





**Brian K. Cherry**  
Vice President  
Regulatory Relations

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June 27, 2008

**Advice 3286-E**

(Pacific Gas and Electric Company ID U 39 E)

**Subject: Power Partners Southwest, LLC, Easements – Request for Approval  
Under Section 851**

Public Utilities Commission of the State of California

**Purpose**

Pacific Gas and Electric Company (“PG&E”) submits this advice letter seeking approval under Public Utilities Code §851 of PG&E’s consent to grant Power Partners Southwest, LLC. (which is owned by enXco Development Corporation, LLC; (collectively “Power Partners”) the use of two easements that cross private property on which PG&E has existing exclusive easements associated with a PG&E transmission corridor in Solano County. The purpose of granting the proposed exclusive easement to Power Partners would be to allow them to construct underground collection lines and a gravel access road to support the installation, use, operation and maintenance of wind turbine sites associated with the Shiloh II Wind Energy Project, LLC (“Shiloh II Wind Energy Project”).<sup>1</sup>

Power Partners has requested that PG&E seek expedited CPUC review and approval of this Advice Letter because Power Partners is facing a construction deadline imposed by expiration of the Federal Production Tax Credits (PTC) under which construction must be commenced by September 15, 2008 in order to complete construction by December 2008 when the PTC expires.

**Background**

PG&E owns two exclusive easements for the purpose of construction, use, and maintenance of PG&E’s 500 kV Vaca Dixon and Table Tesla power transmission tower

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<sup>1</sup> The Shiloh II Wind Project, LLC is a wind energy project to be developed by enXco Inc., a Delaware Corporation and its affiliates. The CPUC has already granted similar approvals in 2006 for a prior wind energy project developed by this same applicant (Shiloh I) but now owned and operated by a third party. (see AL 2714-E, approved in Resolution E-3970, and AL 2743-G/2859-E, approved in Resolution G-3393)

line corridors located on two parcels of certain real property located within Solano County, California. The first such parcel is that of Daryl McCosker and Mary McCosker, who are the owners and trustees of private property in the Montezuma Hills of Solano County identified as APN # 48-50-33 ("McCosker"). The second such parcel is that of Irwin Anderson and Mary Lou Anderson, who are the owners and trustees of private property in the Montezuma Hills of Solano County identified as APN # 48-13-24 ("Anderson") (collectively the "Trustees").

Power Partners has already acquired from the Trustees certain easements and related rights, and has requested that PG&E consent to the granting of the easements and use of the exclusive areas more specifically provided in the Agreement for Third Party Use of Exclusive Easement Areas (See Attachment 1). As a result, PG&E seeks CPUC approval under Public Utilities Code 851 to grant such consent to Power Partners, as the proposed easement uses will not interfere with PG&E's utility operations or the provision of utility services to the public, and doing so is also not adverse to the public interest but rather serves the public interest in facilitating the expansion of renewable wind power consistent with the CPUC's Energy Action Plan II.

In accordance with Resolution ALJ-202, Appendix A, Section IV, PG&E provides the following information related to the proposed transaction:

**(1) Identity and Addresses of All Parties to the Proposed Transaction:**

|   |   |
|---|---|
| Pacific Gas and Electric Company                      | Power Partners Southwest, LLC                                 |
| Andrew L. Niven                                       | c/o enXco, Inc.   |
| Gail L. Slocum  | Attn: Property Agent  |
| Law Department  | 700 La Terrazza Blvd., Suite 200                              |
| P.O. Box 7442   | Escondido, CA 92025   |
| San Francisco, CA 94120                               | Telephone: (760) 740-7022                                     |
| Telephone: (415) 973-6583                             | Facsimile: (760) 740-7030                                     |
| Facsimile: (415) 973-0516                             | Email: <a href="mailto:Scottn@enXco.com">Scottn@enXco.com</a> |
| Email: <a href="mailto:GLSG@pge.com">GLSG@pge.com</a> |   |

**(2) Complete Description of the Property Including Its Present Location, Condition and Use:**

The PG&E property interest at issue consists of two exclusive easements, in place since 1964, across the McCosker and Anderson properties. Existing improvements to these properties utilizing these exclusive easements include PG&E's facilities related to the 500 kV Vaca Dixon and Table Tesla power transmission tower line corridors in rural agricultural areas in the Montezuma Hills of Solano County. The dominant existing land uses are dry-land farming and livestock grazing. The property is adjacent to existing wind energy projects in use, such as the enXco V Project and High Winds Project designed to meet regional energy needs by harnessing the renewable wind resources in the Collinsville-Montezuma Hills Wind Resources Area. PG&E's exclusive

easement which crosses the Anderson parcel was deeded from Everett R. Anderson and others to PG&E on June 30, 1965, and recorded in Book 1359 of Official Records at page 6, Solano County, CA Records. PG&E's exclusive easement which crosses the McCosker parcel was deeded from Jones A. Turner and Ruth J. Turner, husband and wife (collectively the "Turners") to PG&E, on July 30, 1964, and recorded in Book 1289 of Official Records at page 530, Solano County, CA Records.<sup>2</sup> The Legal Descriptions and Maps of PG&E's exclusive easements on the properties for its 500kV Vaca Dixon and Table Tesla power transmission line corridors can be found in Exhibits and of the Agreement (Attachments 2 - McCosker and 3 - Anderson).

The portions of these PG&E exclusive easements which cross the new easements Power Partners has entered into with the McCoskers and Andersons are described in detail in section (3) below.

**(3) Intended Use of the Property:**

Power Partners intends to install the following facilities to support the installation, use, operation and maintenance of their wind turbine sites associated with the Shiloh II Wind Energy Project:

(1) Underground Electrical Collection Lines:

Power Partners proposes to install two collection lines to support the Shiloh II Wind Energy Project: one over PG&E's McCosker easement and the other over PG&E's Anderson easement.

Across the PG&E McCosker easement, Power Partners proposes to install the 34.5 kV electrical collection line in a trench approximately 50 feet wide for a length of approximately 210 feet. The trench will be backfilled with compacted native soil and the surface restored.

Across the PG&E Anderson easement, Power Partners proposes to install an underground 34.5 kV electrical collection line in a trench approximately 10 feet wide and 210 feet long. The trench will be backfilled with compacted native soil and the surface restored.

In addition, Power Partners would have the right to install, maintain and use conduits and associated data and communication lines for the purpose of transmission of electrical power related electronic data and control signals. These proposed uses will not interfere with PG&E's existing facilities.

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<sup>2</sup> The Turners appear to have been the predecessor owners before the McCoskers.

(2) Gravel Access Road:

Across PG&E's McCosker easement, Power Partners proposes to install a new gravel access road. This access road will be 16 feet wide and approximately 210 feet long and will consist of 2" to 3¼" drain rock. This additional proposed use will not interfere with PG&E's existing facilities in this transmission corridor.

Total Acreage:

PG&E believes the total acreage of Power Partners' proposed uses are minor in this request. The total acreage use proposed in this request at the McCosker property is 0.32 acres and 0.05 acres at the Anderson property, for a total of 0.37 acres.

Detailed Description and Map:

Descriptions of the collection line and access road placement and associated maps of the Easement Areas are provided in Attachments 2 and 3.

**(4) Complete Description of Financial Terms of the Proposed Transaction:**

PG&E is not collecting any fees associated with granting consent to Power Partners' use of PG&E's exclusive easements. PG&E is not granting a property right in itself but merely consenting to permit the Trustees to grant a property right to Power Partners in PG&E's exclusive easement area in which Power Partners has already acquired certain easements and related rights from the Trustees. PG&E's consent to allow another party to occupy what would otherwise be PG&E's exclusive easement area does not rise to the level of a right that has any realizable economic value.

**(5) Description of How Financial Proceeds of the Transaction Will Be Distributed:**

Not Applicable.

**(6) Impact of the Transaction on Ratebase and Any Effect on the Ability of the Utility to Serve Its Customers and the Public:**

No PG&E property is being sold or disposed of, so there are no changes to PG&E's rate base as a result of granting the proposed easements. The granting of these easements will not interfere with the use of these transmission tower line corridors by PG&E.

**(7) The Original Cost, Present Book Value, and Present Fair Market Value for Sales of Real Property and Depreciable Assets, and a Detailed**

**Description of How the Fair Market Value Was Determined (e.g., Appraisal):**

Not Applicable.

**(8) The Fair Market Rental Value for Leases of Real Property, and a Detailed Description of How the Fair Market Rental Value Was Determined:**

Not Applicable.

**(9) The Fair Market Value of the Easement or Right-of-Way and a Detailed Description of How the Fair Market Rental Value Was Determined:**

Not Applicable.

