

FIRST AMENDMENT
TO THE
LONG-TERM ENERGY AND CAPACITY
POWER PURCHASE AGREEMENT
BETWEEN
PACIFIC GAS AND ELECTRIC COMPANY
AND
GAS RECOVERY SYSTEMS
(PG&E LOG NO. 08P004)

This First Amendment is by and between Pacific Gas and Electric Company ("PG&E"), a California corporation, and Gas Recovery Systems ("Seller"), a California corporation. PG&E and Seller are sometimes referred to herein collectively as the "Parties" and individually as "Party."

RECITALS

A. Seller and PG&E executed an interim Standard Offer No. 4 Long Term Energy and Capacity Power Purchase Agreement (the "Agreement" or the "Newby Island Agreement") on November 16, 1983, for a proposed 4,200 kW landfill gas facility to be located at Newby Island landfill, San Jose, California (the "Facility"); and

B. Article 3(b) of the Newby Island Agreement states that the nameplate rating of the Facility's generator(s) is 4,200 kW, Article 3(d) of the Newby Island Agreement states that the Seller shall limit the actual rate of delivery into the PG&E system to 4,200 kW, and Article 5 of the Newby Island Agreement states that Seller will deliver 4,200 kW of firm capacity; and

C. The installed nameplate of the Facility's generator(s) is 2,000 kW, and Seller has established only 1,730 kW of firm capacity; and

D. Seller and PG&E agree that the nameplate rating of the Facility's generator(s) in Article 3(b) of the Newby Island Agreement will be increased to 5,000 kW to allow the Seller to take advantage of the availability of "packaged" generation equipment; and

E. Seller and PG&E agree that in consideration for allowing the Seller to take advantage of packaged generation equipment, the actual rate of delivery in Article 3(d) of the Newby Island Agreement, not the nameplate rating of the Facility in Article 3(b) of the Newby Island Agreement, will dictate the absolute maximum rate of delivery into the PG&E system; and

F. Seller and PG&E agree that the operational date of the remaining 2,200 kW increment of the Facility will be deferred one year, until November 16, 1989, in exchange for commensurate ratepayer benefits; and

G. Seller has provided documentation and other information requested by PG&E regarding the project status and the likelihood that Seller would build the Facility and begin energy deliveries within the Newby Island Agreement's Article 12 five-year deadline. In particular, at PG&E's request, Seller has submitted information showing, among other things, that Seller has obtained all of the permits and certification necessary to go forward with construction and operation of the Facility and that fuel and internal construction financing are available. Seller has proven site control, has provided a Project Description and Interconnection Study Request, has paid for

a detailed interconnection study, and is in compliance with the Qualifying Facility Milestone Procedure. Seller has provided PG&E with a letter from Seller's equipment manufacturer assuring that Seller would be able to complete the Facility and begin energy deliveries within the Agreement's Article 12 five-year deadline.

H. Seller has represented that the information and documentation it has submitted to PG&E to demonstrate the Facility's viability are true, correct, accurate, and complete. PG&E has relied substantially upon these representations in determining that the Facility is viable and that Seller could construct the Facility described in the Newby Island Agreement and begin energy deliveries within the Agreement's Article 12 five-year deadline; and

I. Based upon the information and documentation submitted by Seller, PG&E has determined that the Facility is viable and that Seller could construct the Facility and begin energy deliveries within the Article 12 five-year deadline; and

J. Despite Seller's confidence that Seller could construct the Facility and start energy deliveries within the Newby Island Agreement's Article 12 five-year deadline, Seller wishes to defer construction of the Facility because, among other benefits, Seller could make more efficient use of its economic and physical resources;

K. PG&E wishes to defer the start of energy deliveries from the Facility in order to avoid in the interim paying for the Facility's energy at prices higher than the forecasted alternative replacement energy cost, and to defer the operation of the Facility until a time when there is a greater likelihood that PG&E will need the Facility's capacity. The deferral of the project is expected to

result in substantial ratepayer savings; and

L. Seller and PG&E agree that the prices paid for capacity and energy delivered at a rate up to and including 2,000 kW shall be based on the existing Newby Island Agreement; and

