

50-275/323

1 JAMES L. LOPES (No. 63678)
2 JANET A. NEXON (No. 104747)
3 WILLIAM J. LAFFERTY (No. 120814)
4 CEIDE ZAPPARONI (No. 200708)
5 HOWARD, RICE, NEMEROVSKI, CANADY,
6 FALK & RABKIN
7 A Professional Corporation
8 Three Embarcadero Center, 7th Floor
9 San Francisco, California 94111-4065
10 Telephone: 415/434-1600
11 Facsimile: 415/217-5910

12 Attorneys for Debtor and Debtor in Possession
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 Case No. 01-30923 DM
22 Chapter 11 Case

23 Federal I.D. No. 94-0742640

24 NOTICE OF ENTRY OF ORDER APPROVING
25 DEBTOR'S MOTION FOR ORDER AUTHORIZING
26 ASSUMPTION OF LONG-TERM GAS TRANSPORTATION SERVICE
27 AGREEMENT BETWEEN DEBTOR AND GAYLORD CONTAINER CORP.

28 Add: Kids Dgc Mail Center

ADD

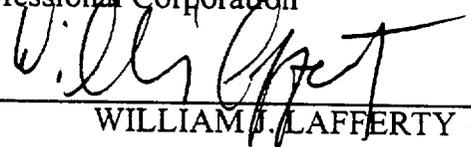
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PLEASE TAKE NOTICE that on September 13, 2001, the above-captioned Bankruptcy Court filed its "Order Approving Debtor's Motion for Order Authorizing Assumption of Long-Term Gas Transportation Service Agreement Between Debtor and Gaylord Container Corp.," a copy of which is attached hereto as Exhibit "A."

DATED: September 18, 2001.

Respectfully,

HOWARD, RICE, NEMEROVSKI, CANADY,
FALK & RABKIN
A Professional Corporation

By: 
WILLIAM J. LAFFERTY

Attorneys for Debtor and Debtor in Possession
PACIFIC GAS AND ELECTRIC COMPANY

HOWARD
RICE
NEMEROVSKI
CANADY
FALK
& RABKIN
A Professional Corporation

WD 091801/1-1419920/944976/v1

1 JAMES L. LOPES (No. 63678)
2 WILLIAM J. LAFFERTY (No. 120814)
3 CEIDE ZAPPARONI (No. 200708)
4 KIMBERLY A. BLISS (No. 207857)
5 HOWARD, RICE, NEMEROVSKI, CANADY,
6 FALK & RABKIN
7 A Professional Corporation
8 Three Embarcadero Center, 7th Floor
9 San Francisco, California 94111-4065
10 Telephone: 415/434-1600
11 Facsimile: 415/217-5910

FILED
SEP 13 2001

UNITED STATES BANKRUPTCY COURT
SAN FRANCISCO, CA

7 Attorneys for Debtor and Debtor in Possession
8 PACIFIC GAS AND ELECTRIC COMPANY

9 UNITED STATES BANKRUPTCY COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION

12 In re
13 PACIFIC GAS AND ELECTRIC
14 COMPANY, a California corporation,
15 Debtor.
16 Federal I.D. No. 94-0742640

Case No. 01-30923 DM
Chapter 11 Case
Date: September 13, 2001
Time: 10:00 a.m.
Place: 235 Pine St., 22nd Floor
San Francisco, California

HOWARD
RICE
NEMEROVSKI
CANADY
FALK
& RABKIN
A Professional Corporation

18
19 ORDER APPROVING DEBTOR'S MOTION FOR ORDER AUTHORIZING
20 ASSUMPTION OF LONG-TERM GAS TRANSPORTATION SERVICE
21 AGREEMENT BETWEEN DEBTOR AND GAYLORD CONTAINER CORP.
22
23
24
25
26
27
28

EXHIBIT A

1 The Motion for Order Authorizing Assumption of Long-Term Gas Transportation
2 Service Agreement between Pacific Gas and Electric Company and Gaylord Container
3 Corporation (the "Motion"), filed by Pacific Gas and Electric Company the debtor and
4 debtor in possession in the above-referenced chapter 11 bankruptcy case ("PG&E"), came
5 for hearing on September 13, 2001, at 10:00 a.m., in the Courtroom of the Honorable Dennis
6 Montali, located at 235 Pine Street, 22nd Floor, San Francisco, California. The Motion was
7 heard on shortened time, pursuant to an Order Shortening Time entered by the Court on
8 September 5, 2001. William J. Lafferty of the law firm Howard, Rice, Nemerovski, Canady,
9 Falk & Rabkin, a Professional Corporation, appeared for PG&E. Michael Soroichinsky of
10 the law firm Milbank, Tweed, Hadley & McCloy LLP appeared telephonically for the
11 Official Committee of Unsecured Creditors. Other appearances, if any, were as noted in the
12 record.

13 The Court having considered the Motion and accompanying declarations and other
14 documents filed in connection therewith, and the arguments of counsel at the hearing on the
15 Motion, and the record of this case, and the Court having been apprised that this Motion is
16 related to PG&E's Notice of Intention to Assume Power Purchase Agreement with Gaylord
17 Container Corporation, which has been separately noticed to creditors pursuant to the notice
18 procedures approved by this Court for the assumption of Power Purchase Agreements, and
19 good cause appearing, the Court hereby ORDERS as follows:

- 20 1. Notice of the Motion was appropriate under the circumstances presented by this
21 matter.
- 22 2. The Motion is approved.
- 23 3. PG&E is authorized to assume the Long-Term Intrastate Natural Gas
24 Transportation Service Agreement (the "Gas Transportation Agreement") between PG&E
25 and Gaylord Container Corporation ("Gaylord"), pursuant to the terms and conditions of that
26 certain "Agreement" between PG&E and Gaylord, dated as of August 22, 2001, including as
27 the same may be amended by that certain letter agreement between the parties dated as of
28 September 12, 2001 (the "Letter Agreement"). True and correct copies of the Gas

1 Transportation Agreement, the "Agreement" and the Letter Agreement are attached hereto as
2 Exhibits "A", "B" and "C", respectively.

3 4. The Court hereby expressly acknowledges the term of paragraph 19 of the
4 Agreement which, as modified by the Letter Agreement, requires that the California Public
5 Utilities Commission ("CPUC") approve a "pricing amendment" to the Power Purchase
6 Agreement ("PPA") between PG&E and Gaylord on or before October 13, 2001, and
7 provides that if such approval is not obtained by that date, the "Agreement", which provides
8 for the assumption of the PPA and the Gas Transportation Agreement, is a "nullity". In the
9 event that the CPUC does not approve the pricing amendment on or before October 13,
10 2001, then PG&E's assumption of the Gas Transportation Agreement authorized herein,
11 shall be nullified, and shall be of no force or effect.

