

1 FIRST AMENDMENT
2 TO THE
3 POWER PURCHASE AGREEMENT
4 FOR
5 LONG-TERM ENERGY AND CAPACITY
6 BETWEEN
7 ENERGY GROWTH GROUP, INC.,
8 ENERGY GROWTH PARTNERSHIP
9 AND
10 PACIFIC GAS AND ELECTRIC COMPANY
11

12 This First Amendment is by and between Pacific Gas
13 and Electric Company ("PG&E"), a California corporation, and
14 Energy Growth Group, Inc., a California corporation, and
15 Energy Growth Partnership, a California limited partnership
16 (jointly, "Seller"). PG&E and Seller are sometimes referred
17 to herein collectively as the "parties" and individually as
18 "party."

19 RECITALS

20 A. Seller on October 31, 1984, and PG&E on
21 November 5, 1984, executed an interim Standard Offer No. 4
22 Long-Term Energy and Capacity Power Purchase Agreement (the
23 "Agreement") for a proposed 10,800 kW hydroelectric facility
24 to be located at N.W. Quarter, Section 10, T23N, R3E, MDB&M,
25 near De Sabla City in Butte County, California (the
26 "Facility");

27 B. Seller has proven site control, has provided
28 a Project Description and Interconnection Study Request, has
29 paid for a detailed interconnection study, has established
30 an escrow account for its \$5/kw project fee, and as of

1 March 28, 1988, was in compliance with the California Public
2 Utilities Commission's Qualifying Facility Milestone
3 Procedure; and

4 C. On July 12, 1983, Seller filed an application
5 with the Federal Energy Regulatory Commission ("FERC") for a
6 major license for the project (FERC Project No. 6896). FERC
7 issued the major license for the project on December 30,
8 1986 (37 FERC ¶ 62,276), and amended the license on May 11,
9 1988 (43 FERC ¶ 62,183); and

10 D. On July 28, 1983, Seller filed an application
11 with the California State Water Resources Control Board
12 ("SWRCB") for appropriative water rights for the project
13 (Application 27,815). SWRCB issued a decision granting the
14 project a water rights permit (Permit 20227) on February 18,
15 1988 (Decision No. 1617); and

16 E. On March 28, 1988, California Save Our
17 Streams Council ("SOS") filed a Petition for Administrative
18 Mandate in the Butte County Superior Court challenging the
19 SWRCB's issuance of a water rights permit for the project
20 (Case No. 97855) ("SOS lawsuit"); and

21 F. On April 8, 1988, Seller notified PG&E that,
22 in Seller's opinion, the SOS lawsuit constituted a force
23 majeure under Section A-8 of the Agreement; and

24 G. On July 22, 1988, SOS filed a Request for
25 Dismissal with prejudice of its lawsuit, which the Butte
26 County Superior Court granted on July 25, 1988; and

1 H. On June 9, 1988, the Butte County Planning
2 Commission denied Seller a use permit for construction of
3 the project. Butte County subsequently issued the use
4 permit, but added a condition requiring Seller to remove
5 tunnel spoil from the project site within twelve months of
6 project completion; and

7 I. On June 23, 1988, Seller notified PG&E that,
8 in Seller's opinion, the denial of the use permit
9 constituted a force majeure under Section A-8 of the
10 Agreement. Seller subsequently notified PG&E that, in
11 Seller's opinion, the tunnel spoil removal condition in the
12 use permit also constituted a force majeure; and

13 J. On July 18, 1988, the United States Bureau of
14 Land Management ("BLM") sent Seller a letter stating that
15 BLM would require a royalty fee of 4.25% plus an annual
16 rental of \$10,000 as conditions for granting a right-of-way
17 Seller needed for the project; and

18 K. On August 1, 1988, Seller notified PG&E that,
19 in Seller's opinion, the BLM right-of-way royalty and rental
20 conditions constituted a force majeure under Section A-8 of
21 the Agreement; and

22 L. Seller represents that, as a result of the
23 events described above which, in Seller's opinion,
24 constitute force majeure under Section A-8 of the Agreement,
25 Seller will be unable to begin energy deliveries from the
26 Facility within the five-year time period specified in

