

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE

SAN FRANCISCO, CA 94102-3298

November 9, 2009

Advice Letter 3499-E

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

**Subject: Lease Amendment with CalPeak Power, LLC, for Siting
Generation on Land Adjacent to Utility Substations on an
Expedited Basis – Request for Approval Under Section 851**

Dear Mr. Cherry:

Advice Letter 3499-E is effective October 15, 2009 per Resolution E-4279.

Sincerely,



Julie A. Fitch, Director
Energy Division



Brian K. Cherry
Vice President
Regulatory Relations

77 Beale Street, Room 1087
San Francisco, CA 94105

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San Francisco, CA 94177

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July 21, 2009

Advice 3499-E

(Pacific Gas and Electric Company ID U 39 E)

Public Utilities Commission of the State of California

**Subject: Lease Amendment With CalPeak Power, LLC, for Siting
Generation on Land Adjacent to Utility Substations on an
Expedited Basis – Request for Approval Under Section 851**

Purpose

Pacific Gas and Electric Company (“PG&E”) submits this Advice Letter requesting approval under Public Utilities Code Section 851 to enter into amended lease extension agreements (the “Lease Extensions”) on PG&E-owned real properties commonly known as the Vaca Dixon Substation and Panoche Substation (the “Premises”) with CalPeak Power-Vaca Dixon, LLC and CalPeak Power-Panoche, LLC, and their affiliates (collectively “CalPeak”). The Lease Extensions would permit CalPeak to extend the current leases by an additional term of 25 years to allow its existing 49.3 megawatt (MW) summer peaking power plants, installed on each of these respective sites in 2001 pursuant to CPUC D. 01-08-070, to continue operation into the longer-term future in order to meet California’s energy needs. Approval of these Lease Extensions will continue to provide rent revenues for the benefit of PG&E’s customers without impairing PG&E’s ability to provide service to its customers.

As explained later in this Advice Letter, CalPeak requests expedited Commission approval of this request in or before October 2009 so that CalPeak may finalize certain Power Purchase Agreements (PPA) with the certainty that its Lease Extensions are in place. This is now necessary to provide assurances, during on-going negotiations, that CalPeak will be able to continue to operate these two gas turbine power stations on the Premises in the long term. If the Leases are not extended, CalPeak will not be able to effectively negotiate PPAs for these facilities on a going forward basis, because there would be uncertainty about the projects’ future viability. If PPAs cannot be entered into on a timely basis, these power plants may have to be relocated to another site. Such outcomes would not be in the interests of PG&E’s utility customers or the public.

Summary of PG&E's Request

CalPeak owns and operates five combustion gas turbine peaking power generation plants - two 49.3MW plants on PG&E land and three 49.3MW plants on SDG&E land. CalPeak, which is located at 7365 Mission George Rd. Suite C, in San Diego, California, is a joint venture between Starwood Energy Group Global, LLC, and Tyr Energy (a subsidiary of Itochu Corporation), formed to supply power to California. CalPeak owns five natural gas-fired power plants, totaling approximately 250MW, which are contracted to the California Department of Water Resources through 2011.

PG&E, as landlord, has two existing ten-year leases of utility property with CalPeak, as tenant, for CalPeak to operate natural gas-fueled electric generators on substation property PG&E owns in the Vacaville-Dixon and Panoche areas, respectively (the "Facilities"). These leases, previously acted on by the Commission in Decision (D) 01-08-070,¹ will expire in late 2011 (specifically the Vaca-Dixon Substation lease will expire on December 26, 2011, and the Panoche Substation lease will expire on December 22, 2011). However, CalPeak is currently negotiating power purchase agreements whereby approval of such power purchase agreements requires certainty of a 25-year lease agreement term at each of these sites by October 2009.

Timely Commission approval of the Lease Extensions is critical because, without these long-term Lease Extensions in place, CalPeak cannot effectively negotiate PPAs for the Facilities on a going-forward basis, as the future viability of the projects would be in question. While the 2011 expiration date may seem far off, prospective buyers are already contracting to satisfy their intermediate-term energy needs and many buyers (such as PG&E) need to receive regulatory approval of such deals after the commercial terms have been agreed upon – an overall process that would take from this year through 2011 to complete. Alternatively, if the lease extensions are not going to be approved, CalPeak needs significant lead time to move the plants to alternate sites.

In this Advice Letter, PG&E requests that the Commission approve, under Section 851, PG&E's proposed amended lease agreements with CalPeak for the small portions (4.685 acres for Panoche in Fresno County and 2.075 acres for Vaca Dixon in Solano County) of PG&E's Premises, to extend the term of these leases for an additional 25 years. Furthermore, PG&E requests that the CPUC find that these Lease Extensions are not a project under CEQA because they will not cause any physical change to CalPeak's existing power plants on either of these two properties.

¹ In D.01-08-070, the CPUC found these leases to be exempt from Section 851 under Section 853(b).

Background of the Vaca Dixon Substation and Panoche Substation Leases

On June 25, 2001, PG&E filed Application 01-06-043 under Public Utilities Code Section 851 to lease PG&E-owned land adjacent to three PG&E substations to CalPeak for installation and operation of electric generation units (collectively the "Units"). The three substations were Vaca Dixon in Solano County, Panoche in Fresno County, and Midway in Kern County.

