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13 PACIFIC GAS and ELECTRIC COMPANY

14 UNITED STATES BANKRUPTCY COURT  
15 NORTHERN DISTRICT OF CALIFORNIA  
16 SAN FRANCISCO DIVISION

17 In re

18 PACIFIC GAS and ELECTRIC  
19 COMPANY, a California corporation,

20 Debtor.

21 Federal I.D. No. 94-0742640

No. 01-30923 DM

Chapter 11 Case

DECLARATION OF JANOS LAZLO IN  
SUPPORT OF DEBTOR'S NOTICE OF  
MOTION AND MOTION FOR  
AUTHORITY (A) TO ENTER INTO  
AMENDMENTS OF POWER  
PURCHASE AGREEMENTS AND TO  
ASSUME POWER PURCHASE  
AGREEMENTS BETWEEN PG&E AND  
CERTAIN "QUALIFYING  
FACILITIES", PURSUANT TO 11  
U.S.C. §§363, 365 AND 502 AND FRBP  
9019

Date: August 3, 2001  
Time: 1:30 p.m.  
Place: 235 Pine Street, 22nd Floor  
San Francisco, California  
Judge: Hon. Dennis Montali

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DECL. OF JANOS LASZLO ISO DEBTOR'S MOT FOR AUTHORITY TO ASSUME POWER PURCHASE  
AGREEMENT

*1001 Add: Kids Oge Mail Center*

*50-275/323*

HOWARD  
RICE  
NEMEROVSKI  
CANADY  
FALK  
& RABKIN  
A Professional Corporation

1 I, JANOS LASZLO, declare:

2 1. I am a Supervisor in the Utility Electric Portfolio Management Department  
3 for debtor Pacific Gas & Electric Company ("PG&E"). I have been engaged in this capacity  
4 for approximately eight years. In my position, I am generally responsible for contract and  
5 pricing management with respect to Qualifying Facilities ("QFs").

6 2. I make this declaration in support of PG&E's "Notice of Motion and  
7 Motion for Authority (a) to Enter into Amendments of Power Purchase Agreements and to  
8 Assume Power Purchase Agreements Between PG&E and Certain "Qualifying Facilities",  
9 etc." (the "Motion"). Unless otherwise stated, the facts herein are known to me of my own  
10 personal knowledge and if called upon to do so, I could and would testify thereto.

11 3. PG&E currently has active long term contracts with over 300 different QFs.  
12 The numerous QFs with whom PG&E contracts represent a diverse mix of fuel types and  
13 technologies, including natural gas fueled cogeneration technologies and various renewable  
14 resources such as hydro, wind, biomass, biogas, geothermal and waste to energy. In total,  
15 the QF contracts represent approximately 36 percent of PG&E's native generation, and  
16 represent a significant portion of its energy supply portfolio.

17 4. Each of PG&E's more than 300 QFs has one of four "Standard Offer  
18 Contracts" originally developed—and expressly approved—by the CPUC. Any individual  
19 QF, however, can—with CPUC approval—negotiate variations to the Standard Offer  
20 Contracts' provisions and/or enter into post-signing amendments. Indeed, many QFs have  
21 taken advantage of both of these options. Accordingly, the more than 300 QF contracts,  
22 though similar in many ways, involve individual pricing schedules and performance  
23 obligations.

24 5. In addition, each of the QF contracts has its own individual termination  
25 date, based on the type of contract and the date it was entered into. Most of PG&E's long-  
26 term QF contracts, however, were entered into in the early 1980's, with facilities coming on  
27 line in the late 1980's and early 1990's. Accordingly, the "typical" QF contract has a  
28 25-year term and an expiration date of 2015.

