# PACIFIC GAS AND ELECTRIC COMPANY

# STANDARD OFFER #4

# POWER PURCHASE AGREEMENT

# FOR

# LONG-TERM ENERGY AND CAPACITY

SEPTEMBER 1983

STANDARD OFFER #4:

LONG-TERM ENERGY AND CAPACITY

POWER PURCHASE AGREEMENT

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LONG-TERM ENERGY AND CAPACITY

POWER PURCHASE AGREEMENT

BETWEEN

FRIANT POWER AUTHORITY

AND

PACIFIC GAS AND ELECTRIC COMPANY

FRIANT POWER AUTHORITY ("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[1] 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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1 Underlining identifies those terms which are defined in Section A-1 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 <u>term of agreement</u>. 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 Agreement shall not constitute PGandE's sole remedy for such breach.

## ARTICLE 3 PURCHASE OF POWER

(a) Seller shall sell and deliver and PGandE shall purchase and accept delivery of capacity and energy at the voltage level of 70 kV.

(b) Seller shall provide capacity and energy from its (see table below) [Nameplate rating of generator(s)] kW Facility located at Friant Dam, Madera and Fresno Counties, California.

(c) The scheduled operation date of the Facility is January 1, 1986. At the end of each calendar quarter Seller shall give written notice to PGandE of any change in the scheduled operation date.

(d) Seller shall limit the Facility's actual rate of delivery into the PGandE system to 29,000 kW.

(e) The primary energy source for the Facility is Friant Dam.

| Facility Unit Names | Nameplate Rating |
|---|---|
| Friant-Kern | 15,000 kW |
| Friant-Madera | 8,000 kW |
| River Outlet | 2,000 kW |

ARTICLE 4 ENERGY PRICE

PGandE shall pay Seller for its net energy output[1] under the energy payment option checked below:[2]

______ Energy Payment Option 1 - Forecasted Energy Prices

During the <u>fixed price period</u>, 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 <u>full short-run avoided operating costs</u>.

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

If Seller's <u>Facility</u> is not an oil or gas-fired cogeneration facility, Seller may convert from Energy Payment Option 1 to Energy Payment Option 2 and be

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

2 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 <u>Facility</u> 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.

subject to the conditions therein, provided that Seller shall not change the percentage of energy prices to be based on PGandE's full short-run avoided operating costs. Such conversion must be made at least 90 days prior to the date of initial energy deliveries and must be made by written notice in accordance with Section A-17, Appendix A.

__X__ Energy Payment Option 2 - Levelized Energy Prices

During the fixed price period, Seller shall be paid for energy delivered at prices equal to 100[1] percent of the levelized energy prices set forth in Table B-2, Appendix B for the year in which energy deliveries begin and term of agreement, plus 0[2] percent of PGandE's full short-run avoided operating costs. During the fixed price period, Seller shall be subject to the conditions and terms set forth in Appendix B, Energy Payment Option 2.

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.

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1 Insert either 20, 40, 60, 80, or 100, at Seller's option.

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

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

______ Energy Payment Option 3 - Incremental Energy Rate

Beginning with the date of initial energy deliveries and continuing until ______________,[1] Seller shall be paid monthly for energy delivered at prices equal to PGandE's <u>full</u> <u>short-run</u> <u>avoided</u> <u>operating</u> <u>costs</u>, provided that adjustments shall be made annually 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.

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1 Specified by Seller. Must be December 31, 1998 or prior.

Table I

| Year | Incremental Energy Rate Band Widths (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.

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:

______ 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.

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

## ARTICLE 7 CURTAILMENT

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

X Curtailment Option A - Hydro Spill and Negative Avoided Cost

____ Curtailment Option B - Adjusted Price Period

The two options are described in Appendix C.

ARTICLE 8 RETROACTIVE APPLICATION OF CPUC ORDERS

Pursuant to Ordering Paragraph 1(f) of CPUC Decision No. 83-09-054 (September 7, 1983), after the effective date of the CPUC's Application 82-03-26 decision relating to 1) line loss factors; 2) interconnection provisions involving future lines and system upgrades; and 3) insurance, Seller has the option to retain the relevant terms of this Agreement or have the results of that decision incorporated into this Agreement. To retain the terms herein, Seller shall provide written notice to PGandE within 30 days after the effective date of the relevant CPUC decision on Application 82-03-26. Failure to provide such notice will result in the amendment of this Agreement to comply with that decision.

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: [redacted]
Friant Power Authority
24790 Avenue 95
Terra Bella, CA 93270

## ARTICLE 10 DESIGNATED SWITCHING CENTER

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

Fresno Dispatch Office
1401 Fulton Avenue, Fresno, CA
(209) 268-0441

## 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

## ARTICLE 12 TERM OF AGREEMENT

This Agreement shall be binding upon execution and remain in effect from January 1, 1986 through December 31, 2015[1] provided, however, that it shall terminate if energy deliveries do not start within five years of the effective date.

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.

| FRIANT POWER AUTHORITY | PACIFIC GAS AND ELECTRIC COMPANY |
|---|---|
| BY: Thomas Cannella | BY: Nolan H. Daines |
| TITLE: President | TITLE: Vice President |
| DATE SIGNED: October 7, 1983 | DATE SIGNED: October 7, 1983 |

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

APPENDIX A

GENERAL TERMS AND CONDITIONS

CONTENTS

## 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 the date of deration or termination to the end of the term of agreement.

Designated PGandE switching center - That switching center or other PGandE installation identified in Article 10.

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

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

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

Firm capacity price - The price for firm capacity applicable for the firm capacity availability date and the number of years of firm capacity delivery from either the firm capacity price schedule, Table E-2, Appendix E, or the successor to Table E-2 in effect on the firm capacity availability date, whichever is higher.

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

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

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

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

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

Net energy output - The Facility's gross output in kilowatt-hours less station use and transformation and transmission losses to the point of delivery into the PGandE system.

Prudent electrical practices - Those practices, methods, and equipment, as changed from time to time, that are commonly used in prudent electrical engineering and operations to design and operate electric equipment lawfully and with safety, dependability, efficiency, and economy.

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

Special facilities - Those parts of the interconnection facilities furnished by PGandE at Seller's request, metering and data processing equipment, and those additions and reinforcements to the PGandE system which are needed to accommodate the maximum delivery of energy and capacity from the Facility as provided in this Agreement. All special facilities shall be furnished at Seller's expense pursuant to PGandE's electric Rule No. 21 by a separate agreement.

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

Surplus energy output - The Facility's gross output, in kilowatt-hours, less station use, and any other use by Seller, and transformation and transmission losses to the point of delivery into the PGandE system.

<u>Term of agreement</u> - The number of years this Agreement will remain in effect from the date of initial energy deliveries, as provided in Article 12.

<u>Voltage level</u> - The voltage at which the <u>Facility</u> interconnects with the PGandE system, measured at the point of delivery.

A-2. CONSTRUCTION

A-2.1 Land Rights

Seller hereby grants to PGandE all necessary rights of way and easements, including adequate and continuing access rights on property of Seller, to install, operate, maintain, replace, and remove the <u>special facilities</u>. Seller agrees to execute such other grants, deeds, or documents as PGandE may require to enable it to record such rights of way and easements. If any part of PGandE's equipment is to be installed on property owned by other than Seller, Seller shall, at its own cost and expense, obtain from the owners thereof all necessary rights of way and easements, in a form satisfactory to PGandE, for the construction, operation, maintenance, and replacement of PGandE's equipment upon such property. If Seller is unable to obtain such rights of way and easements, Seller shall reimburse PGandE for all costs incurred by PGandE in obtaining them. PGandE shall at all times have the right of ingress to and egress from the <u>Facility</u> at all reasonable hours for any purposes reasonably connected with this Agreement or the exercise of any and all rights secured to PGandE by law or its tariff schedules.