**(10) A Complete Description of any Recent Past (Within the Prior Two Years) or Anticipated Future Transactions that May Appear To Be Related to the Present Transaction:**

Past transactions that are geographically related to the Shiloh II Wind Energy Project include the following two approvals by the CPUC under ALJ-186 seeking authority under Public Utilities Code Section 851: (1) a request to grant the use of this same PG&E exclusive easement (as it exists on an adjacent property) for the installation of an underground electric distribution line for the Shiloh I Wind Energy Project (See Advice 2714-E, approved in Resolution E-3970, dated January 12, 2006); and (2) a request to grant the use of this same PG&E exclusive easement (as it exists on an adjacent property) for the installation and maintenance of an access road for the Shiloh I Wind Energy Project. (See Advice 2743-G/2859-E, approved in Resolution G-3393, dated December 11, 2006). Although developed by the same entity, Shiloh I and Shiloh II are separate projects that were permitted several years apart under separate permits and environmental review. Shiloh I is now owned and operated by a third party.

**(11) Sufficient Information and Documentation (Including Environmental Documentation) to Show that All Criteria Set Forth in Section II of Resolution ALJ-202 Are Satisfied:**

PG&E has provided information in this advice letter to meet the eligibility criteria under the advice letter pilot program. Under the CEQA requirements provided in ALJ-202, the activity proposed in the transaction will not require environmental review by the CPUC as a lead agency. The proposed activity on PG&E property is categorically exempt under Sections 15304(f) (covering minor alterations to land such as trenching and backfilling where the surface is restored) and 15303(d) (covering minor street improvements) of the Guidelines to the California Environmental Quality Act (Cal. Code Regs., tit. 14, §§15000,

et seq. ("CEQA Guidelines")). Once the proposed underground electrical collection lines are installed, the surface in the trenching areas will be returned to its original condition by immediately backfilling it with compacted native soil that had been excavated for trenching.

The proposed transaction will not have an adverse effect on the public interest. The proposed transaction is designed to serve the public interest by creating and enhancing wind energy production. The compensation for the proposed easement is below the \$5 million eligibility requirements set forth in ALJ-202 for easements. Finally, the transaction does not involve the transfer or change in ownership of facilities currently used in utility operations.

**(12) Additional Information to Assist in the Review of the Advice Letter:**

Request for Expedited Review: Power Partners has requested that PG&E seek expedited Commission review and approval of this Advice Letter, as Power Partners is facing a construction deadline imposed by the expiration of Federal Production Tax Credits (PTC) under which construction must be commenced by September 15, 2008 to meet COD date of December 2008, when the PTC expires.

**(13) Environmental Information**

Pursuant to ALJ-202, the advice letter program only applies to proposed transactions that (a) will not require environmental review by the CPUC as a lead agency or responsible agency under CEQA either because a statutory or categorical exemption applies or (b) because the transaction is not a project under CEQA.

a. Exemption

(1) Has the proposed transaction been found exempt from CEQA by a government agency?

(a) If yes, please attach notice of exemption. Please provide name of agency, date of Notice of Exemption, and State Clearinghouse number.

Not Applicable.

(b) If no, does the applicant contend that the project is exempt from CEQA? If yes, please identify the specific CEQA exemption or exemptions that apply to the transaction, citing to the applicable State CEQA Guideline(s) and/or Statute(s).

Under the CEQA requirements provided in ALJ-202, the activity proposed in the transaction will not require environmental review by the CPUC. The proposed activity is categorically exempt under sections 15304(f) and 15303(d) of the CEQA Guidelines. Section 15304(f) exempts “minor trenching and backfilling where the surface is restored.” It is also exempt under Section 15303(d) which exempts “New Construction or Conversion of Small Structures” (“water main, sewage, electrical, gas or other utility extensions, including street improvements, of reasonable length, to serve such construction”). The use of PG&E’s McCosker exclusive easement by Power Partners for the proposed gravel access road consists of 210 feet of gravel, 16 feet in width, to serve electrical facilities and 210 feet of trenching, 50 feet in width. The use of PG&E’s Anderson exclusive easement by Power Partners consists of approximately 210 feet of trenching, 10 feet in width. The trenching, which totals 0.37 acres, will be backfilled and the surface restored for both easement areas. The trenching portion of the proposed transaction is smaller in acreage, but similar to Resolution E-4145, dated January 10, 2008, where the Commission found a project which required minor trenching and backfilling across 0.58 acres of PG&E Property to be categorically exempt under CEQA Guidelines Categorical Exemption Section 15304(f).

The proposed consent by PG&E to use its exclusive easements will not have an adverse effect on the environment or the public interest. Under the foregoing circumstances, no CEQA review is required for the grant of the easements. The proposed activities are minor and categorically exempt under CEQA Guidelines Sections 15303(d) and 15304(f).

b. Not a “Project” Under CEQA

- (1) If the transaction is not a “project” under CEQA, please explain why.

Not Applicable.

**Protests**

Anyone wishing to protest this filing may do so by letter sent via U.S. mail, by facsimile or electronically, any of which must be received no later than 20 days after the date of this filing, which is **July 17, 2008**. Protests should be mailed to:

CPUC Energy Division  
Attention: Tariff Unit, 4<sup>th</sup> Floor  
505 Van Ness Avenue  
San Francisco, California 94102

Facsimile: (415) 703-2200  
E-mail: mas@cpuc.ca.gov and jnj@cpuc.ca.gov

Copies of protests also should be mailed to the attention of the Director, Energy Division, Room 4004, at the address shown above.

The protest also should be sent via U.S. mail (and by facsimile and electronically, if possible) to PG&E at the address shown below on the same date it is mailed or delivered to the Commission:

Pacific Gas and Electric Company  
Attention: Brian Cherry  
Vice President, Regulatory Relations  
77 Beale Street, Mail Code B10C  
P.O. Box 770000  
San Francisco, California 94177

Facsimile: (415) 973-7226  
E-mail: PGETariffs@pge.com

### **Effective Date**

Pursuant to the review process outlined in Resolution ALJ-202, PG&E requests that this advice filing become effective by Commission resolution as soon as possible. **PG&E submits this filing as a Tier 3.**

### **Notice**

In accordance with General Order 96-B, Section IV, 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 Rose de la Torre at (415) 973-4716. Advice letter filings can also be accessed electronically at:

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



Vice President, Regulatory Relations

Attachments 1-3

cc: Service List – Advice Letter 3286-E

\*\*\*\*\* **SERVICE LIST Advice 3286-E** \*\*\*\*\*  
**APPENDIX A**

Angela K. Minkin  
Administrative Law Judge Division  
505 Van Ness Avenue  
San Francisco, CA 94102  
(415) 703-2008  
[ang@cpuc.ca.gov](mailto:ang@cpuc.ca.gov)

Myra J. Prestidge  
Administrative Law Judge Division  
505 Van Ness Avenue  
San Francisco, CA 94102  
(415) 703-2629  
[tom@cpuc.ca.gov](mailto:tom@cpuc.ca.gov)

Jonathan Reiger  
Legal Division  
505 Van Ness Avenue  
San Francisco, CA 94102  
(415) 355-5596  
[jzr@cpuc.ca.gov](mailto:jzr@cpuc.ca.gov)

Chloe Lukins  
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Kenneth Lewis  
Energy Division  
505 Van Ness Avenue  
San Francisco, CA 94102  
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[kl1@cpuc.ca.gov](mailto:kl1@cpuc.ca.gov)

Brewster Fong  
Division of Ratepayer Advocates  
505 Van Ness Avenue  
San Francisco, CA 94102  
(415) 703- 2187  
[bfs@cpuc.ca.gov](mailto:bfs@cpuc.ca.gov)

\*\*\*\*\* **AGENCIES** \*\*\*\*\*

Marc Tonneson  
Solano County Recorder & Official Documents  
675 Texas Street, Suite 2700  
Fairfield, CA 94533  
Phone: 707-784-6290

\*\*\*\*\* **3<sup>rd</sup> Party** \*\*\*\*\*

Joseph P. Fahrendorf  
Power Partners Southwest, LLC  
c/o enXco, Inc.  
700 La Terrazza Blvd., Suite 200  
Escondido, CA 92025  
Telephone: 760-740-7022  
Facsimile: 760-740-7030  
Email: [joef@enXco.com](mailto:joef@enXco.com)

# CALIFORNIA PUBLIC UTILITIES COMMISSION

## ADVICE LETTER FILING SUMMARY ENERGY UTILITY

MUST BE COMPLETED BY UTILITY (Attach additional pages as needed)

Company name/CPUC Utility No. **Pacific Gas and Electric Company (ID U39 M)**

Utility type:

ELC       GAS  
 PLC       HEAT       WATER

Contact Person: Linda Tom-Martinez

Phone #: (415) 973-4612

E-mail: lmt1@pge.com

EXPLANATION OF UTILITY TYPE

ELC = Electric      GAS = Gas  
PLC = Pipeline      HEAT = Heat      WATER = Water

(Date Filed/ Received Stamp by CPUC)

Advice Letter (AL) #: **3286-E**

**Tier: 3**

Subject of AL: Power Partners Southwest, LLC, Easements – Request for Approval Under Section 851

Keywords (choose from CPUC listing): Section 851

AL filing type:  Monthly  Quarterly  Annual  One-Time  Other \_\_\_\_\_

If AL filed in compliance with a Commission order, indicate relevant Decision/Resolution #:

Does AL replace a withdrawn or rejected AL? If so, identify the prior AL: No

Summarize differences between the AL and the prior withdrawn or rejected AL<sup>1</sup>: \_\_\_\_\_

Is AL requesting confidential treatment? If so, what information is the utility seeking confidential treatment for:

Confidential information will be made available to those who have executed a nondisclosure agreement:  Yes  No

Name(s) and contact information of the person(s) who will provide the nondisclosure agreement and access to the confidential information: \_\_\_\_\_

Resolution Required?  Yes  No

Requested effective date: **as soon as possible**

No. of tariff sheets: N/A

Estimated system annual revenue effect (%): N/A

Estimated system average rate effect (%): N/A

When rates are affected by AL, include attachment in AL showing average rate effects on customer classes (residential, small commercial, large C/I, agricultural, lighting).