PG&E, among other things, requested that the Commission grant an exemption from the requirements of Section 851, as permitted under Section 853(b),² noting that prompt waiver of the Section 851 approval process would make it possible for CalPeak to finance, construct and commence operation of the contemplated generation Units in or about September 2001. PG&E noted that during that year, Californians had been subject to high energy costs and severe electricity shortages in response to which the California Independent System Operator had entered into agreement for CalPeak to construct and operate new generation plants to improve system reliability and reduce the chance of further involuntary curtailments and rotating block outages which could have significant economic, health and safety impacts on California. The proposed locations on PG&E property adjacent to substations were particularly well suited to accommodate new generation because of their proximity to load centers and ease of connection to the transmission grid.

CalPeak subsequently filed emergency motions requesting authorization to proceed with construction of its generation Units at two of these three PG&E sites, Panoche and Vaca-Dixon,³ emphasizing that the scheduled operating availability date at Panoche was September 26, 2001, and at Vaca Dixon it was October 16, 2001. CalPeak noted that the urgency of the situation and the unopposed status of the Application justified prompt action by the Commission and that delay in the

² PG&E's Application also requested an immediate interim order confirming that PG&E's proposal to allow CalPeak to perform preliminary site preparation was proper under General Order (GO) 69-C. On July 13, 2001, the Assigned Administrative Law Judge requested additional information from PG&E and denied PG&E's request for authority to perform site preparation work. On July 19, 2001, PG&E responded to provide the information requested, and to indicate that it had mistakenly allowed CalPeak to begin clearing and grading the Panoche site on July 6, 2001 in preparation for construction. The CPUC issued Orders to Show Cause regarding this CalPeak pre-construction work, as well as other such work relating to a Calpine power plant installation matter. Both of these matters were concluded in D.04-08-049. In that decision, the Commission granted PG&E's proposal for resolving all the issues raised by Commission decisions (D.) 01-08-070 and 01-08-069. Under the adopted proposal, the proceedings in question were closed upon PG&E's remittance to the Commission of the total amount of \$55,000, with PG&E making no admission of any of the allegations of fact or law in the underlying decisions. Since then, PG&E has implemented significant changes to ensure future compliance with Commission Rules and Orders relating to Section 851.

³ The third potential site (at Midway) was being explored for a third peaker plant by CalPeak when PG&E file its Application in June 2001, but these plans were subsequently dropped by CalPeak.

availability of these plants' output would cause harm to California in the form of reduced availability of electric generation and exposure to higher prices.

On August 23, 2001, the Commission issued Decision 01-08-070 granting PG&E's request for a limited exemption from the requirements of P.U. Code Section 851 under Section 853(b) for the lease of space at these substations for the installation of electric generation Units. The CPUC noted that this Application was factually very similar to that filed by San Diego Gas & Electric (SDG&E) in A.01-04-015 and approved by the CPUC in D.01-06-006 through a Section 853(b) exemption. That case dealt with similar leases of space at two SDG&E substations for summer peaker generating Units to be installed and operated by CalPeak. There, as here, the peaker plants were needed to meet California's urgent need for additional capacity as soon as possible to prevent the type of rolling outages California had been suffering during the energy crisis of 2001. In PG&E's case, the time pressures involved had prevented negotiations on these leases with CalPeak from being finalized and executed at the time the Application was filed, which provided further support for CPUC approval under Section 853(b).⁴ In addition, PG&E was only requesting limited relief pertaining to the leasing of three small parcels located on existing utility facilities, with PG&E providing assurances that the siting of CalPeak units there would not interfere with PG&E's provision of utility service and would generate revenues for ratepayers as well as increased electricity supply. Further, the CPUC noted that, as there had been no protests, PG&E's Application was uncontested. Finally, because the CPUC was granting a Section 853(b) exemption, it found that since no CPUC approval of the leases was required, no CEQA review by the CPUC as a responsible agency had been triggered.⁵ As permitted by the leases, CalPeak has assigned the Panoche lease to its wholly-owned subsidiary, CalPeak Power-Panoche, LLC, and the Vaca Dixon lease to its wholly-owned subsidiary CalPeak Power-Vaca Dixon, LLC.

Request for Section 851 Approval

PG&E respectfully requests that the Commission authorize PG&E to enter into the proposed lease extension agreements under Section 851, based on the showing in this Advice Letter that CPUC approval of these continued compatible productive

⁴ The Assigned Administrative Law Judge issued a Ruling on July 13, 2001, granting PG&E's Motion (filed concurrently with Application 01-06-043) requesting a waiver of the requirement of the CPUC's Rule 36 requirement that copies of the leases be filed with the Application, as they had not been finalized until after the initial Application needed to be filed.

⁵ In its decision, the CPUC noted that PG&E had made credible arguments that one or more CEQA exemptions would apply even if the CPUC were to approve the Application under Section 851, but the CPUC concluded it did not need to reach that issue. (D.01-08-070, mimeo, p.9, fn.9.) CEQA review was conducted for the Vaca Dixon and Panoche sites by the local lead agencies, namely Solano County and Fresno County, respectively, in which these two thermal power plants would be located. Because the CPUC granted as part of their issuance of the necessary land use permits, an exemption under Section 853(b), no review of these local lead agencies' actions by the CPUC as a responsible agency was required.

uses of utility property for needed summer peaking generation is not adverse to the public interest.^{6/ 7/}

In addition, the CPUC's approval should seek to honor, CalPeak's request that Commission expedite its action to authorize these Lease Extensions-- specifically that it do so **in or before October 2009** -- so that CalPeak may secure power purchase agreements with the certainty that the original Leases will be extended for 25 years so that that it will be able to continue to operate these two gas turbine power stations on these two respective sites for the long term. If the Leases are not extended, the power purchase agreements could not be entered and these power plants would have to be removed from PG&E lands. Neither such outcome would be in the interests of PG&E's utility customers or the public.