12 IT IS SO ORDERED.

13 DENNIS MONTALI

14 DATED: September 13, 2001

15 UNITED STATES BANKRUPTCY JUDGE

16
17
18
19
20
21
22
23
24
25
26
27
28

HOWARD
RICE
NEMEROVSKI
CANADY
BALK
& RAEBKIN
A Professional Corporation

LONG-TERM INTRASTATE NATURAL GAS TRANSPORTATION
SERVICE AGREEMENT

1
2
3 This Agreement is made by and between Pacific Gas and Electric
4 Company, a California corporation (PG&E), and Gaylord Container
5 Corporation, a Delaware corporation (Customer), who are also
6 referred to herein as Parties, or, in the singular, Party. This
7 Agreement is for intrastate natural gas transportation service.
8

9
10 1. EFFECTIVE DATE, COMMENCEMENT OF SERVICE, AND TERM

11 1.1 This Agreement is subject to prior approval by the
12 California Public Utilities Commission (CPUC), and shall become
13 effective on the date it is approved by the CPUC, provided it is
14 not modified or conditioned in a manner which is reasonably
15 unacceptable to either Party. The Parties shall reasonably
16 cooperate in obtaining such approval. Prior to such CPUC
17 approval, this Agreement shall be deemed a mutually binding
18 declaration of intent between the Parties.

19 PG&E shall file an application with the CPUC requesting
20 approval of this Agreement within thirty (30) days after
21 execution by both Parties. If PG&E does not file an application
22 within such thirty (30) days, Customer may terminate the
23 Agreement at any time prior to filing by giving PG&E written
24 notice of such termination.
25
26

1 If the CPUC, in its initial approval of this Agreement,
2 modifies the terms or conditions of this Agreement or conditions
3 its approval, including, but not limited to, a condition or
4 decision that is inconsistent with applicable utility revenue
5 requirement recovery as currently set forth in CPUC Decision
6 No. 92-11-052, each Party shall have twenty-one (21) days
7 following such action in which to notify the other Party in
8 writing that the CPUC's modification or condition is
9 unacceptable. Upon a Party providing such notice, the Parties
10 shall, within fourteen (14) days of the notice, meet and
11 undertake good faith negotiations to resolve the issues. If the
12 Parties are unable to resolve the issues within fourteen (14)
13 days of their first meeting, this Agreement shall terminate.
14 Any modification to the terms of this Agreement that results
15 from the operation of this section shall be subject to the
16 approval of the CPUC.

17 If either Party fails to give notice within the above 21-
18 day period, that Party shall be deemed to have accepted the
19 modification or condition and to have waived its right to
20 terminate.

21 1.2 Service under this Agreement shall commence on the
22 first of the month following the later of the date of CPUC
23 approval of the Agreement, or, if the CPUC modifies or
24 conditions its approval, on the date of acceptance by the
25 Parties of the CPUC's approval of this Agreement.

26

1 1.3 The term of this Agreement shall be fifteen (15)
2 years, beginning on the date service commences.

3 1.4 "Contract Year" shall be twelve (12) consecutive
4 months following the commencement of service as defined in
5 Section 1.2 and each twelve (12) months following the
6 anniversary of such commencement.

7
8 2. RATE

9 2.1 The initial rate shall be made up of the following:

- 10 ■ A volumetric rate of \$0.045 per therm delivered to
11 Customer; and
12 ■ A fuel use and line loss payment of in-kind gas
13 (shrinkage) equal to the percentage specified in the
14 then existing otherwise applicable tariff.

15 This rate shall be subject to the provisions of Sections
16 2.2 and 2.3.

17 2.2 The volumetric rate only will be revised annually, on
18 the anniversary of the date service commences under this
19 Agreement, by 2.0 percent, compounded annually.

20 2.3 The rate set forth in Section 2.1 shall not apply to
21 the intrastate delivery or transportation of gas received by
22 PG&E at Malin, Oregon, and such transportation shall be under
23 PG&E's applicable tariffs; provided, however, should the CPUC

24 ///

25 ///

26

1 modify Decision D. 92-11-052 or otherwise authorize discounted
2 rates for firm transportation of gas received by PG&E at Malin,
3 Oregon, under this EAD agreement, the Parties agree to negotiate
4 in good faith a rate, terms, and conditions for such service
5 that are reasonable at the time, all of which will be submitted
6 to the CPUC for its review and approval.

7 2.4 Customer shall pay PG&E each month for all amounts
8 due hereunder within fifteen (15) days from the date each
9 monthly bill is delivered by PG&E. Failure to pay any bill
10 within thirty (30) days from the date that bill is delivered by
11 PG&E shall be cause, at PG&E's election, to suspend service
12 hereunder until all outstanding bills rendered under this
13 Agreement have been paid in full; provided, however, service
14 will not be suspended for nonpayment if the bill is disputed and
15 a deposit with the CPUC of the amount claimed by PG&E to be due
16 is made pursuant to Rule 10 or its successor. The Parties agree
17 that dispersal by the CPUC shall be made in accordance with Rule
18 10 or its successor or, at either Party's election, as may be
19 determined by the operation of Section 5 of this Agreement.

20 2.5 Nothing in this agreement shall preclude PG&E from
21 prosecuting an action to collect bills rendered and unpaid after
22 service has been suspended or terminated. Subject to Section
23 2.4, if Customer fails to make timely payment of bills
24 hereunder, PG&E shall be entitled to recover cost of collection,
25 including reasonable attorney's fees and expenses plus interest

26 ///

1 at the rate as may be then authorized by the CPUC in the gas
2 rules approved for PG&E. It is understood that there is no
3 interest authorized by the CPUC for late payment and no such
4 interest shall be due until authorized by the CPUC under the gas
5 rules approved for PG&E.

6 2.6 Customer may elect to take service under, and at the
7 rates set forth in, any otherwise applicable standard tariff
8 (excluding, for example, Schedule G-LT) or this Agreement by
9 notifying PG&E in writing at least thirty (30) days in advance
10 of each anniversary of the date service commenced under this
11 Agreement. This election will take effect only upon such
12 anniversary. If and when the rates under any otherwise
13 applicable standard tariff (excluding, for example, Schedule
14 G-LT) change throughout the term of this Agreement, Customer
15 also may elect to take service under, and at the rates set forth
16 in, such tariff or under this Agreement by notifying PG&E in
17 writing within thirty (30) days of the effective date of any
18 such rate change. This election will take effect only upon the
19 first day of the month following Customer's election.

20 In the event that Customer elects to take service at a
21 tariff rate, such service shall be provided by PG&E in full
22 accordance with the terms and conditions of the applicable
23 tariff.

24 2.7 No standby charges, transition costs, or surcharges
25 of any kind, as may be assessed pursuant to order of the CPUC,

26 ///

1 shall be added to the rate set forth in Section 2.1. Customer
2 shall be responsible for such charges when Customer receives
3 service under an otherwise applicable standard tariff.
4

5 3. CONTRACT QUANTITY AND LEVEL OF SERVICE

6 3.1 This Agreement is for Customer's full requirements
7 for intrastate natural gas transportation service to the
8 facility specified in Section 4.3. Under this Agreement, all of
9 Customer's intrastate natural gas transportation service will be
10 provided by PG&E. Customer may only use alternative fuels when
11 curtailed by PG&E or if given prior written permission by PG&E.
12 Unauthorized use of alternative fuels will be subject to the
13 then current tariff or rule approved by the CPUC. Customer may
14 meet its full requirements hereunder in whole or in part by gas
15 received by PG&E at Malin, Oregon.

