

SUBSTITUTION AGREEMENT

This Substitution Agreement (Agreement) is effective January, 1, 2009 between SIERRA PACIFIC INDUSTRIES (SPI), a California Corporation, and PACIFIC GAS AND ELECTRIC COMPANY (PG&E), a California Corporation.

**RECITALS**

A. Effective June 4, 2002, SPI, PG&E and the California Independent System Operator (CAISO), a California corporation, entered into a Settlement Agreement resolving disputes among the parties.

B. The Settlement Agreement affected the following power purchases agreements (PPAs) between SPI and PG&E: Burney (PG&E Log No. 13C049), Susanville (PG&E Log No. 10C009), Quincy (PG&E Log No. 10C018), and Lincoln (12C008).

C. Among other things, the Settlement Agreement amended each of the PPAs enumerated in Recital B to include provisions that enable SPI to pool or combine the generation from the four plants to provide a total capacity of 52.165 MW from the plants, or any of them, including a total firm capacity of 36.822 MW.

D. On or about May 3, 2004, SPI permanently closed the Susanville plant; PG&E did not, however, terminate the Susanville PPA.

E. On or about April 18, 2006, SPI and PG&E entered into a form Amendment PG&E made available to all its QF sellers that arose from a settlement PG&E reached with the Independent Energy Producers Association resolving aspects of then-existing litigation (IEP Amendment). Among other things, the Amendment, which governs the PPAs for SPI Quincy (PG&E Log No. 10C018), SPI Burney (PG&E Log No. 13C049), SPI Lincoln (PG&E Log No.

12C008) and SPI Susanville (PG&E Log No. 10C009), fixes the energy price PG&E pays pursuant to the SPI PPAs for a five year period.

F. SPI purchased the 7.5 MW biomass plant and associated sawmill located in Sonora, California, from Snider Lumber L.P. in 1995. To SPI's and PG&E's knowledge, the 7.5 MW Sonora plant has never generated power for sale to PG&E pursuant to a PPA.

G. SPI and PG&E have discussed substituting the 7.5 MW Sonora plant for the now-defunct 12.5 MW Susanville plant in both the Settlement Agreement and PPA between SPI and PG&E for the Susanville plant, referred to herein as the "Susanville/Sonora plant."

## **AGREEMENT**

In consideration of the forgoing Recitals and the mutual promises set forth below, SPI and PG&E agree to modify the Settlement Agreement and the Susanville PPA as follows:

1. Changes to Settlement Agreement.
  - 1.1 The reference to the Susanville PPA in Recital A of the Settlement Agreement shall be changed to refer to the Sonora PPA.
  - 1.2 The reference to the Susanville plant in Recital C of the Settlement Agreement shall be changed to refer to the Susanville/Sonora plant.
  - 1.3 All references to the "Susanville Facility" in Exhibit B of the Settlement Agreement shall be changed to refer to the "Susanville/Sonora plant."
  - 1.4 The reference to "Susanville" in Exhibit E of the Settlement Agreement shall be changed to refer to the "Susanville/Sonora plant."
2. Changes to Susanville PPA.
  - 2.1 Article 3(b) of the Susanville PPA shall be changed to provide:

- (b) Seller shall provide capacity and energy from its 7.5 MW Facility located at  
\_14980 Camage Rd, Sonora, CA 95370.
- 2.2 Article 3(c) and (f) shall be deleted.
- 2.3 Article 5's reference to 12,000 kW shall be changed to 7,500 kW.
- 2.4 Appendix A, p. A-5, "Interconnection Facilities" shall be changed to read: "All means required and apparatus installed to interconnect and deliver power from the Facility including but not limited to connection, transformation, switching, metering, communications and safety equipment, such as equipment required to protect (1) the PG&E system and its customers from faults occurring at the Facility and (2) the Facility from faults occurring on the PG&E system or on the systems of others to which the PG&E system is directly or indirectly connected. Interconnection facilities also include any necessary addition and reinforcements by PG&E to the PG&E system required as a result of the interconnection of the Facility to the PG&E system. Interconnection Facilities also include any related interconnection agreements including, but not limited to the Generator Interconnection Agreement, Generator Special Facilities Agreement, and CAISO Meter Service Agreement."
- 2.5 Appendix A, p. A-8, Section A-2.2(a) shall be changed to delete the words "CPNational system as required for PGandE to receive capacity and," and replace these words with the following "PG&E system as required for PG&E to receive capacity and."
- 2.6 Appendix A, p. A-12, Section A-3.3 shall be changed to read: "Seller shall deliver the energy at the point where Seller's electrical conductors (or those of Seller's

agent) contact PG&E's system as it shall exist whenever the deliveries are being made or at such other point or points as the Parties may agree in writing. The initial point of delivery of Seller's power to the PG&E system is set forth in Attachment 3 to the Small Generator Interconnection Agreement."

3. Energy Deliveries.

3.1 For the term of the Susanville PPA, PG&E will pay SPI for energy deliveries from the Susanville/Sonora plant at the rate specified in the IEP Amendment.

4. Firm and As-Available Capacity Deliveries.

4.1 The generation from the Susanville/Sonora plant will be pooled pursuant to the Settlement Agreement and the amended Susanville PPA.

4.2 Generation from the Susanville/Sonora plant shall not be eligible for or used in the calculation for the Performance Bonus Factor described in Appendix E of Susanville PPA or in Appendix E of the Settlement Agreement.

4.3 During the term of this Agreement, PG&E will pay SPI for as-available capacity deliveries from the Susanville/Sonora plant at the price specified in the IEP Amendment.