In accordance with the format for 851 Advice Letters directed in 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	CalPeak Power, LLC
Andrew L. Niven	Attention: Jeff Paul
Gail L. Slocum	Address: 7365 Mission Gorge Road
Law Department	Suite C, San Diego, CA 92120
P.O. Box 7442	Telephone: (619) 229-3770 x302
San Francisco, CA 94120	Facsimile: (619) 229-6716
Telephone: (415) 973-6583	Email: jeff.paul@calpeak.com
Facsimile: (415) 973-0516	
Email: GLSG@pge.com	

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

The small areas subject to the proposed Lease Extensions are located on existing utility substation facilities at Vaca Dixon and Panoche where CalPeak already has two peaker plants, pursuant to D.01-08-070. The leased areas will remain the same, and there will be no physical change to the facilities or uses if the CPUC approves the proposed Lease Extensions. The specific leased Premises at the Dixon Substation and Panoche Substations are described and identified in the original leases attached

⁶ "The Commission has long recognized that the public interest is served when utility property is used for other productive purposes without interfering with the utility's operations or the provision of utility services to the public." (D.04-07-023, p.13; see also Section No. 11, bullets 3, 4, & 5 below.)

⁷ Alternatively, the Commission could confirm that the subject leaseholds for these same sites continue to be exempt under Section 853(b), consistent with its previous finding in D.01-08-070, because they are simply extensions of those same leaseholds, for the same utility sites, and for the same purpose of accommodating continued use of these long-installed summer peaker generators. (D.01-08-070, mimeo, p.2 Ordering Para. 2.)

hereto as Attachments (1 - Panoche) and (2 - Vaca Dixon), which each include a map of the respective leased premises (see Exhibit A-1 to the Leases), and a legal description of the Premises (see Exhibit A-2 page 2 to the Leases). These areas were leased for the purpose of installing, operating and maintaining two natural gas fueled electric power generation plants and related equipment (collectively, the "Units"), one each within these two Lease areas. (See also Lease Extension Agreements attached hereto as Attachments (3 - Panoche) and (4 - Vaca Dixon).) These two peaker plants, were installed by Calpeak in 2001, and remain in place and operational at the Panoche and Vaca Dixon lease Premises.

(3) Intended Use of the Property:

The Lease Extensions would continue, unchanged, the current use of the Premises under the Leases, which allowed CalPeak to install, maintain and operate summer peaking generation Units on the Premises. The Units shall continue to remain interconnected solely to PG&E's electric system pursuant to, and in accordance with, the Special Facilities Agreement and Interconnection Agreement described in the Lease Agreements. The Leases and Lease Extensions also allow for vehicular and pedestrian ingress and egress rights to and from the Premises, as well as the right for CalPeak to drill for water as specified in the Lease.

Under the Leases as well as the Proposed Lease Extensions, CalPeak continues to be permitted to use only a portion of the electric property involved, and only to the extent such use is compatible with PG&E's use of the properties for utility service.

PG&E and CalPeak intend to continue the current terms of the Potential Use Conflict for the first ten years of the Lease Extensions. In years eleven through twenty five, the possible reasons for PG&E's expansion will be broadened, in order to accommodate PG&E's Substation Asset Management department's planning horizon needs and protect customer's utility service interests.

No physical change to these plants and the use of these Premises will result from the CPUC's approval of the Lease Extensions.

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

The Lease Extensions will continue to provide rental revenues for the benefit of ratepayers by extending the rent terms established under the original Leases. The original Leases had provided that, on or before the Commencement Date (as defined in the Leases), and on or before each anniversary of the Commencement Date during the term of the Leases,

CalPeak shall pay to PG&E, an annual base rent (“Base Rent”), without deduction, offset or abatement, calculated as provided in the Leases. For the first year under the original Leases, the Base Rent CalPeak paid to PG&E was \$100,000, and this was increased each year thereafter by the Consumer Price Index (CPI) published two months prior to the Anniversary Adjustment Date. In addition, to the payment of Base Rent, the original Leases’ provisions allow for Percentage Rent for each calendar year equal to the amount, if any, by which one and eighty-one one-hundredths percent of the gross revenue from CalPeak’s sale of energy produced by the Units to all parties during such calendar year (Gross Sales Proceeds), minus the costs of fuel incurred by CalPeak in the production of such energy (“Related Fuel Costs”) exceeds the Base Rent for such calendar year.

As of the date of the last Anniversary Adjustment in December 2008, the Base Rent had risen to \$117,967.52, and no Percentage Rent has been due since 2006, when the amount was \$6,800 for Vaca Dixon and \$1,526 for Panoche. The same terms will continue under the proposed 25-year Lease Extensions, under which CalPeak shall pay PG&E Base Rent of \$100,000 increased by the CPI escalation factor of (June 20xx CPI / June 2001 CPI)⁸. However, starting on the tenth anniversary of the original lease commencement date, there is a periodic “re-opener” clause which will allow PG&E to confirm every five years, using market comparisons, that CalPeak is being charged a fair market rent. This clause, thus, protects customer interests in maximizing these revenues over the longer term. However, the base rent can only further *increase*, because Section 4 of the Lease Extensions provides that the rent will be the *greater* of the rent would have already been in effect for that year or the fair market rental as then determined.