16 3.2 Exhibit B sets forth the daily Firm Service Level
17 (FSL) and the Maximum Daily Quantity (MDQ) applicable to service
18 provided under this Agreement. The FSL is the maximum amount of
19 firm service (as defined in PG&E's Rule 14) provided hereunder
20 daily. The MDQ is the maximum amount of service, both firm and
21 interruptible, provided hereunder daily.

22 3.3 On any day, usage of transportation service in excess
23 of the FSL, up to the MDQ, shall be provided on an interruptible
24 basis. Usage in excess of the MDQ may be provided only under
25 the otherwise applicable PG&E tariffs, not under this Agreement.
26

1 3.4 PG&E guarantees a minimum availability of intrastate
2 gas transportation service under this Agreement of at least
3 ninety-five percent (95%) of the FSL, calculated at the end of
4 each Contract Year using the formula shown in Exhibit A. This
5 provision is not a guarantee of service through any particular
6 PG&E receipt point.

7 If PG&E fails to satisfy such minimum requirement, PG&E
8 shall reimburse Customer for replacement fuel costs incurred by
9 Customer as a result of any such failure by crediting such
10 amount on Customer's first monthly bill of the next Contract
11 Year (and any successive monthly bills as necessary to
12 compensate Customer fully, as provided above). Such
13 reimbursement shall be the sole and exclusive remedy of customer
14 for any failure of PG&E to meet PG&E's guarantee obligations set
15 forth in this section, but shall not limit Customer's rights and
16 remedies regarding a breach by PG&E, if any, of any other
17 provision.

18 This section shall not apply when Customer elects to take
19 service under its otherwise applicable standard tariff.

20 3.5 By written notice, Customer may request changes in
21 the FSL and MDQ owing to significant changes in overall fuel
22 requirements at Customer's facility; however, the acceptability
23 of any requested change shall be determined solely by PG&E in
24 its reasonable discretion.
25
26

1 4. GAS SERVICE

2 4.1 Subject to Section 2.3, Customer may have gas
3 delivered on its behalf to PG&E at any receipt point on the PG&E
4 system, at the California border or within California. Subject
5 to Section 3.4, service by PG&E under this Agreement shall be
6 governed by PG&E's ability to accept the gas and by applicable
7 related transportation tariffs, gas rules, interconnect
8 agreements, and gas quality specifications in effect at the time
9 of the receipt.

10 4.2 During the term of this Agreement, the tariffs and
11 rules applicable to utilization and operation of PG&E's gas
12 system may change; such changes may affect Customer's receipt-
13 point options provided by Section 4.1. Implementation of any
14 program that adversely affects Customer's receipt-point options
15 under this Agreement shall, at Customer's request, require the
16 Parties to renegotiate this Agreement. If those negotiations
17 are not successful, either Party may initiate the dispute
18 resolution procedure set forth in Section 5.

19 4.3 Under the terms and conditions of this Agreement,
20 PG&E will deliver gas to Customer's facility located at
21 2301 Wilbur Avenue, Antioch, California.

22 4.4 This Agreement may be used by Customer for
23 transportation of natural gas to and from any storage facility
24 that is connected to the PG&E system. Customer shall have the
25 right to use storage in the same manner and under the same terms

26 ///

1 and conditions as any other noncore customer of PG&E. This
2 Agreement does not, however, provide for or otherwise obligate
3 PG&E to construct or pay for any such interconnection of storage
4 facilities to the PG&E system.

5 4.4 Customer shall be deemed to be in control and
6 possession of the gas to be delivered to PG&E hereunder until
7 the gas has been received by PG&E at the point(s) of receipt.
8 PG&E shall be deemed to be in control and possession of the gas
9 after receiving the gas at the point(s) of receipt until the
10 Customer takes possession at the point of delivery. Customer
11 shall be deemed to be in control and possession of the gas at
12 the outlet of PG&E's meter at the point of delivery. Each Party
13 shall indemnify, defend, and save harmless the other, its
14 officers, agents and employees from and against any and all
15 loss, damage, injury, liability and claims for injury to or
16 death of persons (including any employee of either Party), or
17 for loss of or damage to property (including the property of
18 either Party), which occurs or is based upon acts or omissions,
19 except for acts or omissions of the other Party, that occur when
20 the gas is deemed hereunder to be in the control and possession
21 of that Party, or which results directly or indirectly from that
22 Party's performance of its obligations under this Agreement.
23 Notwithstanding the foregoing, neither Party shall be liable
24 hereunder for consequential or indirect loss or damage.

25
26

1 5. DISPUTE RESOLUTION

2 5.1 Except as may otherwise be set forth expressly
3 herein, all disputes arising under this Agreement shall be
4 resolved in accordance with this Section 5.

5 5.2 The Parties shall attempt in good faith to resolve
6 promptly by negotiations between them any controversy or claim
7 arising out of or relating to this Agreement. If a controversy
8 or claim should arise, either Party may request the other to
9 meet within 14 days, at a mutually agreed upon time and place.

10 5.3 If the matter has not been resolved within (60) days
11 of the meeting described in Section 5.2, either Party may
12 initiate binding arbitration in accordance with the following
13 procedures:

14 5.3.1 Unless the Parties otherwise agree, the
15 arbitral tribunal shall be composed of three persons. Each
16 Party shall nominate an arbitrator, and the two arbitrators
17 so appointed shall appoint a third, who shall act as the
18 presiding arbitrator or chair of the arbitral tribunal. If
19 either Party fails to nominate an arbitrator within thirty
20 (30) days of receiving notice of the nomination of an
21 arbitrator by the other Party, such (second) arbitrator
22 shall be appointed by the American Arbitration Association
23 (AAA) at the request of the first Party. If the two
24 arbitrators so selected fail to select a third presiding
25 arbitrator within twenty (20) days of the appointment of

26 ///

1 the second arbitrator, the third arbitrator shall be
2 appointed by the AAA. Should a vacancy occur on the panel,
3 it shall be filled by the method by which that arbitrator
4 was originally appointed.

5 5.3.2 The arbitration shall be conducted in
6 accordance with the American Arbitration Association
7 Commercial Arbitration Rules. Each arbitrator shall agree
8 to abide by the AAA code of Ethics for Arbitrators in
9 Commercial Disputes.

10 5.3.3 The arbitrators shall hold a preliminary
11 meeting with the Parties within thirty (30) days of the
12 appointment of the third or presiding arbitrator for the
13 purpose of determining or clarifying the issues to be
14 decided in the arbitration, the specific procedures to be
15 followed, and the schedule for briefing and/or hearings.
16 The arbitrators shall hold a hearing and, within one-
17 hundred and twenty (120) days of the preliminary meeting
18 (except in extraordinary cases) shall issue an award and
19 include findings of fact and conclusions of law. The
20 United States District Court for the Northern District of
21 California or a Superior Court of the State of California
22 may enter judgement upon any such award.