1 Article 12 of the Agreement. According to Seller, these
2 events will delay the date of initial energy deliveries from
3 the Facility to approximately July 1, 1990; and

4 M. Disputes have arisen between PG&E and Seller
5 as to whether the events described above for which Seller
6 has submitted force majeure claims constitute force majeure
7 under Section A-8 of the Agreement and whether these events
8 entitle Seller to an extension of the five-year period
9 specified in Article 12 of the Agreement (collectively, the
10 "Disputes"); and

11 N. PG&E and Seller wish to resolve amicably and
12 by mutual agreement the Disputes between them which are
13 described above; and

14 O. PG&E and Seller have agreed to settle the
15 Disputes under the terms and conditions set forth in this
16 Amendment to the Agreement; and

17 P. PG&E and Seller have agreed to amend to the
18 Agreement as more fully described herein, including
19 deferring payment of fixed energy and capacity prices to no
20 earlier than January 1, 1991; extending the Article 12
21 five-year deadline to January 1, 1992; discounting capacity
22 prices after the fifth (5th) year of the term of agreement;
23 changing from Energy Payment Option 2, Levelized Energy
24 Prices, to prices based on Energy Payment Option 1,
25 Forecasted Energy prices; discounting energy prices by ten
26 percent after the end of the fixed price period; altering

1 the fixed energy price schedule; and paying PG&E ten percent
2 of all payments otherwise due Seller under the Agreement for
3 generation in excess of 38,000 MWH in any calendar year; and

4 THEREFORE, for the mutual promises and obligations
5 stated herein, Seller and PG&E hereby agree to amend the
6 Agreement (the "First Amendment") as follows:

7 1. Definitions

8 1.1 All underlined terms shall have the meaning
9 stated in Section A-1, DEFINITIONS, Appendix A, pages A-2 to
10 A-7 of the Agreement, except as expressly amended by this
11 First Amendment.

12 1.2 Amend the definition of "fixed price period"
13 in Appendix A, page A-4, lines 5 to 12, to read in its
14 entirety as follows:

15 Fixed price period -- The period during
16 which forecasted and levelized energy
17 prices, and/or forecasted as-delivered
18 capacity prices, are in effect; defined
19 as the period beginning on the later of
20 either the date of initial energy deliv-
21 eries or January 1, 1991, and running
22 five years if the term of agreement is
23 15 or 16 years; six years if the term of
24 agreement is 17, 18, or 19 years; or ten
25 years if the term of agreement is
26 anywhere from 20 through 30 years.

22 2. Energy Price

23 2.1 Delete in its entirety ARTICLE 4, ENERGY
24 PRICE, page 6, line 16 through page 10, line 3, and
25 substitute the following new ARTICLE 4, ENERGY PRICE:

26 ///

1 ARTICLE 4 ENERGY PRICE

2 PGandE shall pay Seller for its net
3 energy output as follows:

4 (a) If Seller begins energy deliveries
5 prior to January 1, 1991, Seller shall
6 be paid at prices equal to 100 percent
7 of PG&E's full short-run avoided
8 operating costs.

9 (b) During the fixed price period,
10 Seller shall be paid for energy deliv-
11 ered at prices equal to 100 percent of
12 the prices set forth in Amended Table
13 B-1, which is attached as Attachment 1.

14 (c) For the remaining years of the term
15 of agreement following the expiration of
16 the fixed price period, Seller shall be
17 paid for energy delivered at prices
18 equal to 90 percent of PG&E's full
19 short-run avoided operating costs.

20 (d) For each calendar year during the
21 term of agreement in which the
22 Facility's annual generation exceeds
23 38,000 MW-hours as measured by the PG&E
24 high-side meter, Seller shall refund to
25 PG&E ten percent (10%) of the payment
26 due based on the weighted average annual
price, for the amount of Seller's energy
deliveries in excess of 38,000 MW-hours.
PG&E will offset such refund amount in
four (4) approximately equal amounts
from subsequent payments due Seller. If
PG&E has not recovered the full refund
amount after four consecutive billing
cycles, Seller shall thereupon directly
pay PG&E the remaining amount due.