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CPUC DECISION 01-06-05

6. As this Court is aware from other proceedings in this case, on June 13, 2001, the CPUC issued Decision 01-06-105 (the "Lynch Decision"). See Request For Judicial Notice In Support Of Debtor's Statement Concerning Proposed Deadline For Assumption Or Rejection Of Its Power Purchase Agreements With Certain "Qualifying Facilities" ("RJN"), Ex. B (filed June 29, 2001). By its own terms, the Lynch Decision is an "interim measure . . . adopt[ed] to bring stability to the electric supply arrangements represented by the long-term contracts between utilities and sellers known as Qualifying Facilities (QFs)." Id. at 1. The Lynch Decision "pre-approve[s]" three alternative contract amendments. Id. at 1. More specifically, the Lynch Decision allows QFs to notify the utility with which they contract on or before July 15, 2001, of their intention to elect one of the three following contract modifications:

- (a) QFs may elect to receive a fixed price of 5.37 cents per kWh rather than the floating SRAC price for a five-year period (id. at 4);
- (b) QFs who demonstrate hardship to the CPUC's Energy Division are eligible to receive a modified SRAC payment for a one-year period (id. at 4-5);<sup>1</sup>
- (c) QFs with "excess power" may sell this energy to the utility for 125% of the modified SRAC price (id. at 5-6).

7. Since the Lynch Decision was issued, PG&E has sought and obtained approval of this Court to amend and to assume a number of its PPAs with the QFs, pursuant to sections 363(b) and 365(b)(1) and (d) of the Bankruptcy Code, and Rules 4001, 6004 and 9019 of the Federal Rules of Bankruptcy Procedure. In almost all instances, PG&E requested authorization to enter into amendments of the PPAs to take advantage of the five year pricing option (the "Price Modification"), coupled with an agreement (an "Agreement"

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<sup>1</sup>For PG&E's QFs, the modified formula is essentially the "old" or "pre-Wood" SRAC formula that uses an average of the Topock and Malin gas indices.

1 or collectively, the "Agreements") to assume the subject PPA. The Agreements have  
2 included the following essential terms: (a) assumption effective upon entry of a Court order  
3 approving the Agreement (provided that, in some instances, for a short period of time, QFs  
4 are permitted to "exit" the Agreement, in the event that they are unable to obtain necessary  
5 approvals or financing), (b) agreement regarding the amount necessary to "cure" pre-petition  
6 defaults (subject to a reservation of rights in some instances) (the "Pre-Petition Payables"),  
7 (c) waiver of certain claims by the QFs (i.e., claims for payments in excess of the "contract  
8 rate" during the "pre-assumption" period), (d) deferral of payment of the Pre-Petition  
9 Payables until either (i) the Effective Date of the Plan of Reorganization confirmed in this  
10 case (the "Calpine Model") or (ii) July 15, 2003, after which date, PG&E agrees to pay two  
11 percent of the principal amount of the Pre-Petition Payables, until paid in full, or Effective  
12 Date (the "GWF Model"), and (e) reservation of certain issues (interest rate on Pre-Petition  
13 Payables) until confirmation of the Plan.

14 8. In addition, PG&E has also, with this Court's approval, entered into  
15 amendments of its PPAs (i) with United Cogen and Cardinal Cogen with regard to the five  
16 year pricing amendment, and (ii) with Gaylord Container Corporation and Oildale Energy  
17 LLC with regard to the hardship amendment. I am also informed and believe that the Court  
18 has set a hearing for July 31, 2001 at 1:30 p.m. to consider PG&E's request also to assume  
19 the PPAs with United Cogen.

20 9. As of the date of this Declaration, PG&E has assumed the PPAs of  
21 approximately 130 of its 332 QFs (the "Assumed PPAs"); PG&E's assumption of these  
22 PPAs has resulted in the disposition of approximately \$740 Million of Pre-Petition Payables  
23 owed under the Assumed PPAs (of approximately \$1 Billion in total Pre-Petition Payables to  
24 all of the QFs, as of the date of the commencement of this case). The Assumed PPAs also  
25 represent approximately two thirds of the aggregate "nameplate capacity" of the QFs as a  
26 whole.

27 10. I believe that the amendment and assumption of the Assumed PPAs has  
28 benefitted PG&E, its bankruptcy estate and creditors, for a number of reasons. The

1 Agreements permit PG&E and the QFs to take advantage of the Price Modification,  
2 eliminating the potential volatility of power costs over the next five years. In addition, the  
3 Agreements defer any payment of the Pre-petition Payables for at least two years, and in  
4 some instances, until the occurrence of the Effective Date of PG&E's confirmed plan of  
5 reorganization. Moreover, although PG&E believes that it would have prevailed on the  
6 issue whether "market rates" could have been charged for post-petition power purchases, the  
7 QFs' waiver on this issue resolves a matter which certainly represented a large potential  
8 liability to the estate.

