons whatsoever.

18  
19 This Agreement contains certain provisions which set  
20 forth methods of calculating damages to be paid to PGandE in  
21 the event Seller fails to fulfill certain performance  
22 obligations. The inclusion of such provisions is not  
23 intended to create any express or implied right in Seller to  
24 terminate this Agreement prior to the expiration of the term  
25 of agreement. Termination of this Agreement by Seller prior  
26 to its expiration date shall constitute a breach of this  
27 Agreement and the damages expressly set forth in this  
28

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 60 kV.

9  
10 (b) Seller shall provide capacity and energy from its  
11 715 kW Facility located in Sections 22, 23, 26, and 27 of  
12 Township 2 South, Range 3 East, Mount Diablo Base and  
13 Meridian, or portions thereof.

14  
15 (c) The scheduled operation date of the Facility is  
16 N/A (operational). At the end of each calendar quarter  
17 Seller shall give written notice to PGandE of any change in  
18 the scheduled operation date.

19  
20 (d) To avoid exceeding the physical limitations of the  
21 interconnection facilities, Seller shall limit the  
22 Facility's actual rate of delivery into the PGandE system to  
23 715 kW.

24  
25 (e) The primary energy source for the Facility is  
26 wind.

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

11  
12 (g) The transformer loss adjustment factor is  
13 determined in Appendix A-19.

14  
15 ARTICLE 4 ENERGY PRICE

16  
17 PGandE shall pay Seller for its net energy output under  
18 the energy payment option checked below:

19  
20 X Energy Payment Option 1 - Forecasted Energy Prices

21  
22 During the fixed price period, Seller shall be  
23 paid for energy delivered at prices equal to 100  
24 percent of the prices set forth in Table B-1, Appen-  
25 dix B, plus 0 percent of PGandE's full short-run  
26 avoided operating costs.

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

16  
17 \_\_\_\_\_ Energy Payment Option 2 - Levelized Energy Prices

18  
19 During the fixed price period, Seller shall be  
20 paid for energy delivered at prices equal to \_\_\_\_\_<sup>1</sup>  
21 percent of the levelized energy prices set forth in  
22 Table B-2, Appendix B for the year in which energy  
23 deliveries begin and term of agreement, plus \_\_\_\_\_<sup>2</sup>  
24 percent of PGandE's full short-run avoided operating  
25 \_\_\_\_\_

26  
27 <sup>1</sup> Insert either 20, 40, 60, 80, or 100, at Seller's option.

28 <sup>2</sup> Insert the difference between 100 and the percentage selected under  
footnote 1 above.

1 costs. During the fixed price period, Seller shall be  
2 subject to the conditions and terms set forth in  
3 Appendix B, Energy Payment Option 2.  
4

5 For the remaining years of the term of agreement,  
6 Seller shall be paid for energy delivered at prices  
7 equal to PGandE's full short-run avoided operating  
8 costs.  
9

10 Seller may convert from Energy Payment Option 2 to  
11 Energy Payment Option 1, provided that Seller shall not  
12 change the percentage of energy prices to be based on  
13 PGandE's full short-run avoided operating costs. Such  
14 conversion must be made at least 90 days prior to the  
15 date of initial energy deliveries and must be made by  
16 written notice in accordance with Section A-17,  
17 Appendix A.  
18

19 \_\_\_\_\_ Energy Payment Option 3 - Incremental Energy Rate  
20

21 Beginning with the date of initial energy  
22 deliveries and continuing until \_\_\_\_\_<sup>1</sup>, Seller  
23 shall be paid monthly for energy delivered at prices  
24 equal to PGandE's full short-run avoided operating  
25 costs, provided that adjustments shall be made annually  
26

27 \_\_\_\_\_  
28 <sup>1</sup> Specified by Seller. Must be December 31, 1998 or prior.



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to the extent set forth in Appendix B, Energy Payment Option 3.

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

Table I

<u>Year</u>	<u>Incremental Energy Rate Band Widths</u> (must be multiples of 100 or zero)
1984	_____
1985	_____
1986	_____
1987	_____
1988	_____
1989	_____
1990	_____
1991	_____
1992	_____
1993	_____
1994	_____
1995	_____
1996	_____
1997	_____
1998	_____

After \_\_\_\_\_, Seller shall be paid for energy delivered at prices equal to PGandE's full short-run avoided operating costs.

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ARTICLE 5 CAPACITY ELECTION AND CAPACITY PRICE

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.

\_\_\_\_\_ Firm capacity - \_\_\_\_\_ kW for \_\_\_\_\_ 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 \_\_\_\_\_ set forth in Appendix D.

OR

X As-delivered capacity with payment determined in accordance with As-Delivered Capacity Payment Option 2 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.

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

10  
11 ARTICLE 7 CURTAILMENT

12  
13 Seller has two options regarding possible curtailment  
14 by PGandE of Seller's deliveries, and Seller's selection is  
15 indicated below:

- 16  X  Curtailment Option A - Hydro Spill and Negative Avoided  
17 Cost  
18   Curtailment Option B - Adjusted Price Period

19  
20 The two options are described in Appendix C.

21  
22 ARTICLE 8 RETROACTIVE APPLICATION OF CPUC ORDERS

23  
24 Pursuant to Ordering Paragraph 1(f) of CPUC Decision  
25 No. 83-09-054 (September 7, 1983), after the effective date  
26 of the CPUC's Application 82-03-26 decision relating to line  
27 loss factors, Seller has the option to retain the relevant  
28 terms of this Agreement or have the results of that decision

1 incorporated into this Agreement. To retain the terms  
2 herein, Seller shall provide written notice to PGandE within  
3 30 days after the effective date of the relevant CPUC  
4 decision on Application 82-03-26. Failure to provide such  
5 notice will result in the amendment of this Agreement to  
6 comply with that decision.

7  
8 As soon as practicable following the issuance of a  
9 decision in Application 82-03-26, PGandE shall notify Seller  
10 of the effective date thereof and its results.

11  
12 ARTICLE 9 NOTICES

13  
14 All written notices shall be directed as follows:

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

18 To Seller: TaxVest Wind Farms, Inc.  
19 5950 Canoga Avenue  
Suite 600  
20 Woodland Hills, CA 91367

21  
22 ARTICLE 10 DESIGNATED SWITCHING CENTER

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

25 Newark Switching Center  
26 645 Durham Road  
27 (415) 656-1664  
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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
- 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 years from April 2, 1985; provided, however, that it shall terminate if energy deliveries do not start within five years of the execution date.

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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.

TAXVEST WIND FARMS, INC.

PACIFIC GAS AND ELECTRIC COMPANY

BY: Michael H. Spivak  
MICHAEL H. SPIVAK

BY: E. E. Hall  
E. E. HALL

TITLE: President

TITLE: Chief Generation  
Planning Engineer

DATE SIGNED: 3/27/85

DATE SIGNED: 4/1/85

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APPENDIX A  
GENERAL TERMS AND CONDITIONS

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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.



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A-3 OPERATION

A-3.1 Inspection and Approval

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

A-3.2 Facility Operation and Maintenance

Seller shall operate and maintain its Facility according to prudent electrical practices, applicable laws, orders, rules, and tariffs and shall provide such reactive power support as may be reasonably required by PGandE to maintain system voltage level and power factor. Seller shall operate the Facility at the power factors or voltage levels prescribed by PGandE's system dispatcher or designated representative. If Seller fails to provide reactive power support, PGandE may do so at Seller's expense.

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A-3.3 Point of Delivery

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

A-3.4 Operating Communications

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

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

(c) If Seller makes deliveries greater than one megawatt, Seller shall measure and register on a graphic 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 make payment for the term of this  
28 Agreement to Seller's representative as follows:

1 SeaWest Energy Group, Inc.  
2 Attention: [REDACTED]  
3 1660 Hotel Circle North, Suite 400  
4 San Diego, CA 92108

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

17 Seller releases PGandE from all liability and agrees  
18 to hold PGandE harmless for making payments to Seller's rep-  
19 resentative as directed under this Paragraph A-4 and for any  
20 allocation of revenues to Seller by Seller's representative.  
21

22 A-5 ADJUSTMENTS OF PAYMENTS

23  
24 (a) In the event adjustments to payments are  
25 required as a result of inaccurate meters, PGandE shall use  
26 the corrected measurements described in Section A-3.6 to  
27 recompute the amount due from PGandE to Seller for the  
28

1 capacity and energy delivered under this Agreement during  
2 the period of inaccuracy.

3  
4 (b) The additional payment to Seller or refund to  
5 PGandE shall be made within 30 days of notification of the  
6 owing Party of the amount due.

7  
8 A-6 ACCESS TO RECORDS AND PGandE DATA

9  
10 Each Party, after giving reasonable written notice to  
11 the other Party, shall have the right of access to all  
12 metering and related records including operations logs of  
13 the Facility. Data filed by PGandE with the CPUC pursuant  
14 to CPUC orders governing the purchase of power from  
15 qualifying facilities shall be provided to Seller upon  
16 request; provided that Seller shall reimburse PGandE for the  
17 costs it incurs to respond to such request.