A-2.2 Design, Construction, Ownership, and Maintenance

(a) Seller shall design, construct, install, own, operate, and maintain all <u>interconnection</u> <u>facilities</u>, except <u>special</u> <u>facilities</u>, to the point of interconnection with the PGandE system as required for PGandE to receive capacity and energy from the <u>Facility</u>. The <u>Facility</u> and <u>interconnection</u> <u>facilities</u> shall meet all requirements of applicable codes and all standards of <u>prudent</u> <u>electrical</u> <u>practices</u> and shall be managed in a safe and prudent manner.

(b) Seller shall submit to PGandE all specifications for the <u>interconnection</u> <u>facilities</u> and, at PGandE's option, the <u>Facility</u>, for review and written acceptance prior to their release for construction purposes. PGandE's review and acceptance of these specifications shall not be construed as confirming or endorsing the design or as warranting their safety, durability, or reliability. PGandE shall not, by reason of such review or lack of review, be responsible for strength, details of design, adequacy, or capacity of equipment built pursuant to such specifications, nor shall PGandE's acceptance be deemed to be an endorsement of any of such equipment. Seller shall change the interconnection facilities as may be reasonably required by PGandE to meet changing requirements of the PGandE system.

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

A-2.3 Meter Installation

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

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

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.

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.

A-3.3 Point of Delivery

Seller shall deliver the energy at the point where Seller's electrical conductors contact PGandE's existing system or at such other point as the Parties may agree in writing.

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 within the Facility agreed to by both Parties.

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

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

A-3.5 Meter Testing and Inspection

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

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

A-3.6 Adjustments to Meter Measurements

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

## A-4. PAYMENT

PGandE shall mail to Seller not later than 30 days after the end of each monthly billing period (1) a statement showing the energy and capacity delivered to PGandE during on-peak, partial-peak, and off-peak periods during the monthly billing period, (2) PGandE's computation of the amount due Seller, and (3) PGandE's check in payment of said amount. If within 30 days of receipt of the statement Seller does not make a report in writing to PGandE of an error, Seller shall be deemed to have waived any error in PGandE's statement, computation, and payment, and they shall be considered correct and complete.

A-5. ADJUSTMENTS OF PAYMENTS

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

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

A-6. ACCESS TO RECORDS

Each Party, after giving reasonable written notice to the other Party, shall have the right of access to all metering and related records including operations logs of the Facility.

A-7. INTERRUPTION OF DELIVERIES

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

A-8. FORCE MAJEURE

(a) The term force majeure as used herein means unforeseeable causes, other than forced outages, beyond the reasonable control of and without the fault or negligence of the Party claiming force majeure, including but not limited to, acts of God, labor disputes, sudden actions of the elements, and actions by federal, state, municipal, or any other government agency.

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

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

of the occurrence,

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

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

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

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

## 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.

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

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

A-11. SEVERAL OBLIGATIONS

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

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.

A-15. CHOICE OF LAWS

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

A-16. GOVERNMENTAL JURISDICTION AND AUTHORIZATION

Seller warrants that the Facility and interconnection facilities, except special facilities, shall at all times conform to all applicable laws and regulations, and Seller shall obtain any governmental authorizations and permits required for the construction and operation thereof. If at any time Seller does not hold such authorizations and permits PGandE may refuse to accept deliveries of power hereunder.

A-17. NOTICES

Any notice, demand, or request required or permitted to be given by either Party to the other, and any instrument required or permitted to be tendered or delivered by either Party to the other, shall be in writing and so given, tendered, or delivered, as the case may be, by depositing the same in any United States Post Office with postage prepaid for transmission by certified mail, return receipt requested, addressed to the Party, or personally delivered to the Party, at the address in Article 9 of this Agreement. Changes in such designation may be made by notice similarly given.

## A-18. INSURANCE

### A-18.1 Workers' Compensation

Seller shall furnish PGandE a certificate of workers' compensation or self-insurance indicating compliance with the Labor Code of California, including Employer's Liability insurance with a minimum of $2,000,000 for injury or death of any one person. This certificate shall provide for 30-days' written notice to PGandE prior to cancellation, termination, alteration, or material change of such insurance.

### A-18.2 Comprehensive General and Comprehensive Automobile Liability Coverage

(a) Seller shall maintain during the performance hereof, Comprehensive General Liability and Comprehensive Automobile Liability of not less than $3,000,000 combined single limit or equivalent for bodily injury, personal injury, and property damage as the result of any one occurrence.

(b) Comprehensive General Liability shall include coverage for Premises-Operations, Owners and Contractors Protective, Products/Completed Operations Hazard, Explosion, Collapse, Underground, Contractual Liability, and Broad Form

Property Damage including Completed Operations. Comprehensive Automobile Liability shall include coverage for Owned, Hired, and Non-Owned automobiles.

(c) Such insurance, by endorsement to the policy(ies), shall include PGandE as an additional insured insofar as work performed by Seller for PGandE is concerned, shall contain a severability of interest clause, shall provide that PGandE shall not by reason of its inclusion as an additional insured incur liability to the insurance carrier for payment of premium for such insurance, and shall provide for 30-days' written notice to PGandE prior to cancellation, termination, alteration, or material change of such insurance.

A-18.3 Additional Insurance Provisions

(a) Evidence of coverage described above in Sections A-18.1 and A-18.2 shall state that coverage provided is primary and is not excess to or contributing with any insurance or self-insurance maintained by PGandE.

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

(c) Seller shall furnish the required certificates and endorsements to PGandE prior to the date construction of the <u>Facility</u> begins or the effective date of this Agreement, whichever is later.

(d) All insurance certificates, 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
San Francisco, CA 94106

APPENDIX B

ENERGY PRICES

Energy Payment Option 1 - Forecasted Energy Prices

Pursuant to Article 4, the energy payment calculation for Seller's energy deliveries during each year of the <u>fixed price period</u> shall include the appropriate prices for such year in Table B-1, multiplied by the percentage Seller has specified in Article 4. If Seller has selected Curtailment Option B in Article 7, the forecasted off-peak hours' energy prices listed in Table B-1 shall be adjusted upward by 7.7% for Period A and 9.6% for Period B.

**TABLE B-1**

**Forecasted Energy Price Schedule**

| Year of Energy Deliveries | Forecasted Energy Prices*, ¢/kWh: Period A On-Peak | Period A Partial-Peak | Period A Off-Peak | Period B On-Peak | Period B Partial-Peak | Period B Off-Peak | Weighted Annual Average |
|---|---|---|---|---|---|---|---|
| 1983 | 5.36 | 5.12 | 4.94 | 5.44 | 5.31 | 5.19 | 5.18 |
| 1984 | 5.66 | 5.40 | 5.22 | 5.74 | 5.61 | 5.48 | 5.47 |
| 1985 | 5.75 | 5.48 | 5.30 | 5.83 | 5.69 | 5.56 | 5.55 |
| 1986 | 5.99 | 5.72 | 5.52 | 6.08 | 5.94 | 5.80 | 5.79 |
| 1987 | 6.38 | 6.08 | 5.88 | 6.47 | 6.32 | 6.17 | 6.16 |
| 1988 | 6.94 | 6.62 | 6.39 | 7.03 | 6.87 | 6.71 | 6.70 |
| 1989 | 7.60 | 7.25 | 7.00 | 7.70 | 7.53 | 7.35 | 7.34 |
| 1990 | 8.12 | 7.74 | 7.48 | 8.23 | 8.04 | 7.85 | 7.84 |
| 1991 | 8.64 | 8.24 | 7.96 | 8.75 | 8.56 | 8.35 | 8.34 |
| 1992 | 9.33 | 8.90 | 8.60 | 9.46 | 9.24 | 9.02 | 9.01 |
| 1993 | 10.10 | 9.63 | 9.30 | 10.23 | 10.00 | 9.76 | 9.75 |
| 1994 | 10.91 | 10.41 | 10.06 | 11.06 | 10.81 | 10.55 | 10.54 |
| 1995 | 11.79 | 11.25 | 10.87 | 11.96 | 11.68 | 11.40 | 11.39 |
| 1996 | 12.67 | 12.09 | 11.68 | 12.85 | 12.56 | 12.25 | 12.24 |
| 1997 | 13.61 | 12.98 | 12.54 | 13.79 | 13.48 | 13.15 | 13.14 |

*These prices are differentiated by the time periods as defined in Table B-4.