9 11. On July 12, 2001, the CPUC extended until July 31, 2001, the period during  
10 which QFs could elect the "excess capacity" or "hardship" amendments to the PPAs set forth  
11 in the Lynch Decision. The CPUC did not then extend the time for electing the Price  
12 Modification. However, I am informed and believe that on July 19, 2001, Administrative  
13 Law Judge John S. Wong issued a ruling (the "July 19 Ruling") which purported to extend  
14 the duration of the Price Modification until the California Public Utilities Commission  
15 ("CPUC") could act on a Petition filed by the Independent Energy Producers requesting an  
16 extension of the Price Modification. Accordingly, so long as the CPUC expressly rules that  
17 the Price Modification has been extended, including by ratification of the July 19 Ruling,  
18 PG&E is prepared to enter into amendments and assume the PPAs of any remaining QFs  
19 desiring to take advantage of the Price Modification, and to enter into Agreements on terms  
20 no less favorable to PG&E than those set forth in the GWF Model.

21 12. I am informed and believe that while there are approximately 160 QFs  
22 which have not had their PPAs amended or assumed (the "Remaining QFs"), many of these  
23 QFs might desire to take advantage of these opportunities. I also believe that it would be in  
24 the best interests of PG&E and its bankruptcy estate to enter into amendments and  
25 Agreements with the Remaining QFs, for the same reasons noted with regard to the  
26 Assumed PPAs. However, the Remaining QFs are generally smaller in size than the QFs  
27 with whom PG&E has already reached agreement, and are less likely to have engaged  
28 counsel on their own behalf. Therefore, if PG&E wishes to reach agreement with the

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1 Remaining QFs, it is likely to have to solicit their response to this opportunity. Accordingly,  
2 PG&E has sent forms of amendments to PPAs offering the Price Modification (the  
3 "Amendments") and Agreements (Calpine or GWF Model to those who requested it) to the  
4 Remaining QFs, and has informed them that PG&E is willing to enter into agreements and  
5 amendments consistent with the forms provided subject only to (a) this Court's consent after  
6 appropriate notice, and (b) the CPUC's express ruling that the Price Modification was  
7 extended post-July 14, 2001. A true and correct copy of the form of proposed Amendment is  
8 attached hereto as Exhibit "A". A true and correct copy of the proposed Agreement is  
9 attached hereto as Exhibit "B".

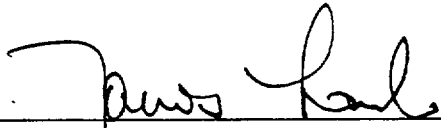
10 13. In addition, for those QFs whose Pre-Petition Payables total less than  
11 \$10,000, the forms of Agreement propose that PG&E pay such amount immediately upon  
12 Bankruptcy Court approval, on the condition that the QF waive any claim for pre- or post-  
13 petition interest on the Pre-Petition Payables. I am informed and believe that, in light of the  
14 relatively small amount of Pre-Petition Payables outstanding to many of the Remaining QFs,  
15 if PG&E were authorized to pay in full the Pre-Petition Payables to QFs owed \$10,000 or  
16 less, such payment would satisfy fully the Pre-Petition Payables of approximately 80 of the  
17 Remaining QFs, at a cost not to exceed the sum of \$131,000. I believe that this proposed  
18 payment of Pre-Petition Payables would aid in the efficient administration of PG&E's  
19 bankruptcy estate by satisfying a number of relatively small claims now, rather than at  
20 confirmation, in exchange for a relatively small present expenditure. In addition, I expect  
21 that the prospect of immediate payment will be an effective inducement to those Remaining  
22 QFs with Pre-Petition Payables less than \$10,000, to enter into Agreements quickly.

23 14. Given the number of Remaining QFs, and their relatively small average  
24 capacity and Pre-Petition Payables, I also believe that it would aid greatly in the efficient  
25 administration of this estate were PG&E to receive pre-authorization from this Court to enter  
26 into amendments to PPAs based upon the Price Modification, and Agreements for  
27 assumption no less favorable than the GWF Model. The ability to enter into such  
28 transactions on a "blanket authority" basis would save the estate the time and expense of

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1 having to move the Court and notice creditors on a seriatim basis, for relief which is  
2 manifestly in the estate's interest, and as to which no creditor of party in interest has  
3 objected in the case of the Assumed PPAs. For these reasons, PG&E believes that the  
4 Motion for Authority, etc. is in the best interests of the estate, and should be approved.