5. Green Attributes.

5.1 Seller hereby provides and conveys all Green Attributes associated with all electricity generation from the Project to Buyer as part of the Product being delivered. Seller represents and warrants that Seller holds the rights to all Green Attributes from the Project, and Seller agrees to convey and hereby conveys all such Green Attributes to Buyer as included in the delivery of the Product from the Project.

- 5.2 The phrase “all electricity generation” as used in 5.1 above, means the Surplus energy output referenced in Article 4 of the Susanville PPA.
- 5.3 For purposes of this Section 5, the following capitalized terms shall have the following definitions.
- 5.4 “Seller” means SPI and its successors and assigns.
- 5.5 “Buyer” means PG&E and its successors and assigns.
- 5.6 “Project” means the Susanville/Sonora plant.
- 5.7 “Product” means all generation delivered to PG&E from the Susanville/Sonora plant.
- 5.8 “Green Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Project, and its avoided emission of pollutants. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (1) any avoided emission of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere;<sup>1/</sup> (3) the

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<sup>1/</sup> Avoided emissions may or may not have any value for GHG compliance purposes. Although avoided emissions are included in the list of Green Attributes, this inclusion does not create any right to use those avoided emissions to comply with any GHG regulatory program.

reporting rights to these avoided emissions, such as Green Tag Reporting Rights. 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 Green Tag Reporting Rights 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 a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of Energy. Green Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Project, (ii) production tax credits associated with the construction or operation of the Project and other financial incentives in the form of credits, reductions, or allowances associated with the project that are applicable to a state or federal income taxation obligation, (iii) fuel-related subsidies or "tipping fees" that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or (iv) emission reduction credits encumbered or used by the Project for compliance with local, state, or federal operating and/or air quality permits. If the Project is a biomass or biogas facility and Seller receives any tradable Green Attributes based on the greenhouse gas reduction

benefits or other emission offsets attributed to its fuel usage, it shall provide Buyer with sufficient Green Attributes to ensure that there are zero net emissions associated with the production of electricity from the Project.

5.9 Seller Representations and Warranties. Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement: (i) the Project qualifies and is certified by the CEC as an Eligible Renewable Energy Resource (“ERR”) as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Project’s output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in Law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in Law.

6. WREGIS.

6.1 Prior to the Initial Energy Delivery Date, Seller shall register the Facility in the Western Region Energy Generation Information System (WREGIS) and take all other actions necessary to ensure that the energy produced from the Facility is tracked for purposes of satisfying the California Renewables Portfolio Standard requirements, as may be amended or supplemented by the CPUC or CEC from time to time. During the Delivery Term, Seller shall establish and maintain an

account with WREGIS and shall create WREGIS certificates for all energy delivered to Buyer from the facility and shall transfer each month all such WREGIS certificates from Seller's WREGIS account to the WREGIS account(s) of Buyer.

7. CPUC Approval.

7.1 As soon as practicable after both PG&E and SPI have signed this agreement, PG&E will submit the Agreement to the CPUC for approval (CPUC Approval) using the procedural process PG&E, in its sole discretion, deems best.

7.2 For purposes of this Section 7, "CPUC Approval" means a CPUC order or resolution that: (a) approves the Agreement as reasonable, without changes or conditions unacceptable to PG&E in its sole discretion; (b) grants PG&E full rate recovery for all energy and capacity payments PG&E makes pursuant to the Agreement; and (c) is not subject to any further reasonableness review except for on-going CPUC review of the reasonableness of PG&E's administration of the Agreement.

7.3 CPUC Approval shall be deemed given on the third business day after the day on which a CPUC order or resolution that satisfies the conditions of Section 7.2 becomes final and no longer subject to judicial review.

8. Termination in absence of CPUC approval.

8.1 This Agreement shall terminate on the earlier of: (a) September 1, 2009; or (b) the last day of the month of the month in which PG&E gives notice to SPI that the CPUC has not granted CPUC approval as specified in Section 7.



8.2 In the event this Agreement is terminated SPI and PG&E shall retain the benefits of the Agreement obtained from the Effective Date through the termination date, but neither SPI nor PG&E shall have any further rights or obligations as specified in the Agreement after the Agreement terminates pursuant to Section 7.

9. No Other Modifications.

9.1 Except as expressly modified by this Agreement, no provision of the Settlement Agreement or the Susanville PPA is or shall be deemed to be modified, amended, waived, or otherwise affected by this Agreement. To the extent that this Agreement is inconsistent with any provision of the Settlement Agreement or the Susanville PPA, this Agreement shall govern the rights and obligations of the Parties.

10. Tax Consequences.

10.1 Neither SPI nor PG&E makes any representation or warranty with respect to the tax treatment of this transaction, and neither SPI nor PG&E shall have any liability to the other for any tax liability that party may incur as a result of this transaction.

11. Modifications.

11.1 SPI and PG&E may amend or modify this Agreement only by a written instrument that both SPI and PG&E have signed.

12. Signatures.

12.1 IN WITNESS WHEREFORE, SPI and PG&E have caused this Agreement to be executed by their authorized representatives. By signing this Agreement, the

representatives of the Parties warrant that they have the requisite authority to bind their respective principals.

PACIFIC GAS AND ELECTRIC COMPANY

By: Garrett Jeung

Name: Garrett Jeung

Title: Senior Director

Date: December 15, 2008

SIERRA PACIFIC INDUSTRIES

By: [Signature]

Name: George R Emmerson

Title: VICE - PRESIDENT

Date: 12/16/08