

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3298

Tel. No. (415) 703-1691



November 25, 2003

Advice Letter 2435-E

Ms Anita Smith, Rate Analyst  
Pacific Gas and Electric Company  
77 Beale Street, Mail Code 10B  
San Francisco, CA 94177

Subject: Agreement with the Regents of the University of California in Accordance with GO 96-A, Sec. XB

Dear Ms Smith:

Advice Letter 2435-E is effective October 31, 2003. A copy of the advice letter is returned herewith for your records.

Sincerely,

A handwritten signature in cursive script that reads "Paul Clanon".

Paul Clanon, Director  
Energy Division



**Karon A. Tomcala**  
Vice President  
Regulatory Relations

77 Beale Street, Room 1065  
San Francisco, CA 94105

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Mail Code B10A  
P.O. Box 770000  
San Francisco, CA 94177

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October 31, 2003

**Advice 2435-E  
(Pacific Gas and Electric Company ID E)**

Public Utilities Commission of the State of California

**Subject      Submits Agreement With The Regents of the University of  
California In Accordance With General Order 96-A, Section X.B**

Pacific Gas and Electric Company (the Company) hereby submits, in accordance with General Order (G.O.) 96-A, Section X.B, an agreement between the Company and the Regents of the University of California, a corporation organized and existing under the laws of the State of California (hereinafter referred to "UC Merced"), regarding the construction and operation of electric distribution facilities to serve its university campus in eastern Merced County. The affected tariff sheets are attached and identified in Attachment.<sup>1</sup>

**Background**

UC Merced is developing a university campus in eastern Merced County, to be known as the University of California, Merced (the "UC Merced Campus"). The attached Agreement is the result of the Company's response to a request for bids by UC Merced to provide cost effective and reliable electrical distribution service to UC Merced's campus.

On September 24, 2001, UC Merced issued a Request For Proposal ("RFP") to provide electrical distribution service to UC Merced's campus. UC Merced addressed its RFP to, among others, the Company.<sup>2</sup> On October 15, 2001, the

<sup>1</sup> The Company reserves all legal rights to challenge the decisions or statutes under which it has been required to make this advice filing, and nothing in this advice filing constitutes a waiver of such rights. Also, the Company reserves any additional legal rights to challenge the requirement to make this advice filing by reason of its status as a debtor under Chapter 11 of the Bankruptcy Code, and nothing in this advice filing constitutes a waiver of such rights.

<sup>2</sup> In the vicinity of the planned UC Merced campus, PG&E competes for new loads with the

Company submitted a Response to UC Merced's RFP. The Company's Response to the RFP contained several service configuration options. UC Merced and PG&E thereafter exchanged a series of communications to clarify UC Merced's selection of a specific service configuration and PG&E's proposal to serve the UC Merced campus based upon the selected service configuration. On January 25, 2002, UC Merced notified PG&E that it had been selected as the preferred bidder based upon PG&E's RFP Response, as clarified and supplemented.

Following UC Merced's selection of PG&E as the preferred bidder to provide electric service, UC Merced and the Company negotiated the Agreement Between The Regents Of The University Of California And Pacific Gas And Electric Company To Provide Electric Service To The UC Merced Campus (the "Agreement") to memorialize the terms of their contract. On October 3, 2003, UC Merced approved the Agreement. A true and correct copy of the Agreement is attached as Exhibit A.

The basic elements of the transaction are that the Company will provide a dual feed electric distribution system to meet UC Merced's reliability requirements for the UC Merced Campus. The dual feed distribution facilities consist of an independent 12 kV distribution circuit from each of the Company's El Capitan and Wilson substations. The circuits closest to the proposed service points for the UC Merced Campus are overhead lines with some underground segments. The existing circuit from El Capitan substation will be extended underground for approximately 1,100 feet to its service point located on the UC Merced Campus. The existing circuit from the Wilson substation will be partially reconstructed and extended overhead, and then extended underground for the last 1,100 feet to the second service point located on the UC Merced Campus. Only one circuit at a time will serve UC Merced, but limited periods of parallel operation will be permitted in accordance with an operating agreement entered into by the parties (the form of which is set forth as Exhibit B of the Agreement). Under the Agreement, the Company has agreed to promptly commence construction of the distribution facilities to serve the UC Merced Campus, and service will be ready from the normal distribution feeder on March 15, 2004 and from the alternate distribution feeder on April 15, 2004.

The term of the Agreement is fifteen (15) years, and there is an "evergreen" clause which will renew the term automatically for ten (10) successive one-year periods. During the term, the Company will provide electric distribution service to the UC Merced Campus pursuant to the Company's electric tariff rules on file and approved from time to time by the Commission. Under the Agreement, the Company will maintain the dual feed distribution facilities serving the UC Merced Campus in accordance with the Commission's General Orders 95, 128 and 165, and all other applicable Commission orders and regulations.

Under the Agreement, the Company has the exclusive right to provide service for all of the electric load for the UC Merced Campus for the term of the Agreement, subject to the following exceptions: 1) UC Merced may use the generated output of the Fairfield Hydroelectric facility owned by Merced County and Merced Irrigation District (not to exceed 970 peak kW); 2) UC Merced has the right to establish an "over the fence" connection in accordance with California Public Utilities Code section 218 with the proposed campus community to receive renewable power; and 3) UC Merced may provide electricity for some of its own load using renewable power or co-generation generated within the boundaries of the UC Merced Campus.

UC Merced retains the right to terminate service under the Agreement prior to the expiration of the term, without incurring the penalties for service termination applicable under standard provisions of Rules 15 and 16. Upon either termination or expiration of the Agreement, however, UC Merced may be required to pay a facility termination charge to the Company, depending on whether or not the Company has recovered the cost of both its capital investment and projected operating expenses from the distribution revenue received from UC Merced. The facility termination charge is based upon the cost of the dual feed distribution facilities installed under the Agreement, and is designed to ensure provision or termination of this service is not to the detriment of other ratepayers. The facility termination charge is based on a formula set out in Section 8.3 of the Agreement and in a table set forth in Exhibit E. In summary, UC Merced may terminate service in any year of the contract term. In the year in which UC Merced wishes to terminate service, however, PG&E shall compare actual revenues received to the cost of installation, operation and maintenance of the facilities serving the campus, including taxes and cost of capital. Upon termination of service, UC Merced has agreed to pay to PG&E all current and accumulated costs of service, as well as any other tariffed charges applicable at the time of termination.

As part of the transaction, UC Merced is entering into a special facilities agreement with respect to the capacity reservation charge for alternate feeder capacity. UC Merced is also paying the capital cost and entering into a special facilities agreement with respect to metering of the alternative feeder second service. UC Merced is also paying the Income Tax Component of Contributions (ITCC) on the metering of the second service. The total costs associated with these special facilities is \$24,258. These costs are itemized in Section 5.0 of the Agreement and the special facilities agreements are attached to the Agreement as Exhibits G and H.

The transaction between the Company and UC Merced consists of:

- 1) Agreement Between The Regents Of The University Of California And Pacific Gas And Electric Company To Provide Electric Service To The UC Merced Campus (Tab A)

The Lists of Contracts and Deviations have been revised to reflect the

agreement, the affected tariff sheet is listed on Enclosure 1.

This filing will not increase any rate of charge, cause the withdrawal of service, or conflict with any rate schedule or rule.

### Protest

Anyone wishing to protest this filing may do so by sending a letter by **November 19, 2003**, which is 20 days from the date of this filing. The protest must state the grounds upon which it is based, including such items as financial and service impact, and should be submitted expeditiously. Protests should be mailed to:

IMC Branch Chief – Energy Division  
California Public Utilities Commission  
505 Van Ness Avenue, 4<sup>th</sup> Floor  
San Francisco, California 94102  
Facsimile: (415) 703-2200  
E-mail: [jjr@cpuc.ca.gov](mailto:jjr@cpuc.ca.gov)

Protests also should be sent by e-mail and facsimile to Mr. Jerry Royer, Energy Division, as shown above, and by U.S. mail to Mr. Royer at the above address.

The protest should be sent via both e-mail and facsimile to the Company on the same date it is mailed or delivered to the Commission at the address shown below.

Pacific Gas and Electric Company  
Attention: Brian J. Cherry  
Director, Regulatory Relations  
77 Beale Street, Mail Code B10C  
P.O. Box 770000  
San Francisco, California 94177  
Facsimile: (415) 973-7226  
E-mail: [RxDd@pge.com](mailto:RxDd@pge.com)

### Effective Date

In accordance with Section X.B. of General Order 96-A, the Company hereby notifies all interested parties that this advice filing shall become effective on the date filed, **October 31, 2003**.

### Notice

In accordance with General Order 96-A, Section III, Paragraph G, a copy of this advice letter is being sent electronically and via postal mailing to parties shown on the attached list. Address change requests should be directed to Sandra

Ciach at (415) 973-7572. Advice letter filings can also be accessed electronically at:

[http://www.pge.com/customer\\_services/business/tariffs/](http://www.pge.com/customer_services/business/tariffs/)

*Karen A. Omeda /srt*

Vice President - Regulatory Relations

cc: University of California, Merced Campus

Attachments

Cal P.U.C. Sheet No.	Title of Sheet	Canceling Cal P.U.C. Sheet No.
20831-E	Lists of Contracts and Deviations	12035-E
20832-E	Table of Contents (Rules and Contracts and Deviations)	20610-E
20833-E	Table of Contents	20814-E



LIST OF CONTRACTS AND DEVIATIONS  
(Continued)

Name and Location of Customer PG&E Installation Reference No.	Type or Class of Service	Execution and Expiration Dates	Commission Authorization Number and Date	Most Comparable Regular Tariff	
				Schedule or Rule No.	Contract Difference
<b>SAN JOAQUIN VALLEY REGION (Cont'd.)</b>					
<u>Supplemental Power</u>					
Stockton Cogen., Co. and CPC International, Stockton	General Service	12-20-88	Res. E-3166	Rule 18	Deviation from Submetering Restrictions
The Regents of University of California, Merced Campus	General Service	9-2003 9-2018	G.O.96-A.X.B Advice 2432-E	Rules 15, 16	Special Rate (N) I (N)
<u>Developers/Subdividers</u>					
Boise Cascade Pine Mountain Lake Tuolumne County	General Service	11-18-69 6-19-70 10-14-70 11-4-70 3-16-71 3-21-72 1-21-72 Indefinite	D-77186; 5-5-70 Res. E-1285 5-4-71 Res. E-1295 9-1-71 Res. E-1297 9-1-71 Res. E-1341 9-26-72 Res. E-1348 12-12-72	Rules 15 and 15.1	Annual Charge for Excess Facilities
Boise Cascade Rancho Calaveras Calaveras County	Domestic Service	10-28-70	G.O.96-A,X.A. Res. E-1287 5-25-71	Rule 15	Annual Charge for Excess Facilities
Boise Cascade Lake Don Pedro Subd. Tuolumne and Mariposa Counties (3 Agreements)	General Service	2-19-71	G.O.96-A,X.A. Res. E-1298 9-1-71	Rule 15	Annual Charge for Excess Facilities
Boise Cascade Recreation Communities (Subdivider) Charge Lake Don Pedro La Grange Tuolumne County	Domestic	6-29-71 -	Res. E-1784 8-22-78	Rule 15	Cost of Ownership Charge

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**PG&E Electric Advice Filing List  
General Order 96-A, Section III(G)**

ABAG Power Pool  
ACN Energy, Inc.  
Aglet Consumer Alliance  
Agnews Developmental Center  
Ahmed, Ali  
Alcantar & Elsesser  
Anderson Donovan & Poole P.C.  
Applied Power Technologies  
APS Energy Services Co Inc  
Arter & Hadden LLP  
Avista Corp  
Barkovich & Yap, Inc.  
BART  
Bartle Wells Associates  
Blue Ridge Gas  
Bohannon Development Co  
BP Energy Company  
Braun & Associates  
C & H Sugar Co.  
CA Bldg Industry Association  
CA Cotton Ginners & Growers Assoc.  
CA League of Food Processors  
CA Water Service Group  
California Energy Commission  
California Farm Bureau Federation  
California ISO  
Calpine  
Calpine Corp  
Calpine Gilroy Cogen  
Cambridge Energy Research Assoc  
Cameron McKenna  
Cardinal Cogen  
Cellnet Data Systems  
Childress, David A.  
City of Glendale  
City of Healdsburg  
City of Palo Alto  
City of Redding  
CLECA Law Office  
Constellation New Energy  
CPUC  
Creative Technology  
Crossborder Inc  
CSC Energy Services  
Davis, Wright Tremaine LLP  
Davis, Wright, Tremaine, LLP  
Defense Fuel Support Center  
Department of the Army  
Department of Water & Power City  
Dept of the Air Force  
DGS Natural Gas Services  
DMM Customer Services  
Downey, Brand, Seymour & Rohwer  
Duke Energy

