

AMENDED AND RESTATED SUBSTITUTION AGREEMENT

This Amended and Restated Substitution Agreement ("Agreement") is effective January 1, 2010 between SIERRA PACIFIC INDUSTRIES ("SPI"), a California Corporation, and PACIFIC GAS AND ELECTRIC COMPANY ("PG&E"), a California Corporation, (collectively "Parties").

**RECITALS**

A. On or about September 25, 1984, PG&E entered into a Long-Term Energy and Capacity PPA to purchase energy and capacity from SPI's electricity generating facility located in Susanville, California, PG&E Log No. 10C009 (as amended by each amendment described in this paragraph, the "Susanville PPA"). PG&E and SPI executed subsequent amendments to the Susanville PPA on or about July 25, 1985, on or about June 2, 1988, and on or about October 21, 1997.

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

C. On or about May 3, 2004, SPI permanently closed the Susanville plant. The Parties did not, however, terminate the Susanville PPA. On or about December 16, 2008, the Parties entered into an agreement allowing output from SPI's facility in Sonora, California to be substituted for output from the Susanville plant ("Substitution Agreement"). The Substitution Agreement was approved by the California Public Utilities Commission ("CPUC") effective January 1, 2009. Shortly after execution of the Substitution Agreement, the Sonora facility was shut down indefinitely for economic reasons associated with the sawmill operations co-located on the property.

D. On or about April 18, 2006, SPI and PG&E entered into a form amendment that PG&E made available to all its Qualifying Facility ("QF") sellers that arose from a settlement between PG&E and the Independent Energy Producers Association ("IEP") resolving aspects of then-existing litigation ("IEP Amendment"). Among other things, the IEP Amendment, which governs the PPAs for Quincy (PG&E Log No. 10C018), Burney (PG&E Log No. 13C049), Lincoln (PG&E Log No. 12C008) and SPI Susanville (PG&E Log No. 10C009), fixes the energy price PG&E pays pursuant to these four PPAs for a five year period.

E. In 1997, SPI constructed the 5.0 MW nameplate biomass plant at its sawmill located in Anderson, California. That facility first came online in January 1998. The facility operated under a Standard Offer No. 1 PPA until December 31, 2001. In October 2002, SPI executed a Transition Standard Offer No. 1 PPA ("Anderson PPA"). The Anderson PPA was

subsequently extended pursuant to D. 04-01-050 and is currently selling excess generation to PG&E under an extended Standard Offer No. 1 PPA. The Anderson PPA is set to expire on December 31, 2010

F. SPI and PG&E have discussed amending and restating the Substitution Agreement to incorporate the 5.0 MW Anderson plant into the Substitution Agreement for the closed down Susanville 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 In Recital D of the Settlement Agreement, reference to the "Susanville Facility" shall be changed to refer to the "Anderson and/or Sonora facilities."
- 1.2 In Section 3.5 of the Settlement Agreement, reference to the "Susanville Facility" shall be changed to refer to the "Anderson and/or Sonora facilities."
- 1.3 All references to the "Susanville Facility" in Exhibit A of the Settlement Agreement shall be changed to refer to the "Anderson and/or Sonora facilities."
- 1.4 All references to the "Susanville Facility" in Exhibit B of the Settlement Agreement shall be changed to refer to the "Anderson and/or Sonora facilities."
- 1.5 The following sentence is added to Article 3 (a) in Exhibit B, Schedule 1-3, as Schedule 1-3 amends in full Article 3 of the Susanville PPA: "Seller shall provide capacity and energy from either or both of its 5.0 MW Facility located at 19758 Riverside Avenue, Anderson, CA 96007 or the 7.5 MW Facility located at 14980 Camage Rd, Sonora, CA 95370."
- 1.6 Article 3 (d) in Exhibit B, Schedule 1-3, is replaced with: "Seller will limit the actual rate of delivery to avoid exceeding any physical limitations of the interconnection facilities of the Anderson and/or Sonora facilities. , Seller shall limit the actual rate of delivery into the PG&E system from the Sonora Facility to 7,500 kW."
- 1.7 The following definitions are added to Exhibit B, Article 3 (f):  
  
"Anderson Facility - Seller's 5.0 MW wood waste fueled cogeneration facility located at 19758 Riverside Avenue, Anderson, CA 96007; QF ID# 13P163."  
  
"Sonora Facility - Seller's 7.5 MW wood waste fueled cogeneration facility located at 14980 Camage Rd, Sonora, CA 95370"

1.8 The following definitions are modified in Exhibit B, Article 3 (f):

"Susanville PPA -that certain Long-Term Energy and Capacity Power Purchase Agreement (Standard Offer No.4), executed by Seller on September 28, 1984, and executed by P-G&E on September 25, 1984, for the Susanville Facility, identified by PG&E Log No. 10C009, as amended by the First Amendment to Long-Term Energy and Capacity Power Purchase Agreement executed by PG&E on July 25, 1985, and by Seller on July 29, 1985, as amended by the First [sic] Amendment to Long-Term Energy and Capacity Power Purchase Agreement executed by PG&E and Seller on or about June 2, 1998, as further amended by the October 21, 1997 Amendment, and as further amended by the June 4, 2002 Amendment Agreement, as further amended by the Amended and Restated Substitution Agreement "