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

The property at issue in this Advice Letter is non-depreciable land used for electric transmission service and is currently included in PG&E’s rate base. The PG&E electric transmission system is within the control of the California Independent System Operator and is subject to Federal Energy Regulatory Commission (“FERC”) jurisdiction for ratemaking. All costs for PG&E’s electric transmission system are now part of FERC ratemaking for transmission service in PG&E’s transmission owner cases. PG&E will account for the lease revenue as Electric Other Operating Revenue.

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

⁸ For example, to find the 2009 rent you multiply \$100,000 by (June 2008 CPI / June 2001 CPI), i.e. $\$100,000 * 225.181 / 190.9 = \$117,957$.

No PG&E property is being sold or disposed of, and as such, there are no changes to PG&E's rate base as a result of granting the proposed Leases.

(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):

The book costs and the original costs for the property involved under the Leases set forth in the table below encompass all of the land associated with the respective substation sites. CalPeak, however, will use 25 percent of the land at Panoche Sub and only 1 percent of the Vaca Dixon Substation land.

Category of Property (Land Only)	Original Cost (dollars)	Accumulated Depreciation	Net Book Value
Vaca Dixon Substation	\$424,840	Not Applicable	\$424,840
Panoche Substation	\$6,349	Not Applicable	\$6,349

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

The Rent Terms for the Leases are similar to those adopted by the CPUC in D.01-06-006 authorizing CalPeak Units to be built on leased land from SDG&E. The proportions of PG&E's Base Rent and Percentage Rent amounts were slightly different than that approved under the SDG&E leases with CalPeak, with PG&E's Base Rent, which started at \$100,000, higher than SDG&E's, which started at \$75,000. However, PG&E's Percentage Rent was lower based on different forecasted operating assumptions.

PG&E's original \$100,000 starting Base Rent was determined by PG&E and CalPeak to fall within the range of fair market value, and the CPI escalator and other additive provisions make the easement and future rents under the Lease Extensions reasonable.

(9) For Fair Market Rental 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 Transaction⁹:

The allowed uses of the lease Premises, its terms and conditions are consistent with existing leases as approved under D.01-08-070 and do not allow the property to be used for other purposes than stated in the lease and interconnect agreement. There is not going to be any change in the current use and no physical change to the property will result from CPUC adoption of the proposed Lease Extensions. Any subsequent assignment of the Leases cannot be finalized without prior notification to PG&E, and, if the CPUC so desires, PG&E is willing to agree to a requirement that it obtain CPUC pre-approval thereof by expedited advice letter.

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

PG&E has provided information in this Advice Letter to meet the eligibility criteria under Resolution ALJ-202:

- First, as regards CEQA, the proposed Lease Extensions will not require environmental review by the CPUC because it is not a CEQA “project” as it will not result in any physical change to the existing CalPeak summer peaking generating Units which were constructed pursuant to the original Leases, which, in D.01-08-070, the CPUC exempted from Section 851 review under Section 853(b).
- Second, the net present value of the projected rents expected under each of these proposed 25-year Lease Extensions is below the \$5 million NPV threshold set for lease equivalents. Accordingly, these Lease Extensions do not materially impact rate base as required by Resolution ALJ-202 for expedited Advice Letter treatment. (See Resolution E-4424 p. 3 finding Kern Power Plant Sale’s approximately \$4.5 million ratebase impact not to be material for PG&E.)
- Third, the transaction does not involve the transfer or change in ownership of facilities currently used in utility operations, and the continued use of these small portions of PG&E lands adjacent to these substations does not interfere with utility operations.

⁹ During adoption of the Advice Letter pilot program in ALJ-186 (later followed by ALJ-202), this category of information was included to enable the CPUC to ensure that utilities were not seeking to circumvent the \$5 million Advice Letter threshold by dividing what is a single asset with a value of more than \$5 million into component parts each valued at less than \$5 million, which is clearly not the case here. (See CPUC Resolution ALJ-186, issued August 25, 2005, mimeo, p.5.)

- Finally, approval of the proposed Lease Extensions will not have an adverse effect on the public interest. In fact, CPUC approval will serve the public interest in several ways, including: (1) it will provide continued summer peaking electricity generation that is needed in California, (2) it will provide continued rental revenues that reduce the rates PG&E's customers would otherwise have to pay; (3) it will require others (CalPeak) to continue to share costs or bear burdens that PG&E's customers would otherwise bear (e.g. Lessee here will share certain costs and perform certain site maintenance on utility lands as well as provides insurance and indemnities); and (4) it will continue to permit compatible productive uses of utility property without interfering with utility operations or affecting utility service to PG&E customers.

- For all of these reasons, and those discussed below, the CPUC should find that the approval of this Lease Extension will not be adverse to public interest. Numerous Commission cases have held that the relevant inquiry for the Commission in Section 851 proceedings is whether the transaction is "adverse to the public's interest" (See, e.g. Universal Marine Corp., 1984, Cal. PUC Lexis 962 * 3; 14 CPUC 2d 644, 646; see *also*, D.89-07-019, 1989 Cal. PUC Lexis 582 * 25, 32 CPUC 2d 233; D.01-05-076, 2001 Cal. PUC Lexis 284 * 15) (D.04-07-021, mimeo p.57), and that the Commission should grant 851 approval if there is no evidence that transaction would adversely affect the public or impair PG&E's ability to serve its customers. (D.04-07-023, mimeo pp. 11-12.) In fact "[t]he Commission has long recognized that the public interest is served when utility property is used for other productive purposes without interfering with the utility's operations or the provision of utility service to the public." (1d. at p.1.) Thus, the CPUC should find that approval of these Lease Extensions is not adverse to the public interest.