Energy Payment Option 2 - Levelized Energy Prices

Pursuant to Article 4, the energy payment calculation for Seller's energy deliveries during the fixed price period shall include the appropriate prices set forth in Table B-2 for the year in which energy deliveries begin and term of agreement, multiplied by the percentage Seller has specified in Article 4. If Seller has selected Curtailment Option B in Article 7, the levelized off-peak hours' energy prices listed in Table B-2 shall be adjusted upward by 7.7% for Period A and 9.6% for Period B. The discount specified in (c)(vi) below, if applicable, will be applied to the energy payments during the fixed price period.

During the fixed price period, Seller shall be subject to the following conditions and terms:

(a) Minimum Damages

The Parties agree that the levelized energy prices which PGandE pays Seller for the energy which Seller delivers to PGandE is based on the agreed value to PGandE of Seller's energy deliveries during the entire fixed price period. In the event PGandE does not receive such full performance by reason of a termination, Seller shall pay PGandE an amount based on the difference between the net present values, at the time of termination, of the payments Seller would receive at the forecasted energy prices in Table B-1 and the payments Seller would receive at the levelized energy prices, for the remaining years of the <u>fixed price period</u>. This amount shall be calculated by assuming that Seller continued to generate for the remaining years of the <u>fixed price period</u> at a level equal to the average annual energy generation during the period of performance, and by applying the weighted annual average levelized price applicable to Seller's <u>Facility</u> and the weighted annual average forecasted energy prices in Table B-1 for the remaining years of the <u>fixed price period</u>. The following formula shall be used to make this calculation:

$$P = \sum_{n=1}^{Y} \frac{(F_n)(A)(W)}{(1.15)^n} - \sum_{n=1}^{Y} \frac{(L)(A)(W)}{(1.15)^n}$$

where:

P = amount due PGandE

Y = number of years remaining in the <u>fixed price period</u>

$F_n$ = weighted annual average forecasted energy price in the $n^{\underline{th}}$ year after the breach, failure to perform, or expiration of security, as shown in Table B-1 for the corresponding calendar year

L = weighted annual average levelized energy price applicable to Seller's <u>Facility</u>

A = average annual energy generation by Seller during the period of performance

n = summation index; refers to the $n^{\underline{th}}$ year following termination

W = percent of Seller's energy payments based on the levelized energy prices, as specified in Article 4

(b) Performance Requirements

Seller shall operate and maintain the <u>Facility</u> in accordance with <u>prudent</u> <u>electrical</u> <u>practices</u> in order to maximize the likelihood that the <u>Facility's</u> output as delivered to PGandE during the part of the <u>fixed price</u> <u>period</u> when the levelized price is below the forecasted price ("last part") shall equal or exceed 70% of the <u>Facility's</u> output during the part of the <u>fixed</u> <u>price</u> <u>period</u> when the levelized price is above the forecasted price ("first part"). In the event that the <u>Facility's</u> output during any year or series of years in the last part of the <u>fixed</u> <u>price</u> <u>period</u> is less than 70% of the average annual production during the first part of the <u>fixed</u> <u>price</u> <u>period</u>, PGandE may, at its discretion (taking into consideration events occurring during such year or series of years such as curtailment by PGandE, Seller's choice not to operate during adjusted price periods, or scheduled maintenance including major overhauls, and the probability that Seller's future performance will be adequate), either request payment from Seller or immediately draw on the security posted, up to the amount equal to

$P \times \frac{A-B}{A}$, where:

P and A are as defined in Section (a) above

B = Seller's average annual energy generation during the year or series of years in which the 70% performance requirement was not met.

PGandE shall not request payment from Seller or draw on the security posted if the <u>Facility's</u> output during the last part of the <u>fixed price period</u> falls below 70% of the average annual energy generation during the first part of the <u>fixed price period</u> solely because of force majeure as defined in Section A-8, Appendix A or a lack of or limited availability of the primary energy resource of the <u>Facility</u>, if such energy resource is wind, water, or sunlight.

(c) Security

(1) As security for amounts which Seller may be obligated to pay PGandE pursuant to Sections (a) and (b) above, Seller shall provide and maintain

one or more of the following in an amount as described in Section (c)(2) below.

(i) An irrevocable bank letter of credit delivered to and in favor of PGandE with terms acceptable to PGandE.

(ii) A payment bond providing for payment to PGandE in the event of any failure to meet the performance requirements set forth in Section (b) above or breach of this Agreement by Seller. Such bond shall be issued by a surety company acceptable to PGandE and shall have terms acceptable to PGandE.

(iii) Fully paid up, noncancellable Project Failure Insurance made payable to PGandE with terms of such policy(ies) acceptable to PGandE.

(iv) A performance bond providing for payment to PGandE in the event of any failure to meet the performance requirements set forth in Section (b) above or breach of this Agreement by Seller. Such bond shall be issued by a surety company acceptable to PGandE and shall have terms acceptable to PGandE.

(v) A corporate guarantee of payment to PGandE which PGandE deems, in its sole discretion, to provide at least the same quality of security as subsections (i) through (iv) above.

(vi) Other forms of security which PGandE does not deem to be equivalent security to those listed in subsections (i) through (v) above, and which PGandE, in its sole discretion, deems adequate. Such other forms of security may include, for example, a corporate guarantee or a lien, mortgage or deed of trust on the Facility or land upon which it is located. A 1.5% discount will be applied against the levelized energy price portion of PGandE's payments to Seller during the fixed price period if this type of security is provided.

(2) (i) Commencing 90 days prior to the scheduled operation date and continuing until December 1 of the following calendar year, security as described in Section (c)(1) above shall be in place in an amount calculated in accordance with the formula set forth in Section (a) above, assuming Seller delivered energy through the end of the following calendar year and then terminated this

Agreement. For purposes of determining the required amount of security, it shall be assumed that Seller's deliveries through the end of the following calendar year would equal R x C x H, where:

R = nameplate rating, in kWh, of the <u>Facility</u>

C = estimated capacity factor of the <u>Facility</u>, which shall be established by mutual agreement of the Parties at the time of execution of this Agreement.

H = number of hours from the <u>scheduled</u> <u>operation</u> <u>date</u> through the end of the following calendar year.

(ii) In the second calendar year of operation and each year thereafter until the end of the <u>fixed</u> <u>price</u> <u>period</u>, from December 1 through December 1 of the following year, security shall be in place in an amount calculated by the formula set forth in Section (a) above assuming Seller continued to deliver energy in each month through the end of the following calendar year, at a level equal to the average monthly energy deliveries to date, and then terminated this Agreement.

(3) Security must be maintained throughout the <u>fixed price period</u> as specified above. Any security with a fixed expiration date must be renewed by Seller prior to that date. If such security is not renewed at least 30 days prior to its expiration, PGandE may, at its discretion, either request payment from Seller or immediately draw on the security posted, up to the amount calculated in accordance with the formula set forth in Section (a) above.

(4) If, at any time during the <u>fixed price period</u>, PGandE believes Seller is in material breach of this Agreement, PGandE shall so notify Seller in writing and Seller must remedy such breach within a reasonable period of time. If Seller does not so remedy, PGandE may, at its discretion, either request payment from Seller or immediately draw upon the security posted, up to the amount calculated in accordance with the formula set forth in Section (a) above, provided that if during Seller's period to remedy, Seller disputes PGandE's conclusion that Seller is in material breach, and PGandE elects to draw upon the security, the amount drawn upon by PGandE shall be

deposited in an interest earning escrow account and held in such account until the dispute is resolved in accordance with Section (c)(5) below.

(5) Upon the written request of either Party, any controversy or dispute between the Parties concerning Section (c)(4) above shall be subject to arbitration in accordance with the provisions of the California Arbitration Act, Sections 1280-1294.2 of the California Code of Civil Procedure except as provided otherwise in this section. Either Party may demand arbitration by first giving written notice of the existence of a dispute and then within 30 days of such notice giving a second written notice of the demand for arbitration.