M. Seller and PG&E agree that PG&E will purchase energy delivered at a rate between 2,000 kW and 4,200 kW based on 100 percent interim Standard Offer No. 4 forecasted energy prices starting with the 1988 forecasted energy prices as if the increment came on line in 1988; and

N. Seller and PG&E agree that the fixed price energy period for that 2,200 kW increment will be extended for one year until August 2, 1995; and

O. Seller and PG&E agree that PG&E will purchase capacity delivered from the Facility at a rate between 1,730 kW and 4,200 kW and pay for that firm capacity delivered in excess of 1,730 kW at \$139/kW-year; and

P. Seller and PG&E agree that Seller shall not generate and PG&E shall not be obligated to accept or pay for energy or capacity delivered at a rate in excess of 4,200 kW; and

Q. Seller and PG&E agree that Seller shall begin deliveries of energy from the 2,200 kW increment on or before November 16, 1989. If Seller fails to meet this condition for any reason other than PG&E's inability to complete the interconnection facilities necessary to accommodate the additional generation, Seller shall not deliver energy at a rate in excess of 2,000 kW or firm capacity in excess of 1,730 kW under the Newby Island Agreement; and

R. Seller and PG&E agree that Seller shall perform a test, within three (3) months of start of operation, to demonstrate to PG&E's satisfaction that the Facility is capable of delivering firm capacity in excess of 1,730 kW (but not in excess of 4,200 kW) continuously into PG&E's system as provided in the Newby Island Agreement. PG&E and Seller agree that there will be no further test for increases in firm capacity; and

S. All other terms and conditions of the Newby Island Agreement will not be changed

NOW, THEREFORE, Seller and PG&E hereby agree to amend the Newby Island Agreement as follows (the "First Amendment"):

1. DEFINITIONS

Underlined terms shall have the same meaning stated in Appendix A Section A-1 DEFINITIONS, pages A-2 through A-7, of the Agreement.

2. Article 3 - PURCHASE OF POWER

2.1 Amend Article 3(b), page 5, line 11 by deleting "4,200 kW [Nameplate rating of generator(s)]," and by substituting "5,000 kW [Nameplate rating of generator(s)]."

2.2 Delete Article 3(c), page 5, lines 15-18 and substitute the following:

"(c) If Seller does not increase the installed nameplate rating of the Facility's generator(s) from 2,000 kW to 5,000 kW and begin energy deliveries from that additional increment by November 16, 1989, Seller shall not deliver nor shall PG&E be obligated to accept or purchase deliveries of firm capacity in excess of 1,730 kW or energy and as-delivered capacity in excess of 2,000 kW. PG&E shall make all reasonable efforts to complete

the interconnection work necessary to accommodate Seller's additional deliveries by November 16, 1989. If PG&E fails to do so for reasons beyond the Seller's control, the November 16, 1989 deadline shall be extended to the date that PG&E completes such necessary interconnection work, but PG&E shall not be liable to Seller for any damages resulting from the delay, nor shall the delay affect the prices provided in this First Amendment."

2.3 Delete Article 3(d), page 5, lines 20-21 and substitute the following:

"(d) Except as otherwise provided in Article 3(c), as amended by this First Amendment, Seller shall limit the Facility's maximum rate of delivery into the PG&E system to 4,200 kW and PG&E shall have no obligation to accept or purchase deliveries at a rate in excess of 4,200 kW."

3. Article 4 - ENERGY PRICE

Amend Article 4, Energy Payment Option 1 - Forecasted Energy Prices, by deleting lines 8-12 on page 6 and substituting the following:

"During the fixed price period, Seller shall be paid for energy delivered at a rate up to and including 2,000 kW at prices equal to 100 percent of the prices set forth in Table B-1, Appendix B. Prior to November 16, 1989, but not before June 1, 1989, Seller shall be paid for energy delivered at a rate between 2,000 kW and 4,200 kW at prices equal to 100 percent of PG&E's full short-run avoided operating cost. Starting November 16, 1989, Seller shall be paid for energy delivered at a rate between 2,000 kW and 4,200 kW at prices equal to 100 percent of the prices set forth in

Table B-1, Appendix B, starting with the 1988 fixed energy price. The fixed price period for the initial 2,000 kW began on August 3, 1984, and runs to and including August 2, 1994. The fixed price period for the 2,200 kW increment runs to and including August 2, 1995."