Duke Energy North America  
Duncan, Virgil E.  
Dutcher, John  
Dynergy Inc.  
Eliison Schneider  
Energy Law Group LLP  
Enron Energy Services  
Exeter Associates  
Foster, Wheeler, Martinez  
Franciscan Mobilehome  
Future Resources Associates, Inc  
GLJ Energy Publications  
Goodin, MacBride, Squeri, Schlotz &  
Grueneich Resource Advocates  
Hanna & Morton  
Heeg, Peggy A.  
Hogan Manufacturing, Inc  
House, Lon  
Imperial Irrigation District  
Integrated Utility Consulting Group  
International Power Technology  
J. R. Wood, Inc  
JTM, Inc  
Kaiser Cement Corp  
Korea Elec Power Corp  
Marcus, David  
Masonite Corporation  
Matthew V. Brady & Associates  
Maynor, Donald H.  
McKenzie & Assoc  
McKenzie & Associates  
Meek, Daniel W.  
Meyer, Joseph  
Mirant California, LLC  
Modesto Irrigation Dist  
Morrison & Foerster  
Morse Richard Weisenmiller & Assoc.  
New United Motor Mfg, Inc  
Norris & Wong Associates  
North Coast Solar Resources  
Northern California Power Agency  
Occidental Energy Marketing  
PG&E National Energy Group  
Pinnacle CNG Company  
PPL EnergyPlus, LLC  
Price, Roy  
Product Development Dept  
Provost Pritchard  
R. M. Hairston & Company  
R. W. Beck & Associates  
Recon Research  
Regional Cogeneration Service  
RMC Lonestar  
Sacramento Municipal Utility District

SCD Energy Solutions  
Seattle City Light  
Sempra  
Sempra Energy  
Sequoia Union HS Dist  
SESCO  
Sierra Pacific Power Company  
Silicon Valley Power  
Simpson Paper Company  
Smurfit Stone Container Corp  
Southern California Edison  
SPURR  
St. Paul Assoc  
Stanford University  
Sutherland, Asbill & Brennan  
Tabors Caramanis & Associates  
Tansev and Associates  
Tecogen, Inc  
TFS Energy  
TJ Cross Engineers  
Transwestern Pipeline Co  
Turlock Irrigation District  
United Cogen Inc.  
URM Groups  
Utility Cost Management LLC  
Utility Resource Network  
Wellhead Electric Company  
Western Hub Properties, LLC  
White & Case  
WMA

**AGREEMENT BETWEEN THE REGENTS OF THE UNIVERSITY OF  
CALIFORNIA AND PACIFIC GAS AND ELECTRIC COMPANY TO PROVIDE  
ELECTRIC SERVICE TO THE UC MERCED CAMPUS**

This Agreement ("Agreement") is entered into the <sup>9<sup>th</sup></sup> day of October, 2003, between THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, a corporation organized and existing under the laws of the State of California ("UC Merced"), and PACIFIC GAS AND ELECTRIC COMPANY, a corporation organized and existing under the laws of the State of California, and having its principal office and place of business at 77 Beale Street, San Francisco, California ("PG&E.") UC Merced and PG&E will sometimes be referred to collectively as "Parties."

**RECITALS**

1. The University of California is developing a university campus in eastern Merced County, to be known as the University of California, Merced. As of the date of this Agreement, construction has begun on the site of the campus.
2. On September 24, 2001 UC Merced issued a Request For Proposal ("RFP") to provide cost effective and reliable electrical distribution service to UC Merced's campus.
3. On October 15, 2001, PG&E submitted a Response to UC Merced's RFP by delivery to the UC Office of the President. As submitted, PG&E's Response to the RFP contained several service configuration options from which UC Merced could choose.
4. Following submittal of PG&E's Response to the RFP, UC Merced and PG&E exchanged a series of communications which served to clarify UC Merced's selection of a specific service configuration and PG&E's proposal to serve the UC Merced campus based upon such a service configuration. As a result of UC Merced's selection of a service configuration, elements of PG&E's Response to the RFP were modified and/or supplemented. Among other things, PG&E's Response to the RFP provided an estimate of reliability predicated on historical data of the existing Wilson-Atwater 115 kV transmission lines, the El Capitan 1102 and Wilson 1102 12kV distribution circuits and the installation of a S&C Power Operated PMH automated high-speed transfer switch capable of switching between two independent power sources under load within 15 cycles. Following submittal of PG&E's Response to RFP, UC Merced elected to install the automatic transfer switch in accordance with PG&E's design and specifications for the switch.
5. On January 25, 2002, UC Merced notified PG&E that it had been selected as the preferred bidder based upon PG&E's RFP Response, as clarified and supplemented.

6. Pursuant to California Public Utilities Commission General Order 96-A, Section X.B., PG&E has the authority to enter into contracts with governmental entities, such as UC Merced, that depart from filed tariff schedules.
7. PG&E has filed a Plan of Reorganization with the United States Bankruptcy Court in San Francisco. PG&E and the California Public Utilities Commission staff have entered into a proposed settlement of the bankruptcy proceedings which provides that PG&E will emerge from Chapter 11 protection in early 2004 as a vertically integrated utility. The proposed settlement is subject to further approval by the CPUC, PG&E's board of directors and PG&E Corporation. The proposed settlement must also be incorporated into a new Plan of Reorganization to be submitted to the Bankruptcy Court for its approval.
8. The Parties desire to enter into an agreement to memorialize the terms and conditions for the electrical interconnection service to UC Merced's campus.

**NOW, THEREFORE**, in consideration of the terms, and covenants contained herein, UC Merced and PG&E hereby agree as follows:

## **AGREEMENT**

### **1.0 MEANING OF TERMS**

As used in this Agreement, the following terms shall be defined as provided in this section.

- 1.1 "Accrued Annual Net" means the difference between PG&E's Annual Distribution Revenue Requirement and the Annual Distribution Revenue received from UC Merced, plus the Accrued Annual Net of the previous year.
- 1.2 "Annual Distribution Revenue" means the actual annual revenue received by PG&E from UC Merced related to the distribution system component of PG&E's electric Tariff used to calculate campus electric charges
- 1.3 "Annual Distribution Revenue Requirement" means those amounts set forth in Exhibit E, Line 1 that represent PG&E's cost of owning and maintaining the dual feed Distribution Facilities to the UC Merced Campus. These charges include depreciation, bond interest, regulated rate of return, income tax, ad valorem tax, insurance and maintenance. The Annual Distribution Revenue Requirement set forth in Exhibit E, Line 1 shall for all purposes be deemed to be PG&E's cost of owning and maintaining the dual feed Distribution Facilities to the UC Merced Campus during the term of this Agreement, and shall not be subject to any modification except by mutual consent of the parties to this agreement.

- 1.4 “Capital Base” means those amounts set forth in Exhibit E, Line 4 that represent PG&E’s depreciated investment in the dual feed Distribution Facilities to the UC Merced Campus. The Capital Base set forth in Exhibit E, Line 4 shall for all purposes be deemed to be PG&E’s depreciated investment to the UC Merced Campus, and shall not be subject to any modification except by mutual consent of the parties to this agreement.
- 1.5 “the Commission” refers to the California Public Utilities Commission, or its regulatory successor, as applicable.
- 1.6 “Co-generation” means the sequential use of energy for the production of electrical and useful thermal energy. The sequence can be thermal use followed by power production or the reverse, subject to the following standards:
- (a) At least 5 percent of the facility's total annual energy output shall be in the form of useful thermal energy.
  - (b) Where useful thermal energy follows power production, the useful annual power output plus one-half the useful annual thermal energy output equals not less than 42.5 percent of any natural gas and oil energy input.
- 1.7 “Distribution Facilities” refers to the utility infrastructure facilities in service and planned to deliver electricity to the UC Merced Campus.
- 1.8 “Effective Date” means the date, following execution of this Agreement by PG&E and UC Merced, that PG&E advice files a copy of this Agreement with the Commission pursuant to General Order 96-A, Section X.B.
- 1.9 “Facility Termination Charge” refers to the charge arising from the unilateral termination or the expiration of this Agreement and based upon the cost of the dual feed Distribution Facilities installed under this Agreement, as calculated pursuant to Section 8.3 and Exhibit E of this Agreement. The Facilities Termination Charge shall be paid to PG&E upon unilateral termination or the expiration of this Agreement. The Facilities Termination Charge does not include any charges to which PG&E may be legally entitled under PG&E's Tariffs or under applicable law, including without limitation, non-bypassable charges, and any charges owed for the electric service furnished to the UC Merced Campus through the date of expiration or termination.
- 1.10 “Governmental Authority” means any government or any agency, bureau, board, commission, court, department, official, political subdivision, tribunal or other instrumentality of any government, whether federal, state or local, domestic or foreign.
- 1.11 “Parallel Operation” refers to UC Merced’s capability to utilize its automatic transfer switch (to be located at the Main Campus Central Plant) to momentarily parallel PG&E’s distribution circuits in accordance with the operating agreement

to be entered into by the Parties in the form attached as Exhibit B attached hereto and incorporated by reference.

- 1.12 “Renewable Power” means electricity generated from one of the following non-combustion sources: wind-powered generation, fuel cells and solar photovoltaic generation.
- 1.13 “Service Point” means the point at which PG&E would deliver Utility Service to UC Merced. There will be two such Service Points provided by PG&E under this Agreement.
- 1.14 “Tariffs” refers to the entire body of rates, rate schedules, rentals, charges, classifications, and rules collectively applied by PG&E and on file with the Commission and approved from time to time by the Commission and any other regulators and includes all preliminary statements and appendices.
- 1.15 “UC Merced Campus” shall refer to the site of the campus facilities located on the former Merced Hills Golf Course, on property south of Lake Yosemite Regional Park, two miles north and east of the City of Merced, in the vicinity of Lake Road and Bellevue Road, and all other lands identified as the location of the campus in the University of California Merced Long Range Development Plan dated January 2002, and the Final Environmental Impact Report dated January 2002. A legal description of the initial UC Merced Campus is set forth in Exhibit A, which is attached hereto and incorporated by reference.
- 1.16 “Utility Service” means electric distribution utility service and all aspects of delivery and associated delivery service furnished by PG&E pursuant to PG&E’s Tariffs on file and approved from time to time by the Commission and any other regulators relating to such Utility Service.

## **2.0 DUAL FEED DISTRIBUTION FACILITIES**

### **2.1 Project Description**

PG&E will provide dual feed Distribution Facilities to the UC Merced Campus. Dual feed Distribution Facilities shall consist of an independent 12 kV distribution circuit from each of PG&E’s El Capitan and Wilson substations, as described in Section 2.2. Each of these two circuits will serve UC Merced through individual revenue meters located at the switchgear that will be located elsewhere on the UC Merced Campus at a point to be determined by UC Merced, in accordance with Section 2.3. The Service Points for these two circuits will be separated by a distance of at least 300 feet at the point where each circuit meets the boundary between PG&E’s franchise area and the UC Merced Campus, on Lake Road, at or near the intersection of Lake Road and Bellevue Road in the County of Merced. The overhead lines will only occupy the same side of the street on the east side of Lake Road at the property boundary of UC Merced where it receives the two primary voltage services. The overhead portions of

these two circuits will not be placed on common poles. Only one circuit at a time will serve UC Merced, but limited periods of Parallel Operation will be permitted in accordance with the operating agreement to be entered into by the Parties concurrently with this Agreement and in the form set forth in Exhibit B attached hereto and incorporated by reference (the "Operating Agreement").

The two revenue meters provided by PG&E shall have a pulse output signal and be capable of being queried by the UC Merced Campus. PG&E will cooperate with UC Merced in establishing and maintaining campus access to metered data information from the revenue meters.

## **2.2 Service and Route**

PG&E will provide dual feed, 12 kV Distribution Facilities from the El Capitan substation and Wilson substation along the approximate route depicted in Exhibit C, which is attached hereto and incorporated by reference. The circuits currently serving the UC Merced Campus are overhead lines supported on typical wood frame structures with some underground segments. All lines are located within existing established private rights of way or city or county franchise areas.

The El Capitan substation is located approximately 1.5 miles north of Merced along State Route 59. UC Merced's normal distribution feed shall be a circuit originating from the El Capitan Substation (El Capitan 1102). El Capitan 1102 runs overhead due east from the El Capitan substation across open fields and along Yosemite Avenue to G Street, runs north on G Street to Bellevue Road, and then turns east on Bellevue Road to the intersection at Lake Road. At this point, El Capitan 1102 will be extended underground for approximately 1,100 linear feet to the first Service Point, approximately 760 feet north of the intersection of Bellevue Road. From this Service Point, UC Merced shall be responsible to continue the service to the revenue meter and switchgear location, that will be located elsewhere on the UC Merced Campus at a point to be determined by UC Merced, subject to approval by PG&E, which shall not be unreasonably withheld. The underground portion of the El Capitan 1102 will consist of 600 amp, 1100 MCM aluminum conductor installed in 6-inch diameter PVC conduit. The overall circuit length is approximately 5.6 miles. PG&E shall replace one (1) circuit mile of existing copper conductor with 715 MCM aluminum conductor and the necessary pole structures and equipment that will accommodate the new conductor.

PG&E's Wilson Substation is located approximately three miles east of Merced along State Route 140. The alternate distribution feed to the UC Merced Campus shall be from a circuit which originates at PG&E's Wilson Substation (Wilson 1102). Wilson 1102 runs west on State Route 140, then turns north on Kibby Road until it reaches Yosemite Avenue. Wilson 1102 then runs west on Yosemite Avenue to Lake Road, and on Lake Road it runs north to the intersection of Bellevue Road. From this point, Wilson 1102 will be extended underground for

approximately 1,100 linear feet to PG&E's second Service Point, approximately 280 feet north of the intersection of Bellevue Road. From this second Service Point, UC Merced shall again be responsible to continue the service to the meter and switchgear location, that will be located adjacent to the revenue meter and switchgear leading from the first Service Point. The underground portion of this circuit will consist of 600 amp, 1100 MCM aluminum conductor installed in 6-inch diameter PVC conduit. The overall circuit length is approximately six (6) miles. PG&E shall install 6900 circuit feet of new 715 MCM aluminum conductor, in part replacing 2700 linear circuit feet of existing copper conductor, and install and replace the necessary pole structures and equipment to accommodate the new conductor.

PG&E plans to normally serve UC Merced from El Capitan 1102. In preparation for PG&E planned outages, UC Merced will be capable of Parallel Operation on both circuits.

### **2.3 Service Point(s) and Revenue Meter Location(s)**

PG&E's Service Point associated with El Capitan 1102 will be on Lake Road, approximately 760 feet north of the intersection of Bellevue Road. PG&E's Service Point associated with Wilson 1102 will also be on Lake Road, approximately 280 feet north of the intersection of Bellevue Road, at least 300 feet to the south of the El Capitan 1102 Service Point. The revenue meter location for each circuit will be located at the Main Campus Central Plant.

### **2.4 Future System Engineering and Construction Modifications**

PG&E reserves the right to make any changes it deems necessary to the design or construction of the facilities serving the UC Merced Campus to address changes in its engineering and construction standards, or any future requirements of any Governmental Authority with jurisdiction over PG&E's facilities.

PG&E also reserves the right to modify the route of the facilities serving the UC Merced Campus depicted on Exhibit C, following the initial installation of the facilities. Such modifications to the route may be made, at PG&E's sole discretion, to meet the future requirements of any Governmental Authority with jurisdiction over PG&E's facilities or to address changes in PG&E's future operations, including without limitation, projects to accommodate a larger load, projects involving a change in the existing grade, width or alignment of franchise areas, undergrounding projects, street vacations or relocations to accommodate third party development projects.

Prior to any substantial modification to the existing route of PG&E's facilities serving the UC Merced Campus, PG&E shall consult with UC Merced in accordance with terms and conditions of the Operating Agreement attached hereto as Exhibit B.

## **2.5 Protection Requirements of UC Merced**

In order to ensure that UC Merced's operations will not adversely impact the service reliability of other PG&E customers, UC Merced shall install, own and operate primary protective devices on the UC Merced Campus that are subject to approval by PG&E in accordance with the Operating Agreement attached hereto as Exhibit B. During the term of this Agreement, PG&E may also require other or additional protective equipment as a result of new Tariff provisions or system protection standards.

## **2.6 Parallel Operation**

UC Merced may utilize its automatic transfer switch for Parallel Operation between the El Capitan 1102 Circuit and the Wilson 1102 Circuit as provided in the Operating Agreement using automatic transfer equipment, provided that such use is limited to either planned outages on UC Merced's own system to perform maintenance and repair work, or to respond to planned and unplanned outages on the PG&E distribution system. To ensure the safety of PG&E personnel and reliability of service to other customers, such Parallel Operation by UC Merced is to be implemented only in accordance with terms and conditions of the Operating Agreement attached hereto as Exhibit B.

## **3.0 SUPPLY OF UTILITY SERVICES**

During the entire term of this Agreement, PG&E shall supply Utility Services to UC Merced in accordance with its Tariffs. Upon request by PG&E, UC Merced shall provide an easement for PG&E's facilities to be located on the UC Merced Campus substantially in the form attached hereto as Exhibit F.

## **4.0 System Maintenance**

PG&E shall maintain the El Capitan 1102 and the Wilson 1102 in accordance with Commission General Orders 95, 128 and 165, and all other applicable Commission orders and regulations that may be in effect during the term of this Agreement. PG&E shall also maintain its transmission facilities serving the Distribution Facilities serving the UC Merced Campus in accordance with all applicable orders and regulations of the Federal Energy Regulatory Commission and the Western Electricity Coordinating Council.

## **5.0 COMPENSATION AND PAYMENT TERMS**

Within forty-five days of the Effective Date of this Agreement and receipt of an invoice from PG&E, UC Merced shall pay PG&E the amounts set forth below in Schedule A.

**Schedule A**

Item	Amount
Capacity reservation charge for alternate feeder capacity (6 MW)	\$15,134
Capital cost for metering associated with the alternate feeder second service	\$5,000
One Time Cost of Ownership (Special Facilities) cost for metering associated with the alternate feeder second service	\$3,024
Income Tax Component of Contributions (ITCC) on the metering associated with the alternate feeder second service, at the rate provided in PG&E's Preliminary Statement.	\$1,100
Total	\$24,258

The amounts set forth in Schedule A do not include costs associated with providing temporary service, which shall be provided in accordance with PG&E's Tariffs.

UC Merced agrees that it will use all best efforts to obtain funding for its financial obligations under this Agreement.

UC Merced and PG&E shall enter into Special Facility Agreements for the second service metering and the capacity reservation charge substantially in the form attached hereto as Exhibits G and H respectively, and incorporated herein by reference.

**6.0 PROJECT SCHEDULE**

After the Effective Date of this Agreement, PG&E shall promptly commence construction of its Distribution Facilities to serve the UC Merced Campus. PG&E will first initiate construction on the service that will normally provide power to the UC Merced Campus (El Capitan 1702). Service shall be ready from the normal distribution feeder on March 15, 2004 and from the alternate distribution feeder on April 15, 2004.

However, PG&E may defer actual construction of the Distribution Facilities upon the final, unappealable denial of any construction or land use permits required from any Governmental Authority that are essential to the opening of the UC Merced campus in Fall 2005 on its present site.

## **7.0 EXCEPTIONS TO DUAL FEED DISTRIBUTION FACILITIES**

PG&E shall have the exclusive right to provide Utility Service for all of the electric load for the UC Merced Campus for the term of this Agreement, subject to the following exceptions:

### **7.1 970 kw Output From Merced Irrigation District's Fairfield Hydroelectric Facility**

UC Merced may use the generated output of the Fairfield Hydroelectric facility owned by Merced County and Merced Irrigation District, provided that it is limited solely to the output of this existing facility as of the date of this Agreement, not to exceed 970 peak kW.

### **7.2 Over-The-Fence Service**

UC Merced shall have the right to establish an "over the fence" connection in accordance with California Public Utilities Code section 218 with the proposed campus community to receive Renewable Power, bypassing the PG&E grid, should such a resource be developed.

### **-7.3 On-Site Generation**

UC Merced has expressed its intent to provide electricity for some of its own load from Renewable Power or Co-generation generated within the boundaries of the UC Merced Campus. UC Merced shall, however, continue to be responsible for all applicable obligations specified in PG&E's Tariffs as they currently exist and as they are amended for the duration of this Agreement.

## **8.0 TERM AND TERMINATION**

### **8.1 Term**

This Agreement shall commence on the Effective Date and continue in force for a period of fifteen (15) years and it shall be automatically extended for successive one (1) year periods on the fifteenth anniversary of the Effective Date and each anniversary of the Effective Date thereafter for ten (10) successive years, unless ninety (90) days prior to the fifteenth anniversary of the Effective Date UC delivers to PG&E written notice of its intention not to extend the term of this Agreement beyond such date, and during the extended period thereafter, until UC delivers to PG&E ninety (90) days advance written notice of its intention to unilaterally terminate this Agreement. During the extended period, all of the terms and conditions of the Agreement shall be in full force and effect. This Agreement shall not be terminable except as expressly provided herein.

### **8.2 Unilateral Termination**

This Agreement may be terminated prior to the expiration of the term set forth in Section 8.1 at the election of UC Merced by providing at least ninety (90) days advance written notice to PG&E, subject to the terms and conditions of this Section 8.

### 8.3 Facility Termination Charge

Upon expiration or unilateral termination of this Agreement, UC Merced shall pay to PG&E on demand (in addition to all other monies to which PG&E may be legally entitled by virtue of such termination) a Facility Termination Charge. PG&E will calculate and present to UC Merced (along with all relevant backup materials) a Facility Termination Charge equal to the amount calculated pursuant to the formulas below and pursuant to the table set forth in Exhibit E, which is attached hereto and incorporated by reference. The Facility Termination Charge shall be based on the year of expiration or unilateral termination of this Agreement, and calculated as follows:

Step A:

Annual Distribution Revenue (line 1) minus Annual Distribution Revenue Requirement (line 2) equals Current Net Revenue (line 3)

If Current Net Revenue is a positive number, then PG&E has collected revenue above its annual requirement. If it is a negative number, PG&E has collected revenue below its annual requirement.

Step B:

Current Net Revenue (line 3) plus Accrued Net Revenue (line 4) from the prior year shall equal Accrued Net Revenue for the current year

If Accrued Net Revenue is a positive number, then PG&E has collected revenue above its cumulative annual requirements. If it is a negative number, PG&E has collected revenue below its cumulative annual requirements.

Step C:

In the year for which the termination payment is calculated, Capital Base (line 5) minus Accrued Net Revenue (line 4) shall equal the termination payment, which in no case shall be less than zero (0).

The Facility Termination Charge specified in this Agreement shall be the sole charge paid by UC Merced arising from its unilateral termination or the expiration of this Agreement. Provided however, that in addition to such Facility Termination Charge, UC Merced shall be responsible for: 1) the charges associated with the removal of the second meter in accordance with the Special Facility Agreement attached hereto as Exhibit G, and 2) any non-bypassable

charges that PG&E may be legally entitled to under PG&E's Tariffs or under applicable law.

Upon receipt of the Facility Termination Charge calculation and all relevant supporting documentation, UC Merced shall have sixty (60) days to review such payment. The Facility Termination Charge shall be due and payable after the expiration of the 60-day review period, provided however, that in the event UC Merced disputes any portion of Facility Termination Charge, such dispute shall be resolved in accordance with the dispute resolution procedure set forth in Section 24 below. In the event of any such dispute, UC Merced shall immediately, and in no event more than fifteen (15) days after the Facility Termination Charge is otherwise due, deposit the disputed portion of the Facility Termination Charge - into a mutually acceptable escrow account, and pay any undisputed portion of the Facility Termination Charge directly to PG&E. The escrow officer shall be instructed to deposit such funds in an interest bearing account at a bank or savings and load of its choice located in San Francisco, California. Upon deposit in escrow of the disputed portion of the Facility Termination Charge, UC Merced and PG&E shall forthwith diligently proceed to complete the dispute resolution process as provided in Section 24. The escrow officer shall return the moneys deposited in the escrow account, including all accrued interest thereon, to UC Merced or PG&E in accordance with the arbitration award issued pursuant to Section 24 of this Agreement. The escrow holder's fees shall be paid equally by UC Merced and PG&E.

Amounts owed to PG&E hereunder that are not paid by the due date shall accrue interest from the due date at a rate equal to the highest rate permitted by law, not to exceed 10% per annum. Such interest shall be paid for the number of days elapsed since the due date and shall be computed on the basis of a thirty (30) day month.