18  
19 A-7 INTERRUPTION OF DELIVERIES

20  
21 PGandE shall not be obligated to accept or pay for  
22 and may require Seller to interrupt or reduce deliveries of  
23 energy (1) when necessary in order to construct, install,  
24 maintain, repair, replace, remove, investigate, or inspect  
25 any of its equipment or any part of its system, or (2) if it  
26 determines that interruption or reduction is necessary  
27 because of PGandE system emergencies, forced outages, force  
28 majeure, or compliance with prudent electrical practices;

1 provided that PGandE shall not interrupt deliveries pursuant  
2 to this section in order to take advantage, or make  
3 purchases, of less expensive energy elsewhere. Whenever  
4 possible, PGandE shall give Seller reasonable notice of the  
5 possibility that interruption or reduction of deliveries may  
6 be required.

7  
8 A-8 FORCE MAJEURE

9  
10 (a) The term force majeure as used herein means  
11 unforeseeable causes, other than forced outages, beyond the  
12 reasonable control of and without the fault or negligence of  
13 the Party claiming force majeure including, but not limited  
14 to, acts of God, labor disputes, sudden actions of the  
15 elements, actions by federal, state, and municipal agencies,  
16 and actions of legislative, judicial, or regulatory agencies  
17 which conflict with the terms of this Agreement.

18  
19 (b) If either Party because of force majeure is  
20 rendered wholly or partly unable to perform its obligations  
21 under this Agreement, that Party shall be excused from  
22 whatever performance is affected by the force majeure to the  
23 extent so affected provided that:

24  
25 (1) the non-performing Party, within two weeks  
26 after the occurrence of the force majeure, gives the  
27 other Party written notice describing the particulars  
28 of the occurrence,

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

4 (3) the non-performing Party uses its best  
5 efforts to remedy its inability to perform (this  
6 subsection shall not require the settlement of any  
7 strike, walkout, lockout or other labor dispute on  
8 terms which, in the sole judgment of the Party  
9 involved in the dispute, are contrary to its  
10 interest. It is understood and agreed that the  
11 settlement of strikes, walkouts, lockouts or other  
12 labor disputes shall be at the sole discretion of the  
13 Party having the difficulty),

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

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

21  
22 (c) In the event a Party is unable to perform due to  
23 legislative, judicial, or regulatory agency action, this  
24 Agreement shall be renegotiated to comply with the legal  
25 change which caused the non-performance.



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A-9 INDEMNITY

Each Party as indemnitor shall save harmless and indemnify the other Party and the directors, officers, and employees of such other Party against and from any and all loss and liability for injuries to persons including employees of either Party, and property damages including property of either Party resulting from or arising out of (1) the engineering, design, construction, maintenance, or operation of, or (2) the making of replacements, additions, or betterments to, the indemnitor's facilities. This indemnity and save harmless provision shall apply notwithstanding the active or passive negligence of the indemnitee. Neither Party shall be indemnified hereunder for its liability or loss resulting from its sole negligence or willful misconduct. The indemnitor shall, on the other Party's request, defend any suit asserting a claim covered by this indemnity and shall pay all costs, including reasonable attorney fees, that may be incurred by the other Party in enforcing this indemnity.

A-10 LIABILITY; DEDICATION

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

1 (b) Each Party shall be responsible for protecting  
2 its facilities from possible damage by reason of electrical  
3 disturbances or faults caused by the operation, faulty  
4 operation, or nonoperation of the other Party's facilities,  
5 and such other Party shall not be liable for any such  
6 damages so caused.

7  
8 (c) No undertaking by one Party to the other under  
9 any provision of this Agreement shall constitute the  
10 dedication of that Party's system or any portion thereof to  
11 the other Party or to the public or affect the status of  
12 PGandE as an independent public utility corporation or  
13 Seller as an independent individual or entity and not a  
14 public utility.

15  
16 A-11 SEVERAL OBLIGATIONS

17  
18 Except where specifically stated in this Agreement to  
19 be otherwise, the duties, obligations, and liabilities of  
20 the Parties are intended to be several and not joint or  
21 collective. Nothing contained in this Agreement shall ever  
22 be construed to create an association, trust, partnership,  
23 or joint venture or impose a trust or partnership duty,  
24 obligation, or liability on or with regard to either Party.  
25 Each Party shall be liable individually and severally for  
26 its own obligations under this Agreement.

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A-12 NON-WAIVER

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

A-13 ASSIGNMENT

Neither Party shall voluntarily assign its rights nor delegate its duties under this Agreement, or any part of such rights or duties, without the written consent of the other Party, except in connection with the sale or merger of a substantial portion of its properties. Any such assignment or delegation made without such written consent shall be null and void. Consent for assignment shall not be withheld unreasonably. Such assignment shall include, unless otherwise specified therein, all of Seller's rights to any refunds which might become due under this Agreement.

