

SECOND 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 Second 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. The First Amendment to the Long-Term Energy and Capacity Power Purchase Agreement Between Pacific Gas and Electric Company and Gas Recovery Systems (the "First Amendment") was executed by Seller on October 11, 1989, and PG&E on October 18, 1989; and

C. According to the terms of the First Amendment, Seller and PG&E agreed that the operational date of the 2,200 kW incremental generating capacity of the Facility would be deferred until November 16, 1989, in exchange for commensurate ratepayer benefits; and

D. On October 17, 1989, at approximately 5:04 p.m., the San Jose area, where the Facility is located, experienced an earthquake of major proportions. As a result of the earthquake, PG&E construction personnel were reassigned from work pertaining to the interconnection of the Facility to emergency repair work on PG&E's system. Accordingly, the original schedule for energizing the new switch station was postponed from October 18, 1989, until November 1, 1989. As a result of the above-described delay, the Facility will be unable to meet its November 16, 1989, deadline; and

E. Seller and PG&E agree that, but for the reassignment of PG&E personnel, Seller would have met the November 16, 1989, deadline; and

F. Seller and PG&E agree that the Article 12 five-year deadline shall be extended until December 6, 1989; and

G. Seller and PG&E agree that Seller shall begin deliveries of energy from the 2,200 kW increment on or before December 6, 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

H. All other terms and conditions of the Newby Island Agreement, as amended by the First Amendment, will not be changed

NOW, THEREFORE, Seller and PG&E hereby agree to amend the Newby Island Agreement as follows (the "Second 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 Newby Island Agreement.

2. Article 3 - PURCHASE OF POWER

Amend Article 3(c) by changing all references to the November 16, 1989, deadline to December 6, 1989.

3. Article 4 - ENERGY PRICE

3.1 Amend Article 4, Energy Payment Option 1 - Forecasted Energy Prices, by deleting the sentence that reads: "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."

3.2 Amend Article 4, by changing all references to the November 16, 1989, deadline to December 6, 1989.

4. ENTIRE AGREEMENT; MODIFICATION

The Second 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 Second Amendment may be further

amended or modified only by a written instrument signed by the Parties hereto.

5. EFFECT ON AGREEMENT

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

6. 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 Second Amendment.

7. CHOICE OF LAWS

This Second 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.

8. NON-WAIVER

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

9. INTERPRETATION

This Second Amendment is the result of negotiation. Moreover, each Party and each Party's respective counsel has reviewed this Second 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 Second Amendment.

10. 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.

11. REASONABLENESS

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

IN WITNESS WHEREOF, Seller and PG&E hereby have caused this Second 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

By:   
Name: George R. Jansen  
Title: Vice President  
Date Signed: 12/13/89

By:   
Name: Junona A. Jonas  
Title: Manager, QF Contracts  
Date Signed: 1/8/90

APPROVED AS TO FORM



APPROVED AS TO FORM