23
24
25
26

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

5.3.4 If one or both of the Parties have a substantial need for discovery in order to prepare for the arbitration hearing, the Parties shall attempt in good faith to agree on a minimum plan for strictly necessary, expeditious discovery (obtaining documents, taking deposition, and the like). Should they fail to reach agreement, either Party may request a joint meeting with the presiding arbitrator to explain points of agreement and disagreement. The presiding arbitrator shall thereafter promptly determine the scope of discovery and time allowed therefor.

5.3.5 Neither Party shall be assessed in arbitration or otherwise any punitive damages.

5.3.6 As part of the arbitration award, the arbitrators shall allocate costs and expenses of the arbitration and determine the extent to which the expenses (including reasonable fees for in-house and outside counsel) incurred by the prevailing Party shall be borne by the other Party. In the event of an action or proceeding to enforce an arbitral award, the prevailing Party in such action or proceeding shall recover its costs and expenses (including the reasonable fees of in-house and outside counsel).

1 5.5 Any modification to the terms of this Agreement that
2 results from the operation of this section shall be subject to
3 the approval of the CPUC. The provisions of Section 1.1 shall
4 apply to any such approval.
5

6 6. GOVERNMENTAL AUTHORITY

7 6.1 Except if the Parties modify this Agreement pursuant to
8 Section 5 or otherwise, once this Agreement has been approved by
9 the CPUC, Sections IX and X of General Order 96-A, authorizing
10 further modification by the CPUC, shall be suspended for the
11 duration of this Agreement.
12

13 7. GENERAL PROVISIONS

14 7.1 This Agreement shall be interpreted according to the
15 laws of the state of California.

16 7.2 Unless otherwise provided, all substances, whether or
17 not of commercial value, including all liquid hydrocarbons of
18 whatever nature that PG&E recovers in the normal course of
19 transporting the volume of natural gas delivered to Customer,
20 shall be PG&E's sole property, and PG&E shall have no obligation
21 to account to Customer for any value that may attach or be said
22 to attach to such substances.

23 7.3 Unless expressly provided to the contrary herein, any
24 notice called for in this Agreement shall be in writing and
25 shall be considered as having been given if delivered by
26

///

1 facsimile or registered mail, with all postage or charges
2 prepaid, to either Party at the place designated below. Routine
3 communications, including monthly statements and payment, shall
4 be considered as duly delivered when received by ordinary mail
5 or facsimile. Customer's daily nominations shall be considered
6 as duly delivered when received by ordinary mail or facsimile or
7 electronic data interchange at the address set forth in
8 Exhibit A. Unless changed by written notice to the other Party,
9 all other notices shall be delivered to the addresses of the
10 Parties as follows:

11 PACIFIC GAS AND ELECTRIC COMPANY
12 Marketing Tariffs
13 123 Mission Street, Room H2645
14 San Francisco, California 94106
15 Attention: Director

16 CUSTOMER:
17 Gaylord Container Corporation
18 2301 Wilbur Avenue
19 Antioch, California 94509
20 Attention: Resident Manager

21 7.4 Neither Party hereto shall be liable for any failure
22 of performance, other than the continuing obligation to make
23 payments due hereunder for periods prior to the event of force
24 majeure, owing to causes beyond its reasonable control and the
25 occurrence of which it could not have prevented by the exercise
26 of due diligence by such Party. Refusal by either Party to
accede to demands of laborers or labor unions which it considers
unreasonable in its sole discretion shall not deny it the

///

1 benefits of this provision. If either Party hereto is unable
2 for any reason to deliver or receive full or partial quantities
3 of gas contemplated by this Agreement due to force majeure, the
4 Party so unable to perform shall promptly advise the other Party
5 that such condition exists, and the Parties shall suspend
6 operations under this Agreement to the extent that the force
7 majeure event dictates, until such time as the event of force
8 majeure is remedied and both Parties can once again deliver and
9 receive gas, respectively. Any force majeure event shall be
10 remedied as far as possible with all reasonable dispatch. The
11 term force majeure as employed herein shall include, but not be
12 limited to, acts of God, strikes or other industrial
13 disturbances, acts of a public enemy, the direct or indirect
14 effect of governmental orders, actions or interferences, civil
15 disturbances, explosions, landslides, lightning, earthquakes,
16 fires, storms, floods and washouts. Force majeure shall not
17 include any economic or financial considerations, maintenance to
18 lines or pipe or the unavailability of upstream transportation
19 or supply.

20 7.5 A waiver by either Party or any one or more defaults
21 by the other hereunder shall not operate as a waiver of any
22 future default or defaults, whether of a like or of a different
23 character.

24
25
26

1 7.6 Nothing in this Agreement shall be deemed to create
2 any rights or obligations between the Parties (a) except as
3 expressly contemplated herein, or (b) after the termination or
4 expiration of the term of this Agreement other than as is
5 specifically provided for herein. Nothing in this Agreement
6 shall be deemed to create any rights or obligations between
7 either Party and any third party.

8 7.7 Customer warrants for itself, its successors and
9 assigns, that it will have, at the time of delivery of gas to
10 PG&E pursuant to this Agreement, good title to that gas, and
11 that all gas delivered to PG&E for transportation under this
12 Agreement is eligible for all requested transportation in
13 intrastate commerce under applicable rules, regulations or
14 orders of the CPUC, or other agency having jurisdiction.
15 Customer shall indemnify PG&E and save and hold PG&E harmless
16 from all suits, actions, damages, costs, losses, and expenses
17 (including reasonable attorneys' fees) associated with
18 regulatory or legal proceedings arising from the breach of this
19 warranty.

20 7.8 Exhibits A-D (Rates, Gas Service Profile, Operations
21 Data, Addresses) are attached hereto and are hereby incorporated
22 into this Agreement. These Exhibits may be amended or modified
23 from time to time in accordance with the provisions of this
24 Agreement and such modifications shall be subject to CPUC
25 approval, as may be required, and all such amendments and
26 modifications shall become part of this Agreement when so made.

1 7.9 Nothing in this Agreement shall obligate PG&E to
2 construct new facilities or to modify or expand existing
3 facilities to provide transportation service to Customer. This
4 Section has no impact on PG&E's obligation under Section 3.4.

5 7.10 Neither Party may assign this Agreement or any rights
6 or obligations hereunder without the prior, written consent of
7 the other (which consent shall not be withheld unreasonably);
8 provided that, this restriction on assignment shall not apply to
9 the assignment of the entire interest of the assignor to a
10 parent, affiliate, or subsidiary corporation, or to an entity
11 succeeding to all or substantially all of the business,
12 properties and assets of the assignor. Upon such assignment,
13 this Agreement shall extend to and be binding on the assignee,
14 its successors and assigns; provided that, no assignment shall
15 relieve the assignor of its obligation to pay amounts due
16 hereunder up to the date of assignment.