#### **8.4 Effect of Termination; Survival**

Upon expiration or unilateral termination of this Agreement, all rights UC Merced shall have under this Agreement for the dual feed Distribution Facilities to the UC Merced Campus from PG&E shall cease and UC Merced shall have no further right to the supply of Utility Service from PG&E by reason of this Agreement. The provisions of this Section 8.4 however shall not be construed as a bar to UC Merced of any rights it may have apart from this Agreement to obtain Utility Service from PG&E following expiration or termination of this Agreement, pursuant to any applicable law, regulation or Tariff, independent and exclusive of this Agreement. The expiration or termination of this Agreement shall not extinguish or otherwise affect any obligations or liabilities of the Parties that have accrued prior to such expiration or termination. Section 17.0 [Indemnification], Section 24.0 [Dispute Resolution], and this Section 8.0 [Term and Termination] shall survive the expiration or termination of this Agreement.

## **8.5 Removal of Distribution Facilities**

Upon expiration or unilateral termination of this Agreement, PG&E shall be entitled to remove any portion of the Distribution Facilities located on the UC Merced Campus. If PG&E elects to remove such Distribution Facilities, PG&E shall provide sufficient notice of its intent to remove any such Distribution Facilities to UC Merced and shall cause such removal operations, conducted either by PG&E or by a third party with whom PG&E contracts, to be conducted in a reasonable manner.

## **9.0 FORCE MAJEURE**

“Force Majeure” means any occurrence beyond the reasonable control of and not occurring due to the fault or negligence of the Party claiming Force Majeure that causes the Party to be unable to perform part or all of its obligations, that by exercise of due foresight such Party could not reasonably have been expected to avoid and that the Party is unable to overcome by the exercise of due diligence. Such an occurrence may include fires, floods, earthquakes or other acts of God, acts of terrorism, war, riots or other civil disturbances, sudden actions of the elements, actions or inactions by federal, state, or local agencies, actions or inactions of legislative, judicial, or regulatory agencies of competent jurisdiction, and industry-wide or region-wide strikes and other labor disputes (including collective bargaining disputes and lockouts) involving a Party or a Party’s subcontractors and not directed exclusively at such Party. Failure of either Party to perform such Party’s obligations under this Agreement due to the failure of any subcontractor of such Party to perform any obligation to such Party, will not constitute Force Majeure hereunder unless such subcontractor is excused from performance under its applicable agreement with such Party, and such agreement contains terms in respect of Force Majeure which are substantively the same as those contained in this Agreement, including this definition of Force Majeure. Actions of the Commission shall be considered Force Majeure.

## **10.0 TARIFF APPLICATION**

Unless otherwise stated in this Agreement, all of the provisions of PG&E’s rates, rules, Tariffs, and policies shall apply to service provided by PG&E to UC Merced, or energy delivered to, generated by, or used at the UC Merced Campus, including, but not limited to, Electric Tariff Rule 14, which provides, in pertinent part, that “PG&E will not be liable for interruption or shortage or insufficiency of supply, or any loss or damage of any kind of character occasioned thereby, if same is caused by inevitable accident, act of God, fire, strikes, riots, war, or any other cause except that arising from its failure to exercise reasonable diligence.”

## **11.0 CHOICE OF LAWS**

This Agreement shall be construed and interpreted in accordance with the laws of the State of California, excluding any choice of law rules that may direct the application of the laws of another jurisdiction. Any controversy or claim arising out of or in any way relating to the Agreement which is not amicably settled or submitted to arbitration in accordance with the dispute resolution procedure set forth in Section 24 and which is not within the exclusive jurisdiction of the Commission, shall be litigated in a California State Court of competent jurisdiction; or if jurisdiction over the action cannot be obtained in a California State Court, in a Federal Court of competent jurisdiction situated in the State of California.

#### **12.0 NON-WAIVER**

The waiver by either Party of any breach of any term, covenant or condition contained in this Agreement, or any default in the performance of any obligations under this Agreement, shall not be deemed to be a waiver of any other breach or default of the same or any other term, covenant, condition or obligation. Nor shall any waiver of any incident of breach or default constitute a continuing waiver of the same.

#### **13.0 GENERAL ACCESS**

Where it is necessary for PG&E to install facilities on the UC Merced Campus, UC Merced hereby grants to PG&E: (a) the right to install, own and maintain such facilities on the UC Merced Campus together with sufficient legal clearance between all structures now or hereafter erected on the UC Merced Campus; (b) the right to enter and leave the UC Merced Campus for any purpose connected with the furnishing of electric service (including but not limited to meter reading, inspection, testing, routine repairs, maintenance, replacement, and emergency work) and the exercise of any and all rights secured to it by law, or under PG&E's Tariff schedules.

#### **14.0 LAND RIGHTS**

Where formal rights-of-way, easements, land leases, or permits are required by PG&E for the installation of the facilities on or over the UC Merced Campus, UC Merced understands and agrees that PG&E shall not be obligated to install the facilities unless and until any necessary permanent rights-of-way, easements, land leases, or permits, satisfactory to PG&E, are granted to or obtained for PG&E without cost to or condemnation by PG&E; however, if PG&E is unable to obtain such land rights, UC Merced shall provide them. Such land rights shall include the right of access and the right to trim trees as necessary to maintain required legal clearances from overhead wires.

#### **15.0 SAFETY PRECAUTIONS**

UC Merced shall inform all persons doing work in proximity of the location of PG&E's facilities on the UC Merced Campus of the existence of such facilities and shall ensure that all work of non-PG&E employees is planned and conducted in a manner to safeguard persons and property from injury. Work performed in close proximity to PG&E's energized electric facilities on the UC Merced Campus also shall be performed in accordance with established Cal-OSHA safety rules and practices, and as may be directed by PG&E. Only personnel duly authorized by PG&E are allowed to connect or disconnect conductors from PG&E-owned service facilities, or perform any work upon PG&E-owned existing facilities.

#### **16.0 CHANGE ORDERS AND RELOCATION OF PG&E'S FACILITIES ON THE UC MERCED CAMPUS**

All standard design or construction changes made in the field relating to PG&E's facilities located on the UC Merced Campus, which impact the charges to UC Merced, will be made using PG&E's Agreement Change Order. Unforeseen field conditions include, but are not limited to, contaminated soil and obstructions. The proper execution and attachment of the Agreement Change Order, and any necessary changes to the location of PG&E's facilities on the UC Merced Campus resulting from the change order, constitute formal amendment to this Agreement. UC Merced shall pay PG&E for any such changes in accordance with the appropriate Tariff.

EXCEPTION: If the requested changes are in addition to or substitution for the standard Facilities that PG&E would normally install, then a Special Facilities Agreement shall be required under the provisions of Section I of Rule 2.

#### **17.0 INDEMNITY**

##### **17.1 PG&E's Obligation**

PG&E shall indemnify, defend and hold harmless UC Merced, its officers, agents, and employees from and against any claims, damages, losses, costs, expenses, or liabilities (collectively "Indemnifiable Losses") arising out of, resulting from or otherwise in connection with a Third Party Claim arising out of PG&E's performance under this Agreement, including, without limitation, Indemnifiable Losses for loss or damage to any property, or for death or injury to any person or persons, but only in proportion to and to the extent that such Indemnifiable Losses arise from the negligent or wrongful acts or omissions of PG&E, its officers, partners, agents, or employees. For purposes of this Section 17, "Third Party Claim" means a claim or demand, or an action commenced, against any indemnitee by a person not a party to this Agreement.

##### **17.2 UC Merced's Obligation**

UC Merced shall indemnify, defend and hold harmless PG&E, its officers, partners, agents, and employees from and against any Indemnifiable Losses arising out of or resulting from or otherwise in connection with a Third Party Claim arising out UC Merced's performance under this Agreement including, without limitation, Indemnifiable Losses for loss or damage to any property or for death or injury to any person or persons, but only in proportion to and to the extent that such Indemnifiable Losses arise from the negligent or wrongful acts or omissions of UC Merced, its officers, agents, or employees.

### **17.3 Notice of Third Party Claims**

If a Third Party Claim is commenced against the indemnitee for which the indemnifying party may be obligated to provide indemnification under this Section 17, the indemnitee shall give the indemnifying party written notice thereof promptly (and in any event within thirty (30) days) after receipt by the indemnitee of notice of the Third Party Claim, which notice shall describe the Third Party Claim in reasonable detail; provided, however, that no delay or failure by the indemnitee to give notice shall affect the indemnitee's right to indemnification under this Agreement, except to the extent the indemnifying party is actually prejudiced by such delay or failure; provided, further, that the indemnifying party shall not be liable for any expenses incurred during the period in which the indemnitee failed to give such notice. Thereafter, the indemnitee shall deliver to the indemnifying party, promptly (and in any event within three (3) business days) after the indemnitee's receipt thereof, copies of all notices and documents (including court papers) received by the indemnitee relating to such Third Party Claim.

### **17.4 Defense of Third Party Claims by the Indemnifying Party**

If a Third Party Claim is made against the indemnitee, the indemnifying party shall be entitled to participate in the defense thereof and, if it so chooses and acknowledges by written notice its obligation to indemnify the indemnitee for the Third Party Claim (which notice shall specify any reservations or exceptions), to assume the defense thereof with counsel selected by the indemnifying party. If the indemnifying party assumes the defense of a Third Party Claim, the indemnifying party shall not be liable to the indemnitee for legal or other expenses subsequently incurred by the indemnitee in connection with the defense of such Third Party Claim. The indemnifying party shall be liable for the reasonable fees and expenses of counsel employed by the indemnitee for any period during which the indemnifying party has failed to assume the defense of a Third Party Claim (other than the period during which the indemnitee failed to give notice of the Third Party Claim). If the indemnifying party elects to assume the defense of any Third Party Claim, the indemnitee shall cooperate with the indemnifying party in the defense or prosecution of any counterclaims therein.

## **18.0 ASSIGNMENT**

UC Merced may assign all or any part of this Agreement, or its rights and obligations hereunder, directly or indirectly, by operation of law or otherwise, on the condition that PG&E consents in writing and the party to whom the Agreement is assigned (Assignee) agrees in writing, to perform the obligations of UC Merced hereunder. Such assignment shall be made using PG&E's Assignment Agreement and shall be notarized. Assignment of this Agreement shall not release UC Merced from any of the obligations under this Agreement unless otherwise provided therein. PG&E may assign all or any part of this Agreement, or its rights and obligations hereunder, directly or indirectly, by operation of law or otherwise, to any company that may be formed pursuant to a Plan of Reorganization confirmed by the Bankruptcy Court, without UC Merced's prior approval or written consent. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the successors and assigns of the Parties hereto.

## **19.0 ENFORCEABILITY**

In the event that any of the provisions, or application of any of the provisions, of this Agreement are held to be illegal or invalid by a court of competent jurisdiction or otherwise changed by a regulatory agency, PG&E and UC Merced shall negotiate an equitable adjustment in the provisions of this Agreement with a view toward effectuating the purpose of the Agreement. The illegality or invalidity of any of the provisions, or application of any of the provisions, of the Agreement will not affect the legality or enforceability of the remaining provisions or application of any of the provisions of the Agreement.

## **20.0 INTEGRATION**

This Agreement and all exhibits attached hereto constitute the entire understanding between the Parties as to the subject matter of hereof, and may not be modified except by mutual written agreement of the Parties. It supersedes all prior or contemporaneous agreements, commitments, representations, writings, and discussions between UC Merced and PG&E, whether oral or written, and has been induced by no representations, statements or agreements other than those expressed herein. Neither UC Merced nor PG&E shall, for so long as it performs its obligations set forth herein, be bound by any prior or contemporaneous obligations, conditions, warranties or representations with respect to the subject matter of this Agreement.

## **21.0 INCORPORATION OF EXHIBITS**

All exhibits attached to or referred to in this Agreement are incorporated herein by such references as if fully and specifically set forth herein. A list of exhibits follows:

LIST OF EXHIBITS

<u>Exhibit No.</u>	<u>Description</u>
A	Legal Description of UC Merced Campus
B	Operating Agreement
C	Map Delineating PG&E's Initial Service Route
D	Designated Contacts For Each Party
E	Termination Calculation Table
F	Grant of Easement
G	Special Facilities Agreement [second service metering]
H	Special Facilities Agreement [capacity reservation charge]

**22.0 SURVIVAL**

The provisions of this Agreement that by their nature should survive expiration, cancellation or other termination of the Agreement, including but not limited to provisions regarding warranty, indemnity, and availability of information, shall survive such expiration, cancellation or other termination.

**23.0 NO THIRD PARTY BENEFICIARIES**

Nothing in this Agreement, whether express or implied, is intended to do any of the following:

- (a) confer any benefits, rights, or remedies under or by reason of the Agreement on any persons other than UC Merced and PG&E, and their respective successors and assigns; or
- (b) give any person not a party to the Agreement any right of subrogation or action against any party.