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

PG&E does not know of any other additional information that is readily available, other than what is already included with this filing.

(13) Environmental Information

a. Exemption

- i. Has the proposed transaction been found exempt from CEQA by a government agency?

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

Not applicable.

2. 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).

Not applicable.

b. Not a "Project" Under CEQA

- i. If the transaction is not a "project" under CEQA, please explain why.

Approval of the proposed Lease Extensions is not a project pursuant to California Environmental Quality Act (CEQA) Guidelines, 14 Cal. Code Regs Section 15378. Since these Lease Extensions do not have the potential for resulting in either a direct physical change or a reasonably foreseeable indirect physical change to the environment, these Lease Extensions are not a "project," and CEQA review is not required. This approval does not authorize and will not result in any construction activities, only the extension of leases for *existing* summer peaking power plants which will not be physically modified in any way as a result of the Lease Extensions. (See, e.g., CPUC Resolution E-4211.) Rather, if the Lease Extensions are *not* approved, the removal of these existing generating plants would result in physical changes that could impact the environment.

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 **August 10, 2009**, which is 20 days after the date of this filing. Protests should be mailed to:

CPUC Energy Division
Attention: Tariff Unit, 4th Floor
505 Van Ness Avenue
San Francisco, CA 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, CA 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 as soon as possible. PG&E agrees in advance to a shortened review and comment period and waiving its right to reply comments on a draft resolution approving this request, if the Energy Division deems a shortened period appropriate and/or necessary in order to expedite final approval to help CalPeak effectively negotiate PPAs for the Facilities on a going-forward basis, as discussed earlier in this filing. **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 served on the Energy Division and the Division of Ratepayer Advocates. In addition, 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 change requests should be directed to San Heng at (415) 973-2640. Advice letter filings can also be accessed electronically at <http://www.pge.com/tariffs>.

A handwritten signature in cursive script that reads "Brian Cherry / mt".

Vice President, Regulatory Relations

Attachments

cc: Service List - Advice Letter 3499-E

***** SERVICE LIST Advice 3499-E *****
APPENDIX A

Karen Clopton
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 bfs@cpuc.ca.gov

***** AGENCIES *****

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 Real Estate & Property Management Services
 Keith Hanson Real Estate Manager
 675 Texas Street, Suite 2500
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 Fax: (707) 784-7958
 Email: kdhanson@solanocounty.com

County of Fresno
 Alan Weaver - Director
 Public Works and Planning
 2220 Tulare Street, 6th floor
 Fresno, CA 93721
 Phone: (559) 262-4078
 Fax : (559) 262-4879
 Email: lbrosi@co.fresno.ca.us

***** 3rd Party *****

Jeff Paul
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 San Diego, CA 92120
 Phone: (619) 229-3770 x302
 Fax: (619) 229-6716
 Email: jeff.paul@calpeak.com

Alexander Daberko
 Starwood Energy Group Global
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 Greenwich CT, 06830
 Phone: (203) 422-8104
 Fax: (203) 422-8105
 Email: adaberko@starwood.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) #: **3499-E**

Tier: **3**

Subject of AL: **Lease Amendment With CalPeak Power, LLC, for Siting Generation on Land Adjacent to Utility Substations on an Expedited Basis**

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 #: D.99-12-030 and D.04-08-031

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 AL¹: _____

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: **Upon Commission Approval**

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 proposed¹: 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 3499-E

Attachment 1

**(ORIGINAL AGREEMENT TO LEASE REAL PROPERTY FOR INSTALLATION
OF GENERATORS – PG&E'S PANOCHE SUBSTATION)**

ORIGINAL

AGREEMENT TO LEASE REAL PROPERTY FOR INSTALLATION OF GENERATORS

This Agreement ("Agreement") is entered into by and between **PACIFIC GAS AND ELECTRIC COMPANY**, a California corporation (the "Company"), and **CALPEAK POWER LLC**, a Delaware limited liability company ("CalPeak"), hereafter also referred to individually as "Party" and collectively as "Parties." This Agreement is dated for reference purposes only as of June 28, 2001 ("Effective Date").

RECITALS

- A. CalPeak wishes to place its generation facilities on real property owned by the Company and commonly referred to as "PG&E's Panoche Substation" (the "Property"); and
- B. The Company is willing to lease to CalPeak, subject to the terms and conditions set forth below, including, without limitation, the Commencement Date Conditions described in Section 1.2(a) below, a portion of the Property on which CalPeak desires to construct its generation facilities.

1. LEASE.

1.1 Scope of Lease.

(a) Lease of Premises. The Company hereby leases to CalPeak and CalPeak hereby leases from the Company, on the terms and conditions stated herein, the premises generally identified on the map attached hereto as Exhibit A-1 and incorporated herein, and legally described in Exhibit A-2 attached hereto and incorporated herein (the "Premises"), for the purpose of installing, operating and maintaining a natural gas fueled electric power generation plant and related equipment (collectively, the "Unit") within the Premises. A description of the Unit to be installed by CalPeak is attached to this Agreement as Exhibit B.

(b) Allowed Use Of Premises. CalPeak shall use the Premises to install, maintain and operate the Unit. The Unit shall be interconnected solely to the Company's electric system, pursuant to, and in accordance with, the Special Facilities Agreement and Interconnection Agreement described in Section 3 below. In addition, to enable CalPeak to operate the Unit, the Company hereby grants the following non-exclusive rights to CalPeak:

(i) Necessary vehicular and pedestrian ingress and egress rights to and from the Premises over adjoining lands of the Company along the routes shown on Exhibit A-1. The Company may reasonably change access locations during the term of this Agreement in its sole and absolute discretion, provided the change does not materially adversely impact CalPeak's operations. CalPeak, with the Company's prior written consent, shall have the right to improve the access route from time to time as required by CalPeak's operations.

(ii) During the initial construction of the Unit only, the temporary use of the portion of the Property specified on Exhibit A-1 adjacent to the Premises, and during the demolition and removal of the Unit, either such portion of the Property or another portion of the Property designated by the Company and reasonably acceptable to CalPeak, in each case for the storing of construction materials, machinery and other items necessary to construct the Unit; provided that CalPeak's temporary use of such portion of the Property must not unreasonably interfere with the remainder of the Property or the Company's use thereof.

(iii) The right to arrange for the provision of utility service, including municipal water and storm drain service, to the Unit.

(iv) The right to drill for water as specified in Section 7.13 below.

All other rights of use of and access to the adjoining lands are expressly reserved by and to the Company. In no event shall CalPeak perform any activities or have the right to use any space or access within the fenced perimeters of the Company's electric substation, except as set forth in the Special Facilities Agreement and the Interconnection Agreement to be executed by the Parties.

(c) Approval of CalPeak's Plans by the Company. Siting, installation, construction, operation, demolition and removal of the Unit are conditioned upon the Company's review and approval of CalPeak's plans, including, but not limited to, the Development Plan (as defined in Section 1.2(g) below) and CalPeak's Environmental Plans (as defined in Section 7.11 below), and CalPeak's acceptance of and compliance with all of the Company's environmental, health and safety requirements set forth in Exhibit C attached hereto and incorporated herein.

(d) Modification of Existing Facilities. CalPeak agrees that if the Company's existing facilities on the Property or environmental plans relating thereto must be modified, or if additional facilities or other environmental plans are required, as a result of CalPeak's use of the Premises, CalPeak shall bear all costs and expenses thereof; provided, however, that the Company, in its sole discretion, may elect to perform any work required that affects the Company's facilities or environmental plans, in which case CalPeak shall reimburse the Company for the costs associated with such work, including the Company's internal costs.

(e) Notice Prior to Entry. At least three (3) days prior to its entry upon the Premises, CalPeak shall notify Joseph Lafferty, PG&E's Maintenance Supervisor at the address and phone number set forth on Exhibit H, in order that a representative of the Company may be present to observe CalPeak's activities to verify safety and protection of the Company's property and facilities and compliance with the terms and conditions of this Agreement.

1.2 Term of Agreement:

(a) Conditions to Commencement Date. The term of this Agreement, and CalPeak's right to possession and use of the Premises, shall commence (the "Commencement Date") upon the later to occur of the following: (i) CalPeak's receipt of all discretionary Governmental Approvals (as defined in Section 8.1 below) required for the siting, construction, and operation of the Unit, with conditions that are acceptable to both the Company and CalPeak in their sole discretion, and said approvals are no longer subject to judicial review, (ii) if the Company or CalPeak so requires pursuant to Section 1.2(b) below, the receipt of Bankruptcy Approval on terms and conditions satisfactory to the Company and CalPeak in their sole discretion, or (iii) if the Company or CalPeak so requires pursuant to Section 1.2(c) below, the receipt of CPUC Approval on terms and conditions satisfactory to the Company and CalPeak in their sole discretion (collectively, the "Commencement Date Conditions"). CalPeak and the Company shall execute a memorandum specifying the Commencement Date, which memorandum shall be in recordable form. This Agreement shall terminate ten (10) years and four (4) months following the Commencement Date at 24:00 hours (the "Expiration Date"). This Agreement shall be a binding contractual obligation effective upon execution and delivery hereof by the Company and CalPeak.

Following the Commencement Date, the Company shall prepare and deliver to CalPeak a Commencement Date Confirmation substantially setting forth both the Commencement Date and

Expiration Date for this Agreement. CalPeak shall execute the Commencement Date Confirmation and deliver the executed original of the same to Landlord within thirty (30) days of CalPeak's receipt thereof.

(b) Bankruptcy Approvals. CalPeak acknowledges that the Company is a debtor in possession in a Chapter 11 reorganization case pending in the United States Bankruptcy Court for the Northern District of California, San Francisco Division (the "Bankruptcy Court"). Consequently, although the Company believes that leasing of the Premises to CalPeak pursuant to this Agreement is in the ordinary course of the Company's business, and therefore that pursuant to 11 U.S.C. § 363(c), no notice and hearing (or any Bankruptcy Court approval) is required, if the Company or CalPeak determines for any reason prior to the Commencement Date that approval of the Bankruptcy Court or the Creditors' Committee ("Bankruptcy Approval") will be required as a condition precedent to the Company's leasing of the Premises to CalPeak, the term of this Agreement shall not commence until the Company obtains Bankruptcy Approval on terms and conditions satisfactory to the Company and CalPeak in their sole discretion. CalPeak further acknowledges and agrees that the Company makes no representation or warranty with respect to Bankruptcy Approval, and CalPeak hereby waives all claims against the Company which may arise out of losses, expenses or damages suffered or incurred by CalPeak as a result of the need for the Bankruptcy Approval, or the Company's failure to obtain Bankruptcy Approval.