5 I declare under penalty of perjury under the laws of the State of California that  
6 the foregoing is true and correct. Executed this 30th day of July 2001, at San Francisco,  
7 California.

8   
9 \_\_\_\_\_  
10 JANOS LASZLO  
11  
12

13 HOWARD  
14 RICE  
15 NEMEROVSKI  
16 CANADY  
17 BALK  
18 & RABKIN  
19 A Professional Corporation

20 WD 073001/1-1419920/934745/v2

**JULY 31, 2001 AMENDMENT TO THE  
POWER PURCHASE AGREEMENT  
BETWEEN  
[QF]  
AND  
PACIFIC GAS AND ELECTRIC COMPANY  
(PG&E LOG NO. \_\_\_\_\_)**

THIS JULY 31, 2001 AMENDMENT ("Amendment") is by and between PACIFIC GAS AND ELECTRIC COMPANY ("PG&E"), a California corporation and [QF] ("Seller"), a \_\_\_\_\_ . PG&E and Seller are sometimes referred to herein individually as "Party" and collectively as the "Parties."

**RECITALS**

- A. On \_\_\_\_\_ Seller (or Seller's predecessor, as applicable) and PG&E entered into a Power Purchase Agreement (as amended, the "PPA"), pursuant to which PG&E purchases electric power from Seller and Seller sells electric power to PG&E.
- B. On April 6, 2001, PG&E filed a voluntary petition under chapter 11 of the United States Bankruptcy Code in the San Francisco Division of the United States Bankruptcy Court for the Northern District of California (the "Bankruptcy Court") (*In re Pacific Gas and Electric Company*, Bankr. Case No. 01-03923).
- C. On June 14, 2001, the California Public Utilities Commission (the "Commission") issued Decision 01-06-015, which approved as "per se reasonable" certain non-standard PPA energy price modifications if such modifications were entered into before July 15, 2001.
- D. Seller notified PG&E of its desire to modify the PPA pursuant to Commission Decision No. 01-06-015 after the initial July 14, 2001 deadline set by the CPUC, which was subsequently extended pursuant to an order issued by CPUC Administrative Law Judge John Wong on July 19, 2001.



E. PG&E is willing to agree to Seller's request to modify its PPA to replace the energy pricing term subject to confirmation by the Commission that its deadline for such PPA modifications being considered "per se reasonable" has actually been extended to or beyond the date this Amendment was executed by Seller.

## **AMENDMENT**

In consideration of the mutual promises and covenants contained herein, PG&E and Seller agree to modify the Agreement as follows:

### **1. FIXED ENERGY PRICE**

Upon approval by the Bankruptcy Court as specified in Section 2 below, the energy price term specified in the PPA (PG&E's "full short-run avoided costs" or "full short-run avoided operating costs" as the case may be) shall be replaced for the lesser of the remaining term of the PPA or five years with the applicable energy prices as specified in Attachment A, which is hereby incorporated by reference. Upon approval by the Bankruptcy Court as specified in Section 2 below, such amended energy prices shall become effective on August 1, 2001, at 00:00 PPT. No provision of the PPA other than the energy price term is or shall be deemed to be modified, amended, waived or otherwise affected by this Amendment. The Parties agree to reasonably cooperate and contest any challenge in any Commission proceeding that seeks to alter or modify the energy pricing terms set forth in Attachment A, including, but not limited to, any challenge to the reasonableness of PG&E having entered into this Amendment.

**2. CONDITIONS ON EFFECTIVENESS OF AMENDMENT**

This Amendment shall not become effective unless and until: (1) it has been approved by the Bankruptcy Court; and (2) the Commission issues a decision, in a form satisfactory to PG&E, finding PPA amendments entered into such as this Amendment after July 14, 2001 and up to the date this Amendment was executed by Seller as "per se reasonable" under the same standards as established in D.01-06-015 for PPA amendments entered into before July 15, 2001. If both conditions (1) and (2) do not occur by August 31, 2001, this Amendment shall be deemed a nullity.