No amendment of, supplement to, or waiver of any obligations under the Agreement will be enforceable or admissible unless set forth in writing signed by the party against which enforcement or admission is sought.

**24.0 DISPUTE RESOLUTION**

**24.1 Negotiation**

The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement promptly by negotiations between PG&E's Vice President of Rates and Account Services and UC Merced's Chancellor or their designated successors or representatives. All such negotiations are confidential and shall be treated as compromise and settlement negotiations, to which Section 1119 of the California

Code of Evidence shall apply, and Section 1119 is incorporated herein by reference.

#### **24.2 Selection of Arbitrator**

Either party may give the other party written notice of any dispute arising under this Agreement. Within twenty (20) days after receiving delivery of said notice, the executives shall meet at a mutually acceptable time and place, and thereafter as often as they may reasonably deem necessary to exchange information and to attempt to resolve the dispute. If the matter has not been resolved within thirty (30) days of the first meeting, a party may initiate arbitration by sending written notice to the other party requesting arbitration and describing the dispute under this Agreement and any proposed remedy. Within ten (10) business days after receipt of such notice, the parties shall provide to one another a list of three (3) potential arbitrators and meet within five (5) business days to attempt to select a single arbitrator. The arbitration shall be conducted in San Francisco, California, by the American Arbitration Association before a single arbitrator in accordance with its Commercial Arbitration Rules, except as modified herein or as agreed by the parties in writing. If the parties cannot agree on the selection of an arbitrator or the parties fail to meet within ten (10) business days, the arbitrator shall be selected by the American Arbitration Association in accordance with its Commercial Arbitration Rules. The arbitrator selected under these procedures shall be a lawyer or retired judge with at least ten (10) years' experience arbitrating complex commercial disputes.

#### **24.3 Discovery**

In such proceedings, the parties shall have the right to utilize depositions as provided in Section 1283 and 1283.05 of California Code of Civil Procedure.

#### **24.4 Effect of Award**

The award of the sole arbitrator shall be final and binding upon the parties, subject to the provisions of the California Code of Civil Procedure relating to arbitration as the same now exists or as the same shall be amended during the term of this Agreement. In such award, the arbitrator shall include the fixing of the expense of the arbitration and the assessment of the same in the judgment of the arbitrator against either or both parties hereto. Each party shall bear its cost for legal fees, witnesses, depositions, etc.

#### **24.5 Hearing**

After giving the parties due notice of hearing, the arbitrator shall hear the dispute arising under this Agreement submitted for arbitration and shall provide a reasoned, written decision within ninety (90) days after the completion of the hearing or such other date selected by agreement of the parties. The decision

shall conform to applicable law. The procedural and substantive law applied in the arbitration shall be the law of the State of California without regard to its conflict of law principles, unless the claims or defenses raise issues of federal law in which case federal substantive law shall apply to those particular claims or defenses. The arbitrator shall be bound to apply the law, including the rules of evidence, and shall be empowered to hear and determine dispositive motions, including motions to dismiss and motions for summary judgment. The decision of the arbitrator shall be final and binding upon the parties, and a party may petition a court to correct or vacate the decision only upon grounds that any award contained therein was procured by corruption, fraud or other undue means and may not petition a court to correct or vacate the decision for failure of the arbitrator to apply the law or any other grounds or reasons. Judgment may be entered on the decision in any court of competent jurisdiction upon the application of a party.

#### **24.6 Fees and Costs**

The arbitrator shall award costs and reasonable attorneys' fees to the prevailing party. If both parties prevail in part, such fees will be allocated among the parties in such amounts as may be determined by the arbitrator based on the relative merits and amounts of each party's claims.

#### **24.7 Injunctions**

Notwithstanding the foregoing provisions, a party may seek a preliminary injunction or other provisional judicial remedy if in its judgment such action is necessary to avoid irreparable damage or to preserve the status quo.

#### **24.8 Continuing obligations**

Each party is required to continue to perform its obligations under this Agreement, pending final resolution of any dispute arising out of or relating to this Agreement.

#### **25.0 EFFECTIVE DATE, SCOPE**

PG&E will advise file a copy of this Agreement upon execution by PG&E and UC Merced with the Commission pursuant to General Order 96-A, Section X.B. It shall become effective and binding upon PG&E's filing it with the Commission pursuant to General Order 96-A, Section X.B and PG&E shall provide a conformed copy of its filing to UC Merced.

#### **26.0 APPROVED AGREEMENT**

This Agreement shall be subject to all of PG&E's applicable Tariff schedules on file with and authorized by the Commission and shall at all times be subject to

such changes or modifications as the Commission may direct from time to time in the exercise of its jurisdiction. These may include, but are not limited to extension rules and rate schedules.

## **27.0 CONTACTS**

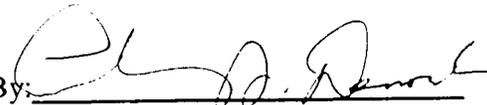
During the term of this Agreement, PG&E and UC Merced shall each designate a representative for the purpose of administering this Agreement. The initial designees of each Party are identified on Exhibit D to this Agreement. Each Party's designated representative shall have the authority to act on behalf of their respective organizations.

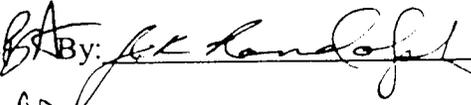
## **28.0 AUTHORITY.**

Each Party represents to the other that (a) it has the corporate or other requisite power and authority to execute, deliver and perform this Agreement, (b) the execution, delivery and performance of this Agreement by it has been duly authorized by all necessary corporate or other requisite actions, (c) it has duly and validly executed and delivered this Agreement, and (d) this Agreement is a legal, valid and binding obligation of such Party, enforceable against it in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally and general principles of equity.

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, a corporation organized and existing under the laws of the State of California

PACIFIC GAS AND ELECTRIC COMPANY, a California corporation

By:   
Lindsay A. Desrosiers  
Title: Vice Chancellor for Administration

By:   
Title: SRVP

Date: October 3, 2003

Date: 10-9-03

**Exhibit A -- Legal Description of UC Merced** (hard copy to be attached to documents prepared for signature)

*Entire UST*

EXHIBIT "A"

Parcel A:

Parcel 1 as shown on that "Parcel Map for Merced County Board of Education as Trustee of the Testamentary Trust of Virginia Smith" recorded June 10, 1987 in Book 59 of Parcel Maps, Pages 1 & 2, Merced County Records, and being a division of Sec. 13, 24, 25, 26, 35, 36 and portions of 27 and 34, T. 6 S. R. 15 E., M.D.B. & M.

Assessors Parcel No.: 052-270-012 and 052-270-014

Parcel B:

Parcels 1, 2 and 3 and all that portion shown as remainder Parcel as per map for "Merced Community Golf Association" recorded November 5, 1997 in Book 83 of Parcel Maps, Pages 9, 10, 11 and 12, Merced County Records, being a division of Parcel 2 recorded in Book 59 of Parcel Maps, Page 1, Merced County Records.

Assessors Parcel No.: 052-270-010/ Portion Parcel B; 052-270-012/ Portion parcel B; 052-270-015/Portion Parcel B; 052-300-003/Portion Parcel B; 052-300-006/Portion Parcel B; 052-300-016/ Portion Parcel B; 053-030-001/Portion Parcel B; 053-030-002/ Portion Parcel B; 053-030-005/ Portion Parcel B; 053-030-006/ Portion Parcel B; 053-050-011/ Portion Parcel B; 053-050-012/Portion Parcel B; 053-050-013/Portion Parcel B; 053-300-020 Old/ 053-300-018 new Portion Parcel B/ 053-300-005 old/ 052-300-019 new portion Parcel B; 052-300-014 old/ 052-300-020 new/ 052-300-021 new; 052-300-022 new portion of Parcel B/ 052-300-016 old; 052-300-017 new portion of Parcel B.

Parcel C:

All that portion of Section 12, Township 6 South, Range 14 East, M.D.B.&M., lying Southerly of the Northerly line of Hornitos Road as said road was conveyed to Merced County by Deed recorded June 5, 1929 in Book 254, Official Records, Page 260, Merced County Records.

Excepting the interest of the County of Merced in and to the Northerly 60 feet as acquired for road purposes by Deed recorded June 5, 1929 in Book 254, Official Records, Page 260, Merced County Records.

Assessors Parcel No.: 052-250-010

Parcel D:

All that portion of Section 7, Township 6 South, Range 15 East, M.D.B.&M., lying Southerly of the Northerly line of Hornitos Road as said road was conveyed to Merced County by Deed recorded June 5, 1929 in Book 254, Official Records, Page 260, Merced County Records.

Excepting therefrom all that portion of said Section 7, which lies Easterly and Northeasterly of a line commencing at the Northwest corner of the Southwest quarter of Section 6, Township 6 South, Range 15 East, M.D.B.&M.; thence South 9 1/2 deg. East 27.25 chains, thence South 33 1/2 deg. East 135.97 chains to the Southeast corner of the Northeast quarter of Section 18, Township 6 South, Range 15 East, M.D.B.&M.

Also excepting therefrom the interest of the County of Merced in and to the Northerly 60 feet as acquired for road purposes by Deed recorded June 5, 1929 in Book 254, Official Records, Page 260, Merced County Records.

Assessors Parcel No.: 053-010-011

**EXHIBIT 'A'**  
*FORMER* **GOLF COURSE LAND**

All that real property situated in the unincorporated area of the County of Merced, California, described as follows:

A portion of Parcel 2 as shown on Parcel Map of Merced County Board of Education as Trustees of the Testamentary Trust of Virginia Smith, as recorded in Book 59 of Parcel Maps, Page 1 and 2, Merced County Records, described as follows:

Beginning at the Southwest corner of Section 34 T. 5 S., R. 14 E. M.D.M. said point being on the centerline of Lake Road; thence along the West line of Section 34 N. 0 deg. 28' 00" E. 200.14 feet; thence S. 89 deg. 32' 00" E. 30.00 feet to the East line of Lake Road said point being TRUE POINT OF BEGINNING of this description; thence along the east line of Lake Road N. 00 deg. 28' 00" E. 693.78 feet; thence N. 54 deg. 33' 55" E. 206.33 feet; thence N. 72 deg. 07' 43" E. 822.84 feet; thence N. 53 deg. 26' 04" E. 159.14 feet; thence N. 35 deg. 08' 49" E. 372.64 feet; thence N. 47 deg. 39' 02" E. 373.03 feet; thence S. 42 deg. 20' 06" E. 52.28 feet; thence N. 48 deg. 20' 33" E. 200.00 feet; thence N. 85 deg. 10' 59" E. 822.56 feet; thence N. 19 deg. 58' 59" E. 234.09 feet; thence N. 66 deg. 03' 39" E. 350.00 feet; thence S. 74 deg. 40' 07" E. 250.00 feet; thence S. 67 deg. 00' 05" E. 128.73 feet; thence N. 80 deg. 34' 13" E. 443.14 feet; thence S. 45 deg. 00' 00" E. 588.26 feet; thence S. 73 deg. 45' 29" E. 375.89 feet; thence S. 59 deg. 30' 32" E. 295.48 feet; thence S. 46 deg. 00' 01" E. 49.70 feet; thence S. 23 deg. 50' 22" W. 151.47 feet; thence S. 12 deg. 05' 43" E. 92.27 feet; thence S. 46 deg. 23' 54" E. 93.44 feet; thence S. 29 deg. 27' 45" E. 484.79 feet; thence S. 45 deg. 17' 25" E. 170.00 feet; thence S. 72 deg. 41' 29" E. 133.21 feet; thence S. 00 deg. 53' 50" W. 350.00 feet; thence S. 79 deg. 16' 05" W. 325.00 feet; thence S. 59 deg. 24' 58" W. 512.00 feet; thence S. 33 deg. 57' 21" W. 250.00 feet; thence S. 80 deg. 25' 00" W. 640.93 feet; thence S. 89 deg. 47' 29" W. 461.84 feet; thence N. 50 deg. 22' 51" W. 352.85 feet; thence S. 89 deg. 47' 29" W. 229.96 feet; thence S. 48 deg. 54' 31" W. 250.00 feet; thence S. 89 deg. 47' 29" W. 1953.76 feet; thence N. 70 deg. 49' 33" W. 200.00 feet; thence S. 89 deg. 47' 29" W. 530.45 feet to the TRUE POINT OF BEGINNING.

Containing 197.36 acres more or less.