2.2 Delete Table B-1, Forecasted Energy Price
Schedule, at Appendix B, page B-2, and substitute "Amended
Table B-1, Forecasted Energy Price Schedule," which is
attached as Attachment 1 to this First Amendment and incor-
porated herein by this reference.

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3. As-Delivered Capacity Price

Amend Article 5, CAPACITY ELECTION AND CAPACITY PRICE, by deleting line 24-26 from page 10 and by substituting the following:

X As-delivered capacity with payment as follows: (i) During years one (1) through five (5) of the term of agreement, payment equal to one hundred percent (100%) of the payment determined in accordance with As-Delivered Capacity Payment Option 2 set forth in Appendix D; (ii) during years six (6) through ten (10) of the term of agreement, payment equal to ninety five percent (95%) of the payment determined in accordance with As-Delivered Capacity Payment Option 2 set forth in Appendix D; and (iii) beginning in year eleven (11) and continuing to the end of the term of agreement, payment equal to ninety percent (90%) of the payment determined in accordance with As-Delivered Capacity Payment Option 2 set forth in Appendix D; provided, however, that PG&E shall have no obligation to make payment for as-delivered capacity delivered prior to January 1, 1991.

4. Construction Start Date

4.1 Amend the first sentences of Section (f) of Article 3, PURCHASE OF POWER, at page 6, lines 1 to 5, and add a new footnote 1 at line 22, to read:

If Seller does not begin construction of its Facility by December 31, 1990, PG&E may reallocate the existing capacity on PG&E's transmission and/or distribution system which would have been used to accommodate Seller's power deliveries to other uses.

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5. Article 12 Five-Year Deadline

Amend Article 12, TERM OF AGREEMENT, at page 13, line 23, through page 14, line 3, in its entirety to read:

This Agreement shall be binding upon execution and remain in effect thereafter for 30 years from the later of the date of initial energy deliveries or January 1, 1991; provided, however, that it shall terminate if energy deliveries from the Facility do not start by January 1, 1992. The obligation to begin energy deliveries by January 1, 1992 represents a contractual obligation by Seller for the Facility which Seller may not breach in order to, among other things, take advantage of higher prices which may be available in the future.

6. Release of Claims

6.1 Seller and PG&E each hereby waive and release any and all claims, demands, causes of action, losses, expenses, fees, damages (compensatory, punitive, exemplary, statutory or otherwise), or other right to relief, whether based on contract, tort, statute, or other legal or equitable theory of recovery which, as of the date of this First Amendment, each may have against the other or any of its subsidiaries, affiliates, officers, directors, agents, employees, attorneys or shareholders, arising out of or related to the Disputes, as defined in Recital "M" above. This mutual release of claims shall not apply to any action commenced to enforce this First Amendment.

6.2 Seller and PG&E each acknowledge that they execute and agree to this full and final release as a

1 compromise of matters involving disputed issues of law and
2 fact, and Seller and PG&E fully assume the risk that the
3 facts and the law may be other than they believe. SELLER
4 AND PG&E EACH EXPRESSLY WAIVE ALL RIGHTS UNDER CALIFORNIA
5 CIVIL CODE SECTION 1542, WHICH PROVIDES AS FOLLOWS:

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

10 SELLER AND PG&E, BEING AWARE OF SAID CODE SECTION, HEREBY
11 EXPRESSLY WAIVE ANY RIGHTS THEY MAY HAVE THEREUNDER, AS WELL
12 AS UNDER ANY OTHER STATUTES OR COMMON LAW PRINCIPLES OF
13 SIMILAR EFFECT.

14 7. No Admission Of Liability

15 The release of claims contained in this First
16 Amendment is a part of a compromise settlement and shall
17 never at any time, for any purpose, be considered an
18 admission of liability or responsibility by either party.

19 8. Good Faith Settlement

20 The mutual release of claims contained in this
21 First Amendment is the result of good faith negotiations
22 between Seller and PG&E, based upon an analysis of the
23 Disputes set forth in the Recitals. Such release is not the
24 product of collusion, fraud or any tortious conduct aimed to
25 injure the interests of any person or entity.

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1 9. Accuracy Of Information And Documentation

2 Seller represents that the information and
3 documentation which it submitted to PG&E regarding the force
4 majeure claims described in the recitals are true, correct,
5 accurate and complete.