Tariff schedules affected: N/A

Service affected and changes proposed<sup>1</sup>: N/A

Pending advice letters that revise the same tariff sheets: N/A

Protests, dispositions, and all other correspondence regarding this AL are due no later than 20 days after the date of this filing, unless otherwise authorized by the Commission, and shall be sent to:

**CPUC, Energy Division**

**Tariff Files, Room 4005**

**DMS Branch**

**505 Van Ness Ave.,**

**San Francisco, CA 94102**

**jnj@cpuc.ca.gov and mas@cpuc.ca.gov**

**Pacific Gas and Electric Company**

**Attn: Brian K. Cherry**

**Vice President, Regulatory Relations**

**77 Beale Street, Mail Code B10C**

**P.O. Box 770000**

**San Francisco, CA 94177**

**E-mail: PGETariffs@pge.com**

# Advice Letter 3286-E

## Attachment 1

LD 2104-01-0148  
LD 2104-02-0518  
Consent to use of Exclusive Easements

RECORDING REQUESTED BY AND RETURN TO:

PACIFIC GAS AND ELECTRIC COMPANY  
343 Sacramento Street  
Auburn, CA 95603  
Attention: Paul Fluckey

Location: City/Uninc \_\_\_\_\_

Recording Fee \$ \_\_\_\_\_

Document Transfer Tax \$ \_\_\_\_\_

- Computed on Full Value of Property Conveyed, or
- Computed on Full Value Less Liens & Encumbrances  
Remaining at Time of Sale

\_\_\_\_\_  
Signature of declarant or agent determining tax

(Portions of APNs 0048-050-330 and 0048-130-240)

## AGREEMENT FOR THIRD PARTY USE OF EXCLUSIVE EASEMENT AREAS

### (Underground Electrical Facilities and gravel Access Road)

This Agreement for Third Party Use of Exclusive Easement Areas (“**Agreement**”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2008 (the “**Effective Date**”) by PACIFIC GAS AND ELECTRIC COMPANY, a California corporation, hereinafter called “**PG&E**”, and Power Partners Southwest, LLC, a Delaware limited liability company, hereinafter called “**User**.”

### RECITALS

A. PG&E is the grantee and owner of certain exclusive easements and rights of way, the specific terms and conditions of which are more particularly specified in the deeds listed below, (the “**Exclusive Use Areas**”) located in Solano County California, as described in those certain deeds to PG&E (the “**Deeds**”):

1. The strip of land described in the deed from Everett R. Anderson and others to PG&E, dated June 30, 1965 and recorded in Book 1359 of Official Records at page 6, Solano County Records;

2. The strip of land described in the deed from Jones A. Turner and Ruth J. Turner, husband and wife to PG&E, dated July 30, 1964 and recorded in Book 1289 of Official Records at page 530, Solano County Records.

B. User is presently developing and constructing an electrical generation project, including a number of wind turbine generators and related facilities (the “**Project**”) in the Collinsville-Montezuma Hills Wind Resource Area of Solano County. As part of the Project, User

has acquired certain easements and related rights (the “**Easements**”) from the fee owners of the Exclusive Use Areas, and has requested that PG&E consent to granting of the Easements and to the use by User of the Exclusive Use Areas as more specifically provided in this Agreement.

C. PG&E is willing to grant such consent on the terms and subject to the conditions set forth herein.

Now, therefore, for good and valuable consideration, PG&E and User agree as follows:

1. Consent to Grant of Easements. PG&E hereby consents to the granting of the Easements to User by the fee owners of the real property in which the Exclusive Use Areas are located, provided, however, that notwithstanding the provisions of any agreement granting, evidencing or otherwise relating to the Easements, User shall not make any use of the Exclusive Use Areas except as, and to the extent, authorized by this Agreement or a subsequent amendment to this Agreement (which User acknowledges will be subject to the provisions of Section 6 hereof). PG&E hereby grants to User a non-exclusive right and license to use the Exclusive Use Areas solely for the following purposes:

(a) to construct, install, repair, replace (with the initial or any smaller size), remove, maintain and use conduits, within a trench as hereinafter described, and containing electrical collection lines, and associated data and communication lines, for the transmission of electrical power and related electronic data and control signals, with necessary and proper fittings and devices necessary for use in connection with said cables and conduits, within the 10 foot wide strip of land portion of the Exclusive Use Areas as described in **Exhibit A-1** and shown upon **Exhibit B-1** and the 60 foot wide strip of land described under Collection Line Easement portion of the Exclusive Use Areas as described in **Exhibit A-2** and shown upon **Exhibit B-2** all attached hereto and made a part hereof;

(b) to construct, install, repair, replace, maintain and use a 16 foot wide, gravel access road within that portion of the Exclusive Areas described under Road Easement in **Exhibit A-2** and shown upon **Exhibit B-2** attached hereto and made a part hereof.

2. Limitations on Use.

(a) The Underground Crossing Area and Aboveground Crossing Area (hereinafter called, the “**Licensed Areas**”), and any facilities constructed in, on or beneath the Licensed Areas, are to be used by User only for those uses permitted in Section 1(a) and 1(b) above, and for no other purpose.

(b) User shall mark the location of its conduit by suitable markers set in the ground; provided that said markers shall be placed in locations which will not interfere with any use which PG&E may from time to time make of the Licensed Areas.

(c) PG&E reserves the right to restrict access to the Licensed Areas or any portion or portions thereof in the event of fire, earthquake, storm, riot, civil disturbance, or other casualty or emergency, or in connection with PG&E’s response thereto, or if emergency repairs or maintenance are required to PG&E facilities within or in the vicinity of the Licensed Areas, or otherwise when PG&E deems it advisable to do so, including in connection with events and

emergencies occurring or affecting PG&E's business operations located elsewhere than in the immediate vicinity of the Exclusive Use Areas.

(d) User agrees not to fence or enclose the Licensed Areas (except that User may, with PG&E's permission, and User will, upon PG&E's request, whenever construction work is being performed on, in or about the Licensed Areas, erect and maintain a temporary fence to surround and secure the area in which such work is being performed).

3. Condition of Licensed Areas. User acknowledges and accepts the existing physical condition of the Licensed Areas, without warranty by PG&E or any duty or obligation on the part of PG&E to maintain the Licensed Areas. User acknowledges that one or more of the following (collectively, "**Potential Environmental Hazards**") may be located in, on or underlying the Exclusive Use Areas and/or the Licensed Areas:

(a) electric fields, magnetic fields, electromagnetic fields, electromagnetic radiation, power frequency fields, and extremely low frequency fields, however designated, and whether emitted by electric transmission lines, other distribution equipment or otherwise ("**EMFs**");

(b) Hazardous Substances (as hereinafter defined). For purposes hereof, the term "**Hazardous Substances**" means any hazardous or toxic material or waste which is or becomes regulated by Legal Requirements (as hereinafter defined) relating to the protection of human health or safety, or regulating or relating to industrial hygiene or environmental conditions, or the protection of the environment, or pollution or contamination of the air, soil, surface water or groundwater, including, but not limited to, laws, requirements and regulations pertaining to reporting, licensing, permitting, investigating and remediating emissions, discharges, releases or threatened releases of such substances into the air, surface water, or land, or relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of such substances. Without limiting the generality of the foregoing, the term Hazardous Substances includes any material or substance:

(1) now or hereafter defined as a "hazardous substance," "hazardous waste," "hazardous material," "extremely hazardous waste," "restricted hazardous waste" or "toxic substance" or words of similar import under any applicable local, state or federal law or under the regulations adopted or promulgated pursuant thereto, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §§9601 et seq. ("CERCLA"); the Resource Conservation and Recovery Act of 1976, 42 U.S.C. §§6901 et seq.; the Clean Air Act, 42 U.S.C. §§7401 et seq.; the Clean Water Act, 33 U.S.C. §§1251 et seq.; the Toxic Substance Control Act, 15 U.S.C. §§2601 et seq.; the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §§136 et seq.; the Atomic Energy Act of 1954, 42 U.S.C. §§2014 et seq.; the Nuclear Waste Policy Act of 1982, 42 U.S.C. §§10101 et seq.; the California Hazardous Waste Control Law, Cal. Health and Safety Code §§25100 et seq.; the Porter-Cologne Water Quality Control Act, Cal. Water Code §§13000 et seq.; the Carpenter-Presley-Tanner Hazardous Substance Account Act (Health and Safety Code §§25300 et seq.); and the Medical Waste Management Act (Health and Safety Code §§25015 et seq.); or

(2) which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic or otherwise hazardous, and is now or hereafter regulated as a Hazardous Substance by the United States, the State of California, any local governmental authority or any political subdivision thereof, or which cause, or are listed by the State of California as being known to the State of California to cause, cancer or reproductive toxicity; or

(3) the presence of which on the Exclusive Use Areas poses or threatens to pose a hazard to the health or safety of persons on or about the Exclusive Use Areas or to the environment; or

(4) which contains gasoline, diesel fuel or other petroleum hydrocarbons; or

(5) which contains lead-based paint or other lead contamination, polychlorinated biphenyls (“PCBs”) or asbestos or asbestos-containing materials or urea formaldehyde foam insulation; or

(6) which contains radon gas;

(c) fuel or chemical storage tanks, energized electrical conductors or equipment, or natural gas transmission or distribution pipelines; and

(d) other potentially hazardous substances, materials, products or conditions.

