

November 9, 2002

33R001

Confirmation Letter for PG&E's RFO - Unit-Firm Renewable Product

When fully executed, this letter confirms the agreement by Wheelabrator Shasta Energy Company Inc. ("Seller"), to provide, first to the California Department of Water Resources with respect to the Electric Power Fund separate and apart from its powers and responsibilities with respect to the State Water Resources Development System ("DWR"), under a separate Confirmation, and then to Pacific Gas and Electric Company ("PG&E"), under this Confirmation, each which shall be a "Buyer," the right to dispatch the unit identified below for all electrical products as specified herein. This Confirmation is expressly subject to satisfaction of the following conditions on or before December 31, 2002: (i) California Public Utilities Commission (CPUC) approval of the agreement, including both cost recovery and assurances of reasonableness acceptable to PG&E in its sole discretion, (ii) approval by the Bankruptcy Court, Northern District of California, and (iii) execution by both DWR and Seller of both an EEI Master Power Purchase and Sale Agreement and the DWR confirmation applicable to this transaction. Accepted offers will be reviewed by DWR for impact on its revenue requirements and administrative information before DWR executes its separate Confirmation.

1. Seller: Wheelabrator Shasta Energy Company Inc.
2. Buyer: Initially, DWR, under a separate Confirmation, and subsequently PG&E, under this Confirmation, on the effective date of the novation from DWR as set forth here. On the next following business day after the date on which PG&E receives a credit rating from both Standard and Poor and Moody's that is at least each agency's minimum investment grade credit rating, the DWR Confirmation shall terminate and be superseded automatically by this Confirmation, and DWR shall be superseded automatically as the Buyer by PG&E; provided that, PG&E may at any time before it receives the credit ratings specified herein cause the novation to take effect immediately by providing written notice, by facsimile or otherwise, that it is exercising this right to substitute this Confirmation for DWR's Confirmation and to itself be substituted as the Buyer under the Transaction. PG&E shall notify Seller of the change and, within 15 days, Seller and PG&E shall each meet the credit requirements set forth in the Seller's Master Agreement with PG&E. Failure of either party to meet such credit requirements as within this time shall constitute an Event of Default. If DWR defaults during the period in which it is the Buyer, this Confirmation shall thereby become null and void, and Seller shall have no recourse against PG&E as a result of either DWR's default or the existence of this Confirmation.
3. Unit:
  - a. Seller shall supply all electrical products under this Confirmation from the following resource(s): Wheelabrator Shasta Unit (T/G) No. 4 [CalISO Resource I.D.: WSENGY\_1\_UNIT 4] ("Unit(s)"). To the extent the Products will be delivered from more than one Unit, all output from such Units must be delivered through a single meter and that meter must be dedicated exclusively to those units

described herein. This/these Unit(s) employ(s) the following renewable technology/ies: biomass. To be eligible, a Unit(s) must qualify as an "Eligible renewable energy resource" as defined in the new Section 399.12, added to the California Public Utilities Code by SB 1078. All environmental attributes associated with generation from the Unit(s) must be provided for an offer to be accepted and shall be conveyed to Buyer as included in the delivery of the Product.

- b. Environmental Attributes shall have the meaning set forth in Attachment A "Environmental Attributes," attached hereto and incorporated herein by this reference. Seller represents that Seller holds the rights to all Environmental Attributes associated with the Unit(s), and Seller agrees to convey and hereby conveys all such Environmental Attributes to Buyer as included in the delivery of the Product from the Unit(s).
4. Product: Full Unit Output. Seller's hourly load profile is 3.0 MW for all hours during the term of this agreement, except as excused for Planned Outage Allowance or per the Unplanned Outage Allowance. Seller to provide all energy from unit to the extent necessary to meet the hourly profile.
  5. Quantity:
    - a. Maximum Capacity: 3.0 MW [must be no less than 3 MW]. Buyer shall have the exclusive right to use all or any portion of the amount of the Maximum Capacity, including green attribute or rights, for all services listed in part b, below, and for daily/hourly changes. The Maximum Capacity shall be no less than maximum unit output, less station use.
    - b. Seller can specify below additional dispatchability and/or ancillary services it wishes to offer in addition to the hourly profile indicated above. [Seller must list these services here, along with the amounts for each service]: No additional dispatchability or ancillary services offered.
    - c. The parties shall follow an "Operating Procedures Agreement," which must be executed by Seller before the commencement of service hereunder and a copy of which shall be provided to Seller by Buyer within 10 days after its selection as a winning bidder.
    - d. Testing: (A) The audit rights under Section 10.9 of the Master Agreement shall include such inspections and testing of meters as is reasonably necessary to confirm their accuracy consistent with current ISO practices and procedures or any successor tariff requirements. The Party requesting any such inspections and testing shall bear the cost of the foregoing in the event the meters are accurate within applicable ISO or successor metering requirements. The other Party shall bear these costs if the meters are not accurate within applicable ISO or successor metering requirements. (B) In addition, such audit rights shall include inspections and testing as is reasonably necessary to confirm the accuracy of any notice delivered by Seller to Buyer respecting the availability or operation of the Unit(s) within the parameters set forth in Section 4. If Buyer requests that a Unit be tested, Seller shall have the right to a prompt retest of such Unit. Seller shall also

have the right to request a test of a Unit at any time, and Buyer shall have the right to a prompt retest of such Unit. The Party requesting that a Unit be tested shall bear the costs of such test. (C) Seller hereby consents to Buyer obtaining from the ISO the ISO meter data applicable to the Unit(s).

- e. Planned Outage Allowance: 21 days per calendar year, which Seller shall schedule in writing with Buyer as set forth in the Operating Procedures Agreement for the next following calendar year on or before December 1 [specified months shall exclude January, June through October, and December]. For the purposes of this Agreement, "Planned Outage" means removing the equipment from service availability for inspection and/or general overhaul of one or more major equipment groups. To qualify as a Planned Outage, the maintenance must actually be conducted during the Planned Outage, and must be of the type that is both necessary to reliably maintain the Unit(s) and cannot be prudently conducted during Unit operations.
- f. Unplanned Outage Allowance: 1200 hours per year; provided that, no more than 4% of the Unplanned Outage Allowance may be used in any month during the period from June through October. The Unplanned Outage Allowance may be used for either Forced Outages or Maintenance Outages. Seller shall notify buyer of any forced outage within 10 minutes, and shall provide an estimate of its expected duration of the outage within 1 hour thereafter. Within these limits, a Forced Outage shall excuse Seller's obligation to deliver electrical products. For any unexcused outage that lasts longer than 1 hour, Buyer shall pay no capacity payment for the period of the outage, and a Unit(s) shall be deemed to be scheduled by Buyer each hour for purposes of adjusting payments due under the Confirmation. For purposes of this agreement, the term "Forced Outage" shall mean an unplanned reduction or suspension of the electrical output from the Unit(s) in response to a mechanical, electrical, or hydraulic control system trip or operator-initiated trip in response to an alarm or equipment malfunction; provided that, a Forced Outage shall not be excused if it resulted from the negligence of Seller or the operator of the Unit(s). Outages that both (i) meet this definition of Forced Outage and (ii) do not exceed the allowable limits set forth herein shall be excused. Forced Outage shall not include any outage that results from a loss of electric or gas transmission service. For the purposes of this Agreement, the term "Maintenance Outage" means the removal of equipment from service availability to perform work on specific components that can be deferred beyond the end of the next weekend, but requires the equipment be removed from service before the next Planned Outage. Seller shall provide advance written notice of any Maintenance Outage to Buyer as set forth in the Operating Procedures Agreement for the outage to qualify as a Maintenance Outage. Within these limits, a Maintenance Outage shall excuse Seller's obligation to deliver electrical products. Under no circumstances may Seller substitute market power for the output of the Unit(s) during an Unplanned Outage.

- g. **Prolonged Outage:** In the event of a "Prolonged Outage," Buyer shall have no obligation to make capacity payments hereunder for the period of the outage, that is, until the Unit(s) is again able to provide the hourly profile on a reliable basis. For purposes of this agreement, a "Prolonged Outage" is any period of more than 30 consecutive days during which the Unit(s) is or will be unable, for whatever reason, to provide at least 60% of the hourly profile as scheduled by Buyer. Seller must notify Buyer of the outage as soon as possible under the circumstances, in writing, and, for the duration of the outage, Buyer need not schedule from the Unit(s). Seller must notify Buyer when the Unit(s) is again capable of providing the hourly profile and, upon buyer's receipt of such notice, Buyer shall resume capacity payments and scheduling. Any outage that prevents the Unit(s) from delivering at least 60% of the hourly profile for a period of six (6) consecutive months shall, at Buyer's election, constitute an Event of Default; provided that, an outage resulting from an event of Force Majeure that prevents the Unit(s) from delivering at least 60% of the hourly profile for a period of twelve (12) consecutive months shall constitute an Event of Default. Under no circumstances may Seller substitute market power for the output of the Unit(s) during a Prolonged Outage.
- h. **Duty of Care:** Seller agrees (1) to use the best industry practices in the maintenance and operation of the Unit(s), so that there is not a material change in the operating characteristics of the Unit(s) over the term of this agreement and (2) to use all commercially reasonable efforts to obtain and maintain all regulatory approvals needed to operate and maintain the Unit(s), so that there is no delay in the commencement of service hereunder and no break in service attributable to regulatory action.
6. **Delivery Point:** (a) Unit's bus bar, if unit(s) is located in California Independent System Operator ("CAISO") zone North of Path 15 as currently defined ("NP15"), or (b) an agreed-upon bus bar in NP15 if unit(s) located outside the CAISO NP15 zone and Seller has firm transmission rights to the specified bus bar for the full term of this agreement, or (c) any other point subject to Buyer's agreement.
7. **Term:** from the operation date of the Unit or of all Units (if the Product will be delivered from more than one Unit), which is January 1, 2003 [the date to be inserted by Seller; provided that, the term must begin no later than June 1, 2003 for existing Units and no later than December 31, 2003 for new Units], through December 31, 2007 [Term may be 5, 10, or 15 years.]
8. **Capacity Price:** Buyer shall pay Seller a capacity payment of \$30.00/kw-year, allocated in accordance with the monthly Capacity Payment Schedule attached hereto.
9. **Energy Price:** Energy shall be measured in MWh at the California Independent System Operator ("ISO") (or its successor) revenue meter for the Unit(s) to determine the amount of Energy delivered at the Delivery Point, which amount shall then be multiplied by the applicable generation meter multiplier (or any successor method to account for losses established by the ISO) for each Unit, to determine the amount of Energy delivered at the Delivery Point. Buyer shall pay for only the net amount delivered after station use needs are subtracted. Buyer will pay Seller for each MWh delivered by Seller from the Unit and

received by Buyer at a rate in \$/MWh in the attached Energy Price Schedule for Proposal No. 1.

10. Buyer will pay N/A \$/start-up for each start required by Buyer's dispatch instructions.
11. Electric Dispatch: Buyer shall be the Scheduling Coordinator for the Unit(s). DWR shall have the right to designate PG&E as its scheduling agent until the transition to the Seller/PG&E Master Agreement is effective. If Buyer is experiencing an overgeneration condition (as defined by the ISO), Buyer may, without penalty hereunder and subject to the operating parameters of the unit, reduce the scheduled output from the Unit(s) and shall not be required to pay for the amount of energy not actually delivered as a result of this reduction. Buyer will notify Seller, conforming to NERC scheduling protocols, for any day-ahead electric dispatch if such product is offered. Buyer will also notify Seller, conforming to California ISO scheduling protocols, for any hour-ahead or real-time electric dispatch and changes if such product is offered. Seller shall notify Buyer of any instruction received from the ISO with respect to RMR contracts and 'must offer' requirements. Any applicable RMR contract shall have precedence over scheduling under this agreement.
12. Schedule of Deliveries: Seller shall provide delivery schedules to Buyer consistent with the hourly profile no later than thirty-eight (38) hours prior to the beginning of each delivery day. Buyer may reduce the 38 hour period whenever it is practicable to do so. Each delivery schedule shall clearly identify, for each hour, Seller's best estimate of all amounts of energy to be delivered and sold to Buyer pursuant to this agreement.
13. Transmission: The risk of transmission outages is allocated to each of the parties as follows: Seller is responsible for electric transmission to the Delivery Point and bears all risks and costs associated therewith; Buyer is responsible for electric transmission from the Delivery Point and bears all risks and costs associated therewith; the party providing fuel is responsible for gas transmission to the Unit(s) and bears all risks and costs associated therewith. The failure of gas or electric transmission service shall not be an excuse from performance hereunder.
14. Billing and Payment, Remedies: On or after the 20th day of each month, Seller shall provide to Buyer (i) records of metered data sufficient to document and verify the generation of electrical products by the Unit(s) for all hours during the month, including ISO metering and transaction data, and (ii) an invoice, in the format specified by Buyer, covering the services provided in the preceding month. Buyer shall pay the undisputed amount of all such invoices on or before ten (10) calendar days of receipt;] provided that, the invoice is complete, properly formatted, and is sent to the correct address; and provided further that Buyer shall be required to pay only for the service it has scheduled and received from the Unit(s), as verified by the applicable meter data; and provided further that, Buyer shall provide at the time of payment an explanation of any disputed amount.
  - a. If in any month Seller fails to provide the electrical services from the Unit(s) as dispatched by Buyer and such failure to deliver is not excused hereunder, then (i) no energy payment shall be due for the energy not actually delivered from the

Unit(s), and (ii) the capacity payment for that month shall be reduced pro rata according to the total megawatt hours not provided from the Unit(s) as a ratio of the total megawatt hours dispatched by Buyer for that month, taking into consideration the outage allowances provided for in sections 5.e. and 5.f, and (iii) Seller shall reimburse Buyer, by set-off if Buyer so elects, for any energy imbalance costs and penalties incurred by Buyer for any hour during which Seller fails to deliver the full amount of energy scheduled by Buyer, excluding only hours during which the Unit(s) is unavailable because of an allowable outage, an RMR dispatch by the ISO, an Emergency dispatch by the ISO, or a Force Majeure condition; provided that, (A) the burden is the Seller's to demonstrate that one of these excuses applies to any particular instance of nonperformance by the Unit(s) and (B) the energy provided to the ISO by the Unit(s) shall be deemed delivered hereunder, and (C) any revenue received by Seller from the ISO for such dispatch shall be remitted to Buyer.

- b. If Buyer fails to pay the undisputed amount of any invoice that is complete, properly formatted, and delivered to the correct address within the prescribed ten-day period, Seller may, without penalty, (i) suspend the provision of services under this Confirmation and (ii) the capacity payments under section 7 shall continue to accrue during the suspension period, and (iii) make sales to third parties from the Unit(s) until such payment, including applicable accrued interest, is received by Seller. Upon receipt by Seller of Buyer's payment, Buyer's rights hereunder shall be fully restored.
- c. The remedies set forth here shall be the exclusive remedies (i) for Seller's failure to deliver electrical products as dispatched by Buyer and (ii) for late payment of undisputed amounts by Buyer; provided that, the failure of either party to make required payments hereunder for a period of more than sixty (60) calendar days after an invoice for the underlying charges has been delivered to it shall constitute an Event of Default under the Master Agreement.
- d. To the extent required in any currently effective Reliability Must Run ("RMR") Contract, on or before the Effective Date, Seller will assign any such RMR contracts to Buyer in accordance with their applicable terms and Buyer agrees to accept such assignment and to be bound to such RMR contracts. To the extent Buyer receives any revenues from any assigned RMR Contract, it shall retain all such revenue, except for Incremental Administrative Costs, Monthly Surcharge Payments, the ISO Repair Share, and Motoring Charges for Ancillary Services Dispatch, as each is defined in the applicable RMR Contracts, all of which shall be remitted to Seller. If, following the Effective Date, Seller enters into any new RMR contracts affecting the Unit(s), then, Seller shall assign such RMR contracts to Buyer in accordance with their applicable terms and Buyer shall agree to accept such assignment and to be bound to such RMR contracts. Revenues from such additional RMR contracts shall be treated in accordance with the second sentence of this provision.