2. Changes to Susanville PPA.

- 2.1 As stated in the June 4, 2002 Settlement Agreement, Article 3 is replaced in full by Schedule 1-3 of the Settlement Agreement; Article 5 is replaced in full by Schedule 3 of the Settlement Agreement; Appendix E is replaced in full by Schedule 4 of the Settlement Agreement; and Article 3 is amended by Schedule 2.
- 2.2 Appendix A, p. A-5, "Interconnection Facilities" shall be changed to state: "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, CAISO Meter Service Agreement."
- 2.3 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 by replacing these words with the following "PG&E system as required for PG&E to receive capacity and".
- 2.4 Appendix A., p. A-10, Section A-2.3 shall be changed to add the following subsection (d) "PGandE shall be relieved of the obligations specified in subsection (a), above when Seller enters into a Meter Service Agreement for CAISO Metered Entities."
- 2.5 Appendix A, p. A-12, Section A-3.3 shall be changed to state: "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 Appendix F." Seller will provide a replacement Appendix F for the Susanville PPA.

3. Energy Deliveries.

3.1 For the term of the Susanville PPA, PG&E will pay SPI for energy deliveries from the Anderson and/or Sonora plants at the rate specified in the IEP Amendment. PG&E will not pay for energy deliveries from Anderson that exceed 3.5 MWh in any given hour.

4. Firm and As-Available Capacity Deliveries.

4.1 The generation from the Anderson and/or Sonora plants shall be eligible for pooling pursuant to the Settlement Agreement and the Susanville PPA.

4.2 Generation from the Anderson and/or Sonora plants 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 Anderson and/or Sonora plants at the price specified in the IEP Amendment until such pricing provisions expire.

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 Anderson and/or Sonora plants.

- 5.7 “Product” means all generation delivered to PG&E from the Anderson and/or Sonora plants.
- 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 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.
6. Seller Representations and Warranties.
- 6.1 Seller, and, if applicable, its successors, representatives and assigns warrants that throughout the Delivery Term of this Agreement: (i) the Project qualifies and is

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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.

certified by the California Energy Commission (“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.

- 6.2 Seller represents and warrants that within 90 days of the effective date of this Agreement it shall comply with CAISO Tariff Section 10 – Metering and the requirements of the ‘Business Practice Manual for Metering’ published by the CAISO, as may be modified from time to time.
- 6.3 Seller represents and warrants that within 90 days of the effective date of this Agreement it shall register the Project in Western Renewable Energy Generating Information System or any successor renewable energy tracking program (“WREGIS”), and shall perform all other tracking, record-keeping and reporting required of Seller under WREGIS and as otherwise required to ensure that the Energy or Green Attributes produced from the Project are issued and tracked for purposes of meeting the RPS requirements for counting the electricity purchased under a contract executed pursuant to the federal Public Utility Regulatory Policies Act of 1978 toward the RPS obligations of the purchasing retail seller.

7. CPUC Approval and True Up to Agreed Upon Bilateral Price.

- 7.1 This Agreement shall become effective upon the first day of the month following CPUC Approval (“Effective Date”). The “Execution Date” shall be defined as the date upon which this Agreement is executed by the Parties, or, if executed on different dates, whichever date is later.
- 7.2 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 appropriate.
- 7.3 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.
- 7.4 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 7.3 becomes final and non-appealable.



- 7.5 The Parties agree that upon the Effective Date, the price paid to SPI for energy and/or capacity from the Anderson and/or Sonora facilities from the Execution Date to the Effective Date shall be trued up to the prices referred to in Section 3.1 in this Agreement.
- 7.6 Within sixty (60) days of the date of CPUC Approval, PG&E shall provide an invoice to SPI recalculating the payments due to SPI from the Execution Date to the Effective Date as provided for in Section 7.5. If the net amount of the invoice requires a payment from SPI to PG&E, SPI shall make the required payment within sixty (60) days of receiving the invoice. If the net amount of the invoice requires a payment from PG&E to SPI, PG&E shall make the required payment within sixty (60) days of issuing the invoice.
8. Early Termination.
- 8.1 Either Party may terminate this Agreement within five (5) business days of written notice to the other Party if: (a) PG&E has not received CPUC Approval by December 31, 2010; or (b) the CPUC does not grant CPUC Approval as specified in Section 7.3. The termination date specified in the written notice shall be referred to as the "Early Termination Date."
- 8.2 In the event this Agreement is terminated under Section 7.1, neither SPI nor PG&E shall have any further rights or obligations under this Agreement.
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. Termination.

12.1 This Agreement terminates upon the earlier of an Early Termination Date pursuant to Section 7.1 above or May 5, 2016.

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

SIERRA PACIFIC INDUSTRIES

By: 

By: 

Name: Roy Legu

Name: George Emmerson

Title: VP Energy Supply Management

Title: Vice President

Date: 7/29/10

Date: 7/15/10