User shall take reasonable precautions to protect its employees, contractors, consultants, agents and invitees (“**User’s Representatives**”) from risks of harm from Potential Environmental Hazards. User acknowledges that it has previously evaluated (or has had the opportunity to evaluate) the condition of the Licensed Areas and all matters affecting the suitability of the Licensed Areas for the uses permitted by this Agreement, including, but not limited to, the Potential Environmental Hazards listed herein. User’s use of the Licensed Areas shall be at User’s sole risk and expense.

4. Construction and Maintenance. User hereby covenants and agrees:

(a) to construct and install its underground conduits, electric collector lines, data communication lines, gravel access road and related facilities (collectively, “**Improvements**”) within the Licensed Areas at no cost to PG&E. All such construction shall be performed in accordance with detailed plans and specifications (“**Plans**”) previously approved by PG&E, and shall comply with all Legal Requirements. Before commencing construction of any Improvements, User shall obtain all permits, authorizations or other approvals, at User’s sole cost and expense as may be necessary for such construction. Without limiting the generality of the foregoing, User shall be responsible for complying with the requirements of the California Environmental Quality Act (“**CEQA**”) and satisfying, at User’s sole expense, any and all mitigation measures under CEQA that may apply to User’s proposed occupancy and use of the Licensed Areas, and to the construction, maintenance and use of User’s proposed Improvements and facilities. User shall promptly notify PG&E of any and all proposed mitigation measures that may affect PG&E or the Exclusive Use Areas. If PG&E determines in good faith that any such mitigation measures may adversely affect PG&E or the Exclusive Use Areas, or impose

limitations on PG&E's ability to use the Exclusive Use Areas as specified in Section 9, then PG&E shall have the right, without liability to User, to give notice of termination of this Agreement to User, whereupon this Agreement and the consent and other rights granted to User shall terminate, unless within ten (10) days following delivery of such notice, User gives notice to PG&E by which User agrees to modify its proposed Project (as that term is defined under CEQA) so as to eliminate the necessity for such mitigation measures. In the event of such termination, PG&E and User shall each be released from all obligations under this Agreement, except those which expressly survive termination, and User shall have no further rights to make any use of the Exclusive Use Areas. User acknowledges and agrees that PG&E's review of User's Plans is solely for the purpose of protecting PG&E's interests, and shall not be deemed to create any liability of any kind on the part of PG&E, or to constitute a representation on the part of PG&E or any person consulted by PG&E in connection with such review that the Plans or the Improvements contemplated by such Plans are adequate or appropriate for any purpose, or comply with applicable Legal Requirements. User shall not commence construction or installation of any Improvements without the prior written consent of PG&E, which consent shall not be unreasonably withheld, conditioned or delayed, and the prior consent, to the extent required by applicable law or regulation, of the California Public Utilities Commission (hereinafter, "CPUC");

(b) to comply with all Legal Requirements which relate to the generation, use, storage, handling, treatment, transportation or disposal of Hazardous Substances, as defined herein, or to health, safety, noise, environmental protection, air quality or water quality. User shall furnish satisfactory evidence of such compliance upon request by PG&E;

(c) to notify PG&E in writing within three (3) business days of any investigation, order or enforcement proceeding which in any way relates to the Licensed Areas, or to any suspected contamination on, within or underlying the Licensed Areas. Such notice shall include a complete copy of any order, complaint, agreement, or other document which may have been issued, executed or proposed, whether draft or final;

(d) not to interfere in any way or permit any interference with the use by PG&E of the Exclusive Use Areas. Interference shall include, but not be limited to, any activity by User that places any of PG&E's gas or electric facilities in violation of any of the provisions of General Order Nos. 95 (Overhead Electric), 112 (Gas), and 128 (Underground Electric) of the CPUC or to any other Legal Requirements under which the operations of utility facilities are controlled or regulated. User shall not erect, handle, or operate any tools, machinery, apparatus, equipment, or materials closer to any of PG&E's high-voltage electric conductors than the minimum clearances set forth in the High-Voltage Electrical Safety Orders of the California Division of Industrial Safety; which minimum clearances are incorporated herein by reference; but in no event closer than ten (10) feet to any energized electric conductors or appliances. User shall not drill, bore, or excavate within thirty (30) feet of any of PG&E's underground facilities, including, but not limited to, gas pipelines, valves, regulators or electric conduits. User shall provide notice to Underground Service Alert at 1-800-227-2600 at least two (2) business days prior to commencing any drilling, boring or excavating permitted hereunder to assist User with locating any and all underground facilities, including, but not limited to, gas pipelines, valves, regulators or electric conduits.

(e) to conduct its activities and operations within and on the Licensed Areas in such a manner so as not to endanger the Exclusive Use Areas, PG&E's utility facilities, the environment and human health and safety. In the event PG&E determines that User's activities in any way endanger the Exclusive Use Areas, PG&E's utility facilities, the environment, or human health and safety, PG&E may, in PG&E's sole discretion, require that User halt such activities until appropriate protective measures are taken to PG&E's satisfaction. User shall hold PG&E harmless from any claims for damages resulting from any delay under this paragraph. PG&E's right to halt activities under this paragraph shall not in any way affect or alter User's insurance obligations under this Agreement, nor shall it relieve User from any of its obligations hereunder that pertain to health, safety, or the protection of the environment;

(f) to maintain its facilities and Improvements in good condition and repair in compliance with all applicable Legal Requirements, and be responsible for the security of, the facilities installed hereunder;

(g) to promptly backfill any trench and repair any damage it may cause to PG&E's facilities and improvements in or around the Underground Crossing Area;

(h) to install and maintain User's conduit at a minimum depth of 36 inches below the surface of the surrounding land;

(i) to coordinate all of User's activities on or in the vicinity of the Licensed Areas so as to reasonably minimize any interference with the use by PG&E of the Exclusive Use Areas.

(j) that if User fails to perform any act or other obligation on its part to be performed hereunder, and such failure is not remedied within fifteen (15) days following notice from PG&E (or in the case of an emergency, following such notice, if any, as may be reasonably practicable under the existing circumstances), PG&E may (but without obligation to do so, and without waiving or releasing User from any of its obligations) perform any such act or satisfy such obligation, or otherwise remedy such emergency or such failure on the part of User. All costs incurred by PG&E in responding to or remedying such failure by User shall be payable by User to PG&E on demand.

## 5. Indemnification.

(a) User shall, to the maximum extent permitted by law, indemnify, protect, defend and hold harmless PG&E, its parent corporation, subsidiaries and affiliates, and their respective officers, managers, directors, representatives, agents, employees, transferees, successors and assigns (each, an "**Indemnitee**" and collectively, "**Indemnitees**") from and against all claims, losses (including, but not limited to, diminution in value), actions, demands, damages, costs, expenses (including, but not limited to, experts fees and reasonable attorneys' fees and costs) and liabilities of whatever kind or nature (collectively, "**Claims**"), which arise from or are in any way connected with the occupancy or use of the Licensed Areas by User or User's Representatives, or the exercise by User of its rights hereunder, or the performance of, or failure to perform, User's duties under this Agreement, including, but not limited to, Claims arising out of: (1) injury to or death of persons, including but not limited to employees of PG&E

or User (and including, but not limited to, injury due to exposure to EMFs and other Potential Environmental Hazards in, on or about the Exclusive Use Areas); (2) injury to property or other interest of PG&E, User or any third party; (3) violation of any applicable federal, state, or local laws, statutes, regulations, or ordinances, including all Legal Requirements relating to human health or the environment, and including any liability which may be imposed by law or regulation without regard to fault; excepting only with respect to any Indemnitee, to the extent of any Claim arising from the sole negligence or willful misconduct of such Indemnitee. Without limiting the generality of the foregoing, User shall, to the maximum extent permitted by law, indemnify, protect, defend and hold Indemnitees harmless from and against Claims arising out of or in connection with any work of improvement constructed or installed at or on, labor performed on, or materials delivered to, or incorporated in any improvements constructed on, the Licensed Areas by, or at the request or for the benefit of, User. In the event any action or proceeding is brought against any Indemnitee for any Claim against which User is obligated to indemnify or provide a defense hereunder, User upon written notice from PG&E shall defend such action or proceeding at User's sole expense by counsel approved by PG&E, which approval shall not be unreasonably withheld, conditioned or delayed.

(b) User acknowledges that all Claims arising out of or in any way connected with releases or discharges of Hazardous Substance occurring as a result of or in connection with User's use or occupancy of the Licensed Areas or the surrounding Exclusive Use Areas, or any of the activities of User and User's Representatives, and all costs, expenses and liabilities for environmental investigations, monitoring, containment, abatement, removal, repair, cleanup, restoration, remediation and other response costs, including reasonable attorneys' fees and disbursements and any fines and penalties imposed for the violation of Legal Requirements relating to the environment or human health, are expressly within the scope of the indemnity set forth above.

(c) User accepts all risk relating to its occupancy and use of the Licensed Areas. PG&E shall not be liable to User for, and User hereby waives and releases PG&E and the other Indemnitees from, any and all liability, whether in contract, tort or on any other basis, for any injury, damage, or loss resulting from or attributable to any occurrence on or about the Licensed Areas, the condition of Licensed Areas, or the use or occupancy of the Licensed Areas, except in the case of any Indemnitee, to the extent that such injury, damage, or loss was proximately caused by the sole negligence or willful misconduct of such Indemnitee.

(d) User shall, to the maximum extent permitted by law, indemnify, protect, defend and hold Indemnitees harmless against claims, losses, costs (including, but not limited to, attorneys' fees and costs), liabilities and damages resulting from the failure of User, or any of its contractors or subcontractors, to comply with the insurance requirements set forth in **Exhibit C**, attached hereto and made a part hereof. If User fails to so indemnify, protect, defend or hold harmless any Indemnitee, then at PG&E's option, this Agreement and the rights herein granted to User to make use of the Licensed Areas shall terminate, if such failure continues for five (5) days following the giving of written notice of termination to User, unless within such time such failure is cured to the reasonable satisfaction of PG&E.

(e) The provisions of this Section 5 shall survive the termination of this Agreement.

6. Additional Facilities or Uses. User shall not install any additional facilities or improvements in, on, under or over the Licensed Areas, or make any other or additional use thereof not authorized by this Agreement, without the prior written consent of PG&E, which consent may be granted or withheld in PG&E's sole and absolute discretion, and the prior consent, to the extent required by applicable law or regulation, of the CPUC. User shall submit a written request for authorization to conduct other or additional uses, together with plans for installation of any proposed additional facilities within the Licensed Areas, to PG&E for its written approval at the address specified in Section 14.

7. Compliance with Laws. User shall, at its sole cost and expense, promptly comply with all laws, statutes, ordinances, rules, regulations, requirements or orders of municipal, state, and federal authorities now in force or that may later be in force, with the conditions of any permit, occupancy certificate, license or other approval issued by public officers relating to User's use or occupancy of the Licensed Areas; and with any liens, encumbrances, easements, covenants, conditions, restrictions and servitudes (if any) of record, or of which User has notice, which may be applicable to the Licensed Areas (collectively, "**Legal Requirements**"), regardless of when they become effective, insofar as they relate to the use or occupancy of the Licensed Areas by User. The judgment of any court of competent jurisdiction, or the admission of User in any action or proceeding against User, whether or not PG&E is a party in such action or proceeding, that User has violated any Legal Requirement relating to the use or occupancy of the Licensed Areas, shall be conclusive of that fact as between PG&E and User.

8. Abandonment, Termination. In the event User abandons the facilities installed hereunder or the use of either Licensed Area, this Agreement shall terminate as to such Licensed Area. The non-use of such facilities or such Licensed Area for a continuous period of two (2) years, unless such nonuse is due to factors outside User's reasonable control, in which case such period is extended to four (4) years, shall be conclusive evidence of such abandonment. Upon any termination of this Agreement, in whole or in part, User shall remove, at no cost to PG&E, such of User's facilities and equipment located on the Licensed Areas so terminated as PG&E may specify. Upon any termination of this Agreement, User shall execute, acknowledge and deliver to PG&E a quitclaim deed or such other documents or instruments, in a form reasonably acceptable to PG&E, as may be reasonably necessary to eliminate this Agreement as an encumbrance on the title to the Exclusive Use Areas or any larger parcel of property containing the Exclusive Use Areas.

9. Reserved Rights. Subject to the provisions of Section 11 below, PG&E reserves the right to use the Licensed Areas for any and all purposes which will not unreasonably interfere with User's transmission line(s) and related facilities. Without limiting the generality of the foregoing:

(a) PG&E reserves the right to make use of the Licensed Areas for such purposes as it may deem necessary or appropriate if, and whenever, in the interest of its service to its patrons or consumers or the public, it shall appear necessary or desirable to do so.

(b) User acknowledges that PG&E may have previously granted, and may in the future grant, certain rights in and across the Licensed Areas to others, and the use of the word "grant" in this Agreement shall not be construed as a warranty or covenant by PG&E that there are no such other rights.

(c) User shall not make use of the Licensed Areas in any way which will endanger human health or the environment, create a nuisance or otherwise be incompatible with the use of the Licensed Areas, the Exclusive Use Areas, or any adjacent property owned or used by PG&E, by persons or entities, including PG&E, entitled to use such property.

(d) This grant is made subject to all applicable provisions of General Order No. 95 (Overhead Electric), General Order 112 (Gas) and General Order No. 128 (Underground Electric) of the CPUC, in like manner as though said provisions were set forth herein.

10. Governmental Approvals. This Agreement shall not become effective, notwithstanding that it may have been executed and delivered by the parties, and User shall not commence any use of the Licensed Areas, or any construction or other activities hereunder, unless and until the CPUC approves this Agreement and the rights granted and other transactions contemplated hereby (including the adequacy of the compensation to be paid by User), by an order which is final, unconditional and unappealable (including exhaustion of all administrative appeals or remedies before the CPUC). User further acknowledges and agrees that PG&E makes no representation or warranty regarding the prospects for CPUC approval, and User hereby waives all Claims against PG&E which may arise out of the need for such CPUC approval or the failure of the CPUC to grant such approval. This Agreement is made subject to all the provisions of such approval, as more particularly set forth in CPUC Resolution \_\_\_\_\_ (Advice Letter No. \_\_\_\_\_), in like manner as though said provisions were set forth in full herein.

11. Relocation. Subject to the provisions of this Section 11, the rights granted to User herein shall forever be subordinate to PG&E's right to require the relocation of any of User's facilities if necessary, in PG&E's judgment, in connection with its future use of the Exclusive Use Areas. Upon written notice from PG&E, User shall, at its own cost and expense, relocate such facilities to an alternate location mutually agreed upon between PG&E and User, provided User is given at least twenty (20) days prior written notice of such required relocation or a greater number of days provided that User diligently pursues necessary governmental approvals and relocation efforts upon receipt of notice. Any such relocation of User's facilities shall be coordinated and scheduled between PG&E and User so as to minimize, to the extent practicable, any interference with User's use and operation of its facilities resulting from such relocation.

12. Compliance; Insurance. PG&E shall have a right to access and inspect the Licensed Areas at any time to confirm User's compliance with Legal Requirements and the provisions of this Agreement. Prior to the Effective Date of this Agreement, User shall procure, and thereafter User shall carry and maintain in effect at all times during the term of the Agreement, the insurance specified in **Exhibit C**, attached hereto and made a part hereof by this reference, provided that PG&E reserves the right to review and modify from time to time the coverages and limits of coverage required hereunder, as well as the deductibles and/or self-insurance retentions in effect from time to time (but PG&E agrees that it will not increase required coverage limits more often than once in any five-year period). All insurance shall be written on forms and with insurance carriers acceptable to PG&E. For so long as User (a) is an agency or instrumentality of the United States of America, the State of California or any political subdivision thereof, or (b) is a public utility (as that term is defined in the California Public Utilities Code), or (c) maintains a net worth (measured in accordance with generally accepted accounting principles applicable to public utility companies) not less than twenty (20) times the limit of liability (per-occurrence) from time

to time required hereunder for User's Commercial General Liability Insurance coverage (or if such coverage is no longer available, its replacement); then User may elect to self-insure for any or all of the required coverage. User is also responsible for causing its agents, contractors and subcontractors to comply with the insurance requirements of this Agreement at all relevant times.

13. Mechanics' Liens. User shall keep the Licensed Areas free and clear of all mechanics', material suppliers' or similar liens, or claims thereof, arising or alleged to arise in connection with any work performed, labor or materials supplied or delivered, or similar activities performed by User or at its request or for its benefit. If any mechanics' liens are filed against the Exclusive Use Areas, or PG&E's interest therein, in connection with the activities or facilities set forth in this Agreement, User shall promptly cause such liens to be released and removed from title, either by payment or by recording a lien release bond in the manner specified in California Civil Code Section 3143 or any successor statute.

14. Notice. Any notices or communications hereunder shall be in writing and shall be personally delivered or sent by first class mail, certified or registered, postage prepaid, or sent by national overnight courier, with charges prepaid for next business day delivery, addressed to the addressee party at its address or addresses listed below, or to such other address or addresses for a party as such party may from time to time designate by notice given to the other party. Notices shall be deemed received upon actual receipt by the party being sent the notice, or on the following business day if sent by overnight courier, or on the expiration of three (3) business days after the date of mailing.

If to PG&E:

Pacific Gas and Electric Company  
343 Sacramento St.  
Auburn, CA 95603  
Attention: Paul Fluckey

With a copy to:

Pacific Gas and Electric Company  
77 Beale Street, Mail Code B30A  
San Francisco, California 94105  
Attention: Land Attorney

If to User:

Power Partners Southwest, LLC  
c/o enXco, Inc.  
700 La Terraza Blvd., Suite 200  
Escondido, CA 92025  
Attention: Property Agent

15. Governing Law. This Agreement shall in all respects be interpreted, enforced, and governed by and under the laws of the State of California.

16. Entire Agreement. This Agreement supersedes all previous oral and written agreements between and representations by or on behalf of the parties and constitutes the entire agreement of the parties with respect to the subject matter hereof. This Agreement may not be amended except by a written agreement executed by both parties.

17. Binding Effect. This Agreement and the covenants and agreements contained herein shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective heirs, successors and assigns (subject to the provisions of Section 18). No assignment or delegation by User, whether by operation of law or otherwise, shall relieve User of any of its duties, obligations or liabilities hereunder, in whole or in part.

18. Assignment. User shall not assign, convey, encumber, or otherwise transfer the rights herein conveyed, or any portion thereof or interest herein, without the prior written consent of PG&E, which consent may be given or withheld by PG&E for any reason or for no reason, provided, however, that notwithstanding the foregoing, PG&E agrees that its consent will not be unreasonably withheld, delayed or conditioned in the case of: (a) a proposed transfer or dedication to a governmental agency, or (b) a proposed transfer to a public or private utility to which User also transfers its interest in the generation or transmission network of which the facilities hereby authorized are a part. User acknowledges and agrees that in any instance where PG&E is required not to unreasonably withhold its consent, it shall be reasonable for PG&E to withhold its consent if any regulatory agency having or asserting jurisdiction over PG&E or the Exclusive Use Areas, or having or claiming a right to review and/or approve the proposed transfer, fails to grant approval thereof (or imposes conditions on such approval which are not acceptable to PG&E, in its reasonable discretion). User further acknowledges and agrees that in any instance where PG&E is required not to unreasonably delay giving or withholding its consent, it shall be reasonable for PG&E to make application for approval to any regulatory agency having or asserting jurisdiction, and to defer the giving or withholding of consent, without liability hereunder for delay, during the pendency and for a reasonable time following the conclusion of any such regulatory proceedings.

19. Attorneys' Fees. Should either party bring an action against the other party, by reason of or alleging the failure of the other party with respect to any or all of its obligations hereunder, whether for declaratory or other relief, then the party which prevails in such action shall be entitled to its reasonable attorneys' fees (of both in-house and outside counsel) and expenses related to such action, in addition to all other recovery or relief. A party shall be deemed to have prevailed in any such action (without limiting the generality of the foregoing) if such action is dismissed upon the payment by the other party of the sums allegedly due or the performance of obligations allegedly not complied with, or if such party obtains substantially the relief sought by it in the action, irrespective of whether such action is prosecuted to judgment. Attorneys' fees shall include, without limitation, fees incurred in discovery, contempt proceedings and bankruptcy litigation, and in any appellate proceeding. The non-prevailing party shall also pay the attorney's fees and costs incurred by the prevailing party in any post-judgment proceedings to collect and enforce the judgment. The covenant in the preceding sentence is separate and several and shall survive the merger of this provision into any judgment on this Agreement. For purposes hereof, the reasonable fees of PG&E's in-house attorneys who perform services in connection with any

such action shall be recoverable, and shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the relevant subject matter area of the law, in law firms in the City of San Francisco with approximately the same number of attorneys as are employed by PG&E's Law Department.

20. No Waiver. No waiver with respect to any provision of this Agreement shall be effective unless in writing and signed by the party against whom it is asserted. No waiver of any provision of this Agreement by a party shall be construed as a waiver of any subsequent breach or failure of the same term or condition, or as a waiver of any other provision of this Agreement.

21. No Offsets. User acknowledges that PG&E is executing this Agreement in its capacity as the owner of an interest in real property, and not in its capacity as a public utility company or provider of electricity and natural gas. Notwithstanding anything to the contrary contained herein, no act or omission of Pacific Gas and Electric Company or its employees, agents or contractors as a provider of electricity and natural gas shall abrogate, diminish, or otherwise affect the respective rights, obligations and liabilities of PG&E and User under this Agreement. Further, User covenants not to raise as a defense to its obligations under this Agreement, or assert as a counterclaim or cross-claim in any litigation or arbitration between PG&E and User relating to this Agreement, any claim, loss, damage, cause of action, liability, cost or expense (including, but not limited to, attorneys' fees) arising from or in connection with Pacific Gas and Electric Company's provision of (or failure to provide) electricity and natural gas.

22. No Dedication. Nothing contained in this Agreement shall be deemed to be a gift or dedication of land or rights to the general public. The right of the public or any person, including User, to make any use whatsoever of the Exclusive Use Area(s) or any portion thereof, other than as expressly permitted herein or as expressly allowed by a recorded map, agreement, deed or dedication, is by permission and is subject to the control of PG&E in its sole discretion.

23. No Third Party Beneficiary. This Agreement is solely for the benefit of the parties hereto and their respective successors and permitted assigns, and, except as expressly provided herein, does not confer any rights or remedies on any other person or entity.

24. Captions. The captions in this Agreement are for reference only and shall in no way define or interpret any provision hereof.

25. Time. Except as otherwise expressly provided herein, the parties agree that as to any obligation or action to be performed hereunder, time is of the essence.

26. Severability. If any provision of this Agreement shall be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each provision of this Agreement shall be valid and enforced to the full extent permitted by law, provided the material provisions of this Agreement can be determined and effectuated.

27. Counterparts. This Agreement may be executed in identical counterpart copies, each of which shall be an original, but all of which taken together shall constitute one and the same agreement.

28. **WAIVER OF JURY TRIAL; VENUE. PG&E AND USER EACH HEREBY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER PARTY AGAINST THE OTHER ON ANY MATTER WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT, INCLUDING ANY CLAIM OF INJURY OR DAMAGE. PG&E AND USER ALSO AGREE THAT THE VENUE OF ANY SUCH ACTION, PROCEEDING OR COUNTERCLAIM SHALL BE IN THE COUNTY OF SAN FRANCISCO, CALIFORNIA. THE COVENANTS OF THE PARTIES CONTAINED IN THIS SECTION 28 SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.**

29. Other Documents. Each party agrees to sign any additional documents or permit applications which may be reasonably required to effectuate the purpose of this Agreement. Provided, however, that PG&E will not be required to take any action or execute any document that would result in any cost, expense or liability to PG&E.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first set forth above.

PACIFIC GAS AND ELECTRIC COMPANY,  
a California corporation

POWER PARTNERS SOUTHWEST, LLC  
a Delaware limited liability company

By: \_\_\_\_\_  
Loren Loo  
Its: Manager, Land Asset Management  
Technical & Land Services

By: enXco, Inc., a Delaware Corporation\_  
\_\_\_\_\_  
Its: Manager\_\_\_\_\_

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Name: Joseph P. Fahrendorf  
Title: Vice-president

Dated: \_\_\_\_\_

Exhibits A, B and C attached

## EXHIBIT C

### INSURANCE REQUIREMENTS

User shall procure, carry and maintain in effect throughout the term of this Agreement, in a form and with deductibles acceptable to PG&E and with such insurance companies as are acceptable to PG&E, the following insurance coverages (subject to periodic revision of the required coverage and limits of coverage as provided in Section 12 of this Agreement). User is also responsible for the compliance of its contractors and subcontractors with the insurance requirements set forth below, as appropriate, provided that User may, in the exercise of its reasonable judgment, permit its contractors and subcontractors to maintain coverages and limits lower than those specified below so long as the coverages and limits required by User are commercially reasonable in light of applicable circumstances.

A. Workers' Compensation and Employers' Liability

1. Workers' Compensation insurance indicating compliance with any and all applicable labor codes, acts, laws or statutes, state or federal.
2. Employer's Liability insurance shall not be less than \$1,000,000 for injury or death, each accident.