15. Non-performance:

- a. In the event that the Unit(s) specified in Section 3 of this Confirmation is not commercially operable and delivering to Buyer by December 31, 2003, PG&E may at its sole discretion terminate this agreement and Seller shall pay PG&E damages in the form of \$15,000.00 (fifteen thousand dollars) times the MW specified under this agreement. Seller and Buyer agree that such damages are a reasonable approximation of the damages that Buyer will incur and shall be construed as liquidated damages and not as a penalty. Such liquidated damages shall apply solely to a termination of this agreement by PG&E for the reasons stated in this Section 15. a.
  - b. Within thirty (30) days of acceptance of this Confirmation by Buyer, Seller shall provide to PG&E, as security for the payment of liquidated damages in accordance with paragraph 15. a above, a letter of credit or surety bond issued for the benefit of PG&E, in the form attached to PG&E's Request For Offers, or other security acceptable to PG&E.
16. Remedy for Default: Except as otherwise set forth in Section 15 above, the Non-Defaulting Party's sole remedy for termination of this Agreement shall be to recover an amount (the "Termination Amount") equal to the Non-Defaulting Party's damages for the loss of the economic benefit, if any, of this Agreement for the remaining Term. Factors used in determining the loss of economic benefit may include, without limitation, a comparison of comparable transactions, third-party quotations from leading dealers in energy and gas contracts, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., NYMEX), the remaining Term of the Agreement, value of Environmental Attributes, and current discount rates. The Non-Defaulting Party will have the burden of proving the Termination Amount. In no event shall the Non-Defaulting Party have to enter into actual transactions in order to provide the Termination Amount. If the Parties cannot agree on a Termination Amount, the Termination Amount will be determined pursuant to the dispute resolution provisions in Section 17.

17. Dispute Resolution:

Mindful of the high costs of litigation, not only in dollars but time and energy as well, the Parties intend to and do hereby establish a final and binding out-of-court dispute resolution procedure to be followed in the event any controversy should arise out of or concerning the performance of this Agreement. Accordingly, it is agreed as follows:

- a. Any controversy arising out of or relating to this Agreement, including any claims based on contract, tort, statute, or other authority, shall be resolved at the request of any Party through a two-step dispute resolution process administered by the American Arbitration Association ("AAA"). As the first step the parties agree to mediate any controversy before a mediator from the AAA panel, pursuant to AAA's commercial mediation rules, in San Francisco, California. Either Party may begin mediation by serving a written demand for mediation. If within 60 days after service of a written demand for mediation, the mediation does not result in resolution of the dispute, then the controversy shall be settled