(c) CPUC Approval. If the Company or CalPeak determines for any reason prior to the Commencement Date that approval of the California Public Utilities Commission ("CPUC") will be required as a condition precedent to the Company's leasing of the Premises to CalPeak, the term of this Agreement shall not commence until the Company obtains such approval ("CPUC Approval") on terms and conditions satisfactory to the Company and CalPeak in their sole discretion. CalPeak shall cooperate with the Company by providing supporting data, review and other services to assist the Company in obtaining CPUC Approval. CalPeak further acknowledges and agrees that the Company makes no representation or warranty with respect to CPUC Approval, and CalPeak hereby waives all claims against the Company which may arise out of losses, expenses or damages suffered or incurred by CalPeak as a result of the need for the CPUC Approval, or the Company's failure to obtain CPUC Approval.

(d) Termination Rights. In the event that all discretionary Governmental Approvals required for the siting, construction and operation of the Unit and any required Bankruptcy or CPUC Approvals have not been obtained within twelve (12) months after the Effective Date, CalPeak and the Company shall each have the option to terminate this Agreement by written notice to the other Party at any time prior to the Commencement Date, in which event all of the Parties' rights and obligations hereunder shall terminate, except for those which expressly survive termination.

(e) Potential Use Conflict.

(i) If during the term of this Agreement the Company determines that (a) an expansion, modification or improvement of the substation located on the Property is required for safety or regulatory compliance, and such expansion, modification or improvement will create a conflict with CalPeak's use and occupancy of the Premises, or (b) any electrical or natural gas lines must be moved, rerouted, relocated or redesigned because of CalPeak's use and occupancy of the Premises (a "Use Conflict"), the Company shall promptly notify CalPeak of that fact and inform CalPeak of the Company's proposed "least cost" solution to the conflict ("Use Conflict Notice"). Within thirty (30) days after CalPeak's receipt of the Company's Use Conflict Notice, CalPeak shall either: (A) agree to implement the solution proposed by the Company in its Use Conflict Notice, or (B) deliver to the Company in writing for the Company's consideration an alternative "least cost" solution. CalPeak's failure to do (A) or (B) in the preceding sentence within the time specified shall constitute CalPeak's

agreement to and acceptance of the "least cost" solution proposed by the Company. The Company and CalPeak agree to confer and cooperate with the other to determine a "least cost" solution to the Use Conflict; provided, however, that the Company's determination of the "least cost" solution shall be final and binding on the parties.

(ii) If the Company delivers a Use Conflict Notice to CalPeak at any time during the first five (5) years of the term of this Agreement, the Company shall bear all costs incurred by the Company and CalPeak to effect the "least cost" solution. If the Company delivers a Use Conflict Notice to CalPeak at any time during the second five (5) years of the term of this Agreement, CalPeak shall either (A) bear all reasonable costs that the Company incurs to effect the "least cost" solution, or (B) elect to terminate this Agreement by written notice to the Company within thirty (30) days following CalPeak's receipt from the Company of the estimated cost of implementation of the "least cost" solution (which estimate CalPeak agrees shall not be binding on the Company or the contractor(s) making such estimate).

(f) Construction of the Unit. Following the Commencement Date (or, if later, upon CalPeak's receipt of all of the Governmental Approvals), CalPeak shall proceed in a diligent and workmanlike manner to construct and install the Unit in accordance with those certain Construction Plans described on Exhibit G attached hereto (the "Construction Plans"), and in accordance with all Applicable Laws.

(g) Development Plan.

(i) Prior to the Effective Date, CalPeak has submitted to the Company, and the Company has approved, a plan for siting, construction, and operation of the Unit (the "Development Plan"). The Development Plan (A) includes a list all proposed entitlements, permits, licenses and other Governmental Approvals required for siting, construction, and operation of the Unit, (B) sets forth in detail the required steps and schedule for obtaining the Governmental Approvals, and (C) includes the Construction Plans. Any amendments to the Development Plan shall be subject to the Company's review and approval, which approval shall not be unreasonably withheld or delayed. The Company's review and approval of the Development Plan and any amendments thereto shall not create any liability of any kind on the part of the Company, or constitute a representation on the part of the Company or any person consulted by the Company in connection with such review and approval regarding such documents. CalPeak shall also obtain the Company's prior written approval of the civil engineer for the project, which approval shall not be unreasonably withheld or delayed.

(ii) Subject to the provisions of Section 1.2(g)(i) above and Section 8.2 below, CalPeak shall have the right to process all applications, agreements, documents and other instruments or entitlements necessary or appropriate for the siting, construction and operation of the Unit on the Premises. CalPeak shall proceed with such processing in a diligent manner at its sole cost and expense. Any documents filed or other actions taken by CalPeak pursuant to this Section 1.2(g) which are consistent with the Development Plan shall not require additional approval from the Company; provided that CalPeak shall deliver to the Company copies of any documents filed by CalPeak pursuant to this Section 1.2(g) concurrently with any such filing. Any documents filed or other actions taken by CalPeak pursuant to this Section 1.2(g) which are not consistent with the Development Plan shall require the Company's prior written approval, which approval will not be unreasonably withheld or delayed. The Company shall reasonably cooperate with, and assist CalPeak in, the processing of such items under this Section 1.2(g), provided that the Company shall not be required to expend any sums, nor assume any liability, nor agree to any invasive testing, with respect thereto.