Within ten days after receipt of the demand for arbitration, each Party shall appoint one person, who shall not be an employee of either Party, to hear and determine the dispute. After both arbitrators have been appointed, they shall within five (5) days select a third arbitrator.

The arbitration hearing shall take place in San Francisco, California, within 30 days of the appointment of the arbitrators, at such time and place as they select. The arbitrators shall give written notice of the time of the hearing to both Parties at least ten days prior to the hearing. The arbitrators shall not be authorized to alter, extend, or modify the terms of this Agreement. At the hearing, each Party shall submit a proposed written decision, and any relevant evidence may be presented. The decision of the arbitrators must consist of selection of one of the two proposed decisions, in its entirety.

The decision of any two arbitrators shall be binding and conclusive as to disputes relating to Section (c)(4) only. Upon determining the matter, the arbitrators shall promptly execute and acknowledge their decision and deliver a copy to each Party. A judgment confirming the award may be rendered by any superior court having jurisdiction. Each Party shall bear its own arbitration costs and expenses, including the cost of the arbitrator it selected, and the costs and expenses of the third arbitrator shall be divided equally between both Parties, except as provided otherwise elsewhere in this Agreement.

Pending resolution of any controversy or dispute hereunder, performance by each Party shall continue so as to maintain the status quo prior to notice of such controversy or dispute. Resolution of the controversy or dispute shall include payment of any interest accrued in the escrow account.

TABLE B-2
Levelized Energy Price Schedule

For a term of agreement of 15-16 years:

| Year in Which Energy Deliveries Begin | Levelized Energy Prices*, ¢/kWh — Period A On-Peak | Period A Partial-Peak | Period A Off-Peak | Period B On-Peak | Period B Partial-Peak | Period B Off-Peak | Weighted Annual Average |
|---|---|---|---|---|---|---|---|
| 1983 | 5.76 | 5.50 | 5.31 | 5.85 | 5.71 | 5.58 | 5.57 |
| 1984 | 6.06 | 5.78 | 5.58 | 6.14 | 6.00 | 5.86 | 5.85 |
| 1985 | 6.41 | 6.11 | 5.91 | 6.50 | 6.35 | 6.20 | 6.19 |
| 1986 | 6.85 | 6.54 | 6.32 | 6.95 | 6.79 | 6.63 | 6.62 |
| 1987 | 7.37 | 7.03 | 6.79 | 7.47 | 7.30 | 7.13 | 7.12 |
| 1988 | 7.96 | 7.60 | 7.34 | 8.07 | 7.89 | 7.70 | 7.69 |

For a term of agreement of 17-19 years:

| Year in Which Energy Deliveries Begin | Levelized Energy Prices*, ¢/kWh — Period A On-Peak | Period A Partial-Peak | Period A Off-Peak | Period B On-Peak | Period B Partial-Peak | Period B Off-Peak | Weighted Annual Average |
|---|---|---|---|---|---|---|---|
| 1983 | 5.90 | 5.63 | 5.44 | 5.98 | 5.84 | 5.71 | 5.70 |
| 1984 | 6.23 | 5.95 | 5.74 | 6.32 | 6.18 | 6.03 | 6.02 |
| 1985 | 6.60 | 6.30 | 6.08 | 6.69 | 6.53 | 6.38 | 6.37 |
| 1986 | 7.06 | 6.73 | 6.51 | 7.16 | 7.00 | 6.83 | 6.82 |
| 1987 | 7.60 | 7.25 | 7.00 | 7.70 | 7.53 | 7.35 | 7.34 |
| 1988 | 8.21 | 7.83 | 7.57 | 8.32 | 8.13 | 7.94 | 7.93 |

For a term of agreement of 20-30 years:

| Year in Which Energy Deliveries Begin | Levelized Energy Prices*, ¢/kWh — Period A On-Peak | Period A Partial-Peak | Period A Off-Peak | Period B On-Peak | Period B Partial-Peak | Period B Off-Peak | Weighted Annual Average |
|---|---|---|---|---|---|---|---|
| 1983 | 6.49 | 6.20 | 5.98 | 6.58 | 6.43 | 6.28 | 6.27 |
| 1984 | 6.90 | 6.58 | 6.35 | 6.99 | 6.83 | 6.67 | 6.66 |
| 1985 | 7.34 | 7.00 | 6.76 | 7.44 | 7.27 | 7.10 | 7.09 |
| 1986 | 7.88 | 7.51 | 7.26 | 7.99 | 7.81 | 7.62 | 7.61 |
| 1987 | 8.49 | 8.10 | 7.82 | 8.61 | 8.41 | 8.21 | 8.20 |
| 1988 | 9.16 | 8.74 | 8.44 | 9.29 | 9.08 | 8.86 | 8.85 |

* These prices are differentiated by the time periods as defined in Table B-4.

Energy Payment Option 3 - Incremental Energy Rate

During the period specified in Article 4, annual adjustments to Seller's energy payments shall be made as described below.

At the end of each calendar year, the Derived Incremental Energy Rate (with units expressed in Btu/kWh) will be calculated as follows:

$$\text{Derived Incremental Energy Rate (DIER)} = \frac{B}{A \times C}$$

where:

A = the total kWh delivered by Seller during the calendar year, excluding any kWh delivered when Seller was asked to curtail deliveries under Curtailment Option A <u>or</u> when Seller was asked to take adjusted prices under Curtailment Option B;

B = the total dollars paid for the energy described for A above;

C = the weighted average price paid during the calendar year by PGandE's Electric Department for oil and natural gas for PGandE's fossil steam plants, expressed in \$/Btu on a gas Btu basis.

If the DIER is between the upper and lower Incremental Energy Rate Bounds specified for that year in Table B-3 for the curtailment option selected by Seller, no additional payment is due either Party.

If the DIER is below the lower Incremental Energy Rate Bound, PGandE shall pay Seller an amount calculated as follows:

$$P_S = \left(\begin{matrix}\text{Lower Incremental} \\ \text{Energy Rate Bound}\end{matrix} - \text{DIER}\right)(A)(C)$$

where:

$P_S$ = additional payment due Seller

DIER = Derived Incremental Energy Rate

PGandE shall add this payment to the first payment made to Seller following the calculation.

If the DIER is above the upper Incremental Energy Rate Bound, Seller shall pay PGandE an amount calculated as follows:

$$P_B = \left(\text{DIER} - \begin{matrix}\text{Upper Incremental} \\ \text{Energy Rate Bound}\end{matrix}\right)(A)(C)$$

where:

$P_B$ = amount due PGandE

DIER = Derived Incremental Energy Rate

This amount shall be deducted from the first payment made to Seller following the calculation. If there is any remaining amount due PGandE, PGandE may, at its option, invoice Seller with such payment due within 30 days or deduct this amount from future payments due Seller.

Table B-3

Forecasted Incremental Energy Rates and Incremental Energy Rate Bounds

Curtailment Option A:

| Year | Forecasted Incremental Energy Rates, Btu/kWh (a) | Incremental Energy Rate Band Width from Article 4, Btu/kWh (b) | Upper Incremental Energy Rate Bound, Btu/kWh [column (a) plus column (b)] | Lower Incremental Energy Rate Bound, Btu/kWh [column (a) minus column(b)] |
|---|---|---|---|---|
| 1984 | 9,000 | ______ | ______ | ______ |
| 1985 | 9,050 | ______ | ______ | ______ |
| 1986 | 8,840 | ______ | ______ | ______ |
| 1987 | 8,850 | ______ | ______ | ______ |
| 1988 | 8,960 | ______ | ______ | ______ |
| 1989 | 8,820 | ______ | ______ | ______ |
| 1990 | 8,540 | ______ | ______ | ______ |
| 1991 | 8,540 | ______ | ______ | ______ |
| 1992 | 8,540 | ______ | ______ | ______ |
| 1993 | 8,540 | ______ | ______ | ______ |
| 1994 | 8,540 | ______ | ______ | ______ |
| 1995 | 8,540 | ______ | ______ | ______ |
| 1996 | 8,540 | ______ | ______ | ______ |
| 1997 | 8,540 | ______ | ______ | ______ |
| 1998 | 8,540 | ______ | ______ | ______ |