- by arbitration conducted by a retired judge or justice from the AAA panel conducted in San Francisco, California, administered by and in accordance with AAA's Commercial Arbitration Rules. Either party may initiate arbitration by filing with AAA a notice of intent to arbitrate within 60 days of service of the written demand for mediation.
- b. At the request of a Party, the arbitrator shall have the discretion to order depositions of witnesses to the extent the arbitrator deems such additional discovery relevant and appropriate. Depositions shall be limited to a maximum of three per Party and shall be held within 30 days of the making of a request. Additional depositions may be scheduled only with the permission of the arbitrator, and for good cause shown. Each deposition shall be limited to a maximum of six hours duration. All objections are reserved for the arbitration hearing except for objections based on privilege and proprietary and confidential information. The arbitrator shall also have discretion to order the Parties to exchange relevant documents. The arbitrator shall also have discretion to order the Parties to answer interrogatories, upon good cause shown.
  - c. To the extent that the dispute concerns the calculation of the Termination Amount (but not whether there has been an Event of Default giving rise to the right to require the payment of such Termination Amount), each of the Parties shall submit to the arbitrator, in accordance with a schedule set by the arbitrator, offers in the form of the award it considers the arbitrator should make. If the arbitrator requires the Parties submit more than one such offer, the arbitrator shall designate a deadline by which time the Parties shall submit their last and best offer. In such proceedings the arbitrator shall be limited to awarding only one of the two "last and best" offers submitted, and shall not determine an alternative or compromise remedy.
  - d. The arbitrator shall have no authority to award punitive or exemplary damages.
  - e. The arbitrator's award shall be made within nine months of the filing of the notice of intention to arbitrate (demand) and the arbitrator shall agree to comply with this schedule before accepting appointment. However, this time limit may be extended by agreement of the parties or by the arbitrator, if necessary. The California Superior Court of the City and County of San Francisco may enter judgment upon any award rendered by the arbitrator. The Parties are aware of the California Supreme Court's Decision in *Advanced Micro Devices, Inc. v. Intel Corp.*, 9 Cal. 4<sup>th</sup> 362 (1994), and, except as modified by this Agreement, intend to limit the power of the arbitrator to that of a Superior Court judge enforcing California law. The prevailing party in this dispute resolution process shall be entitled to recover its costs and reasonable attorneys' fees.
  - f. Except as may be required by law, neither a Party nor an arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both Parties.



18. Other Terms and Conditions: The EEI Master Agreement in effect at the time, as modified by the applicable Schedule A, applies to this transaction. To the extent that this Confirmation is inconsistent with any provision of the applicable Master Agreement, this Confirmation shall govern the rights and obligations of the parties hereto.

PACIFIC GAS AND ELECTRIC COMPANY

SELLER

By:



By:



Name:

GORDON R. SMITH

Name:

George D. Woodward

Title:

President + CEO

Title:

General Manager

Date:

11/14/02

Date:

November 9, 2002

Attachment A  
Environmental Attributes

"Environmental Attributes" means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable from the facility. Environmental Attributes include but are not limited to: (1) any avoided emissions of pollutants to the air, soil or water such (subject to the foregoing) sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO2), methane (CH4) and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; and (3) the reporting rights such as Green Tag Reporting Rights to these avoided emissions. Green Tag Reporting Rights are the right of a Green Tag Purchaser to report the ownership of accumulated Green Tags in compliance with Federal or state law, if applicable, and to a Federal or state agency or any other party at the Green Tag Purchaser's discretion, and include without limitation those accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Green Tags are accumulated on kWh basis and one Green Tag represents the Environmental Attributes associated with one (1) MWh of energy. Environmental Attributes do not include any energy, capacity, reliability or other power attributes from the project nor production tax credits or certain other financial incentives existing now or in the future associated with the construction or operation of the energy projects."

Capacity Payment Schedule

January.....	10.0%
February.....	2.8%
March.....	2.8%
April.....	2.8%
May.....	2.8%
June.....	12.0%
July.....	15.0%
August.....	15.0%
September.....	12.0%
October.....	12.0%
November.....	2.8%
December.....	10.0%

Wheelabrator Shasta Energy Company  
 Proposal No. 1 for Unit (T/G) No. 4 in Response to 9/16/02 PG&E DWR UFRP RFO  
 Energy Price Schedule

Time of Use Periods	Period A June 1 – September 30	Period B October 1 – May 31	Days Applicable
Peak Hours	11:00 AM – 7:00 PM	11:00 AM – 7:00 PM	Weekdays excluding NERC Holidays
Off-Peak Hours	All hours not included in peak hours	All hours not included in peak hours	All days not included in peak days

Energy Rates:			
Peak Hours – (\$/MWh)	\$80.00	\$50.00	Weekdays excluding NERC Holidays
Off-Peak Hours – (\$/MWh)	\$46.00	\$40.00	All days not included in peak days

Capacity Price:	Payment of \$30/kw-year
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