## **Exhibit B**

### **Operating Agreement for Electric Service · For the Main Campus Of UC Merced**

This Operating Agreement shall govern ongoing electrical operations aspects of electric service from Pacific Gas and Electric Company (PG&E) to the University of California, Merced (UC Merced). The scope of this Operating Agreement is limited to the following:

- Procedures to be followed when PG&E wishes to modify the existing service route or facilities serving UC Merced
- Requirements for PG&E notification to UC Merced for modifications to service arrangements
- Process and procedures to be followed by UC Merced to obtain PG&E approval of protection equipment to be installed by UC Merced
- Procedures to prevent parallel operation of secondary systems and equipment
- Description of Service Configuration
- Permissible Operations and Notification Requirements
- Prohibited Operations
- Procedures to be followed by both PG&E and UC Merced when power is lost to the circuit normally serving UC Merced and such power remains available on the alternate service to UC Merced;
- Procedures to be followed by both PG&E and UC Merced in switching UC Merced campus load back to the normal feed when availability of that service has been restored; and,
- Designated contacts for both PG&E and UC Merced

#### **1. Specifications Notification**

UC Merced shall provide PG&E with the appropriate general arrangement drawings, line diagrams, relay test results, and pertinent equipment manufacturer specifications for review with regard to UC Merced's connection to the primary service provided by PG&E.

All primary protection settings and power transfer schemes shall be subject to PG&E approval.

UC Merced shall provide PG&E written notice at least 8 days in advance of its intention to transfer load from the El Capitan 1102 to the Wilson 1102 for planned maintenance.

UC Merced shall provide PG&E written notice of any subsequent changes to UC Merced's loads or load characteristics that may impact primary service protection equipment, transfer, and restoration schemes. These changes include, but are not limited to, on-site electric generation.

## **2. Modification of Existing Services or Facilities Serving UC Merced**

If, after initial service to UC Merced is established in accordance with the "Agreement Between The Regents of the University of California and Pacific Gas and Electric Company to Provide Electric Service to the UC Merced Campus," (Master Agreement) PG&E has need to make revisions or alterations to the facilities serving UC Merced, PG&E shall promptly provide UC Merced written notice and shall communicate the expected changes and impacts on service to UC Merced. PG&E shall not commence to make such alterations until notification of and discussions with UC Merced have taken place.

## **3. Process and Procedures for Approval of PG&E-Required Protective Equipment**

Prior to installation and at any time changes are contemplated by UC Merced, UC Merced shall provide PG&E with detailed plans, technical and equipment specifications and intended installation timetables. PG&E shall promptly review the materials and information for compliance with PG&E's standards and requirements in effect at the time such installations are to be made, and communicate its approval or disapproval of such plans to UC Merced. UC Merced shall not install any protective or interconnection equipment not approved by PG&E.

Design and equipment costs shall be the sole responsibility of UC Merced, with the exception of equipment and design provided by PG&E under the "Master Agreement." PG&E shall not be liable for any purchases or commitments that may be made by UC Merced for equipment or design in the event PG&E ultimately rejects such equipment or design as provided in this Operating Agreement.

## **4. Procedures to Prevent Parallel Operation of UC Secondary System With Primary System**

Procedures to prevent parallel operation of UC Merced's secondary voltage system or equipment shall be submitted to PG&E for its review and approval prior to initial operation of the UC Merced campus.

## **5. Description of Service Configuration**

PG&E shall serve UC Merced's load via 2 independent 12 kV distribution circuits, El Capitan 1102 and Wilson 1102, in the manner described in section 2.1 of the contract for electric service. Under normal conditions, each circuit is supplied from a different substation transformer and bus section.

UC Merced shall maintain its protection equipment in a manner consistent with the applicable electric codes and manufacturers specifications and recommendations and PG&E's Electric Tariff Rule 2.

Both circuits are to remain energized and capable of furnishing power at all times during normal operations.

## 6. Permissible Operations

**A. Operation/Action:** Either circuit and its associated substation equipment may be taken out of service for routine maintenance or modification as required by PG&E.

**Notification Requirement:** PG&E shall provide written notice to the appropriate UC Merced personnel at least 8 days in advance of such occurrence in order to enable UC Merced to take any action on their part, e.g. disabling the automatic transfer equipment at the Central Plant, transferring priority load to standby generation, etc.

**B. Operation/Action:** PG&E may perform field and substation switching under emergency conditions as necessary to maintain the integrity of PG&E's electric distribution system.

**Notification Requirement:** None

**C. Operation/Action:** UC Merced may transfer up to 6 MW of campus load from its normal service on El Capitan 1102 to Wilson 1102 in order to make repairs to UC Merced's own facilities. In doing so, UC Merced may operate PG&E's two distribution circuits in parallel, but only through the automatic transfer switch located at the Central Plant. The automatic transfer switch shall be set to allow parallel operation for 60 or fewer cycles.

**Notification Requirement:** UC Merced shall provide PG&E written notice at least 8 days in advance of its intention to transfer load from the El Capitan 1102 to the Wilson 1102 for planned maintenance.

## 7. Prohibited Operations

**A.** UC Merced shall not split the campus load between the 2 circuits. All campus load will be served through one circuit during normal operating conditions.

- B. UC Merced shall not transfer load in excess of 6MW from its normal service on El Capitan 1102 to Wilson 1102 under any circumstances, or for any period of time.
  - C. UC Merced shall not allow any of its secondary voltage system or equipment to operate in parallel to the primary service beyond the automatic transfer switch.
- 8. Automatic Transfer Equipment Operation During Planned Or Emergency Outage Conditions**

**A. NORMAL OPERATING CONDITIONS ON UC MERCED MAIN PRIMARY BUS (Located at Central Plant)**

- 1) Normal main breaker at Utility Source 1 closed to El Capitan 1102.
- 2) Both UC Merced main bus tie breakers closed, energizing both of UC Merced's 12 kV buses from Utility Source 1.
- 3) Alternate main breaker on Utility Source 2 open to Wilson 1102.
- 4) Alternate feeder Wilson 1102 energized up to alternate main breaker at Utility Source 2.

**B. SEQUENCE OF OPERATION ON LOSS OF VOLTAGE TO NORMAL FEEDER EL CAPITAN 1102**

- 1) During an under voltage or loss of voltage condition, UC Merced's automatic transfer equipment operates to transfer load from PG&E's El Capitan 1102 circuit to the Wilson 1102 circuit.
- 2) Automatic transfer to alternate feeder Wilson 1102 shall be permitted to occur only if voltage is present on the alternate feeder.
- 3) UC Merced's Normal main breaker on Utility Source 1 opens automatically upon sensing an under voltage or loss of voltage condition to El Capitan 1102.
- 4) UC Merced's alternate main breaker on Utility Source 2 automatically closes on the Wilson 1102 circuit upon sensing an under voltage or loss of voltage condition at UC Merced's Normal main breaker on Utility Source 1.
- 5) UC Merced shall immediately notify (within 10 minutes or less) PG&E's Yosemite Electric Control Center that UC Merced's automatic transfer switch has been operated.

- 6) If, after an automatic power transfer, voltage is lost on the alternate Wilson 1102 feeder and voltage has been re-established on the normal El Capitan 1102 feeder for at least 30 seconds, power shall transfer back to the normal feeder automatically.
- 7) UC Merced shall immediately notify (within 10 minutes or less) PG&E's Yosemite Electric Control Center that UC Merced's load has been transferred back to El Capitan 1102.
- 8) Should the service for UC Merced remain on the Wilson 1102 the manual transfer procedure shall be used to transfer the load back to the El Capitan 1102.

**C. MANUAL TRANSFER PROCEDURE FOR RETURNING UC MERCED LOAD TO EL CAPITAN 1102**

- 1) Power becomes available on the UC Merced Utility Source 1 Bus fed by the El Capitan 1102.
- 2) PG&E Yosemite Electric Control Center notifies UC Merced that power will be transferred back to normal source manually, without interruption to UC Merced's load.
- 3) PG&E switching personnel complete the necessary operations in preparation to transfer back to the El Capitan 1102.
- 4) PG&E will direct UC Merced to transfer from the Utility Source 2 served by the Wilson 1102 to the Utility Source 1 served by the El Capitan 1102. Parallel operation of the two circuits shall be momentary, limited to 60 cycles.
- 5) UC Merced will report completion of the transfer to the Yosemite Electric Control Center.
- 6) PG&E will complete switching operations on its system to return to normal operations.
- 7) PG&E will notify UC Merced when the El Capitan 1102 and Wilson 1102 circuits have been returned to normal operating conditions.

**9. DESIGNATED CONTACTS FOR PG&E AND UC MERCED**

A. For PG&E:

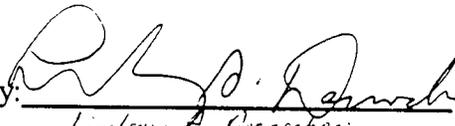
- 1) Account Services Contact and Functions
- 2) Yosemite Electric Control Center Operations Contact and Functions
- 3) Supervising Electric Planner and Functions

B. For UC Merced:

- 1) Plant Electrical Engineer Contact and Functions

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, a corporation organized and existing under the laws of the State of California

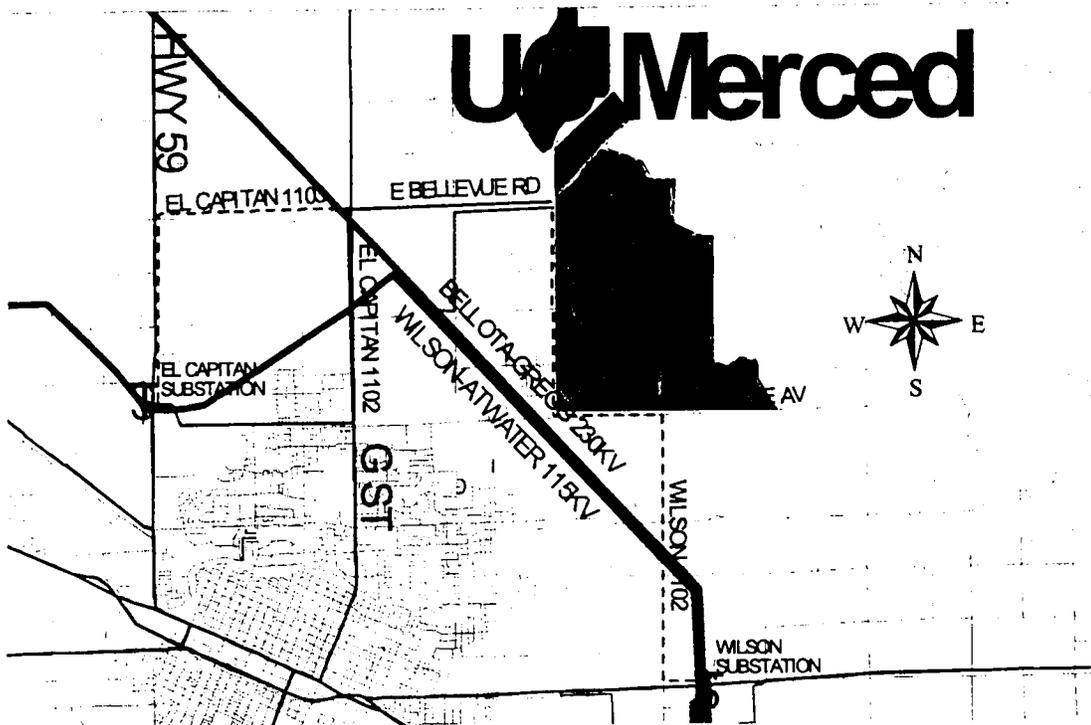
PACIFIC GAS AND ELECTRIC COMPANY, a California corporation

By:   
 Title: Vice Chancellor for Administration  
 Date: October 3, 2003

By: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Date: \_\_\_\_\_

### Exhibit C – Map Delineating Route For Distribution Facilities

The map set forth below depicts the route for the initial installation of PG&E's Distribution Facilities to the UC Merced Campus.