Curtailment Option B:

| Year | Forecasted Incremental Energy Rates, Btu/kWh (a) | Incremental Energy Rate Band Width from Article 4, Btu/kWh (b) | Upper Incremental Energy Rate Bound, Btu/kWh [column (a) plus column (b)] | Lower Incremental Energy Rate Bound, Btu/kWh [column (a) minus column(b)] |
|---|---|---|---|---|
| 1984 | 9,440 | ______ | ______ | ______ |
| 1985 | 9,500 | ______ | ______ | ______ |
| 1986 | 9,280 | ______ | ______ | ______ |
| 1987 | 9,290 | ______ | ______ | ______ |
| 1988 | 9,400 | ______ | ______ | ______ |
| 1989 | 9,270 | ______ | ______ | ______ |
| 1990 | 8,970 | ______ | ______ | ______ |
| 1991 | 8,970 | ______ | ______ | ______ |
| 1992 | 8,970 | ______ | ______ | ______ |
| 1993 | 8,970 | ______ | ______ | ______ |
| 1994 | 8,970 | ______ | ______ | ______ |
| 1995 | 8,970 | ______ | ______ | ______ |
| 1996 | 8,970 | ______ | ______ | ______ |
| 1997 | 8,970 | ______ | ______ | ______ |
| 1998 | 8,970 | ______ | ______ | ______ |

TABLE B-4[1]

| | Monday through Friday[2] | Saturdays[2] | Sundays and Holidays |
|---|---|---|---|
| Seasonal Period A (May 1 through September 30) | | | |
| On-Peak | 12:30 p.m. to 6:30 p.m. | | |
| Partial-Peak | 8:30 a.m. to 12:30 p.m. 6:30 p.m. to 10:30 p.m. | 8:30 a.m. to 10:30 p.m. | |
| Off-Peak | 10:30 p.m. to 8:30 a.m. | 10:30 p.m. to 8:30 a.m. | All Day |
| Seasonal Period B (October 1 through April 30) | | | |
| On-Peak | 4:30 p.m. to 8:30 p.m. | | |
| Partial-Peak | 8:30 p.m. to 10:30 p.m. 8:30 a.m. to 4:30 p.m. | 8:30 a.m. to 10:30 p.m. | |
| Off-Peak | 10:30 p.m. to 8:30 a.m. | 10:30 p.m. to 8:30 a.m. | All Day |

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1 This table is subject to change to accord with the on-peak, partial-peak, and off-peak period as defined in PGandE's own rate schedules for the sale of electricity to its large industrial customers.

2 Except the following holidays: New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving, and Christmas, as said days are specified in Public Law 90-363 (5 U.S.C.A. Section 6103(a)).

TABLE B-5
Energy Prices Effective August 1 - October 31, 1983

The energy purchase price calculations which will apply to energy deliveries determined from meter readings taken during August, September, and October 1983 are as follows:

| Time Period | Incremental Heat Rate[1] (a) | Cost of Energy[2] (b) | Energy Purchase Price[3,4] (c) = (a) x (b) |
|---|---|---|---|
| **May 1-Sept. 30 (Period A)** | | | |
| Time of Delivery Basis: | | | |
| On-Peak | 11,447 Btu/kWh | $5.3948/10^6 Btu | $0.06175/kWh |
| Partial-Peak | 10,919 | 5.3948 | 0.05891 |
| Off-Peak | 10,549 | 5.3948 | 0.05691 |
| Seasonal Average (Period A) | 10,821 | $5.3948 | $0.05838 |
| **Oct. 1-April 30 (Period B)** | | | |
| Time of Delivery Basis: | | | |
| On-Peak | 11,605 Btu/kWh | $5.3948/10^6 Btu | $0.06261/kWh |
| Partial-Peak | 11,341 | 5.3948 | 0.06118 |
| Off-Peak | 11,067 | 5.3948 | 0.05970 |
| Seasonal Average (Period B) | 11,231 | $5.3948 | $0.06059 |

1 Incremental heat rates are derived from marginal energy costs (including variable operating and maintenance expense) adopted by CPUC Decision No. 93887. They are adjusted to reflect the use of natural gas as the incremental fuel.

2 Cost of natural gas under PGandE Gas Schedule No. G-55 effective 7/1/83 per Advice No. 1225-G (Supplemental), Resolution No. 2545.

3 Energy Purchase Price = Incremental Heat Rate x Cost of Energy.

4 This figure excludes the applicable energy line loss adjustment factors. However, as ordered by Ordering Paragraph No. 12(j) of Decision No. 82-12-120, this figure is currently 1.0 for transmission and primary distribution loss adjustments and is equal to marginal cost line loss adjustment factors for the secondary distribution voltage level. These factors may be changed by the CPUC in the future.

# APPENDIX C

## CURTAILMENT OF DELIVERIES

Seller has two options regarding curtailment of energy deliveries and Seller has made its selection in Article 6. The two options are as follows:

Curtailment Option A - Hydro Spill and Negative Avoided Cost

(a) In anticipation of a period of hydro spill conditions, as defined by the <u>CPUC</u>, PGandE may notify Seller that any purchases of energy from Seller during such period shall be at hydro savings prices quoted by PGandE. If Seller delivers energy to PGandE during any such period, Seller shall be paid hydro savings prices for those deliveries in lieu of prices which would otherwise be applicable. The hydro savings prices shall be calculated by PGandE using the following formula:

$$\frac{AQF - S}{AQF} \times PP \qquad (\geq 0)$$

where:

AQF = Energy, in kWh, projected to be available during hydro spill conditions from all qualifying facilities under agreements containing hydro savings price provisions.



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S = Potential energy, in kWh, from PGandE hydro facilities which will be spilled if all AQF is delivered to PGandE.

PP = Prices published by PGandE for purchases during other than hydro spill conditions.

PGandE shall give Seller notice of general periods when hydro spill conditions are anticipated, and shall give Seller as much advance notice as practical of any specific hydro spill period and the hydro savings price which will be applicable during such period.

(b) PGandE shall not be obligated to accept or pay for and may require Seller with a Facility with a nameplate rating of one megawatt or greater to interrupt or reduce deliveries of energy during periods when PGandE would incur negative avoided costs (as defined by the CPUC) due to continued acceptance of energy deliveries under this Agreement.

Whenever possible, PGandE shall give Seller reasonable notice of the possibility that interruption or reduction of deliveries may be required.

(c) Before interrupting or reducing deliveries under subsection (b), above, and before invoking hydro savings prices under subsection (a), above, PGandE shall take reasonable steps to make economy sales of the surplus energy giving rise to the condition. If such economy sales are made, while the surplus energy condition exists Seller shall be paid at the economy sales price obtained by PGandE in lieu of the otherwise applicable prices.

(d) If Seller is selling <u>net energy output</u> to PGandE and simultaneously purchasing its electrical needs from PGandE and Seller elects not to sell energy to PGandE at the hydro savings price pursuant to subsection (a) or when PGandE curtails deliveries of energy pursuant to subsection (b), Seller shall not use such energy to meet its electrical needs but shall continue to purchase all its electrical needs from PGandE. If Seller is selling <u>surplus energy output</u> to PGandE, subsections (a) or (b) shall only apply to the <u>surplus energy output</u> being delivered to PGandE, and Seller can continue to internally use that generation it has retained for its own use.

Curtailment Option B - Adjusted Price Period

(a) In each calendar year, the price which PGandE is obligated to pay Seller for energy deliveries during 1,000 off-peak hours (as defined in Table B-4, Appendix B) may be adjusted to a price equal to, but not in excess of, PGandE's available alternative source. This adjusted price shall be effective under any of the following conditions:

(i) when PGandE's energy source at the margin is not a PGandE oil- or gas-fueled plant, and PGandE can replace Seller's energy with energy from this source at a cost less than the price paid to Seller;

(ii) when PGandE would incur negative avoided costs (as defined by the CPUC) due to continued acceptance of energy deliveries under this Agreement; or

(iii) when PGandE is experiencing minimum system operations.

During any of the conditions described above the adjusted price may be zero.