17 7.11 Except as otherwise expressly provided herein,
18 service provided under this Agreement shall be subject to the
19 operational requirements of PG&E's gas system and to all
20 applicable PG&E tariffs and gas rules in effect during the term
21 of this Agreement. In the event of a conflict between the
22 express provisions of this Agreement and an otherwise applicable
23 tariff, the express provisions of this Agreement shall prevail.

24
25
26

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

7.12 This Agreement may only be amended by an instrument in writing, which is executed by both parties hereto and shall be subject to CPUC approval according to CPUC rules.

PACIFIC GAS AND ELECTRIC COMPANY

GAYLORD CONTAINER CORPORATION

By: *Norman L. Bryan*

By: *[Signature]*

Title: *V.P. Sales*

Title: General Manager

Date: *Dec 15, 1994*

Date: 1/10/95

A:\GAYLORD.M48-12/14/94 3:30 PM

EXHIBIT A - RATES AND TERM

CUSTOMER NAME: Gaylord Container Corp. Transportation Id.: 0673599

CUSTOMER ADDRESS: 2301 Wilbur Avenue
Antioch, California 94509

Major Acct. Rep.: Bill Scheiber Phone No.: (510) 674-6558

Corporate Acct. Rep.: Paul Johnson Phone No.: (415) 973-4757

I. TERM:

The term of this agreement shall be 180 months.

II. RATES:

Volumetric Rate: \$0.045 per therm, subject to escalation (see special billing instructions, below).

III. SERVICE OPTION:

Full Requirements. Customer agrees to utilize PG&E delivered natural gas service for 100 percent of its entire potential fuel use.

IV. COGENERATION:

Check if the facility qualifies for a cogeneration rate schedule.
Cogeneration Customers also must complete an Exhibit E. Please complete the following:
Cogeneration Rate Schedule: G-CGS
Net Electric Output Meter Information:
Percentage of FSL used for Cogeneration (used for assigning curtailment blocks): 100%

V. GAS METER INFORMATION:

<u>Meter No</u>	<u>Submeter No</u>	<u>AIS No.</u>	<u>Usage Account No.</u>
35201903	n/a	1305	BJC-N2-1002-1

SPECIAL BILLING INSTRUCTIONS

The above Volumetric Rate will be escalated on the anniversary of the date service commences under this agreement, by 2.0 percent, compounded annually.

Shrinkage will be equal to the percentage specified in the then existing otherwise applicable tariff.

Customer may elect service under the rates set forth under the otherwise applicable standard tariff as specified in Section 2.6 of the Agreement.

If, during any Contract Year, PG&E is unable to provide the guaranteed level of firm intrastate transportation service to Customer due to a PG&E initiated reduction or discontinuance of deliveries to Customer's site (not including receipt point capacity allocations or curtailment of balancing service), PG&E, as specified in Section 3.4 of the Agreement, will reimburse Customer. In determining the amount of any such reimbursement, PG&E will compare (during those months Customer took service at the above contract rate in that Contract Year) the volume of reduced service below the Agreement Firm Service Level (as specified in Exhibit B to the Agreement) with the product of 5%, the Agreement Firm Service Level, and the number of days that customer took service at the contract rate in that Contract Year. To the extent the reduction exceeds the product of 5%, the contract Firm Service Level, and the number of days of service under the contract rate, PG&E will reimburse the Customer for such difference as specified in Section 3.4 of the Agreement.

EXHIBIT B - GAS SERVICE PROFILE AND QUANTITIES

CUSTOMER NAME: Gaylord Container Corp. **Transportation Id.:** 0673599

I. MAXIMUM DAILY QUANTITY

Customer must designate a Maximum Daily Quantity (MDQ) for all service served under this contract. The MDQ must be consistent with the maximum amount of gas that Customer can be expected to use at the facilities served under this contract on a given day. The MDQ will be the maximum amount of gas that Customer will be allowed to deliver into PG&E's service territory on any day.

MAXIMUM DAILY QUANTITY: 22,100 decatherms per day

II. FIRM SERVICE LEVEL

Customer must designate a Firm Service Level (FSL) for all service under this Agreement. The FSL is the maximum amount of gas that Customer can transport using firm intrastate capacity.

FIRM SERVICE LEVEL: 20,000 decatherms per day

CUSTOMER NAME: Gaylord Container Corp. Transportation Id.: 0673599

	Column A Firm Transportation (Dth)	Column B Interruptible Transportation (Dth)	Column C Operating Days in Month	Column D Daily Firm Service Level
WINTER SEASON:				
Nov 1995:	600,000	_____	_30_	20000
Dec 1995:	620,000	_____	_31_	20000
Jan 1995:	620,000	_____	_31_	20000
Feb 1995:	560,000	_____	_28_	20000
Mar 1995:	620,000	_____	_31_	20000
Sub-Total:	3,020,000			
SUMMER SEASON:				
Apr 1995:	600,000	_____	_30_	20000
May 1995:	620,000	_____	_31_	20000
Jun 1995:	600,000	_____	_30_	20000
Jul 1995:	620,000	_____	_31_	20000
Aug 1995:	620,000	_____	_31_	20000
Sep 1995:	600,000	_____	_30_	20000
Oct 1995:	620,000	_____	_31_	20000
Sub-Total	4,280,000			
Annual Totals	7,300,000*	_____		

*For Full Requirements Customers, monthly and annual totals are for PG&E's planning purposes only.

EXHIBIT C - OPERATIONS DATA

CUSTOMER NAME: Gaylord Container Corp.

Transp.ID No.: 0673599

CUSTOMER OPERATING CONTACT

Nominating Customer ID No¹ _____

CO. NAME: Gaylord Container Corp.
ADDRESS: 2301 Wibur Avenue
CITY/STATE/ZIP CODE: Antioch, CA 94509
CONTACT: Bob Sheffield PHONE NO.:(510) 779-3235
ALTERNATE NO.:() - TELECOPIER NO.:(510) 779-3330

If Customer is transporting third-party gas, list the supplier(s) of that gas only if the supplier is a Nominating Marketer, defined as having the authority to nominate gas deliveries to PG&E on behalf of Customer.

The following information including the addition or removal of a Nominating Marketer from this list, may be changed upon receipt of written notification by the Customer.

MARKETER² MARKETER ID NUMBER: 101A
CO. NAME: Chevron USA Inc.
ADDRESS: P.O. Box 5060
CITY/STATE/COUNTRY: San Ramon, CA ,USA ZIP CODE: 94583-0960
CONTACT: Dave Jones PHONE NO.:
ALTERNATE NO.:() - TELECOPIER NO.:

MARKETER² MARKETER ID NUMBER: 0156
CO. NAME: DeKalb-Canada
ADDRESS: 700 9th Avenue S.W.
CITY/STATE/COUNTRY: Calgary, Alberta ZIP CODE: T2P3V-4
CONTACT: Bruce Craig PHONE NO.:(403) 261-1331
ALTERNATE NO.:() - TELECOPIER NO.:(403) 264-7142

MARKETER² MARKETER ID NUMBER: _____
CO. NAME: _____
ADDRESS: _____
CITY/STATE/COUNTRY: _____ ZIP CODE: _____
CONTACT: _____ PHONE NO.:() - _____
ALTERNATE NO.:() - TELECOPIER NO.:() - _____

PG&E Gas Control Center

CO. NAME: Pacific Gas and Electric Co.
ADDRESS/CITY/STATE: 77 Beale St. - Room 1645 San Francisco, CA 94106
CONTACT: Transportation Coordinator PHONE NO.:(415) 973-3967
ALTERNATE NO.: (415) 973-3216 (24 hr.) TELECOPIER NO.:(415) 973-0649

¹ A Nominating Customer I.D. Number is required for only customers who will be nominating third party supplies in their own name.