**Exhibit D – Designated Contacts for administration of this agreement**

For PG&E:

PG&E's local Account Manager assigned to serve the UC Merced campus

Currently Account Manager assigned is:

Dan Pope  
Account Manager  
Pacific Gas and Electric Company  
3185 M Street  
Merced, CA 95348

(209) 726-6393

Email: DWP4@pge.com

For UC Merced:

UC Merced's Vice Chancellor for Administration

Currently:

Lindsay A Desrochers  
Vice Chancellor for Administration  
University Of California  
4225 North Hospital Road  
Atwater, CA 95301

(209) 724-4430

[lindsay.desrochers@ucop.edu](mailto:lindsay.desrochers@ucop.edu)

Mailing Address:  
P. O. Box 2039  
Merced, CA 95344

**Exhibit E- termination Calculation Table**

	Year	1	2	3	4	5	6	7	8	9	10	11	12
1	Annual Distribution Revenue												
2	Annual Distribution Revenue Requirement	238	233	229	224	220	215	211	206	202	197	193	188
3	Current Net Revenue												
4	Accrued Net Revenue												
5	Capital Base	932	901	870	840	809	778	747	716	685	655	624	593
6	Termination Payment												

	Year	13	14	15	16	17	18	19	20	21	22	23	24	25
1	Annual Distribution Revenue													
2	Annual Distribution Revenue Requirement	184	179	175	170	166	162	157	153	148	144	140	135	131
3	Current Net Revenue													
4	Accrued Net Revenue													
5	Capital Base	562	531	501	470	439	408	377	346	316	285	254	223	192
6	Termination Payment													

*\*Note: All figures are noted in thousands of dollars*

**Step A:**

Annual Distribution Revenue (line 1) minus Annual Distribution Revenue Requirement (line 2) equals Current Net Revenue (line 3)

If Current Net Revenue is a positive number, then PG&E has collected revenue above its annual requirement. If it is a negative number, PG&E has collected revenue below its annual requirement.

**Step B:**

Current Net Revenue (line 3) plus Accrued Net Revenue (line 4) from the prior year shall equal Accrued Net Revenue for the current year.

If Accrued Net Revenue is a positive number, then PG&E has collected revenue above its cumulative annual requirements. If it is a negative number, PG&E has collected revenue below its cumulative annual requirements.

Step C:

In the year for which the termination payment is calculated, Capital Base (line 5) minus Accrued Net Revenue (line 4) shall equal the termination payment, which in no case shall be less than zero (0).

**RECORDING REQUESTED BY**

PACIFIC GAS AND ELECTRIC COMPANY

**AND WHEN RECORDED MAIL TO**  
PACIFIC GAS AND ELECTRIC COMPANY  
Land Services Office-Merced  
3185 M Street  
Merced, CA, 95348

\_\_\_\_\_  
SPACE ABOVE THIS LINE FOR RECORDER'S USE

**GRANT OF EASEMENT**

THIS AGREEMENT, made this \_\_\_\_\_ day of August, 2003, by and between THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, a California corporation, hereinafter referred to as "Grantor", and PACIFIC GAS AND ELECTRIC COMPANY, a corporation organized and existing under the laws of the State of California, hereinafter referred to as "Grantee",

WHEREAS Grantor is the owner of certain real property in the County of Merced, State of California, which land is known as *[Insert APN]*, and is described as follows:

*[Insert Description of Lands]*

WHEREAS Grantee has requested a non-exclusive easement to accommodate the underground electrical facilities described in paragraph 1 below; and

WHEREAS Grantor is willing to convey such easement to Grantee, and in consideration of value paid by Grantee, the receipt whereof is hereby acknowledged.

NOW, THEREFORE, the parties agree as follows:

1. Grantor hereby Grants to Grantee the right to install and maintain such underground conduits, pipes, manholes, service boxes, wires, cables, and electrical conductors; aboveground marker posts, risers, and service pedestals; underground and aboveground switches, fuses, terminals, and transformers with associated concrete pads; and fixtures and appurtenances necessary to any and all thereof, as second party from time to time deems necessary, which shall be located within the strips of land not to exceed ten (10) feet in width, and not to exceed five (5) feet on each side of the facilities as initially installed hereunder in, under, and along that certain real property described in Exhibit "A" attached hereto and by this reference made a part hereof. Grantor expressly reserves the right to use the easement or to grant other easements or licenses at the same location; provided such use does not interfere with the rights herein granted, and provided that Grantor shall not erect or construct any building or other structure, or drill or

operate any well, or construct any reservoir or other obstruction, or add to the ground level in said easement area.

2. The rights granted herein shall be for so long as said easement is used for the purpose described in Section 1 above. Grantee agrees that said facilities shall be laid down, constructed and maintained at a depth of at least eighteen (18) inches below the present surface of the ground.

3. The easement herein granted is subject to all covenants, conditions, reservations, contracts, leases, including agricultural licenses, easements, encumbrances, restrictions, and rights-of-way of record and appurtenant thereto, and the use of the word "grant" shall not constitute any warranty on the part of the Grantor.

4. Grantee shall comply with all regulatory environmental and safety requirements at Grantee's sole cost and expense.

5. Grantee shall not use, deposit or permit the use or deposit of any hazardous or toxic waste or material or other harmful substances on Grantor's land.

6. Grantor may relocate the easement if in the opinion of Grantor it unreasonably interferes with the use by the Grantor of Grantor's land; provided, however, that Grantor shall bear the cost of relocating said facilities and provide to Grantee a substitute easement location reasonably suited to Grantee's needs at no cost to Grantee.

7. Grantee shall not materially interfere with the normal operation and activities of Grantor in its use of adjoining land, and Grantee shall use such routes and procedures on Grantor's land as occasion the least practical damage and inconvenience to Grantor. Except in the event of an emergency, Grantee shall not close any road or interfere with the flow of traffic on, to or from Grantor's property without Grantor's prior written consent. Grantee shall provide all appropriate and reasonable safety measures including, if applicable, traffic control and other safety procedures during installation or maintenance.

8. Grantee shall repair and restore to as near as reasonably possible the original condition any of Grantor's property, including, but not limited to, roads, utilities, buildings and fences that may be damaged or destroyed in connection with the exercise of the easement hereby granted.

9. This Grant of Easement is made on the express condition that Grantor is to be free from all liability by reason of injury or death to persons or injury to property arising out of any wrongful or negligent act or omission of Grantee, its contractors, agents, officers, employees, invitees, or licensees, including any liability for injury or death to the person or property of Grantee, its contractors, agents, officers, members, employees, invitees, or licensees, provided, however, that this indemnity shall not extend to that portion of such loss or damage that shall have been caused by Grantor's comparative negligence or willful misconduct. Grantee hereby covenants and agrees to and shall indemnify Grantor, its officers, employees, and agents and save them harmless from any and all liability, loss, costs, or obligations on account of, or arising out of, any such injury or losses caused by any wrongful or negligent act or omission of Grantee, other than those caused by the comparative negligence or willful misconduct of Grantor, its employees, contractors or agents.

10. Grantee, its officers, employees, and agents shall assume all risk of injury or death of persons or damage to any and all property under the control or custody of Grantee upon said premises or damage or loss of any property maintained on the premises by Grantee, its contractors, agents, officers, employees, invitees or licensees, except as to injury, death, loss or damage caused by the comparative negligence or willful misconduct of Grantor, its employees, contractors or agents.

11. Grantee shall be responsible for any damage to the adjoining lands of Grantor or third parties caused by the exercise of this easement by Grantee, including, but not limited to, soil erosion or damage resulting there from; except damage caused by the comparative negligence or willful misconduct of Grantor, its employees, contractors or agents.

12. Grantor may terminate this agreement any time after twenty-five (25) years of continuous non-use of the easement by Grantee. In the event of such termination, the easement shall be quitclaimed from Grantee to Grantor, without expense to Grantor, and Grantor's land shall automatically revert to Grantor or its assigns and successors, without the necessity of any further action to effect said reversion.

13. Grantee alone shall pay any taxes or use fee(s) levied against the premises or against Grantee's interest by any governmental agency relating to the easement herein granted. Grantee shall not cause liens of any kind to be placed against the property.

14. Grantee shall pay all escrow and recording fees incurred in this transaction and if title insurance is required by the Grantee, the premium charge there for.

15. This instrument contains the entire agreement between the parties relating to the rights herein granted and the obligations herein assumed. Any oral representations or modifications concerning this instrument shall be of no force or effect except in a subsequent modification in writing, signed by the party to be charged.

16. This instrument shall bind and inure to the benefit of and bind the respective successors of the parties hereto, and all covenants shall apply to and run with the land.

**IN WITNESS WHEREOF**, the parties hereto have executed this instrument the day and year first above written.

**GRANTOR:**

**THE REGENTS OF THE  
UNIVERSITY OF CALIFORNIA**

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

PACIFIC GAS AND ELECTRIC COMPANY  
AGREEMENT FOR INSTALLATION OR ALLOCATION OF  
SPECIAL FACILITIES

At the request of The Regents of The University of California, A California Corporation (Applicant), PACIFIC GAS AND ELECTRIC COMPANY (PGandE) hereby agrees, as an accommodation, to install at the Applicant's expense within a reasonable time, or allocate for Applicant's use at Lake Road, Merced, State of California, certain facilities consisting of capacity reservation charge for alternate feeder capacity (Special Facilities), at an estimated total additional installed cost of \$15,134.00 over and above the cost of standard facilities which PGandE would normally provide or allocate for regular service in accordance with its tariffs on file with and authorized by the California Public Utilities Commission (Commission), subject to the following terms and conditions:

1. Applicant shall pay to PGandE, on demand and in advance of construction by PGandE, the initial sum of:

(a) \$15,134.00\* (Advance) which consists of a credit of \$0.00 for that portion of the facilities provided by and conveyed to PGandE by the Applicant, and Applicant's payment of \$15,134.00 representing PGandE's additional costs for Special Facilities; plus,

(b) \$0.00\* (Rearrangement) a nonrefundable amount representing PGandE's cost of rearranging existing facilities to accommodate the installation of the Special Facilities.

2. Applicant shall also pay to PGandE, in addition to the monthly rates and charges for service, at the option of PGandE, either:

(a) A monthly charge for the Special Facilities of \$N/A (Cost of Ownership Charge) representing the continuing ownership costs of the Special Facilities (N/A% per month) as determined in accordance with the applicable percentage rate established in the Special Facilities section of PGandE's applicable Gas or Electric Rule No. 2, copy attached; or,

(b) \$0.00 (Equivalent One-Time Payment) which is the present worth of the monthly ownership costs (0.46%) for the Special Facilities in perpetuity. Refunds and adjustments, if any, of the Advance and Equivalent One-Time Payment will be made in accordance with paragraph 13. Interest at the rate of \*\* % annually will be added to the unamortized balance of the Equivalent One-Time Payment on each anniversary of the date the Special Facilities are first made available, as such date is established in PGandE's records, before the current year's Cost of Ownership Charges are deducted.

The monthly Cost of Ownership Charge shall commence on the date the Special Facilities are first available for Applicant's use, as such date is established in PGandE's records. PGandE will notify Applicant, in writing, of such commencement date.

3. The annual ownership cost used to determine the Equivalent One-Time Payment or used to determine the monthly charges in paragraph 2 above shall automatically increase or decrease without formal amendment to this agreement if the Commission should subsequently authorize a higher or lower percentage rate for monthly costs of ownership for Special Facilities as stated in Rule No. 2, effective with the date of such authorization. Thereafter, such revised annual ownership cost shall also be used to determine the unamortized balance of the Equivalent One-Time Payment, as provided in paragraph 13.(a).

4. Where it is necessary to install Special Facilities on Applicant's premises, Applicant hereby grants to PGandE:

(a) the right to make such installation on Applicant's premises along the shortest practical route thereon and of sufficient width to provide legal clearance from all structures now or hereafter erected on Applicant's premises for any facilities of PGandE; and,

(b) the right of ingress to and egress from Applicant's premises at all reasonable hours for any purposes reasonably connected with the operation and maintenance of the Special Facilities.

5. Where formal rights of way or easements are required on and over Applicant's property or the property of others for the installation of the Special Facilities, Applicant understands and agrees that PGandE shall not be obligated to install the Special Facilities unless and until any necessary permanent rights of way or easements, satisfactory to PGandE, are granted without cost to PGandE.

6. PGandE shall not be responsible for any delay in completion of the installation of the Special Facilities resulting from shortage of labor or materials, strike, labor disturbance, war, riot, weather conditions, governmental rule, regulation or order, including orders or judgments of any court or Commission, delay in obtaining necessary rights of way and easements, act of God, or any other cause or condition beyond the control of PGandE. PGandE shall have the right, in the event it is unable to obtain materials or labor for all of its construction requirements, to allocate materials and labor to construction projects which it deems, in its sole discretion, most important to serve the needs of its customers, and any delay in construction hereunder resulting from such allocation shall be deemed to be a cause beyond PGandE's control.

\* Includes ITCC tax at the rate of 22% and 22% for electric and gas facilities respectively.

\*\* Interest at the rate prescribed for deposits in Rule 7 will be applied to any unamortized balance.

7. In the event that PGandE is prevented from completing the installation of the Special Facilities for reasons beyond its control within twelve (12) months following the date of this Agreement, PGandE shall have the right to terminate this Agreement upon thirty (30) days' written notice to Applicant.