(b) Whenever possible, PGandE shall give Seller reasonable notice of any price adjustment for energy deliveries and its probable duration.

(c) If Seller is selling net energy output to PGandE and simultaneously purchasing its electrical needs from PGandE and Seller elects not to sell energy to PGandE at the adjusted price, Seller shall not use such energy to meet its electrical needs but shall continue to purchase all its electrical needs from PGandE.

(d) After Seller receives notice of the probable duration of the period during which the adjusted price will be paid, Seller may elect to perform maintenance during such period and so inform the PGandE employee in charge at the designated PGandE switching center prior to the time when the adjusted price period is expected to begin. If Seller makes such election, the number of off-peak hours of probable duration quoted in PGandE's notice to Seller shall be applied to the 1,000 hour calendar year limitation set forth in this section. After an election to do maintenance, if Seller makes any deliveries of energy during the quoted probable duration period, Seller shall be paid the adjusted price quoted in its notice from PGandE without regard to any subsequent changes on the PGandE system which may alter the adjusted price or shorten the actual duration of the condition.

APPENDIX D

AS-DELIVERED CAPACITY PRICES

## D-1 As-Delivered Capacity Payment Options

Seller has two options for as-delivered capacity payments and Seller has made its selection in Article 5. The two options are as follows:

### As-Delivered Capacity Payment Option 1

PGandE shall pay Seller for as-delivered capacity at prices authorized from time to time by the CPUC. The as-delivered capacity prices in effect on the date of execution are calculated as shown in Exhibit D-1, with a shortage cost of $70 per kilowatt-year.

### As-Delivered Capacity Payment Option 2

During the fixed price period, the as-delivered capacity prices will be calculated in accordance with Exhibit D-1 and the forecasted shortage costs in Table D-2.

For the remaining years of the term of agreement, PGandE shall pay Seller for as-delivered capacity at the higher of:

(i) prices authorized from time to time by the CPUC;

(ii) the as-delivered capacity prices that were paid Seller in the last year of the fixed price period; or

(iii) the as-delivered capacity prices in effect in the first year following the end of the fixed price period, provided that the annualized shortage cost from which these prices are derived does not exceed the annualized value of a gas turbine.

D-2 As-Delivered Capacity in Excess of Firm Capacity

The amount of capacity delivered in excess of firm capacity will be considered as-delivered capacity. This as-delivered capacity is based on the total kilowatt-hours delivered each month during all on-peak, partial-peak and off-peak hours excluding any energy associated with generation levels equal to or less than the firm capacity.

Seller has the two options listed in Section D-1 for payment for such as-delivered capacity. Seller has made its selection in Article 5.

Exhibit D-1

The as-delivered capacity price (in cents per kw-hr) for power delivered by the Facility is the product of three factors:

(a) The shortage cost in each year the Facility is operating.

(b) A capacity loss adjustment factor which provides for the effect of the deliveries on PGandE's transmission and distribution losses based on the Seller's interconnection voltage level. The applicable capacity loss adjustment factors for non-remote[1] Facilities are presented in Table D-1(a). Capacity loss adjustment factors for remote Facilities shall be calculated individually.

(c) An allocation factor which accounts for the different values of as-delivered capacity in different time periods and converts dollars per kW-year to cents per kWh. The current allocation factors are presented in Table D-1(b). The time periods to which they apply are shown in Table B-4, Appendix B. The allocation factors are subject to change from time to time.

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1 As defined by the CPUC.

TABLE D-1(a)

Capacity Loss Adjustment Factors
For Non-Remote[1] Facilities

| Voltage Level | Loss Adjustment Factor |
|---|---|
| Transmission | .989 |
| Distribution | .991 |

If the Facility is remote, the capacity loss adjustment factor is ______________[2].

TABLE D-1(b)

Allocation Factors
For As-Delivered Capacity[3]

| | Peak (¢-yr/$-hr) | Partial Peak (¢-yr/$-hr) | Off-Peak (¢-yr/$-hr) |
|---|---|---|---|
| Seasonal Period A | .09982 | .01635 | .00000 |
| Seasonal Period B | .02023 | .00306 | .00001 |

---

[1] As defined by the CPUC. The capacity loss adjustment factors for remote Facilities are determined individually.

[2] Determined individually.

[3] The units for the allocation factor, ¢-yr/$-hr, are derived from the conversion of $/kW-yr into ¢/kWh as follows:

$$\frac{¢/\text{kWh}}{\$/\text{kW-yr}} = \frac{¢/\text{kW-hr}}{\$/\text{kW-yr}} = \frac{¢\text{-yr}}{\$\text{-hr}}$$

The allocation factors are subject to change from time to time.

TABLE D-2

Forecasted Shortage Cost Schedule

| Year | Forecast Shortage Cost, $/kW-Yr |
|---|---|
| 1983 | 70 |
| 1984 | 76 |
| 1985 | 81 |
| 1986 | 88 |
| 1987 | 95 |
| 1988 | 102 |
| 1989 | 110 |
| 1990 | 118 |
| 1991 | 126 |
| 1992 | 135 |
| 1993 | 144 |
| 1994 | 154 |
| 1995 | 164 |
| 1996 | 176 |
| 1997 | 188 |

APPENDIX E

FIRM CAPACITY

CONTENTS

## APPENDIX E
## FIRM CAPACITY

### E-1 GENERAL

This Appendix E establishes conditions and prices under which PGandE shall pay for firm capacity.

PGandE's obligation to pay for firm capacity shall begin on the firm capacity availability date. The firm capacity price shall be subject to adjustment as provided for in this Appendix E.

The firm capacity prices in Table E-2 are applicable for deliveries of firm capacity beginning after December 30, 1982.

### E-2 MINIMUM PERFORMANCE REQUIREMENTS

(a) To receive full capacity payments, the firm capacity shall be delivered for all of the on-peak hours[1] in the peak months on the PGandE system, which are presently the months of June, July, and August, subject to a 20 percent allowance for forced outages in any month.

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1 On-peak, partial-peak, and off-peak hours are defined in Table B-4, Appendix B.

Compliance with this provision shall be based on the Facility's total on-peak deliveries for each of the peak months and shall exclude any energy associated with generation levels greater than the firm capacity.

(b) If Seller is prevented from meeting the minimum performance requirements because of a forced outage on the PGandE system, a PGandE curtailment of Seller's deliveries, or a condition set forth in Section A-7, Appendix A, PGandE shall continue capacity payments. Firm capacity payments will be calculated in the same manner used for scheduled maintenance outages.

(c) If Seller is prevented from meeting the minimum performance requirements because of force majeure, PGandE shall continue capacity payments for ninety days from the occurrence of the force majeure. Thereafter, Seller shall be deemed to have failed to have met the minimum performance requirements. Firm capacity payments will be calculated in the same manner used for scheduled maintenance outages.

(d) If Seller is prevented from meeting the minimum performance requirements because of exteme dry year conditions, PGandE shall continue capacity payments. Extreme dry year conditions are drier than those used to establish firm capacity pursuant to Section E-8. Seller shall warrant to PGandE that the Facility is a hydroelectric facility and that such conditions are the sole cause of Seller's inability to meet its <u>firm capacity</u> obligations.

(e) If Seller is prevented from meeting the minimum performance requirements for reasons other than those described above in Sections E-2(b), (c), or (d):

(1) Seller shall receive the reduced <u>firm capacity</u> payments as provided in Section E-5 for a probationary period not to exceed 15 months, or as otherwise agreed to by the Parties.

(2) If, at the end of the probationary period Seller has not demonstrated that the <u>Facility</u> can meet the minimum performance requirements, PGandE may derate the <u>firm capacity</u> pursuant to Section E-4(b).