A-14 CAPTIONS

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

1 A-15 CHOICE OF LAWS

2

3 This Agreement shall be interpreted in accordance  
4 with the laws of the State of California, excluding any  
5 choice of law rules which may direct the application of the  
6 laws of another jurisdiction.

7

8 A-16 GOVERNMENTAL JURISDICTION AND AUTHORIZATION

9

10 Seller shall obtain any governmental authorizations  
11 and permits required for the construction and operation of  
12 the Facility. Seller shall reimburse PGandE for any and all  
13 losses, damages, claims, penalties, or liability it incurs  
14 as a result of Seller's failure to obtain or maintain such  
15 authorizations and permits.

16

17 A-17 NOTICES

18

19 Any notice, demand, or request required or permitted  
20 to be given by either Party to the other, and any instrument  
21 required or permitted to be tendered or delivered by either  
22 Party to the other, shall be in writing (except as provided  
23 in Section E-3) and so given, tendered, or delivered, as the  
24 case may be, by depositing the same in any United States  
25 Post Office with postage prepaid for transmission by  
26 certified mail, return receipt requested, addressed to the  
27 Party, or personally delivered to the Party, at the address  
28 in Article 9 of this Agreement. Changes in such designation

1 may be made by notice similarly given.

2  
3 A-18 INSURANCE

4  
5 A-18.1 General Liability Coverage

6  
7 (a) Seller shall maintain during the performance  
8 hereof, General Liability Insurance<sup>1</sup> of not less than  
9 \$1,000,000 if the Facility is over 100 kW, \$500,000 if the  
10 Facility is over 20 kW to 100 kW, and \$100,000 if the  
11 Facility is 20 kW or below of combined single limit or  
12 equivalent for bodily injury, personal injury, and property  
13 damage as the result of any one occurrence.

14  
15 (b) General Liability Insurance shall include  
16 coverage for Premises-Operations, Owners and Contractors  
17 Protective, Products/Completed Operations Hazard, Explosion,  
18 Collapse, Underground, Contractual Liability, and Broad Form  
19 Property Damage including Completed Operations.

20  
21 (c) Such insurance, by endorsement to the  
22 policy(ies), shall include PGandE as an additional insured  
23 if the Facility is over 100 kW insofar as work performed by

24  
25  
26 <sup>1</sup> Governmental agencies which have an established record of  
27 self-insurance may provide the required coverage through  
28 self-insurance.

1 Seller for PGandE is concerned, shall contain a severability  
2 of interest clause, shall provide that PGandE shall not by  
3 reason of its inclusion as an additional insured incur  
4 liability to the insurance carrier for payment of premium  
5 for such insurance, and shall provide for 30-days' written  
6 notice to PGandE prior to cancellation, termination,  
7 alteration, or material change of such insurance.

8  
9 A-18.2 Additional Insurance Provisions

10  
11 (a) Evidence of coverage described above in Section  
12 A-18.1 shall state that coverage provided is primary and is  
13 not excess to or contributing with any insurance or  
14 self-insurance maintained by PGandE.

15  
16 (b) PGandE shall have the right to inspect or obtain  
17 a copy of the original policy(ies) of insurance.

18  
19 (c) Seller shall furnish the required certificates<sup>1</sup>  
20 and endorsements to PGandE prior to commencing operation.

21  
22  
23  
24  
25 <sup>1</sup> A governmental agency qualifying to maintain self-insurance  
26 should provide a statement of self-insurance.

1 (d) All insurance certificates<sup>1</sup>, endorsements,  
2 cancellations, terminations, alterations, and material  
3 changes of such insurance shall be issued and submitted to  
4 the following:

5 PACIFIC GAS AND ELECTRIC COMPANY  
6 Attention: Manager - Insurance Department  
7 77 Beale Street, Room E280  
8 San Francisco, CA 94106

9 A-19 TRANSFORMER LOSS ADJUSTMENT FOR LOW-SIDE METERING  
10

11 Because Seller's deliveries to PGandE will be metered  
12 on the low voltage (21 kV) side of Seller's transformer, the  
13 transformer energy losses will not be directly metered.  
14 Therefore, loss adjustments shall be made to correct all  
15 measurements for transformer losses. No-load transformer  
16 losses will be calculated by PGandE, assuming the  
17 transformer is always connected to the PGandE system and  
18 load losses will be calculated by PGandE on the basis of  
19 data collected by an A2h (ampere-squared-hour) meter.  
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