² Communications by Marketer shall be binding on Customer and shall prevail if there is any conflict with information regarding nominations or receipt from Customer. Such person shall be considered a Nominating Marketer of the Customer for the term of this Agreement unless a formal written notification is received by PG&E that such agency arrangement no longer exists. At least one nomination must be made by Customer or a Nominating Marketer for there to be a valid nomination in place.

CUSTOMER NAME: Gaylord Container Corp.

Transp.ID No.: 0673599

DIRECTIONS: PLEASE CHECK BOX WHERE THE FOLLOWING ADDRESS IS APPLICABLE ¹ Any of the names or addresses listed below may be changed upon receipt of written notification from the Customer.

FORMAL COMMUNICATION BILLING ADDRESS
 CURTAILMENT IMBALANCE STATEMENT ADDRESS

CO. NAME: Gaylord Container Corporation
 ADDRESS: 2301 Wilbur Avenue
 STATE/COUNTRY: Antioch, CA, USA ZIP CODE: 94509
 CONTACT: Bob Sheffield PHONE NO.: (510) 779-3235
 ALTERNATE NO.: () - TELECOPIER NO.: (510) 779-3330

FORMAL COMMUNICATION BILLING ADDRESS
 CURTAILMENT IMBALANCE STATEMENT ADDRESS

CO. NAME: Gaylord Container Corporation
 ADDRESS: P.O. Box 10
 CITY/STATE/COUNTRY: Antioch, CA, USA ZIP CODE: 94509
 CONTACT: Accounts Payable PHONE NO.: (510) 779-3213
 ALTERNATE NO.: () - TELECOPIER NO.: (510) 779-3330

FORMAL COMMUNICATION BILLING ADDRESS
 CURTAILMENT IMBALANCE STATEMENT ADDRESS

CO. NAME: DeKalb Energy (Canada)
 ADDRESS: 700 9th Avenue S. W.
 CITY/STATE/COUNTRY: Calgary, Alberta ZIP CODE: T2P3V-4
 CONTACT: Mike Flaman PHONE NO.: (403) 261-1332
 ALTERNATE NO.: () - TELECOPIER NO.: (403) 264-7142

FORMAL COMMUNICATION BILLING ADDRESS
 CURTAILMENT IMBALANCE STATEMENT ADDRESS

CO. NAME: _____
 ADDRESS: _____
 CITY/STATE/COUNTRY: _____ ZIP CODE: _____
 CONTACT: _____ PHONE NO.: () - _____
 ALTERNATE NO.: () - _____ TELECOPIER NO.: () - _____

PG&E FORMAL COMMUNICATIONS:

TO PG&E: PACIFIC GAS & ELECTRIC COMPANY
 ADDRESS: 123 Mission Street
 STATE/ZIPCODE: San Francisco, CA 94106
 ATTENTION: MARKETING TARIFFS DIRECTOR

¹ An address must be provided for all four categories. Customer is ultimately responsible for payment of transportation and imbalance bills, regardless of who is designated to receive the customer's bill or imbalance statement.

AGREEMENT

This AGREEMENT, dated as of August 22, 2001 (the "Effective Date"), by and among Gaylord Container Corporation ("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 a power purchase agreement for PG&E's purchase of power from QF's project identified by PG&E Log No. 01C104 (as amended, "PPA");

WHEREAS, on July 20, 2001, the Parties entered into the First Amendment to the Power Purchase Agreement between Gaylord Container Corporation and Pacific Gas and Electric Company ("First Amendment"). The Approval Date under, and as defined in, the First Amendment occurred on July 27, 2001;

WHEREAS, QF and PG&E are Parties to the Long Term Intrastate Natural Gas Transportation Service Agreement executed by QF on January 10, 1995 and by PG&E on December 15, 1994 ("EAD Contract");

WHEREAS, starting on February 1, 2001, 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 six-million four-hundred eighty-nine thousand eight-hundred thirty-one dollars and eleven cents (\$6,489,831.11), 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, on April 6, 2001 (the "Petition Date"), PG&E commenced a voluntary case (the "Chapter 11 Case") by filing 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

08/22/01 8:41 AM

EXHIBIT B

8/22/01 8:41 AM

"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 (i) 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, and (ii) have the PPA and the EAD Contract assumed by PG&E pursuant to an order of the Bankruptcy Court under section 365 of the Bankruptcy Code in the Chapter 11 Case;

WHEREAS, PG&E is willing to agree to QF's request to assume the PPA and the EAD Contract and 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;

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.

1.1 Effective upon the date (the "Bankruptcy Court Approval Date") the Bankruptcy Court enters the Approval Order (as defined and specified in Section 2 of this Agreement), unless otherwise set forth in the PPA, for the period commencing with the date on which the Second Amendment to the PPA between QF and PG&E (PG&E Log No. 01C104) (the "Pricing Amendment," a true and correct copy of which is attached hereto as Attachment B hereto) has been executed by the Parties and ending upon the commencement of the Fixed Rate Period (as defined in Section 1.2 below) the price for energy delivered to PG&E by QF shall be determined pursuant to the PPA, without reference to the pricing set forth in the Pricing Amendment.

1.2 Commencing with the date that is the earlier of September 1, 2001 or September 16, 2001 following the Term Commencement Date (as defined below) and ending on August 31, 2006 (this period referred to hereafter as the "Fixed Rate Period"), QF elects to replace the energy price term specified in the PPA with the applicable energy prices as specified in the Pricing Amendment. The "Term Commencement Date" is the later of (a) the Bankruptcy Court Approval Date and (b) the date on which the CPUC issues a decision finding power purchase agreement amendments such as the Pricing Amendment entered into 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 similar power purchase agreement amendments entered into before July 15, 2001. 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 Agreement. 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 the Pricing Amendment, 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 the Pricing Amendment becomes final and nonappealable, the Parties shall in good faith renegotiate the pricing terms in the Pricing Amendment, 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. Concurrently with the execution of this Agreement the Parties shall execute the Pricing Amendment.

1.3 For a fifteen-day period following the Term Commencement Date, QF shall have the sole right to terminate this Agreement. Upon termination of this Agreement, none of the waivers, covenants, warranties, representations and other provisions of this Agreement shall survive and the Pricing Amendment shall be deemed a nullity.