E-3 SCHEDULED MAINTENANCE

Outage periods for scheduled maintenance shall not exceed 840 hours (35 days) in any 12-month period. This allowance may be used in increments of an hour or longer on a consecutive or nonconsecutive basis. Seller may accumulate unused maintenance hours from one 12-month period to another up to a maximum of 1,080 hours (45 days). This accrued time must be used consecutively and only for major overhauls. Seller shall provide PGandE with the following advance notices: 24 hours for scheduled outages less than one day, one week for a scheduled outage of one day or more (except for major overhauls), and six months for a major overhaul. Seller shall not schedule major overhauls during the peak months (presently June, July and August). Seller shall make reasonable efforts to schedule or reschedule routine maintenance outside the peak months, and in no event shall outages for scheduled maintenance exceed 30 peak hours during the peak months. Seller shall confirm in writing to PGandE pursuant to Article 9, within 24 hours of the original notice, all notices Seller gives personally or by telephone for scheduled maintenance.

If Seller has selected Curtailment Option B, off-peak hours of maintenance performed pursuant to Section (d) of Curtailment Option B, Appendix C shall not be deducted from Seller's scheduled maintenance allowances set forth above.

E-4 ADJUSTMENTS TO FIRM CAPACITY

(a) Seller may increase the <u>firm capacity</u> with the approval of PGandE and receive payment for the additional capacity thereafter in accordance with the applicable capacity purchase price published by PGandE at the time the increase is first delivered to PGandE.

(b) Seller may reduce the <u>firm capacity</u> at any time prior to the <u>firm capacity availability date</u> by giving written notice thereof to PGandE. PGandE may derate the firm capacity as a result of appropriate tests, studies, or prior performance.

## E-5 FIRM CAPACITY PAYMENTS

The method for calculation of firm capacity payments is shown below. As used below in this section, month refers to a calendar month.

The monthly payment for firm capacity will be the product of the Period Price Factor (PPF), the Monthly Delivered Capacity (MDC), the appropriate capacity loss adjustment factor from Table E-1 based on the Facility's interconnection voltage, and the appropriate performance bonus factor, if any, from Table E-3, plus any allowable payment for outages due to scheduled maintenance. The firm capacity price shall be applied to meter readings taken during the separate times and periods as illustrated in Table B-4, Appendix B.

The PPF is determined by multiplying the firm capacity price by the following Allocation Factors[1]:

| | Allocation Factor | x | Firm Capacity Price | = | PPF ($/kW-month) |
|---|---|---|---|---|---|
| Seasonal Period A | .16479 | | ____________ | | ____________ |
| Seasonal Period B | .02515 | | ____________ | | ____________ |

1 All allocation factors are subject to change by PGandE based on PGandE's marginal capacity cost allocation, as determined in general rate case proceedings before the CPUC. Seasonal Periods A and B are defined in Table B-4, Appendix B.

The MDC is determined in the following manner:

(1) Determine the Performance Factor (P), which is defined as the lesser of 1.0 or the following quantity:

$$P = \frac{A}{C \times (B-S) \times (0.8^{*})} \qquad (\leq 1.0)$$

Where:

A = Total kilowatt-hours delivered during all on-peak and partial-peak hours excluding any energy associated with generation levels greater than the firm capacity.

C = Firm capacity in kilowatts.

B = Total on-peak and partial-peak hours during the month.

S = Total on-peak and partial-peak hours during the month Facility is out of service on scheduled maintenance.

(2) Determine the Monthly Capacity Factor (MCF), which is computed using the following expression:

$$MCF = P \times (1.0 - \frac{M}{D})$$

Where:

M = The number of hours during the month Facility is out of service on scheduled maintenance.

D = The number of hours in the month.

---

* 0.8 reflects a 20% allowance for forced outage.

(3) Determine the MDC by multiplying the MCF by C:

$$\text{MDC (kilowatts)} = \text{MCF} \times \text{C}$$

The monthly payment for <u>firm</u> <u>capacity</u> is then determined by multiplying the PPF by the MDC, by the appropriate capacity loss adjustment factor presented from Table E-1, and by the appropriate performance bonus factor, if any, from Table E-3.

$$\text{monthly payment for firm capacity} = \text{PPF} \times \text{MDC} \times \text{capacity loss adjustment factor} \times \text{performance bonus factor}$$

Furthermore, the payment for a month in which there is an outage for scheduled maintenance shall also include an amount equal to the product of the average hourly <u>firm</u> <u>capacity</u> payment[1] for the most recent month in the same type of Seasonal Period (i.e., Seasonal Period A or Seasonal Period B) during which deliveries were made times the number of hours of outage for scheduled maintenance in the current month. <u>Firm</u> <u>capacity</u> payments will continue during the outage periods for scheduled maintenance provided that the provisions of Section E-3 are met.

During a probationary period Seller's monthly payment for <u>firm</u> <u>capacity</u> shall be determined by substituting for the <u>firm</u> <u>capacity</u>, the capacity at which

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1 Total monthly payment divided by the total number of hours in the monthly billing period.

Seller would have met the minimum performance requirements. In the event that during the probationary period Seller does not meet the minimum performance requirements at whatever firm capacity was established for the previous month, Seller's monthly payment for firm capacity shall be determined by substituting the firm capacity at which Seller would have met the minimum performance requirements. The performance bonus factor shall not be applied during probationary periods.

TABLE E-1

If the Facility is non-remote[1] the firm capacity loss adjustment factors are as follows:

| Interconnection Voltage | Capacity Loss Adjustment Factor |
|---|---|
| Transmission | .989 |
| Distribution | .991 |

If the Facility is remote the firm capacity loss adjustment factor is ______________[2].

---

[1] As defined by the CPUC.

[2] Determined individually.

TABLE E-2

Firm Capacity Price Schedule

(Levelized $/kW-year)

| Firm Capacity Availability Date | Number of Years of Firm Capacity Delivery | | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| (Year) | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 20 | 25 | 30 |
| 1982 | 65 | 68 | 70 | 72 | 75 | 77 | 79 | 81 | 84 | 86 | 88 | 90 | 91 | 93 | 95 | 103 | 109 | 113 |
| 1983 | 70 | 73 | 75 | 78 | 80 | 83 | 85 | 88 | 90 | 92 | 94 | 96 | 98 | 100 | 102 | 110 | 117 | 122 |
| 1984 | 76 | 78 | 81 | 84 | 86 | 89 | 92 | 94 | 97 | 99 | 101 | 103 | 106 | 108 | 110 | 118 | 125 | 130 |
| 1985 | 81 | 84 | 87 | 90 | 93 | 96 | 99 | 101 | 104 | 106 | 109 | 111 | 113 | 115 | 118 | 127 | 134 | 140 |
| 1986 | 88 | 91 | 94 | 97 | 100 | 103 | 106 | 109 | 112 | 114 | 117 | 119 | 122 | 124 | 126 | 136 | 144 | 150 |
| 1987 | 95 | 98 | 101 | 105 | 108 | 111 | 114 | 117 | 120 | 123 | 125 | 128 | 130 | 133 | 135 | 146 | 154 | 160 |

TABLE E-3

Performance Bonus Factor

The following shall be the performance bonus factors applicable to the calculation of the monthly payments for firm capacity delivered by the Facility after it has demonstrated a firm capacity factor in excess of 85%.

| DEMONSTRATED FIRM CAPACITY FACTOR (%) | PERFORMANCE BONUS FACTOR |
|---|---|
| 85 | 1.000 |
| 90 | 1.059 |
| 95 | 1.118 |
| 100 | 1.176 |

After the Facility has delivered power during the span of all of the peak months on the PGandE system (presently June, July, and August) in any year (span),

(i) the firm capacity factor for each such month shall be calculated in the following manner:

$$\text{FIRM CAPACITY FACTOR (\%)} = \frac{A}{B \times C} \times 100$$

Where:

A = Total kilowatt-hours delivered by Seller in any peak month during all on-peak hours excluding any energy associated with generation levels greater than the firm capacity.

C = Firm capacity in kilowatts.

B = Total on-peak hours during the month.

(ii) the arithmetic average of the above firm capacity factors shall be determined for that span,

(iii) the average of the above arithmetic average firm capacity factors for the most recent span(s), not to exceed 5, shall be calculated and shall become the Demonstrated Firm Capacity Factor.