**3. SIGNATURES**

IN WITNESS WHEREFORE, Seller and PG&E have caused this Amendment to be executed by their authorized representatives.

PACIFIC GAS AND ELECTRIC COMPANY

a California corporation

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

[QF]

a \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## AGREEMENT

THIS AGREEMENT, dated as of July 31, 2001 (the "Effective Date"), by and among \_\_\_\_\_ ("QF") and Pacific Gas and Electric Company ("PG&E"). QF and PG&E are sometimes referred to herein as the "Parties."

## WITNESSETH

WHEREAS, QF and PG&E are Parties to power purchase agreement for PG&E's purchase of power from QF's project identified by PG&E Log No. \_\_\_\_\_ ("PPA");

WHEREAS, starting on February 1, 2001 (the "Initial Default Date"), PG&E failed to pay the full amount due to QF under the PPA for deliveries of energy and capacity for the period between December 1, 2000 and April 6, 2001;

WHEREAS, the amount of payables for QF are set forth in Attachment A hereto for a total amount of \_\_\_\_\_ dollars (\$ \_\_\_\_\_), excluding interest thereon (the "Prepetition Payables");

WHEREAS, PG&E asserted that its failure to make certain of the Prepetition Payables was excused based on a claim of force majeure and QF protested PG&E's assertion of such a force majeure and QF continues to dispute such assertions of PG&E's claim of force majeure;

WHEREAS, PG&E filed a Chapter 11 bankruptcy petition pursuant to Title 11 United States Codes §§ 101 *et seq.* ("Bankruptcy Code") in the United States Bankruptcy Court for the Northern District of California, San Francisco Division (the "Bankruptcy Court") on April 6, 2001;

WHEREAS, on June 13, 2001, the California Public Utilities Commission (the "CPUC") issued Decision No. 01-06-015 whereby Qualifying Facilities under Standard Offer Contracts with PG&E may request that their contracts be modified to replace the energy pricing term with a five-year average fixed price of 5.37 cents/kwh, as proposed in the March 23, 2001 comments of the Independent Energy Producers referred to in CPUC Decision No. 01-06-015;

WHEREAS, QF notified PG&E of its desire to modify the PPA pursuant to CPUC Decision No. 01-06-015 after the initial July 14, 2001 deadline set by the CPUC, which was subsequently extended pursuant to an order issued by CPUC Administrative Law Judge John Wong on July 19, 2001;

WHEREAS, PG&E is willing to agree to QF's request to modify its PPA to replace the energy pricing term subject to confirmation by the CPUC that its deadline for such PPA modifications being considered "per se reasonable" has actually been extended to or beyond the date this Agreement was executed by QF;

Exhibit B

NOW THEREFORE, in consideration of the premises described above and the terms and conditions set forth below, the Parties hereby agree as follows:

1. Acceptance of the CPUC Five-Year Fixed Energy Price Option. Upon entry of a Bankruptcy Court order authorizing the assumption of the PPA as specified in Section 2 of this Agreement, PG&E and QF shall amend the PPA to replace the energy price term (PG&E's "full short-run avoided costs" or "full short-run avoided operating costs," as the case may be) for the lesser of the term of the PPA or five years with the applicable energy prices as specified in Attachment B to this Agreement. These amended energy prices become effective on August 1, 2001, at 00:00 PPT. No provision of the PPA other than the energy pricing term is or shall be deemed to be modified, amended, waived or otherwise affected by this Agreement and except as so modified hereby, the PPA remains in full force and effect and is hereby ratified and confirmed in all respects. The Parties agree to reasonably cooperate and contest any challenge in any CPUC proceeding that seeks to alter or modify the energy pricing terms set forth in Attachment B to this Agreement, including, but not limited to, any challenge to the reasonableness of PG&E having entered into this Agreement. If, despite such cooperation and contest, a CPUC decision that alters or modifies the pricing terms in Attachment B to this Agreement becomes final and nonappealable, the Parties shall in good faith renegotiate the pricing terms in Attachment B to this Agreement, solely on a prospective basis, to preserve a five-year annual average fixed price of 5.37 cents/kwh, as proposed in the March 23, 2001 comments of the Independent Energy Producers referred to in Decision No. 01-06-015. By no later than July 31, 2001, the Parties shall execute an amendment to the PPA consistent with the terms of this Section 1.