2. Assumption.

2.1. The effectiveness of the Pricing Amendment is contingent upon PG&E's assumption of the PPA in accordance with the procedures described below:

- a. Immediately upon execution and delivery of this Agreement by the Parties, PG&E shall file and serve a Notice of Intention to Assume the PPA and Enter into the Pricing Agreement ("Notice") as contemplated by the Bankruptcy Court's August 3, 2001 oral order granting PG&E authority to assume power purchase agreements; and
- b. The Parties shall use their best efforts to obtain from the Bankruptcy Court an order (the "Approval Order") approving this Agreement, authorizing PG&E's assumption of the PPA effective as of August 31, 2001 and approving the Pricing Amendment.

2.2. In respect of PG&E's assumption of the EAD Contract:

- a. Immediately upon execution and delivery of this Agreement by the Parties, PG&E shall file with the Bankruptcy Court and serve a motion seeking authority to assume the EAD Contract; and

- b. The Parties shall use their best efforts to obtain from the Bankruptcy Court an order authorizing PG&E's assumption of the EAD Contract effective as of August 31, 2001.

3. **Full Payment.** In connection with PG&E's assumption of the PPA, PG&E agrees to pay to QF the Prepetition Payables (as such amount may be adjusted pursuant to Section 8 of this Agreement), including all interest thereon at the Interest Rate (as defined in Section 4), which shall accrue and be added to the outstanding balance of the Prepetition Payables and which shall constitute an administrative expense (the "Cure Amount") on the sooner of the following (the "Due Date"): (i) the date on which an order converting the PG&E Chapter 11 case to a Chapter 7 case is final and all appeals have been concluded; (ii) the date on which an order dismissing the PG&E Chapter 11 case is entered and with no stay having been timely; or (iii) the "Plan Effective Date" (as such term is defined in the plan of reorganization as confirmed in the PG&E Chapter 11 case, the "Plan"), all as part of its administrative priority cure obligations pursuant to sections 365, 1129 and 503 of the Bankruptcy Code. There is no "Cure Amount" other than as defined in this Section 3. In the event that the Plan Effective Date does not occur on or before August 15, 2003, PG&E will commence to pay QF on August 15, 2003, and thereafter monthly on the 15th day of each month, a sum equal to two percent (2%) of the total Cure Amount, excluding any accrued but unpaid interest thereon, until the sooner of the occurrence of the Due Date or August 15, 2005, at which time all remaining Cure Amounts including all accrued but unpaid interest will be paid in full under (iii) above, or will be payable under (i) and (ii) above. Interest shall continue to accrue on the then outstanding amounts until paid.

4. **Interest.** Interest shall accrue on the Prepetition Payables (as such amount may be adjusted pursuant to Section 8 of this Agreement) 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 31, 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 (i) 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; (ii) QF's purported rights to set off or recoup amounts that are or may become owing to PG&E and PG&E's right to contest such purported rights of setoff and recoupment; and (iii) either Party's right's with respect to amounts owed by PG&E to QF under the First Amendment. 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 EAD Contract and the payment of the Cure Amount and supersedes 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 and the Pricing Amendment has been duly authorized by all necessary corporate, shareholder and similar actions; (b) this Agreement and the Pricing Agreement have been duly executed and delivered and constitutes the legal valid and binding obligation of such Party, enforceable against such Party in accordance with its terms; and (c) the execution and delivery of this Agreement and the Pricing Amendment and the performance by such Party of its obligations hereunder do not and will not conflict with, contravene or breach, any 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 September 13, 2001, this Agreement shall be deemed a nullity.

19. CPUC Approval. This Agreement is subject to a decision by the CPUC finding, without condition unacceptable to PG&E, power purchase agreement amendments such as the Pricing Amendment entered into 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 similar power purchase agreement amendments entered into before July 15, 2001. If the CPUC issues a decision regarding the reasonableness of power purchase agreement amendments such as the Pricing Amendment entered into after July 14, 2001, PG&E shall notify QF in writing within five business days following the issuance of such decision (notice by fax or email, subsequently confirmed by hard copy, to be acceptable) whether or not the decision contains a condition unacceptable to PG&E; if PG&E fails to provide timely such notice, PG&E shall be deemed to have waived its right to assert that the decision contains a condition unacceptable to PG&E and the provision of this Section 19 shall have no force and effect. If such decision is not issued by September 13, 2001, this Agreement shall be deemed a nullity.

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

Gaylord Container Corporation,
a Delaware corporation

Pacific Gas and Electric Company,
a California corporation

By: Ray C. Dillon

By: Joseph C. Henne

Name: Ray C. Dillon

Name: Joseph C. Henne

Title: Executive Vice President

Title: Director, UOPM

09-22 01 WED 09:29

GAYL. LD CONTAINER
925 779 3330

925 9 3330

**Attachment B
(Pricing Amendment)**

Table with multiple rows and columns, mostly blank or illegible.

**SECOND AMENDMENT TO THE
POWER PURCHASE AGREEMENT
BETWEEN
GAYLORD CONTAINER CORPORATION
AND
PACIFIC GAS AND ELECTRIC COMPANY
(PG&E LOG NO. 01C104)**

THIS SECOND AMENDMENT, dated as of August 22, 2001, is by and between PACIFIC GAS AND ELECTRIC COMPANY ("PG&E"), a California corporation and Gaylord Container Corporation ("Seller"), a Delaware corporation. PG&E and Seller are sometimes referred to herein individually as "Party" and collectively as the "Parties."

RECITALS

A. On December 29, 1982, 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 ("D.") 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 (the "Initial Deadline"). The Initial Deadline was subsequently

08/22/01 8:43 AM

extended by the Commission for certain one-year energy price amendments.

D. On July 20, 2001 the Parties entered into the First Amendment to the Power Purchase Agreement between Gaylord Container Corporation and Pacific Gas and Electric Company ("First Amendment"), changing the original energy pricing provisions in accordance with the one-year option set forth in D.01-06-015. The Approval Date under, and as defined in, the First Amendment occurred on July 27, 2001.

E. On July 19, 2001, Commission administrative law judge John S. Wong issued a ruling extending the Initial Deadline for certain five-year energy price amendments until the Commission rules on a petition submitted by the Independent Energy Producers Association ("IEP") to modify D.01-06-015.

F. Seller notified PG&E of its desire to modify the PPA by electing the five-year energy pricing option set forth in D.01-06-015 after the Initial Deadline but before the Commission has ruled on the IEP petition referred to above.

G. PG&E is willing to agree to Seller's request to modify Seller's PPA to replace the energy pricing term subject to the terms set forth below

AMENDMENT

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

1. FIXED ENERGY PRICE

Commencing with the first day of the fifteen-day billing cycle immediately following the Commencement Date (as defined in Section 2 below) and ending on August 31, 2006 (this period referred to hereafter as the "Fixed Rate Period"), the energy price term specified in the PPA (as set forth in the First Amendment) shall be replaced with the

08/22/01 8:43 AM

applicable energy prices as specified in Attachment A to this Second Amendment, which is hereby incorporated by reference. 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 Second Amendment. The Parties agree to cooperate reasonably 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 Second Amendment.