6 10. Regulatory Review

7 PG&E and Seller shall use their best efforts to
8 support the reasonableness of this First Amendment, and the
9 Agreement as amended, before any government authority of
10 competent jurisdiction in a proceeding involving a review of
11 the First Amendment or the Agreement for purposes of
12 allowance or disallowance in rates charged by PG&E. Each
13 party shall bear its own costs and expenses associated with
14 seeking such approval. Seller shall cooperate with PG&E to
15 provide to the CPUC any data or information requested
16 regarding the force majeure claims and the Disputes
17 described in the recitals.

18 11. Effect On Agreement

19 Except as expressly modified by this First
20 Amendment, the provisions of the Agreement shall remain
21 unchanged.

22 12. Entire Agreement

23 The First Amendment constitutes the entire
24 agreement of the parties with respect to the subject-matter
25 thereof and supersedes any and all prior negotiations,
26 correspondence, understandings and agreements between the

1 parties respecting the subject-matter of this First
2 Amendment.

3 13. Modification

4 This First Amendment may be further amended or
5 modified only by a written instrument signed by the parties
6 hereto.

7 14. Captions

8 Captions are included herein for ease of reference
9 only. The captions are not intended to effect the meaning
10 of the contents or scope of this First Amendment.

11 15. Choice Of Laws

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

16 16. Non-Waiver

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

21 17. Notices

22 Amend Article 9, NOTICES, at page 13, lines 8-9 to
23 replace "Vice President - Electric Operations" with "Vice
24 President - Power Generation."

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18. Interpretation

This First Amendment is the result of negotiation. Moreover, each party has reviewed this Amendment, and has had full and adequate opportunity to obtain legal advice regarding this Amendment from the legal counsel of its choice. Accordingly, the rule of construction in California Civil Code § 1654 to the effect that any ambiguity shall be resolved against the drafting party shall not be employed against either party in the interpretation of this Amendment.

19. Confidentiality

Seller and PG&E agree to keep, and agree that they shall cause their respective counsel, consultants and agents to keep, this First Amendment confidential except for purposes of financing, disclosures to the CPUC or its staff (including the Division of Ratepayer Advocates and its counsel), for purposes of fulfilling the parties' obligations under Paragraph 12 (Regulatory Review) of this First Amendment, to the California Energy Commission, or where either party is required by law to disclose it.

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20. Effective Date

This First Amendment is effective upon signature by the duly authorized representative of each party, and its effectiveness is not conditioned on approval by the CPUC.

IN WITNESS WHEREOF, the parties hereto have caused this First Amendment to be executed by their duly authorized representatives, and it is effective as of the last signature date set forth below:

ENERGY GROWTH GROUP, INC.
AND ENERGY GROWTH
PARTNERSHIP

PACIFIC GAS AND ELECTRIC COMPANY

BY: Michael W.S. Bristow

BY: Robert J. Haywood

NAME: Michael W.S. BRISTOW

NAME: ROBERT J. HAYWOOD

TITLE: Executive Vice President
John Eastwood Associates, Inc.

TITLE: Vice President

DATE
SIGNED: Feb 15, 1989

DATE
SIGNED: 2/27/89

NOTICE
ADDRESSES:

10 Lombard St. #410
SAN FRANCISCO
CALIFORNIA 94111

Pacific Gas and Electric
Company
Attn: Manager, QF Contracts
77 Beale Street, 23rd Floor
San Francisco, CA 94106

ATTACHMENT 1

Amended Table B-1 1/
Forecasted Energy Price Schedule

| <u>Year</u> | <u>Weighted Average Annual Price ¢/kWh</u> |
|-------------|--|
| 1991 | 8.39 |
| 1992 | 9.07 |
| 1993 | 9.81 |
| 1994 | 10.0 |
| 1995 | 10.5 |
| 1996 | 11.0 |
| 1997 | 12.0 |
| 1998 | 12.3 |
| 1999 | 12.3 |
| 2000 | 12.56 |

1/ These prices are to be differentiated by time periods as defined in Table B-4. Table B-4 is subject to change to accord with the time periods as defined in PG&E's own rate schedules for the sale of electricity to its large industrial customers.