4. Article 5 - CAPACITY ELECTION AND CAPACITY PRICE

Amend Article 5, page 9, line 22 by deleting the first paragraph and substituting the following:

"~~X~~ Firm Capacity - 765 kW for 30 years from September 1, 1984, with payment determined in accordance with Appendix E based on a 1984 firm capacity availability date; and 965 kW for 29 years from April 29, 1985, with payment determined in accordance with Appendix E based on a 1985 firm capacity availability date. In addition, notwithstanding Section E-4(a), on the condition that on or before three (3) months from the operational date of the project, which will be on or before November 16, 1989, Seller demonstrates to PG&E's satisfaction in a single firm capacity demonstration test that the Facility is capable of delivering firm capacity in excess of 1,730 kW, but not in excess of 4,200 kW, continuously into PG&E's system as provided in this Agreement, Seller may increase its firm capacity from 1,730 kW to the amount so demonstrated or 4,200 kW, whichever is less. Seller shall have no right to retest even if Seller is unable to demonstrate 4,200 kW of firm capacity in the test. Payment for such increases shall be determined in accordance with Appendix E based on a 1985 firm capacity availability date and assuming a 29-year term of agreement commencing April 29, 1985. The firm

capacity test deadline shall be extended only if PG&E fails to complete the special facilities necessary to accommodate deliveries up to 4,200 kW due to reasons beyond Seller's control, in which case the deadline shall be extended to the date that PG&E completes such special facilities in accordance with Article 3(c), as amended by this First Amendment."

5. Article 9 - NOTICES

Amend Article 9, page 12, lines 4-5 of the Newby Island Agreement by replacing:

"Attention: Vice President - Electric Operations" with

"Attention: Vice President - Power Generation."

6. ENTIRE AGREEMENT; MODIFICATION

The First Amendment constitutes the entire agreement of the Parties with respect to the subject matter thereof and supersedes any and all prior negotiations, correspondence understandings, and agreements between the Parties respecting the subject matter thereof. The First Amendment may be further amended or modified only by a written instrument signed by the Parties hereto.

7. EFFECT ON AGREEMENT

Except as expressly modified by this First Amendment, the provisions of the Newby Island Agreement shall remain unchanged.

8. CAPTIONS

Captions are included herein for ease of reference only. The captions are not intended to affect the meaning of the content or scope of this First Amendment.

9. CHOICE OF LAWS

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

10. NON-WAIVER

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

11. INTERPRETATION

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

12. CONTRACT MODIFICATIONS

PG&E and Seller have negotiated contract amendments, accompanied by price and/or performance concessions, commensurate in value with the contract amendments requested by Seller. The modifications and concessions obtained through negotiations were valued with reference to the unamended contract.


13. REASONABLENESS

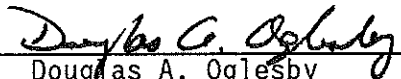

PG&E and Seller shall use their best efforts to support the reasonableness of the First Amendment before any government authority of competent jurisdiction in a proceeding involving a review of the First Amendment for purposes of allowance or disallowance in rates charged by PG&E.

IN WITNESS WHEREOF, Seller and PG&E hereby have caused this First Amendment to be executed by their duly authorized representatives and it is effective as of the last date set forth below.

GAS RECOVERY SYSTEMS

PACIFIC GAS AND ELECTRIC COMPANY

B : 
Name: George R. Jansen
Title: Vice President
Date Signed: 10/11/89

By: 
Name: Douglas A. Oglesby
Title: Vice President - Acting
Power Planning & Contracts
Date Signed: 10/18/89 

APPROVED AS TO FORM:

