

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

Tel. No. (415) 703-1691



May 5, 2004

Advice Letter 2492-E

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

Subject: Agreement with Alameda County Flood Control and Water Conservation District

Dear Ms Smith:

Advice Letter 2492-E is effective April 9, 2004. 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

Karen A. Tomcala
Vice President
Regulatory Relations

77 Beale Street, Room 1065
San Francisco, CA 94105

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

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Internet: KAT5@pge.com

April 9, 2004

**Advice 2492-E
(Pacific Gas and Electric Company ID U 39E)**

Public Utilities Commission of the State of California

**Subject: Submits Agreement with Alameda County Flood Control and
Water Conservation District In Accordance with General Order
96-A, Section X.B**

Pacific Gas and Electric Company (the "Company") hereby submits in accordance with Section X.B of General Order 96-A an agreement between the Company and the Alameda County Flood Control and Water Conservation District (the "District"), regarding the relocation of underground electric distribution facilities in conflict with the District's sewer improvement project in Oakland, California.

Background:

The District is proposing to construct a public works project commonly known as the Lakeshore Storm Sewer Improvement Project, involving certain storm drain system improvements along Lakeshore Avenue in Oakland, California, between Lake Park Avenue and Trestle Glen. The Company has existing underground electric distribution facilities in the public right of way along Lakeshore Avenue that will have to be rearranged in order to accommodate the District's Project.

The relocation of the Company's existing facilities is governed by Electric Tariff Rule 15.I.1.¹ The flood control act that established the District further provides

¹ Electric Tariff Rule 15.I.1 provides, in pertinent part, "Any relocation or rearrangement of PG&E's existing facilities, at the request of, or to meet the convenience of an Applicant or customer, and agreed upon by PG&E, normally shall be performed by PG&E."

that the District is financially responsible for any utility relocation.²

The Company has entered into an agreement with the District to make the necessary rearrangement of the Company's facilities at the District's expense. The basic element of the transaction is that the District will reimburse the Company for the actual costs incurred to relocate the underground distribution facilities in conflict with the District's project. At the District's request, the Company performed advanced design services to develop a rearrangement plan to clear the conflict with District's project. As part of these design services, PG&E estimated the cost of rearrangement is Nine Hundred Ninety-Seven Thousand Eight Hundred Fifty-two Dollars (\$997,852). The District has approved the Company's rearrangement plan.³

Under the agreement, the District will pay the estimated costs in three installment payments. The first installment represents payment of the costs associated with the Company's advanced design services, and will be applied against a deposit the District paid to the Company in the amount of Thirty Thousand Dollars (\$30,000).⁴ The second installment in the amount of Four Hundred Seventy-Four Thousand Eight Hundred and Fifty-Seven Dollars (\$474,857.00) was paid prior to construction on March 21, 2004. The third installment in the amount of Four Hundred Seventy-Four Thousand Eight Hundred and Fifty-Seven Dollars (\$474,857.00) is due upon fifty percent completion of construction, on or before April 30, 2004.

The Company's cost estimate does not include contingency. If the actual cost to complete construction exceeds the Company's cost estimate, District will be billed for the additional charges in accordance with the terms of the agreement. Within 120 days after completion of the rearrangement work, the Company will provide the District with a final invoice that will identify the actual cost for specified elements of the rearrangement work (labor, materials and supplies, outside contractors, salvage credits and betterment credits). If the total of the actual costs exceeds the total of estimated costs by more than 20%, the

² The Alameda County Flood Control and Water Conservation District Act (the "Act") provides that the District shall "...in addition to the damage for the taking, injury, or destruction of the property, also pay the cost of removal, reconstruction or relocation of any structure, railways, mains, pipes, conduits, wires, cable, poles, of any public utility which is required to be moved to a new location..." (California Water Code App. §55-5, Sec. 13.).

³ Although the Rearrangement Plan has been approved, the District disputes the Company's cost estimate because, in the District's opinion, it does not provide sufficiently detailed information as to how the Company's rearrangement costs were calculated. The Agreement provides that the District will pay the rearrangement costs under protest, and without waiving its right to seek a more detailed statement of the costs associated with the rearrangement work.

⁴ The \$997,852 cost estimate recognized the District was entitled to a betterment credit of \$18,138. Applying this betterment credit and the \$30,000 deposit, the remaining balance is \$949,714.

Company will provide a written explanation for the deviation. The District will pay the amount of the final invoice within 30 days after receipt. The agreement provides a dispute resolution procedure for addressing costs that may exceed 120% of the cost estimate.

The transaction between the Company and the District consists of:

- 1) Agreement for Rearrangement of Facilities of Pacific Gas and Electric Company to Accommodate a Public Work (Attachment II)
- 2) The electric Lists of Contracts and Deviations have been revised to reflect the agreement; the affected tariff sheet is listed on Attachment I.

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

Protests:

Anyone wishing to protest this filing may do so by sending a letter by **April 29, 2004**, which is 20 days from the date of filing. The protest should be 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, 4th Floor
San Francisco, California 94102
Facsimile: (415) 703-2200
E-mail: 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 PG&E on the same date it is mailed or delivered to the Commission at the address shown below.

Pacific Gas and Electric Company
Attention: Brian K. 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

Effective Date:

In accordance with General Order 96-A, Section X.A., the Company requests that this filing be effective **April 9, 2004**, which is the date of filing.

Notice:

In accordance with General Order 96-A, Section III, Paragraph G, a copy of this advice letter is being sent electronically and via U.S. mail to parties shown on the attached list. Address changes should be directed to Sandra Ciach at (415) 973-7572. Advice letter filings can also be accessed electronically at:

<http://www.pge.com/tariffs>

Karen A. Domicola/gst
Vice President – Regulatory Relations

Attachments

cc: Alameda County Flood Control and Water Conservation District

Cal P.U.C. Sheet No.	Title of Sheet	Canceling Cal P.U.C. Sheet No.
21541-E	Lists of Contracts and Deviations	19456-E
21542-E	Lists of Contracts and Deviations (continued)	19456-E
21543-E	Table of Contents (Rules and Contracts and Deviations)	21165-E
21544-E	Table of Contents	21478-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	
EAST BAY REGION (Cont'd.)						
<u>Counties and Cities</u>						
City of Livermore and Roger L. Shaheen Research Drive Assessment District Livermore	Coml/Ind	08-22-79 ---	G.O.96-A,X.B. 4-2-80	Elec. Rule 15.2 Gas Rule 15	Cost of Ownership Charge Assessment District	
City of Livermore	Coml/Ind	03-13-81 ---	Res. G-2458 3-2-82	Rule 15.2	Cost of Ownership Charge	
County of Alameda	Coml/Ind	12-22-93 12-22-003	--	Rule 15	Exceptional Case Line Extension	
County of Alameda Flood Control and Water Conservation	Construction	03-11-04	G.O.96-A,X.B. Advice 2492-E	Elec. Rule 15.L.2	Project Cost Allocation	(N) (N) (L)

*1 to *4 See last page of Electric Contracts and Deviations Section for explanation of footnotes.

(Continued)



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
<u>Other Public Agencies</u>					
Contra Costa Co. Water Dist. Contra Costa Canal Contra Costa County (Assigned from USDO Bureau of Reclamation 14-06-200-3416A)	General Service	11-06-2*2	G.O.96-A,X.B. 4-2-75	Rule 15	Monthly Cost of Ownership Charges
Contra Costa Co. Water Dist. Contra Costa Canal Contra Costa County (Assigned from USDO Bureau of Reclamation 14-06-200-3479A)	General Service	11-6-72*2	G.O.96-A,X.B. 4-2-75	Rule 15	Monthly Cost of Ownership Charges
BART Alameda, Contra Costa, San Mateo, and San Francisco Counties	Tractn, Statn & Misc. Power	08-01-97 01-01-03	G.O.96-A,X.B.	E-20	Conjunctive Billing, Special Facilities, Transmission and Distribution, Supplemental Power
East Bay Municipal Utilities District	General Service	09-12-95	G.O.96-A,X.B. Advice 2330-E	Rule 2	Special Facilities Agreement
<u>Supplemental Power</u>					
AT(04-3)-580 United States Atomic Energy Commission Sandia and Lawrence Radiation Laboratory Sites near Livermore, Alameda County	Supple- mental	09-15-66 06-30-67	G.O.96-A,X.B. 8-20-68	---	Special Rate

(L)

(L)

*1 to *4 See last page of Electric Contracts and Deviations Section for explanation of footnotes.

(Continued)



TABLE OF CONTENTS
(Continued)
RULES

RULE	TITLE OF SHEET	CAL P.U.C. SHEET NO.
1	Definitions	14855,16368,14857,14858,14859,14860,14861,19759, 19760,14864,14865,19403,14867,19761,14869,14870,14871,15564,14873,14874-E
2	Description of Service	11257,11896,11611, 14079,11261 to 11264,11498,11266,11267,11499,11269 to 11278,14055,11280 to 11283-E
3	Application for Service	11714,18973-E
4	Contracts	13612-E
5	Special Information Required on Forms	11287,14192,11289-E
6	Establishment and Re-establishment of Credit.....	20229,20230-E
7	Deposits.....	11300,11301-E
8	Notices.....	14144,14145,13137,14146,13139-E
9	Rendering and Payment of Bills	16369,14877,14878,19310,14317,14318-E
10	Disputed Bills.....	11308 to 11310-E
11	Discontinuance and Restoration of Service.....	13140 to 13150,14080,13152-E
12	Rates and Optional Rates.....	16872,16873,16874-E
13	Temporary Service.....	20092,15574-E
14	Shortage of Supply and Interruption of Delivery	19762,15527-E
15	Distribution Line Extensions	20093,20094,15577,15578,17850,17851, 17852,15582,15583,20095,21162,21163,21164,15588,17856,17857,15591,16986,15593-E
16	Service Extensions	20096, 15595,14880,14881,15596 to 15598,16987,15600 to 15608,14254,13775,15609,15610-E
17	Meter Tests and Adjustment of Bills for Meter Error	20099,12050 to 12052-E
17.1	Adjustment of Bills for Billing Error	14886,12054-E
17.2	Adjustment of Bills for Unauthorized Use	14887,12056 to 12058-E
18	Supply to Separate Premises and Submetering of Electric Energy	14329,14330,13396,13276-E
19	Medical Baseline Quantities	18974,18975,18976-E
19.1	California Alternate Rates for Energy for Individual Customers and Submetered Tenants of Master-Metered Customers	16391,20371,16393,16394-E
19.2	California Alternate Rates for Energy for Nonprofit Group-Living Facilities.....	13728,20372,13589,13730,13591-E
19.3	California Alternate Rates for Energy for Qualified Agricultural Employee Housing Facilities.....	13899,20373,13901,13902-E
20	Replacement of Overhead with Underground Electric Facilities	19012,11240,11241,19013,16665,15611,19014-E
21	Generating Facility Interconnections	19404 to 19453-E
22	Direct Access Service.....	14888,19763,15565, 14891 to 14901,16448,14903,14904,16449,16235 to 16243,14913,16244,16245,16384, 14917,15833 to 15836,14920,14921,15568,14923,15569,14925,14926,15190,15191, 14929,14930,16385,16386,14933,16387,14935,14936,15192,14938 to 14946,16388-E
SERVICE AREA MAPS:		
	Boundary Lines.....	10534-E
	Map A Lassen Municipal Utility District/Surprise Valley	10423-E
	Map B Sacramento Municipal Utility District.....	4524-E
	Map C Modesto Irrigation/Turlock Irrigation District	4525-E
	Map D SoCalEdison	4671-E
	Map E Palo Alto	4672-E
	Map F Redding	13310-E
	Map G Healdsburg	13079-E
	Map H Lompoc.....	13372-E
	Map I Gridley	13780-E
	LIST OF CONTRACTS AND DEVIATIONS:.....	13819,13794,21541,21542,12000,12001,13672,12003,19350, 11435,12004,19351,12006,19020,12008,12009,11191,12010,11193,11194,11195,12969,19352,12012,13466, 12014,12015,13296,12955,19353,12018 to 12024,17259,12026,13092,11211,12027,12028,16703,12030, 12031,14035,11217,12032,20482,11219,12034,12035,12036,11223,11986,11987,17007,16898,11227-E

(T)

(Continued)



TABLE OF CONTENTS

		<u>CAL P.U.C. SHEET NO.</u>	
Title Page		8285-E	
Table of Contents:			
Rate Schedules	21544,21477,21476,21475-E		(T)
Preliminary Statements	21473,19373,21474-E		
Rules, Maps, Contracts and Deviations	21543-E		(T)
Sample Forms	19880,20377,20196,20979,18911,20980,21472-E		

RATE SCHEDULES

<u>SCHEDULE</u>	<u>TITLE OF SHEET</u>	<u>CAL P.U.C. SHEET NO.</u>
RESIDENTIAL RATES		
E-1	Residential Service	21217,21218,21219,19910,21220,21221-E
E-2	Experimental Residential Time-of-Use Service	21222 to 21231,19886,21232,21233-E
E-3	Experimental Residential Critical Peak Pricing Service	21234 to 21243,19895,19896,21244-E
EE	Service to Company Employees	21245-E
EM	Master-Metered Multifamily Service	21536,21247,21248,20648,21249,21250-E
ES	Multifamily Service	21537,21252 to 21256-E
ESR	Residential RV Park and Residential Marina Service	21257,21258,21259,20657,21260,21261-E
ET	Mobilehome Park Service	21262 to 21267-E
E-7	Residential Time-of-Use Service	21268 to 21273-E
E-A7	Experimental Residential Alternate Peak Time-of-Use Service	21274 to 21279-E
E-8	Residential Seasonal Service Option	21280 to 21283-E
E-9	Experimental Residential Time-of-Use Service for Low Emission Vehicle Customers	20891,21284 to 21291-E
EL-1	Residential CARE Program Service	21292 to 21296-E
EML	Master-Metered Multifamily CARE Program Service	21538,21298 to 21301-E
ESL	Multifamily CARE Program Service	21539,21303 to 21307-E
ESRL	Residential RV Park and Residential Marina CARE Program Service	21308 to 21313-E
ETL	Mobilehome Park CARE Program Service	21314 to 21319-E
EL-7	Residential CARE Program Time-of-Use Service	21320 to 21325-E
EL-A7	Experimental Residential CARE Program Alternate Peak Time-of-Use Service	21326,21327,21328,19783,21329,21330-E
EL-8	Residential Seasonal CARE Program Service Option	21331 to 21334-E
COMMERCIAL/INDUSTRIAL		
A-1	Small General Service	21335 to 21339-E
A-6	Small General Time-of-Use Service	21340 to 21345-E
A-10	Medium General Demand-Metered Service	21346 to 21355-E
A-15	Direct-Current General Service	21356,21357-E
E-19	Medium General Demand-Metered Time-of-Use Service	21358, 17092,21359 to 21364,20932,20723,21365,18864,18039,20933,18865,17900,16414, 15330,20512,21366,21367,21368,20935,20728,21369,20729,19805,21370,21371-E
E-20	Service to Customers with Maximum Demands of 1,000 Kilowatts or More	21372 to 21377,19314,20736,21378,18044,20942, 18867,15356,21379,15358,20513,21380,21381,21382,20944,17101,20945,21383-E

(Continued)

Attachment I
Agreement for Rearrangement of Facilities of
Pacific Gas and Electric Company to
Accommodate a Public Work

Agreement for Rearrangement of Facilities of PACIFIC GAS AND ELECTRIC COMPANY to Accommodate a Public Work

THIS AGREEMENT is entered into as of this 10th day of March, 2004 by and between the Alameda County Flood Control and Water Conservation, hereinafter referred to as "District" and Pacific Gas and Electric Company, a California public utility, hereinafter referred to as "Pacific."

RECITALS

WHEREAS District is proposing to construct a public works project commonly known as the Lakeshore Storm Sewer Improvement Project, involving certain storm drain system improvements along Lakeshore Avenue in Oakland, California, between Lake Park Avenue and Trestle Glen (the "Project");

WHEREAS certain facilities of Pacific will have to be rearranged in order to accommodate the Project;

WHEREAS, Pursuant to California Public Utilities Commission General Order 96-A, Section X.B., Pacific has the authority to enter into contracts with governmental entities, such as District, that depart from filed tariff schedules; and

WHEREAS Pacific is willing to accommodate District and make the necessary Rearrangement of its facilities under the terms and conditions specified in this Agreement;

NOW, THEREFORE, the parties agree as follows:

1. DEFINITIONS

- 1.1. "Actual Cost" means actual and reasonable costs incurred by Pacific, as determined under the Uniform System of Accounts approved by the Federal Energy Regulatory commission, in performing the Rearrangement specified in a written Notice to Owner from District.
- 1.2. "District's Project Manager" means the person designated by District to perform the functions of a Project Manager as specified in this Agreement.
- 1.3. "Betterment" means the difference in Actual Cost between the facility that Pacific elects to install and a facility that would provide Pacific with equivalent substitute utility facilities for the utility facilities rearranged. Betterment does not include difference caused by changes in utility standards, manufacturing or construction standards, availability of materials, or regulatory requirements.
- 1.4. "Cost Estimate" means a detailed estimate of the costs of a Rearrangement prepared pursuant to paragraph 4.2.
- 1.5. "Delineate" means indicating the approximate horizontal location of a facility.

C-2004-349

- 1.6. "Notice to Owner" means the written notice given by District (or another governmental District having authority to request Pacific to rearrange facilities for District's project) pursuant to paragraph 5.1 instructing Pacific to proceed with a Rearrangement and designating the Rearrangement Plan to be used.
- 1.7. "Pacific's Project Manager" means the person designated by Pacific to perform the functions of the Pacific's Project Manager specified in this Agreement.
- 1.8. "Project" means the public work that District intends to construct.
- 1.9. "Project Area" means the geographic area affected by District's proposed Project.
- 1.10. "Proportionate Share" means the share of the costs of rearrangement to be borne by a party.
- 1.11. "Public Utility Easement" means an area of land designated in a deed or on a parcel map or subdivision map as a public utility easement or a public service easement, whether or not accepted by a local District. A Public Utility Easement is not a Public Way.
- 1.12. "Public Way" means the public highways, streets, roads, ways, alleys and other places in which the public has a right of passage.
- 1.13. "Rearrangement" means permanently or temporarily moving, lowering, raising, removing and installing new facilities or otherwise clearing conflicts between the utility facilities and the District's proposed Project or providing support for or protection of facilities during construction.
- 1.14. "Rearrangement Plan" means drawing and schedule detailed plans and specifications for specific rearrangements prepared by Pacific based on plans for District's proposed project provided by District. A Rearrangement Plan describes the facilities to be installed and removed, the schedule of construction, the methods of construction to be employed, anticipated environmental mitigation measures, and any other factors that may affect the cost or timing of the Rearrangement. The Rearrangement Plan contains sufficient detail to allow preparation of a Cost Estimate for the Rearrangement.
- 1.15. "Revised Notice to Owner" means a written notice given to Pacific approving a deviation from the approved Rearrangement Plan.
- 1.16. "Wasted Work" means design or construction work performed by Pacific for a Rearrangement in connection with a proposed project that is canceled, delayed, or substantially revised through no fault of Pacific.

2. DETERMINATION OF DISTRICT'S PROPORTIONATE SHARE.

District and Pacific agree that District's Proportionate Share of the Rearrangement contemplated shall be 100% of the Actual Costs which Pacific will incur in effecting the rearrangement of Pacific's facilities including costs, if any, involved in any temporary rearrangement. The Cost Estimate prepared by Pacific for the Rearrangement is Nine Hundred Ninety-Seven Thousand Eight Hundred Fifty-two Dollars (\$997,852).

3. PROJECT MANAGER AUTHORITY

- 3.1. District shall designate a person to act as District's Project Manager. District represents that District's Project Manager has the authority to bind District with respect to the functions to be carried out by District's Project Manager under this Agreement.
- 3.2. Pacific shall designate a person to act as Pacific's Project Manager. Pacific represents that Pacific's Project Manager has the authority to bind Pacific with respect to the functions to be carried out by Pacific's Project Manager under this Agreement.

4. PLANNING AND DESIGN

4.1. Advanced Design

- 4.1.1. At the request of District's Project Manager, Pacific has prepared a Rearrangement Plan. The plan divided the rearrangement into manageable elements and for each element shall include the location, length, size and/or capacity, type, class, and pertinent operating conditions and design features of existing, proposed and temporary facilities, including any proposed changes to them; and the limits of right-of-way to be acquired from, by, or on behalf of Pacific.
- 4.1.2. In any Rearrangement Pacific shall be entitled to equivalent facilities, including equivalent land rights.
- 4.1.3. Pacific may elect to better its utility facilities by rearranging its facilities in a manner or along a route which will be different from that required solely to effect a rearrangement necessary to accommodate the construction, reconstruction or improvement of District's proposed project or by increasing the capacity, durability or efficiency of Pacific's facilities. District shall not be obligated to pay any portion of any Betterment.
- 4.1.4. Pacific has submitted the Rearrangement Plan to District.
- 4.1.5. District has reviewed the Rearrangement Plan to determine whether the Rearrangement as designed by Pacific will clear the conflict with District's proposed project. By entering into this Agreement, District confirms its approval of the Rearrangement Plan.
- 4.1.6. Pacific shall accumulate its costs for providing these advanced design services, and District shall pay its Proportionate Share of those costs regardless of whether District requests the Rearrangement. District has provided Pacific with an engineering deposit in the amount of Thirty Thousand Dollars (\$30,000). District's Proportionate Share of the costs for providing these advanced design services shall be applied to such deposit as set forth in Section 8.

4.2. Cost Estimate

- 4.2.1. Upon receiving the written request of District's Project Manager, Pacific has prepared a Cost Estimate based on the Rearrangement Plan approved by

District. The Cost Estimate specifies the estimated costs of each element and shall include the following items

- 4.2.1.1. labor
- 4.2.1.2. materials and supplies
- 4.2.1.3. outside contractors (paving, spoil, equipment rental, miscellaneous)
- 4.2.1.4. salvage credits
- 4.2.1.5. Betterment credits

The Cost Estimate was developed in accordance with the Uniform System of Accounts as approved by the Federal Energy Regulatory Commission and shall include an Allowance for Funds Used During Construction (AFUDC) as required by that accounting system.

- 4.2.2. Pacific has transmitted its Cost Estimate to District together with a written statement of Pacific's opinion of District's Proportionate Share of the costs of each element of the Rearrangement.

5. CONSTRUCTION

- 5.1. If District determines that it desires Pacific to perform the Rearrangement, it shall issue a Notice to Owner (or direct another governmental District having authority to request Pacific to rearrange facilities for District's project to issue a Notice to Owner) instructing Pacific to proceed with the Rearrangement in accordance with the approved Rearrangement Plan.
 - 5.1.1. The issuance of a Notice to Owner shall obligate District to pay its Proportionate Share of the Actual Cost of the Rearrangement reasonably incurred by Pacific.
 - 5.1.2. The Notice to Owner shall include a statement as to whether District agrees or disagrees with Pacific's opinion of District's Proportionate Share of the costs of the Rearrangement. If an District does not agree with Pacific's opinion, the Notice to Owner shall state District's opinion of its Proportionate Share of those costs.
 - 5.1.3. If an District does not accept Pacific's opinion of District's Proportionate Share of the costs, Pacific shall nevertheless proceed with the Rearrangement, and District shall be obligated to pay its Proportionate Share as determined pursuant to section 11.
- 5.2. Once District's Project has been approved, Pacific shall commence and diligently prosecute the Rearrangement to completion as nearly as possible in accordance with the Rearrangement Plan approved by District.
 - 5.2.1. If the approved Rearrangement Plan contemplates that additional land rights be acquired, District shall convey or cause to be conveyed to Pacific all necessary land or land rights in a form satisfactory to Pacific to Permit Pacific to install its facilities in a new location; provided, however, that in

satisfaction of this obligation of District, District and Pacific will enter into a Joint Use Agreement to be in the form attached and marked Exhibit A. For such portion of Pacific's existing facilities as will remain in the present location on land or rights of way acquired by District, the parties will enter into a Consent to Common Use in the form attached and marked Exhibit B. Pacific will not commence construction until all required land rights have been obtained. If District requests that Pacific commence the Rearrangement on the basis of a right of entry or prejudgment possession order in a condemnation action and Pacific agrees to do so, District shall indemnify Pacific against any loss or damage that it may incur because District fails to obtain permanent rights for Pacific's facilities and transfer them to Pacific in a timely manner.

5.2.2. Pacific will convey or quitclaim to District its land or land rights occupied by facilities to be abandoned or removed within the land or rights of way required by District for the construction of its project.

5.2.3. Pacific shall obtain all required permits. Pacific will not commence construction until all required permits have been obtained. Pacific shall not be liable to District for any loss or damage District may incur because of delays caused by Pacific's inability to obtain the necessary permits.

5.3. If requested by District's Project Manager, Pacific shall keep a daily record of the hours worked by each employee classification and the type of equipment and hours used.

6. REVISIONS TO REARRANGEMENT PLAN

6.1. If at any time after District has issued a Notice to Owner for the Rearrangement, either party determines that it is necessary to deviate from the approved Rearrangement Plan, the party making the determination shall notify the other party.

6.2. The parties shall agree upon the nature and scope of the deviation from the Rearrangement Plan.

6.3. District shall issue a Revised Notice to Owner describing the nature and scope of the deviation. The issuance of the Revised Notice to Owner shall obligate District to pay its Proportionate Share of any additional Actual Cost incurred by Pacific as a result of the deviation.

6.4. Pacific shall not proceed with the deviation until it has received the Revised Notice to Owner.

6.5. Within 10 days of parties' reaching agreement on the nature and scope of the deviation, Pacific shall provide District with an estimate of any additional Actual Cost it expects to incur as a result of the deviation.

6.6. If District accepts this estimate, for purposes of section 9 the Cost Estimate shall be deemed increased by this amount. If an District does not accept this estimate, District shall specify the amount that it believes to be appropriate, and for purposes of section 9 the Cost Estimate shall be deemed increased by this amount. The dispute shall be resolved pursuant to section 11.

7. WASTED WORK

- 7.1. If at any time during the process of designing and estimating the Rearrangement, District determines that it will not proceed with its Project, District shall reimburse Pacific for all costs incurred as Wasted Work.
- 7.2. If District does not commence its Project within three years of Pacific's completing the Rearrangement, District shall reimburse Pacific for all costs incurred in designing and performing the Rearrangement. This period may be extended if District's expected funding sources should become unavailable for reasons not anticipated at the time the Notice to Owner was issued.

8. BILLING

- 8.1. Pacific may bill District for its Proportionate Share in three installments. The first installment will be for the costs associated with providing the advanced design services described in Section 4.1, and shall be applied against District's deposit of Thirty Thousand Dollars (\$30,000), receipt of which is acknowledged. The remaining balance of the Cost Estimate, less Betterment credits, is Nine Hundred Forty-Nine Thousand Seven Hundred and Fourteen Dollars (\$949,714.00), which shall be billed and paid by District in two equal installments. The second installment in the amount of Four Hundred Seventy-Four Thousand Eight Hundred and Fifty-Seven Dollars (\$474,857.00) shall be due and owing prior to commencement of construction on March 21, 2004. The third installment in the amount of Four Hundred Seventy-Four Thousand Eight Hundred and Fifty-Seven Dollars (\$474,857.00) shall be due and owing upon fifty percent completion of construction, on or before April 30, 2004.
- 8.2. The Cost Estimate does not include contingency. If the Actual Cost to complete construction exceeds the Cost Estimate, District will be billed for the additional charges in accordance with this Section 8.2.
- 8.2.1. Not later than 120 days after Pacific has completed the Rearrangement, Pacific shall submit to District a final invoice for the District's Proportionate Share of the Rearrangement. Pacific's final invoice shall state—
- 8.2.1.1. the estimated cost as shown on the Cost Estimate for each element of the Rearrangement for which a separate element was estimated,
 - 8.2.1.2. the actual costs incurred for the element,
 - 8.2.1.3. the District's Proportionate Share of the costs of each element,
 - 8.2.1.4. the percentage by which the total actual costs for all elements deviate from the Cost Estimate, and
 - 8.2.1.5. accrued depreciation credits, if any.

The invoice shall also state the District's Proportionate Share for the Rearrangement and deduct therefrom any payments already received from District based on installment invoices. If the total of actual costs exceed the total of estimated costs by more than 20%, the invoice shall be accompanied by a written explanation for the deviation. If the actual costs exceed the estimated costs solely as a result of a Revised Notice to Owner issued

pursuant to paragraph 6.3, a copy of the Revised Notice to Owner shall suffice as an explanation.

9. PAYMENT

- 9.1. District shall pay Pacific the amount of the Cost Estimate in the manner and on the dates set forth in Section 8.1. Not later than 30 days after receipt of the final invoice, District shall pay to Pacific the amount of the final invoice, provided that District shall not be required to make payments totaling more than its opinion of its Proportionate Share set forth in the Notice to Owner plus District's Proportionate Share of any Actual Cost incurred as the result of a Revised Notice to Owner based on installment invoices.
- 9.2. If the final invoice seeks an amount that will cause the total payments made by District to exceed 120% of its Proportionate Share of the Cost Estimate, but that excess cost is due solely to a Revised Notice to Owner, District shall pay the amount of the final invoice within 30 days of receipt of the final invoice.
- 9.3. If the final invoice seeks an amount that will cause the total payments made by District to exceed 120% of its Proportionate Share of the Cost Estimate and District is satisfied with the explanation provided by Pacific for the excess, District shall pay that amount within 30 days of receipt of the final invoice.
- 9.4. If the final invoice seeks an amount that will cause the total payments made by District to exceed 120% of its Proportionate Share of the Cost Estimate and the District disputes the excess, the District shall pay an amount that will bring its total payments to 120% of its Proportionate Share of the Cost Estimate. The payment of any amount in excess shall be subject to the dispute resolution provision of Section 11.

10. RETENTION OF RECORDS

For a period of five years after completion of a Rearrangement, each party shall keep and maintain all books, papers, plans, drawings, records, accounting record, files, reports and other material relating to the Rearrangement and shall make these records available to the other party and any District providing any part of the funding for District's project and their respect auditors at any reasonable time and upon reasonable notice for the purposes of auditing, inspection, and copying. Pacific shall include in any contract for any part of the Rearrangement a similar requirement and a provision requiring its contractor to require any subcontractor to do likewise. If the Rearrangement was performed on a Fixed Cost basis, District shall reimburse Pacific for any costs incurred to accommodate any auditing, inspection, or copying of its records.

11. DISPUTE RESOLUTION

- 11.1. Either party may give the other party written notice of any dispute. If District disputes an invoice, District shall give Pacific notice of the dispute within 30 days of receipt of the invoice. If Pacific disputes District's opinion of its Proportionate Share, Pacific shall give District notice of the dispute within 30 days of receipt of the Notice to Owner. The notice shall state the basis of the dispute.
- 11.2. The parties shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement promptly by negotiations between a vice president of Pacific or, if designated by a vice president, an operations director, and an executive of similar

authority of District. Within twenty (20) days after delivery of the notice specified in paragraph 11.1, the executives shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary to exchange information and to attempt to resolve the dispute.

11.3. If the matter has not been resolved within thirty (30) days of the first meeting, either party may initiate a mediation of the controversy. Neither party may initiate litigation until at least one mediation has been conducted.

11.4. All negotiations and any mediation conducted pursuant to this clause are confidential and shall be treated as compromise and settlement negotiations, to which Section 1152.5 of the California Evidence Code shall apply, and Section 1152.5 is incorporated herein by reference.

11.5. 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.

11.6. 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.

12. ALLOCATION OF RESOURCES AND FORCE MAJEURE

Pacific shall make a reasonable attempt to effect any Rearrangement in a timely and expeditious manner. However, Pacific shall not be responsible for any delay in completion of its work resulting from any cause or condition beyond the control of Pacific. Pacific shall have the right to allocate material or labor resources to the construction or maintenance projects which it deems, in its sole discretion, most important to serve the needs of all of its customers. Any delay in effecting any Rearrangement hereunder resulting from such allocation or reallocation of Pacific's resources shall be deemed to be beyond Pacific's control.

13. NO SPECIAL OR CONSEQUENTIAL DAMAGES

Neither party shall be liable to the other party for incidental, special, or consequential damages, whether such damages arise in contract, tort (including negligence) or otherwise, including, but not limited to, lost profits, and damages arising out of commitments to subcontractors or personal service contracts unless expressly authorized in writing.

14. 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 which may direct the application of the laws of another jurisdiction. Any controversy or claim arising out of or in any way relating to this Agreement which cannot be amicably settled without court action 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.

15. NON-WAIVER

The waiver by either Pacific or District 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 term, covenant, condition or

obligation; nor shall any waiver of any incident of breach or default constitute a continuing waiver of that breach or default.

16. 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 arbitrator/mediator, Pacific and District shall negotiate an equitable adjustment in the provisions of this Agreement with a view toward effectuating the purpose of this Agreement. The illegality or invalidity of any of the provisions, or application of any of the provisions, of this Agreement will not affect the legality or enforceability of the remaining provisions or application of any of the provisions of the Agreement.

17. TERMINATION OF CONTRACT

Either party may terminate this agreement by giving the other party 90 days written notice of its intention to do so. Any Rearrangement for which District has issued a Notice to Owner shall remain subject to the terms and conditions of this Agreement notwithstanding such termination.

18. INTEGRATION

This Agreement and that certain agreement by and between Pacific and the State of California executed on April 16, 1952 (Need to Insert references to all Master Agreements that exist between Pacific and any State or Federal District) as may be applicable, constitute the entire agreement and understanding between the parties as to the subject matter of the Agreement. Except for the agreement noted in the preceding sentence, which remains in full force and effect, it supersedes all prior or contemporaneous agreements, commitments, representations, writings, and discussions between District and Pacific, whether oral or written, and has been induced by no representations, statements or agreements other than those expressed herein. Except for the agreement noted in the first sentence of this paragraph, neither District nor Pacific shall be bound by any prior or contemporaneous obligations, conditions, warranties or representations with respect to the subject matter of this Agreement.

19. SUCCESSORS AND ASSIGNS

The provisions of this Agreement shall inure to the benefit of and bind the respective successors and assigns of the parties.

20. SURVIVAL

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

21. Effective Date, Scope

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

22. 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.

23. The parties dispute the nature and extent of Pacific's obligation to provide an estimate of costs, charges for the Rearrangement work and Pacific's obligation to provide periodic billing statements for the work actually performed prior to receipt of actual payment for that work. In addition, the District specifically disputes Pacific's "Cost Summary Breakdown" which, in District's opinion, fails to provide sufficient information to either comply with applicable utility rules and regulations and/or fails to provide the District with sufficient detailed information to allow the District to make an informed decision that it is encumbering or spending public funds in an appropriate manner. Therefore, the District is making payments provided for herein under protest. Notwithstanding any other provision in this Agreement, and to allow the work to proceed without delay, the parties agree that the District reserves the right to seek and may seek appropriate relief, at a later date and subject to the Dispute Resolution procedure set forth in Section 11 of this Agreement, from the California Public Utilities Commission, the Courts or other venue, determining any issue related to these disputes including but not limited to Pacific's obligation, if any, to provide:
- (a) A more detailed estimate of the costs, charges, etc. than the "Cost Summary Breakdown" Pacific is currently willing to provide prior to requiring the District to agree to pay or pay such costs.
 - (b) A more detailed "Cost Summary Breakdown" which complies with all applicable utility rules and regulations and also provides the District with sufficient detailed information to allow the District to make an informed decision that it is encumbering or spending public funds in an appropriate and responsible manner, and to ascertain that the District, and thereby the public, is not being overcharged for services rendered.

Executed: March 16, 2004

PACIFIC GAS AND ELECTRIC COMPANY

By *Jeffrey D. Butler*
Its Senior Vice President
Transmission + Distribution

ALAMEDA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT

By *Gail Stebbins*

I hereby certify under penalty of perjury that the President of the Board of Supervisors was duly authorized to execute this document on behalf of the County of Alameda by a majority vote of the Board on MAR 16 2004 and that a copy has been delivered to the President as provided by Government Code Section 25103.

ATTEST:

Date: MAR 16 2004

CRYSTAL K. HISHIDA, Clerk of the Board of Supervisors, County of Alameda, State of California



By *Rosalinda K. Caballero*

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

ABAG Power Pool
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
Dynegy Inc.
Ellison 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 &
Grueineich 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.
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
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