B. Commercial General Liability

1. Commercial General Liability coverage with respect to the Licensed Areas and the use, occupancy and activities by and on behalf of User, its employees and agents on or about the Licensed Areas, including construction and other related activities on the Licensed Areas, against claims for bodily injury (including death) and property damage (including loss of use), and at least as broad as the Commercial General Liability insurance occurrence policy form CG 00 01, or a substitute form providing equivalent coverage, covering liability imposed by applicable laws upon User and such other insured parties ("**Commercial General Liability Insurance**"), having limits of not less than Ten Million Dollars (\$10,000,000) per occurrence for bodily injury and property damage, personal injury liability, and products and completed operations. Defense costs are to be provided as an additional benefit and not included within the limits of liability of the Commercial General Liability Insurance. Products and completed operations coverage shall remain in effect until two (2) years following completion of construction.
2. Coverage shall include: a) an "Additional Insured" endorsement (ISO Additional Insured form CG 2026, or a policy provision or substitute endorsement providing equivalent coverage, as reasonably approved by PG&E) adding as additional insureds PG&E, its directors, officers, agents and employees with respect to liability arising out of work performed by or for User and to the extent of the indemnity obligations assumed hereunder; and b) an endorsement or policy provision specifying that the User's insurance is primary and that any insurance or self-insurance maintained by PG&E shall be excess and non-contributing.

C. Business Auto

1. Coverage shall be at least as broad as the Insurance Services Office (ISO) Business Auto Coverage form covering Automobile Liability, code I “any auto.”
2. The limit shall not be less than Two Million Dollars (\$2,000,000) each accident for bodily injury and property damage occurring prior to completion of construction of User’s facilities, and One Million Dollars (\$1,000,000) each accident for bodily injury and property damage occurring thereafter.

D. Pollution Liability

1. Whenever excavation or construction activities are being conducted within the Underground Crossing Area, coverage for bodily injury, property damage, including clean up costs and defense costs resulting from sudden and gradual pollution conditions including the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, hydrocarbons, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any watercourse or body of water.
2. The limit shall not be less than One Million Dollars (\$1,000,000) each occurrence for bodily injury and property damage.
3. For so long as User maintains a net worth (measured in accordance with generally accepted accounting principles applicable to public utility companies) not less than twenty (20) times the limit of liability required hereunder, then User may elect to self-insure for pollution liability coverage. User agrees to provide PG&E Audited Financials as evidence of said net worth.

E. Additional Insurance Provisions

1. Upon the Effective Date of this Agreement, and before commencing any work, User shall furnish PG&E with certificates of insurance evidencing all required insurance for User, including copies of required endorsements.
2. All policies shall provide (or be endorsed to provide), and all certificates of insurance shall expressly specify, that the insurer will provide PG&E thirty (30) days advance written notice of policy cancellation, failure to renew, or reduction of coverage.
3. Certificates of insurance must be signed by a person authorized by that insurer to bind coverage on its behalf. Certificates and endorsements shall be submitted to:

Pacific Gas and Electric Company  
Insurance Department  
One Market, Spear Tower, Suite 2400  
San Francisco, California 94105

Pacific Gas and Electric Company  
343 Sacramento Street  
Auburn, CA 95603  
Attention: Paul Fluckey

4. Upon request, User shall furnish PG&E evidence of insurance for its agents or contractors.
5. All insurance required under this Agreement shall be effected under valid enforceable policies issued by insurers of recognized responsibility, as reasonably determined by PG&E with having an A.M. Best Insurance Reports rating of A-:V11 or better.
6. If User is permitted to self-insure hereunder for any required insurance, and elects to do so, User shall be liable to PG&E for the full equivalent of insurance coverage which would have been available to PG&E if the applicable insurance policies had been obtained by User from a third party insurer, in full compliance with the provisions of this Exhibit C, and shall pay on behalf of or indemnify PG&E for all amounts which would have been payable by the third party insurer. In addition, User shall act with the same promptness and subject to the same standards of good faith as would apply to a third party insurance company.
7. Any policy of liability insurance required to be maintained hereunder by User may be maintained under a so-called “blanket policy” insuring other locations and/or other persons, so long as PG&E is specifically named as an additional insured under such policy and the coverages and amounts of insurance required to be provided hereunder are not thereby impaired or diminished. In addition, liability insurance coverages may be provided under single policies for the full limits, or by a combination of underlying policies with the balance provided by excess or umbrella liability insurance policies.
8. User agrees, at PG&E’s request and sole expense, to deliver complete certified copies of all policies, and/or to permit PG&E to inspect the original policies in the office of User giving User reasonable notification.

# Advice Letter 3286-E

## Attachment 2

**Exhibit "A-2"**

**LEGAL DESCRIPTION**

A portion of Parcel A as shown on Book 47 of Parcel Maps, at Page 30, Official Records County of Solano, located in Section 22, Township 04 North, Range 02 East, M.D.B. & M., Solano County, California, more particularly described as follows:

**Road Easement**

A strip of land 16 feet wide lying 8 feet on each side of the following described line:

**COMMENCING** at a concrete monument with brass disc set in a monument well, marking the northeast corner of said Section 22 as shown on said Parcel Map, said corner marking the easterly terminus of the course bearing North 89°54'50" East; thence along said course North 89°37'00" West 1783.64 feet to the east line of a 210-foot PG&E Easement recorded in Book 1289, at Page 530, Official Records County of Solano; thence along said east line South 15°51'40" East 4555.17 feet to the **POINT OF BEGINNING**; thence leaving said east line North 89°41'10" West 218.67 feet to the west line of said PG&E Easement and the **POINT OF TERMINATION**.

The sidelines of the above described strip of land are to be lengthened or shortened to terminate with boundary lines.

Containing 3,500 square feet (0.080 acre), more or less.

**Collection Line Easement**

A strip of land 60 feet wide lying 30 feet on each side of the following described line:

**COMMENCING** at a concrete monument with brass disc set in a monument well, marking the northeast corner of said Section 22 as shown on said Parcel Map, said corner marking the easterly terminus of the course bearing North 89°54'50" East; thence along said course North 89°37'00" West 1783.64 feet to the east line of a 210-foot PG&E Easement recorded in Book 1289, at Page 530, Official Records County of Solano; thence along said east line South 15°51'40" East 4594.74 feet to the **POINT OF BEGINNING**; thence leaving said east line North 89°41'10" West 218.67 feet to the west line of said PG&E Easement and the **POINT OF TERMINATION**.

The sidelines of the above described strip of land are to be lengthened or shortened to terminate with boundary lines.

Containing 13,122 square feet (0.301 acre), more or less.

The basis of bearings for this description is the California Coordinate System, Zone II, North American Datum of 1983, Epoch date 1991.35, U.S. Survey feet. Distances are grid distance. Divide grid distance by 0.9999206 to obtain ground distance. Area is ground area.

Attached hereto is a plat labeled "Exhibit B-2" and by this reference made a part hereof.

**END OF DESCRIPTION**

This real property description has been prepared by me, or under my direction, in conformance with the Professional Land Surveyors Act.

  
Christopher B. Curtis, PLS No. 7579      20 JUN 08  
Date



16 15 Little Honker Bay Road 15 14  
 21 22 22 23

ELLIOT, REIS &  
 FULLER  
 0048-050-070

100' PG&E  
 EASEMENT PER  
 272 OR 377

210' PG&E  
 EASEMENT PER  
 1289 OR 530

IT CORP  
 PARCEL B  
 47 PM 30  
 0048-050-034

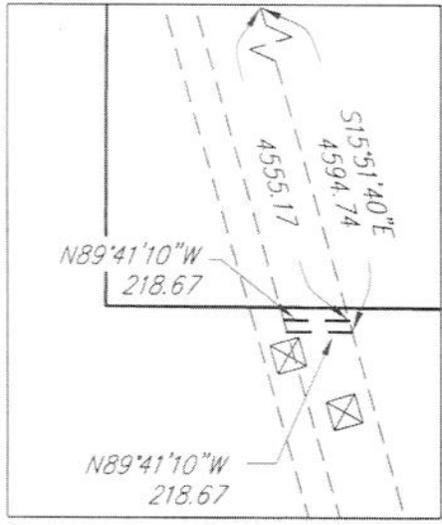
McCOSKER  
 PARCEL A  
 47 PM 30  
 0048-050-330

SEE  
 DETAIL

ROAD  
 COLLECTION  
 LINE

ANDERSON  
 0048-050-230

Olsen Road



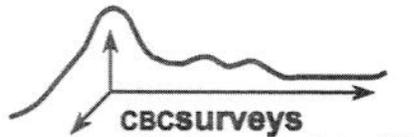
**DETAIL**  
 NO SCALE

**Legend**

R1 Per 47 PM 30

--- Centerline

⊠ Existing Transmission Tower Location



**CBCsurveys**  
 1300 Ethan Way, Suite 300  
 Sacramento, CA 95825  
 Tel: 916.921.9033



|   |             |                              |
|---|-------------|------------------------------|
| Shiloh II   |             |                              |
| Exhibit 'B-2'   |             |                              |
| Proposed Road & Collection Line Location for<br>enXco Development Corporation |             |                              |
| Scale:  | 1"=1000'    | Drawn: JWC Job No.: 07006-00 |
| Date:   | 20 JUNE '08 | Checked: CBC Sheet 1 of 1    |

# Advice Letter 3286-E

## Attachment 3

Exhibit "A-1"

**LEGAL DESCRIPTION**

A portion of the lands described in Document No. 1995-00051508, Official Records County of Solano, located in Section 33, Township 04 North, Range 02 East, M.D.B. & M., Solano County, California, more particularly described as follows:

A strip of land 10 feet wide lying 5 feet on each side of the following described line:

**COMMENCING** at a found nail in fence post as shown on that unrecorded survey titled "Lands of Anderson, et al.," conducted by Charles Evans of Evans Surveys, dated 17 December 1993, marking the northwesterly terminus of the course bearing North 59°36'10" West 1179.35 feet; thence along said course South 59°31'47" East 595.07 feet to the west line of a 210-foot PG&E Easement recorded in Book 1359, at Page 06, Official Records County of Solano; thence along said west line South 08°13'36" West 574.17 feet to the **POINT OF BEGINNING**; thence leaving said west line South 78°26'49" East 210.36 feet to the east line of said PG&E Easement and the **POINT OF TERMINATION**.