2. EFFECTIVENESS

Section 1 of this Second Amendment shall not become effective unless and until both (1) it has been approved by the Bankruptcy Court and (2) the Commission issues a decision finding power purchase agreement amendments such as this Second Amendment entered into after July 14, 2001 and up to the date this Second Amendment was executed by Seller as "per se reasonable" under the same standards as established in D.01-06-015 for similar amendments entered into before July 15, 2001 (the date on which such events occur being the "Commencement Date"). Immediately upon execution of this Second Amendment, (A) PG&E shall file and serve a notice of intention to assume the PPA and enter into this Second Amendment as contemplated by the Bankruptcy Court's recent order granting PG&E authority to assume power purchase agreements, and (B) the Parties shall use their best efforts to obtain from the Bankruptcy Court an order authorizing PG&E's assumption of the PPA effective as of August 31, 2001 and approving this Second Amendment and that certain Agreement dated as of August 22, 2001 by and among Gaylord Container Corporation and Pacific Gas and Electric Company, pursuant to which PG&E shall assume the PPA and executed concurrently with this Second Amendment. If both conditions (1) and (2) on the occurrence of the Commencement Date do not occur by September 13, 2001, this Second Amendment shall be deemed a nullity.

08/22/01 8:43 AM

3. SELLER'S OPTION PERIOD

For a fifteen-day period following the Commencement Date, Seller shall have the sole right in its discretion to terminate this Second Amendment. Upon Seller's termination of this Second Amendment pursuant to this Section 3, this Second Amendment shall be deemed a nullity.

08/22/01 8:43 AM

4. NO WAIVER

Nothing in this Second Amendment shall constitute an admission, waiver or compromise of either Party's rights, claims or obligations in the Bankruptcy Court, all of which are expressly preserved and reserved, and this Amendment shall have no precedential value in the Bankruptcy Court.

5. SIGNATURES

IN WITNESS WHEREFORE, Seller and PG&E have caused this Second Amendment to be executed by their authorized representatives, effective as of the date of the last signature set forth below. By signing this Second Amendment below, the representatives of the Parties warrant that they have the requisite authority to bind their respective principals.

PACIFIC GAS AND ELECTRIC COMPANY
a California corporation

By:

Name: *[Signature]*

Title: *Director USPM*

Date: *23 August, 2001*

Gaylord Container Corporation
a Delaware corporation

By: *Ray C. Dillon*

Name: Ray C. Dillon

Title: Executive Vice President

08/22/01 8:43 AM

Attachment A

Pacific Gas and Electric Company

FIXED ENERGY PRICES FOR QUALIFYING FACILITIES UNDER D. 01-06-015¹

Effective through December 31, 2001

	Starting Energy Value \$/kwh	2001 TOU Hours	SRAC TF Base ²	2001 TOU Factor ³	2001 TOU Energy Price ⁴ \$/kwh
	(a)	(b)	(c)	(d)	(e) = a * d
Allocation of Annual Fixed Price to Seasons:					
Period A - Summer	0.053700	4,417	0.018748	0.879	0.047181
Period B - Winter	0.053700	4,343	0.023973	1.123	0.060330
Annual Average	0.053700	8,760	0.021338		0.053700
Without Time-of-Use Metering:					
Allocation of Seasonal Prices to TOU Periods:					
With Time-of-Use Metering:					
Period A - Summer					
Peak	0.047181	774		1.065	0.050248
Partial-Peak	0.047181	803		1.022	0.048219
Off-Peak	0.047181	2,003		0.965	0.045465
Super Off-Peak	0.047181	737		0.946	0.044533
Period B - Winter					
Peak	-	-		-	-
Partial-Peak	0.060330	1,812		1.032	0.062281
Off-Peak	0.060330	2,008		0.982	0.059368
Super Off-Peak	0.060330	723		0.950	0.057314

- These energy prices are derived solely for purposes of implementing the five-year fixed energy price (5.37 cents/kwh) option in CPUC Decision (D.) 01-05-015. These prices will be reallocated annually using appropriate TOU calendar hours.
- SRAC TF Base values reflect the seasonal allocation factors currently specified in PG&E's SRAC Transition Formula, as adopted by the CPUC in D.96-12-028. Seasonal values reflect the Base SRAC energy prices adopted in D.96-12-028. The annual average value shown derives from weighting the seasonal values by TOU period hours.
- TOU factors allocate the fixed annual energy price for seasons, and seasonal values for time-of-use periods. Seasonal TOU factors are derived from the ratio of the seasonal SRAC TF Base values to the average annual value shown. Intra-seasonal TOU factors are as adopted in D.96-12-028 (as corrected in CPUC D.97-01-027). Off-peak period values are calculated using seasonal period hours for the applicable year; per the following:

Period A (May 1 - October 31)	Period B (November 1 - April 30)
$\frac{[\text{Total Summer hours} - (1.065 * \text{Summer Peak hours}) - (1.022 * \text{Summer Partial Peak hours}) - (0.946 * \text{Summer Super Off-Peak hours})]}{\text{Summer Off-Peak hours}}$	$\frac{[\text{Total Winter hours} - (1.032 * \text{Winter Partial-Peak hours}) - (0.950 * \text{Winter Super Off-Peak hours})]}{\text{Winter Off-Peak hours}}$

- TOU energy price is the product of the starting energy value and the TOU factor. Energy prices shown do not include applicable line loss adjustments. Line loss adjustments will be determined in accordance with CPUC D.01-01-007.

Executive Offices

Gaylord Container Corporation
500 Lake Cook Road
Suite 400
Deerfield, Illinois 60015-4921
847 405 5800

September 12, 2001

Mr. Joe Henri
Pacific Gas and Electric Company
245 Market Street, Room 1240
San Francisco, CA 94105

Re: Amendments to Assumption Agreement and PPA Amendment

Dear Mr. Henri:

The purpose of this letter is to confirm our agreement to amend the Agreement, dated as of August 22, 2001, by and among Gaylord Container Corporation and Pacific Gas and Electric Company ("Assumption Agreement") and the Second Amendment to Power Purchase Agreement, dated as of August 23, 2001 between Gaylord Container Corporation and Pacific Gas and Electric Company ("PPA Amendment") as set forth below.

Assumption Agreement

In the first sentence of Section 1.2, the phrase "September 1, 2001 or September 16, 2001" is deleted and replaced with "October 1, 2001 or October 16, 2001"; and the date August 31, 2006 is deleted and replaced with September 30, 2006.

In the last sentence of Section 19 the date September 13, 2001 is deleted and replaced with October 13, 2001.

PPA Amendment

In the first sentence of Section 1, the date August 31, 2006 is deleted and replaced with September 30, 2006.

In the third sentence of Section 2, the date September 13, 2001 is deleted and replaced with October 13, 2001.

In all other respects the Assumption Agreement and the PPA Amendment shall remain unchanged.

EXHIBIT C

Mr. Joe Henri
September 12, 2001
Page 2

Please indicate your agreement and acceptance of the foregoing amendments by signing a copy of this letter and returning it to me. Thank you.

Sincerely,



Ray C. Dillon
Executive Vice President

Agreed and Accepted:



PACIFIC GAS AND ELECTRIC COMPANY
Director, USPM