2. Conditioned on Assumption. The effectiveness of the PPA amendment contemplated in Section 1 of this Agreement is contingent upon assumption of the PPA in accordance with the procedures described below:

- a. PG&E and QF shall use their respective best efforts to enter into a Stipulation Regarding Assumption of the PPA ("Stipulation") that shall be filed in the Bankruptcy Court specifying the terms of this Agreement;
- b. PG&E shall use its best efforts to file and serve a Motion for Bankruptcy Court Approval of the Stipulation ("Motion"); and
- c. The Bankruptcy Court must grant the Motion and authorize PG&E's assumption of the PPA effective as of August 1, 2001.

3. Full Payment. In connection with PG&E's assumption of the PPA, PG&E agrees to pay on the "Plan Effective Date" (as such term is defined in the plan) the Prepetition Payables, including all interest thereon at the Interest Rate (as defined in Section 4 of this Agreement), which is amortized and added to the outstanding balance of the Prepetition Payables (the "Cure Amount"), all as part of its administrative priority cure obligations pursuant to sections 365 and 503 of the Bankruptcy Code. There is no "Cure Amount" other than as defined in this Section 3.

4. Interest. Interest shall accrue on the Prepetition Payables from their respective due dates until paid, at a rate (the "Interest Rate") to be negotiated in good faith by the Parties. If

the Parties do not agree on the Interest Rate prior to the Plan Effective Date, the Interest Rate shall be determined in accordance with the terms of the Plan, if any, or by the Bankruptcy Court as part of the plan confirmation process. If no plan is confirmed or if PG&E's bankruptcy case is dismissed or converted to Chapter 7, then the Bankruptcy Court shall determine the Interest Rate. If the Bankruptcy Court declines to exercise jurisdiction over the determination of the Interest Rate, the Parties reserve all rights to pursue their appropriate remedies. The Parties agree that interest shall accrue and the Interest Rate shall be determined as set forth herein but each of the Parties reserves all of its respective rights as to the appropriate Interest Rate and to the capitalization or compounding thereof in any proposed plan or in connection with any other determination of the Interest Rate by the Bankruptcy Court. Specifically, though not exclusively, QF reserves the right to dispute any Interest Rate set forth in a proposed plan and preserves the right to assert that the claim of QF is impaired under the proposed plan as a result of such proposed Interest Rate.

5. Waiver of Pecuniary Loss Damages. QF waives its right to assert claims to recover "pecuniary loss" damages in connection with assumption of the PPA pursuant to Bankruptcy Code section 365(b)(1)(B). This waiver shall not diminish or affect QF's right to payment of the Prepetition Payables or the Cure Amount, or to recover interest thereon; nor shall this waiver affect the determination of the Interest Rate.

6. Waiver of Right to Pre-Assumption Claim. QF waives its right to assert claims to receive the difference between the market price and the contract price for energy and capacity delivered to PG&E from and after April 6, 2001 through August 1, 2001, the effective date that PG&E assumes the PPA, pursuant to Bankruptcy Code sections 365 and 503(b).

7. Payment of Post-Assumption Obligations. PG&E shall pay in full any and all post-assumption obligations due under the PPA on such dates, at such times, and under the PPA, pursuant to Bankruptcy Code section 365. Such obligations shall be afforded administrative priority status under Bankruptcy Code section 503. Good faith disputes regarding the amounts to be paid to QF under the PPA for post-assumption deliveries of energy and capacity shall not be deemed a breach of this Agreement.

8. Reservation of Rights. Neither this Agreement nor PG&E's assumption of the PPA in the manner contemplated herein shall modify, waive, or otherwise prejudice either Party's rights and obligations with respect to any proceedings before the CPUC, the Federal Energy Regulatory Commission and the courts, relating to the energy price to be paid pursuant to the PPA for the period prior to PG&E's assumption of the PPA provided herein, including, but not limited to, PG&E's pending Emergency Motion for Stay of D.99-11-025 to End True-Up for Switching QFs, filed January 10, 2001 in CPUC proceeding R.99-11-022, and petitions for rehearing, enforcement actions, and judicial challenges to CPUC Decision No. 01-03-067 and the dispute between the Parties with respect to the statement, computation and payment for electricity sold and delivered pursuant to the PPA during the period from January 1 through January 18, 2001. However, QF hereby waives any claim for payment from PG&E based on any QF assertion of economic hardship, other than that as set forth in the PPA and this Agreement or

as has otherwise already been approved for the QF by the Bankruptcy Court and accrued before July 31, 2001.