8. If this Agreement is terminated as set forth in paragraph 7, the provisions of paragraph 13 shall be applicable, based on that portion of the Special Facilities then completed, if any, including charges for any expenses incurred by PGandE for any engineering, surveying, right of way acquisition expenses and other associated expenses incurred by PGandE for that portion of the Special Facilities not installed or, in PGandE's sole judgment, not useful in supplying permanent service to PGandE's other customers.

9. Special Facilities provided by PGandE hereunder shall at all times be and remain the property of PGandE.

10. As provided in PGandE's applicable Electric Rule No. 14 or Gas Rules No. 14 and 21, copies attached, Applicant understands that PGandE does not guarantee electric or gas service to be free from outages, interruptions or curtailments and that the charges for the Special Facilities represent the additional cost associated with providing the Special Facilities rather than for a guaranteed level of service reliability.

11. If it becomes necessary for PGandE to alter or rearrange the Special Facilities, including, but not limited to the conversion of overhead facilities to underground, Applicant shall be notified of such necessity and shall be given the option to either terminate this Agreement in accordance with paragraphs 12 and 13, or pay to PGandE additional Special Facilities charges consisting of:

(a) A facility termination charge for that portion of the Special Facilities which is being removed because of alteration or rearrangement. Such charge to be determined in the same manner as described in paragraph 13; plus,

(b) An additional Advance and/or rearrangement costs, if any, for any new Special Facilities requested which shall be determined in the same manner as described in paragraph 1; plus,

(c) A revised Equivalent One-Time Payment or monthly charge based on the total net estimated additional installed costs of all new and remaining Special Facilities. Such revised Equivalent One-Time Payment or monthly charge shall be determined in the same manner as described in paragraphs 2 and 3.

12. This Agreement shall be effective when executed by the parties hereto and shall remain in effect until terminated by either party on at least thirty (30) days' advance written notice.

13. Upon discontinuance of the use of any Special Facilities due to termination of service, termination of this Agreement, or otherwise:

(a) Applicant shall pay to PGandE on demand (in addition to all other monies to which PGandE may be legally entitled by virtue of such termination) a facility termination charge defined as the estimated installed cost, plus the estimated removal cost, less the estimated salvage value for the Special Facilities to be removed, as determined by PGandE in accordance with its standard accounting practices. PGandE shall deduct from the facility termination charge the Advance plus the unamortized balance of the Equivalent One-Time Payment previously paid, if any. If the Advance paid plus the unamortized balance of the Equivalent One-Time Payment is greater than the facility termination charge, PGandE shall refund the difference, without interest, to the Applicant;

(b) PGandE shall be entitled to remove and shall have a reasonable time in which to remove any portion of the Special Facilities located on the Applicant's premises;

(c) PGandE may, at its option, alter, rearrange, convey or retain in place any portion of the Special Facilities located on other property off Applicant's premises. Where all or any portion of the Special Facilities located off Applicant's premises are retained in place and used by PGandE to provide permanent service to other customers, an equitable adjustment will be made in the facility termination charge.

14. Applicant may, with PGandE's written consent, assign this Agreement if the assignee thereof will agree in writing to perform Applicant's obligations hereunder. Such assignment will be deemed to include, unless otherwise specified therein, all of Applicant's rights to any refunds which might become due upon discontinuance of the use of any Special Facilities.

15. This Agreement shall be subject to all of PGandE's applicable tariffs on file and authorized by the Commission and shall at all times be subject to such changes or modifications as the Commission may direct from time to time in the exercise of its jurisdiction.

Dated this 9<sup>th</sup> day of OCTOBER, 2003.

The Regents of the UC  
Applicant

PACIFIC GAS AND ELECTRIC COMPANY

BY: 

BY: 

TITLE: Vice Chancellor for Administration

for Manager, \_\_\_\_\_ Division

MAILING ADDRESS:  
The Regents of the University of Calif.  
P.O. Box 2039  
Merced, CA 95344

Attachments: Rules 2 and 14 (Electric), or  
Rules 2, 14 and 21 (Gas)

PACIFIC GAS AND ELECTRIC COMPANY  
AGREEMENT FOR INSTALLATION OR ALLOCATION OF  
SPECIAL FACILITIES

At the request of The Regents of The University of California, A California Corporation (Applicant), PACIFIC GAS AND ELECTRIC COMPANY (PGandE) hereby agrees, as an accommodation, to install at the Applicant's expense within a reasonable time, or allocate for Applicant's use at Lake Road, Merced, State of California, certain facilities consisting of metering associated with second service (Special Facilities), at an estimated total additional installed cost of **\$5,000.00** over and above the cost of standard facilities which PGandE would normally provide or allocate for regular service in accordance with its tariffs on file with and authorized by the California Public Utilities Commission (Commission), subject to the following terms and conditions:

1. Applicant shall pay to PGandE, on demand and in advance of construction by PGandE, the initial sum of:

(a) **\$6,100.00\*** (Advance) which consists of a credit of **\$0.00** for that portion of the facilities provided by and conveyed to PGandE by the Applicant, and Applicant's payment of **\$6,100.00** representing PGandE's additional costs for Special Facilities; plus,

(b) **\$0.00\*** (Rearrangement) a nonrefundable amount representing PGandE's cost of rearranging existing facilities to accommodate the installation of the Special Facilities.

2. Applicant shall also pay to PGandE, in addition to the monthly rates and charges for service, at the option of PGandE, either:

(a) A monthly charge for the Special Facilities of **\$N/A** (Cost of Ownership Charge) representing the continuing ownership costs of the Special Facilities (**N/A%** per month) as determined in accordance with the applicable percentage rate established in the Special Facilities section of PGandE's applicable Gas or Electric Rule No. 2, copy attached; or,

(b) **\$3,024.00** (Equivalent One-Time Payment) which is the present worth of the monthly ownership costs (**0.46%**) for the Special Facilities in perpetuity. Refunds and adjustments, if any, of the Advance and Equivalent One-Time Payment will be made in accordance with paragraph 13. Interest at the rate of **\*\*** % annually will be added to the unamortized balance of the Equivalent One-Time Payment on each anniversary of the date the Special Facilities are first made available, as such date is established in PGandE's records, before the current year's Cost of Ownership Charges are deducted.

The monthly Cost of Ownership Charge shall commence on the date the Special Facilities are first available for Applicant's use, as such date is established in PGandE's records. PGandE will notify Applicant, in writing, of such commencement date.

3. The annual ownership cost used to determine the Equivalent One-Time Payment or used to determine the monthly charges in paragraph 2 above shall automatically increase or decrease without formal amendment to this agreement if the Commission should subsequently authorize a higher or lower percentage rate for monthly costs of ownership for Special Facilities as stated in Rule No. 2, effective with the date of such authorization. Thereafter, such revised annual ownership cost shall also be used to determine the unamortized balance of the Equivalent One-Time Payment, as provided in paragraph 13.(a).

4. Where it is necessary to install Special Facilities on Applicant's premises, Applicant hereby grants to PGandE:

(a) the right to make such installation on Applicant's premises along the shortest practical route thereon and of sufficient width to provide legal clearance from all structures now or hereafter erected on Applicant's premises for any facilities of PGandE; and,

(b) the right of ingress to and egress from Applicant's premises at all reasonable hours for any purposes reasonably connected with the operation and maintenance of the Special Facilities.

5. Where formal rights of way or easements are required on and over Applicant's property or the property of others for the installation of the Special Facilities, Applicant understands and agrees that PGandE shall not be obligated to install the Special Facilities unless and until any necessary permanent rights of way or easements, satisfactory to PGandE, are granted without cost to PGandE.

6. PGandE shall not be responsible for any delay in completion of the installation of the Special Facilities resulting from shortage of labor or materials, strike, labor disturbance, war, riot, weather conditions, governmental rule, regulation or order, including orders or judgments of any court or Commission, delay in obtaining necessary rights of way and easements, act of God, or any other cause or condition beyond the control of PGandE. PGandE shall have the right, in the event it is unable to obtain materials or labor for all of its construction requirements, to allocate materials and labor to construction projects which it deems, in its sole discretion, most important to serve the needs of its customers, and any delay in construction hereunder resulting from such allocation shall be deemed to be a cause beyond PGandE's control.

\* Includes ITCC tax at the rate of 22% and 22% for electric and gas facilities respectively.

\*\* Interest at the rate prescribed for deposits in Rule 7 will be applied to any unamortized balance.

7. In the event that PGandE is prevented from completing the installation of the Special Facilities for reasons beyond its control within twelve (12) months following the date of this Agreement, PGandE shall have the right to terminate this Agreement upon thirty (30) days' written notice to Applicant.

8. If this Agreement is terminated as set forth in paragraph 7, the provisions of paragraph 13 shall be applicable, based on that portion of the Special Facilities then completed, if any, including charges for any expenses incurred by PGandE for any engineering, surveying, right of way acquisition expenses and other associated expenses incurred by PGandE for that portion of the Special Facilities not installed or, in PGandE's sole judgment, not useful in supplying permanent service to PGandE's other customers.

9. Special Facilities provided by PGandE hereunder shall at all times be and remain the property of PGandE.

10. As provided in PGandE's applicable Electric Rule No. 14 or Gas Rules No. 14 and 21, copies attached, Applicant understands that PGandE does not guarantee electric or gas service to be free from outages, interruptions or curtailments and that the charges for the Special Facilities represent the additional cost associated with providing the Special Facilities rather than for a guaranteed level of service reliability.

11. If it becomes necessary for PGandE to alter or rearrange the Special Facilities, including, but not limited to the conversion of overhead facilities to underground, Applicant shall be notified of such necessity and shall be given the option to either terminate this Agreement in accordance with paragraphs 12 and 13, or pay to PGandE additional Special Facilities charges consisting of:

(a) A facility termination charge for that portion of the Special Facilities which is being removed because of alteration or rearrangement. Such charge to be determined in the same manner as described in paragraph 13; plus,

(b) An additional Advance and/or rearrangement costs, if any, for any new Special Facilities requested which shall be determined in the same manner as described in paragraph 1; plus,

(c) A revised Equivalent One-Time Payment or monthly charge based on the total net estimated additional installed costs of all new and remaining Special Facilities. Such revised Equivalent One-Time Payment or monthly charge shall be determined in the same manner as described in paragraphs 2 and 3.

12. This Agreement shall be effective when executed by the parties hereto and shall remain in effect until terminated by either party on at least thirty (30) days' advance written notice.

13. Upon discontinuance of the use of any Special Facilities due to termination of service, termination of this Agreement, or otherwise:

(a) Applicant shall pay to PGandE on demand (in addition to all other monies to which PGandE may be legally entitled by virtue of such termination) a facility termination charge defined as the estimated installed cost, plus the estimated removal cost, less the estimated salvage value for the Special Facilities to be removed, as determined by PGandE in accordance with its standard accounting practices. PGandE shall deduct from the facility termination charge the Advance plus the unamortized balance of the Equivalent One-Time Payment previously paid, if any. If the Advance paid plus the unamortized balance of the Equivalent One-Time Payment is greater than the facility termination charge, PGandE shall refund the difference, without interest, to the Applicant;

(b) PGandE shall be entitled to remove and shall have a reasonable time in which to remove any portion of the Special Facilities located on the Applicant's premises;

(c) PGandE may, at its option, alter, rearrange, convey or retain in place any portion of the Special Facilities located on other property off Applicant's premises. Where all or any portion of the Special Facilities located off Applicant's premises are retained in place and used by PGandE to provide permanent service to other customers, an equitable adjustment will be made in the facility termination charge.

14. Applicant may, with PGandE's written consent, assign this Agreement if the assignee thereof will agree in writing to perform Applicant's obligations hereunder. Such assignment will be deemed to include, unless otherwise specified therein, all of Applicant's rights to any refunds which might become due upon discontinuance of the use of any Special Facilities.

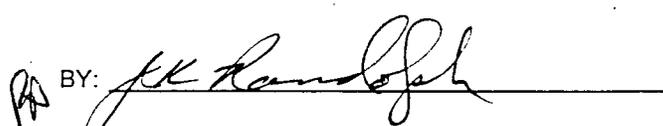
15. This Agreement shall be subject to all of PGandE's applicable tariffs on file and authorized by the Commission and shall at all times be subject to such changes or modifications as the Commission may direct from time to time in the exercise of its jurisdiction.

Dated this 9th day of OCTOBER, 2003.

**The Regents of the UC**  
Applicant

PACIFIC GAS AND ELECTRIC COMPANY

BY:   
Lindsay A. Desjardins

BY: 

TITLE: Vice Chancellor for Administration

for Manager, \_\_\_\_\_ Division

MAILING ADDRESS:  
The Regents of the University of Calif.  
P.O. Box 2039  
Merced, CA 95344

Attachments: Rules 2 and 14 (Electric), or  
Rules 2, 14 and 21 (Gas)