The sidelines of the above described strip of land are to be lengthened or shortened to terminate with boundary lines.

Containing 2,104 square feet (0.048 acres), more or less.

The basis of bearings for this description is the California Coordinate System, Zone II, North American Datum of 1983, Epoch date 1991.35, U.S. Survey feet. Distances are grid distance. Divide grid distance by 0.9999206 to obtain ground distance. Area is ground area.

Attached hereto is a plat labeled "Exhibit B-1" and by this reference made a part hereof.

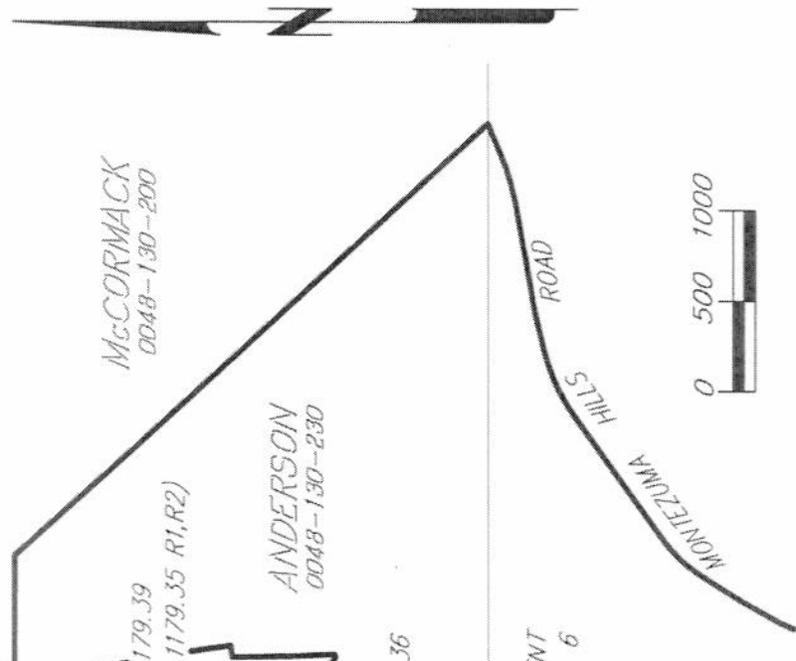
**END OF DESCRIPTION**

This real property description has been prepared by me, or under my direction, in conformance with the Professional Land Surveyors Act.

  
Christopher B. Curtis, PLS No. 7579      20 Jun '08  
Date



**CBC surveys**  
 1300 Ethon Way, Suite 300  
 Sacramento, CA 95825  
 Tel: 916.921.9033



GURULE  
0048-150-250

GURULE  
0048-150-290

EMIGH  
0048-150-220

McCORMACK  
0048-130-200

ANDERSON  
0048-130-230

ANDERSON  
0048-130-240

ANDERSON  
0090-190-230

559°31'47"E 1179.39  
(N59°36'10"W 1179.35 R1,R2)

595.07  
S08°13'36"W  
574.17

S78°26'49"E 210.36

210' PG&E EASEMENT  
PER BK. 1359, PG. 6



**Legend**

- R1 Per an unrecorded survey titled "Lands of Anderson, et al," by Charles Evans of Evans Surveys, dated 17 DEC 1993
- R2 Per Document No. 1995-00051508
- Proposed location for the six collection lines
- ☒ Existing Transmission Tower Location

|   |              |                   |              |
|---|--------------|-------------------|--------------|
| Shiloh II   |              |                   |              |
| Exhibit 'B-1'   |              |                   |              |
| Proposed Collection Line Location for enXco Development Corporation |              |                   |              |
| Scale: 1"=1000'   | Drawn: JMC   | Job No.: 07006-00 |              |
| Date: 20 JUN '08  | Checked: CBC |                   | Sheet 1 OF 1 |

**PG&E Gas and Electric  
Advice Filing List  
General Order 96-B, Section IV**

|  |   |  |
|--|---|--|
| Aglet                                    | Department of the Army                      | Northern California Power Association                      |
| Agnews Developmental Center              | Dept of General Services                    | Occidental Energy Marketing, Inc.                          |
| Alcantar & Kahl                          | Division of Business Advisory Services      | OnGrid Solar   |
| Ancillary Services Coalition             | Douglas & Liddell                           | PITCO  |
| Anderson & Poole                         | Douglass & Liddell                          | PPL EnergyPlus, LLC  |
| Arizona Public Service Company           | Downey & Brand                              | Pinnacle CNG Company                                       |
| BART                                     | Duke Energy                                 | Praxair  |
| BP Energy Company                        | Duncan, Virgil E.                           | R. W. Beck & Associates                                    |
| Barkovich & Yap, Inc.                    | Dutcher, John                               | RCS, Inc.  |
| Bartle Wells Associates                  | Ellison Schneider & Harris LLP              | RMC Lonestar   |
| Blue Ridge Gas                           | Energy Management Services, LLC             | Recon Research   |
| Braun & Associates                       | FPL Energy Project Management, Inc.         | SCD Energy Solutions                                       |
| C & H Sugar Co.                          | Foster Farms                                | SCE  |
| CA Bldg Industry Association             | Foster, Wheeler, Martinez                   | SESCO  |
| CAISO                                    | Franciscan Mobilehome                       | SMUD   |
| CLECA Law Office                         | G. A. Krause & Assoc.                       | SPURR  |
| CSC Energy Services                      | GLJ Publications                            | Santa Fe Jets  |
| California Cotton Ginners & Growers Assn | Goodin, MacBride, Squeri, Schlotz & Ritchie | Seattle City Light   |
| California Energy Commission             | Green Power Institute                       | Sempra Utilities   |
| California League of Food Processors     | Hanna & Morton                              | Sequoia Union HS Dist                                      |
| California Public Utilities Commission   | Heeg, Peggy A.                              | Sierra Pacific Power Company                               |
| California Water Company                 | Hitachi                                     | Silicon Valley Power                                       |
| Calpine                                  | Hogan Manufacturing, Inc.                   | Smurfit Stone Container Corp                               |
| Cameron McKenna                          | Imperial Irrigation District                | Southern California Edison Company                         |
| Cardinal Cogen                           | Innercite                                   | St. Paul Assoc.  |
| Casner, Steve                            | International Power Technology              | Sunshine Design  |
| Cerox                                    | Intestate Gas Services, Inc.                | Sutherland, Asbill & Brennan                               |
| Chamberlain, Eric                        | J. R. Wood, Inc.                            | TFS Energy   |
| Chevron Company                          | JTM, Inc.                                   | Tabors Caramanis & Associates                              |
| Chris, King                              | Los Angeles Dept of Water & Power           | Tecogen, Inc.  |
| City of Glendale                         | Luce, Forward, Hamilton & Scripps LLP       | TransCanada  |
| City of Palo Alto                        | MBMC, Inc.                                  | Turlock Irrigation District                                |
| City of San Jose                         | MRW & Associates                            | U S Borax, Inc.  |
| Clean Energy Fuels                       | Manatt Phelps Phillips                      | United Cogen   |
| Coast Economic Consulting                | Matthew V. Brady & Associates               | Utility Cost Management                                    |
| Commerce Energy                          | McKenzie & Associates                       | Utility Resource Network                                   |
| Commercial Energy                        | Meek, Daniel W.                             | Utility Specialists  |
| Constellation                            | Merced Irrigation District                  | Vandenberg Air Force                                       |
| Constellation New Energy                 | Mirant                                      | Verizon  |
| Consumer Federation of California        | Modesto Irrigation District                 | Wellhead Electric Company                                  |
| Crossborder Energy                       | Morgan Stanley                              | Western Manufactured Housing Communities Association (WMA) |
| Davis Wright Tremaine LLP                | Morrison & Foerster                         | White & Case   |
| Day Carter Murphy                        | New United Motor Mfg., Inc.                 | eMeter Corporation   |
| Defense Energy Support Center            | Norris & Wong Associates                    |  |
| Department of Water Resources            | North Coast SolarResources                  |  |