9. Further Assurances. QF and PG&E shall take all necessary action to implement the terms and conditions contemplated herein, including but not limited to executing the amendment contemplated in Section 1 of this Agreement and preparing any documentation and taking any actions necessary to implement Section 2 of this Agreement and approving, executing and delivering this Agreement.

10. Descriptive Headings. The descriptive headings of this Agreement are inserted for convenience of reference only and do not constitute a part of this Agreement. All references to sections, attachments, or exhibits are to the sections, attachments or exhibits of this Agreement.

11. Expenses. Each Party shall pay its own expenses, professional fees and other costs connected with or associated with the negotiation and execution of this Agreement. In the event any Party breaches this Agreement, the breaching Party shall pay all costs and expenses (including attorneys' fees and expenses) incurred by the other Party or Parties in connection with or arising out of such breach.

12. Governing Law. This Agreement is made and entered into in the State of California, and shall in all respects be interpreted and governed under the laws of California, without regard to principles of conflicts of law.

13. Entire Agreement. This Agreement, and all attachments hereto, sets forth the entire agreement between the Parties relating to the acceptance by QF of the CPUC five-year fixed energy price option set forth in CPUC Decision No. 01-06-015, assumption by PG&E of the PPA and the payment of the Cure Amount and supercedes and replaces any prior understanding, correspondence, commitments or agreement, whether oral or written concerning the subject matters of this Agreement. Any modification or amendment to this Agreement must be in writing and must be signed and dated by the Parties, and must explicitly state that it is intended to be an amendment to or modification of this Agreement.

14. Binding Agreement. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the Parties hereto.

15. Construction of Agreement. Counsel for the respective Parties have reviewed and participated in the drafting of this Agreement. Consequently, the principle of construction of contracts that ambiguities shall be resolved against the drafter shall not be used or applied in the interpretation of this Agreement.

16. Representations. Each Party hereby represents and warrants to each of the other Parties that (a) the execution of this Agreement has been duly authorized by all necessary corporate, shareholder and similar actions; (b) this Agreement has been duly executed and delivered and constitutes the legal valid and binding obligation of such Party, enforceable against such Party is in accordance with its terms; and (c) the execution and delivery of this Agreement

and the performance by such Party of its obligations hereunder do not and will not conflict with, contravene or breach, and law, judgment, order or material contract applicable to or binding on such Party or any of its properties or assets.

17. Execution by Counterparts. This Agreement may be executed in separate counterparts, each of which when executed shall be an original, but all of which, taken together, shall constitute one and the same instrument.

18. Bankruptcy Court Approval. This Agreement is subject to Bankruptcy Court approval. If such approval has not been given by August 31, 2001, this Agreement shall be deemed a nullity.

19. CPUC Approval. This Agreement is subject to a decision by the CPUC, in a form satisfactory to PG&E, finding PPA amendments entered into pursuant to this Agreement after July 14, 2001 and up to the date this Agreement was executed by QF as per se reasonable under the same standards as established in D.01-06-015 for PPA amendments entered into before July 15, 2001.

IN WITNESS WHEREOF, this Agreement has been duly executed by or on behalf of QF and PG&E as of the Effective Date.

\_\_\_\_\_[QF]

Pacific Gas and Electric Company,  
a California corporation

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

# ATTACHMENT A

Legal Entity	Dec'00 Outstanding A/R	Jan'01 Outstanding A/R	Feb'01 Outstanding A/R	Mar'01 Outstanding A/R	Apr 1-6 Outstanding A/R	Calculated Outstanding A/R at 4/6/01
Project Description	Due 01/30/01	Due 03/02/01	Due 03/30/01	Due 04/30/01	Due 04/17/01*	
	\$	\$	\$	\$	\$	\$



Attachment B  
(PDF Form, available from PG&E)