To calculate the performance bonus factor for a Demonstrated Firm Capacity Factor not shown in Table E-3 use the following formula:

$$\text{Performance Bonus Factor} = \frac{\text{Demonstrated Firm Capacity Factor (\%)}}{85\%}$$

SECTIONS E-6 THROUGH E-10 SHALL APPLY ONLY TO HYDROELECTRIC PROJECTS

E-6 DETERMINATION OF NATURAL FLOW DATA

Natural flow data shall be based on a period of record of at least 50 years and which includes historic critically dry periods. In the event Seller demonstrates that a natural flow data base of at least 50 years would be unreasonably burdensome, PGandE shall accept a shorter period of record with a corresponding reduction in the averaging basis set forth in Section E-8. Seller shall determine the natural flow data by month by using one of the following methods:

Method 1

If stream flow records are available from a recognized gauging station on the water course being developed in the general vicinity of the project, Seller may use the data from them directly.

Method 2

If directly applicable flow records are not available, Seller may develop theoretical natural flows based on correlation with available flow data for the closest adjacent and similar area which has a recognized gauging station using generally accepted hydrologic estimating methods.

E-7 THEORETICAL OPERATION STUDY

Based on the monthly natural flow data developed under Section E-6 a theoretical operation study shall be prepared by Seller. Such a study shall identify the monthly capacity rating in kW and the monthly energy production in kWh for each month of each year. The study shall take into account all relevant operating constraints, limitations, and requirements including but not limited to --

(1) Release requirements for support of fish life and any other operating constraints imposed on the project;

(2) Operating characteristics of the proposed equipment of the Facility such as efficiencies, minimum and maximum operating levels, project control procedures, etc.;

(3) The design characteristics of project facilities such as head losses in penstocks, valves, tailwater elevation levels, etc.; and

(4) Release requirements for purposes other than power generation such as irrigation, domestic water supply, etc.

The theoretical operation study for each month shall assume an even distribution of generation throughout the month unless Seller can demonstrate that the Facility has water storage characteristics. For the study to show monthly capacity ratings, the Facility shall be capable of operating during all on-peak hours in the peak months on the PGandE system, which are presently the months of June, July, and August. If the project does not have this capability throughout each such month, the capacity rating in that month of that year shall be set at zero for purposes of this theoretical operation study.

## E-8 DETERMINATION OF AVERAGE DRY YEAR CAPACITY RATINGS

Based on the results of the theoretical operation study developed under Section E-7, the average dry year capacity rating shall be established for each month. The average dry year shall be based on the average of the five years of the lowest annual generation as shown in the theoretical operation study. Once such years of lowest annual generation are identified, the monthly capacity rating is determined for each month by averaging the capacity ratings from each month of those years. The <u>firm capacity</u> shown in Article 5 shall not exceed the lowest average dry year monthly capacity ratings for the peak months on the PGandE system, which are presently the months of June, July, and August.

## E-9 INFORMATION REQUIREMENTS

Seller shall provide the following information to PGandE for its review:

(1) A summary of the average dry year capacity ratings based on the theoretical operation study as provided in Table E-4;

(2) A topographic project map which shows the location of all aspects of the <u>Facility</u> and locations of stream gauging stations used to determine natural flow data;

(3) A discussion of all major factors relevant to project operation;

(4) A discussion of the methods and procedures used to establish the natural flow data. This discussion shall be in sufficient detail for PGandE to determine that the methods are consistent with those outlined in Section E-6 and are consistent with generally accepted engineering practices; and

(5) Upon specific written request by PGandE, Seller's theoretical operation study.

E-10 ILLUSTRATIVE EXAMPLE

(1) Determine natural flows - These flows are developed based on historic stream gauging records and are compiled by month, for a long-term period (normally at least 50 years or more) which covers dry periods which historically occurred in the 1920's and 30's and more recently in 1976 and 77. In all but unusual situations this will require application of hydrological engineering methods to records that are available, primarily from the USGS publication "Water Resources Data for California".

(2) Perform Theoretical Operation Study - Using the natural flow data compiled under (1) above a theoretical operation study is prepared which determines, for each month of each year, energy generation (kWh) and capacity rating (kW). This study is performed based on the <u>Facility's</u> design, operating capabilities, constraints, etc., and should take into account all factors relevant to project

operation. Generally such a study is done by computer which routes the natural flows through project features, considering additions and withdrawals from storage, spill past the project, releases for support of fish life, etc., to determine flow available for generation. Then the generation and capacity amounts are computed based on equipment performance, efficiencies, etc.

(3) Determine Average Dry Year Capacity Ratings - After the theoretical project operation study is complete the five years in which the annual generation (kWh) would have been the lowest are identified. Then for each month, the capacity rating (kW) is averaged for the five years to arrive at a monthly average capacity rating. The firm capacity is then set by the Seller based on the monthly average dry year capacity ratings and the minimum performance requirements of this appendix. An example project is shown in the attached completed Table E-4.

EXAMPLE

TABLE E-4

Summary of Theoretical Operation Study

Project: New Creek 1

Water Source: West Fork New Creek

Mode of Operation: Run of the river

Type of Turbine: Francis Design Flow: 100 cfs Design Head: 150 feet

Operating Characteristics:[1]

| | Flow (cfs) | Head (feet) Gross | Head (feet) Net | Output (kW) | Efficiency (%) Turbine | Efficiency (%) Generator |
|---|---|---|---|---|---|---|
| Normal Operation | 100 | 160 | 150 | 1,120 | 90 | 98 |
| Maximum Operation | 110 | 160 | 148 | 1,150 | 85 | 98 |
| Minimum Operation | 30 | 160 | 155 | 290 | 75 | 98 |

Average Dry Year Operation - Based on the average of the following lowest generation years: 1930, 1932, 1934, 1949, 1977.

| Month | Energy Generation (kWh) | Capacity Output (kW) | Percent of Total Hours Operated |
|---|---|---|---|
| January | 855,000 | 1,150 | 100 |
| February | 753,000 | 1,120 | 100 |
| March | 818,000 | 1,100 | 100 |
| April | 727,000 | 1,010 | 100 |
| May | 699,000 | 940 | 100 |
| June | 612,000 | 850 | 100 |
| July | 484,000 | 650 | 100 |
| August | 305,000 | 410 | 100 |
| September | 245,000 | 340 | 100 |
| October | 148,800 | 200 | 100 |
| November | 468,000 | 650 | 100 |
| December | 595,000 | 800 | 100 |

Maximum firm capacity: 410 kW

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[1] If Facility has a variable head, operating curves should be provided.

E-11 MINIMUM DAMAGES

(a) In the event the firm capacity is derated or Seller terminates this Agreement, the quantity by which the firm capacity is derated or the firm capacity shall be used to calculate the payments due PGandE in accordance with Section (d).

(b) Seller shall be invoiced by PGandE for all amounts due under this section. Payment shall be due within 30 days of the date of invoice.

(c) If Seller does not make payments pursuant to Section (b), PGandE shall have the right to offset any amounts due it against any present or future payments due Seller.

(d) Seller shall pay to PGandE:

(i) an amount equal to the difference between (a) the firm capacity payments already paid by PGandE, based on the original term of agreement and (b) the total firm capacity payments which PGandE would have paid based on the period of Seller's actual performance using the adjusted firm capacity price. Additionally, Seller shall pay interest, compounded monthly from the date the excess capacity payment was made until the date

Seller repays PGandE, on all overpayments, at the published Federal Reserve Board three months' Prime Commercial Paper rate; plus

(ii) a sum equal to the amount by which the firm capacity is being terminated or derated times the difference between the current firm capacity price on the date of termination or deration for a term equal to the balance of the term of agreement and the firm capacity price, multiplied by the appropriate factor shown in Table E-5 below. In the event that the current firm capacity price is less than the firm capacity price, no payment under this Subsection (ii) shall be due either Party.

TABLE E-5

| Amount of Firm Capacity Terminated or Derated | Factor |
|---|---|
| 1,000 kW or under | .25 |
| over 1,000 kW through 10,000 kW | .75 |
| over 10,000 kW through 25,000 kW | 1 |
| over 25,000 kW through 50,000 kW | 3 |
| over 50,000 kW through 100,000 kW | 4 |
| over 100,000 kW | 5 |