1.3 Rent.

(a) Base Rent. On or before the Commencement Date, and on or before each anniversary of the Commencement Date during the term of this Agreement, CalPeak shall pay to the Company, at the address set forth herein or at such other place as the Company shall designate in writing, annual base rent (the "Base Rent"), without deduction, offset or abatement, calculated as follows:

(i) For the first year of the term of this Agreement, the Base Rent payable by CalPeak hereunder shall equal One Hundred Thousand Dollars (\$100,000);

(ii) On the first anniversary of the Commencement Date, and on each successive anniversary thereof during the term of this Agreement (each, an "Adjustment Date"), CalPeak shall pay to the Company Base Rent for the next succeeding year equal to the Base Rent payable by CalPeak for the first year of the term (i.e., \$100,000) multiplied by a fraction, the numerator of which shall equal the "Anniversary Index" (defined below) and the denominator of which shall equal the "Base Index" (defined below); provided, however, in no event shall the Base Rent payable following an Adjustment Date be less than the Base Rent payable immediately prior thereto. For purposes hereof, the "Anniversary Index" shall mean the "CPI" (defined below) published for the month which is two (2) months prior to the applicable Adjustment Date and the "Base Index" shall mean the CPI published for the month which is two (2) months prior to the Commencement Date. The "CPI" shall mean the United States Department of Labor, Bureau of Labor Statistics Consumer Price Index for All Urban Consumers, San Francisco - Oakland - San Jose, California, "All Items" (1982-1984 = 100). If, at any time during the term of this Agreement, the CPI shall be discontinued, the Company and CalPeak shall mutually and reasonably agree to substitute such other official index published by the Bureau of Labor Statistics, or by another nationally recognized publisher of similar statistical information, as is then generally recognized and accepted for like determinations of purchasing power.

(b) Percentage Rent.

(i) In addition to the payment of Base Rent, CalPeak shall pay the Company percentage rent ("Percentage Rent") for each calendar year (or portion thereof) occurring during the term of this Agreement equal to the amount, if any, by which (A) one and eighty-one one-hundredths percent (1.81%) of (1) the gross revenue from CalPeak's sale of energy produced by the Unit to all parties during such calendar year (or portion thereof) ("Gross Sales Proceeds"), minus (2) the costs of fuel incurred by CalPeak in the production of such energy ("Related Fuel Costs"), exceeds (B) the Base Rent payable by CalPeak for such calendar year (or portion thereof). CalPeak shall pay Percentage Rent in accordance with the provisions of Sections 1.3(b)(ii) and 1.3(b)(iii) below.

(ii) CalPeak shall furnish to the Company, within thirty (30) days after the expiration of each calendar year during the term, and within thirty (30) days after the expiration or earlier termination of this Agreement, a statement certified by a senior financial officer of CalPeak setting forth the amount of Gross Sales Proceeds, Related Fuel Costs and any Percentage Rent for the preceding calendar year (or portion thereof). Concurrently with the delivery of such annual statement, CalPeak shall pay to the Company the Percentage Rent, if any, due for such calendar year (or portion thereof).

(iii) In addition, CalPeak shall furnish to the Company, within one hundred twenty (120) days after the expiration of each calendar year during the term, and within one hundred twenty (120) days after the expiration or earlier termination of this Agreement, an income statement for the Unit for the preceding calendar year (or portion thereof) certified by a certified public

accountant. Concurrently with the delivery of such statement, CalPeak shall pay the Company any Percentage Rent due for such year (or portion thereof), in excess of the amounts previously paid by CalPeak in respect of such year (or portion thereof). Any overpayment of Percentage Rent for such calendar year, or portion thereof, shall be promptly refunded to CalPeak, so long as CalPeak is not then in default under the terms of this Agreement.

(iv) CalPeak shall keep and maintain full, complete and appropriate books of account and records of Gross Sales Proceeds and Related Fuel Costs relating to the Premises in accordance with generally accepted accounting principles. CalPeak shall retain all documentation relating to the Percentage Rent calculation for any year for a period of four (4) years. The Company shall have the right to audit such documentation at CalPeak's place of business during normal business hours upon seventy-two (72) hours' prior written notice to CalPeak. Such audit shall be conducted in such a manner that does not unreasonably impact CalPeak's operations. If an audit or examination by the Company of CalPeak's records of Gross Sales Proceeds and Related Fuel Costs discloses that Percentage Rent has been underpaid, CalPeak shall immediately pay the Company all delinquent Percentage Rent, together with interest thereon at the rate set forth in Section 29. If any statement of Percentage Rent previously made by CalPeak to the Company shall be found to understate the amount of Percentage Rent payable by CalPeak as shown by such audit by more than five percent (5%), CalPeak shall pay to the Company the cost of such audit within thirty (30) days following CalPeak's receipt of the Company's demand therefor, otherwise the cost of such audit shall be paid by the Company. If an audit or examination by the Company of CalPeak's records of Gross Sales Proceeds and Percentage Rent discloses that Percentage Rent has been overpaid, the Company shall pay CalPeak within thirty (30) days, without interest, the amount by which such overpayment exceeds the cost of the Company's audit or examination. If any audit shall be commenced by the Company, or if there shall arise a difference or dispute concerning Percentage Rent, then CalPeak's books of account and records pertaining to the period of time to which the audited or disputed statements of Gross Sales Proceeds or Related Fuel Costs apply (including all supporting data and any other records from which such amounts may be tested or determined) shall be preserved and retained by CalPeak until a final resolution or final determination of such dispute or difference, regardless of whether the time required for such final resolution or determination extends beyond the four (4)-year required record retention period.

(c) Additional Rent. It is the intent of this Agreement that, except as expressly set forth herein, the Base Rent shall be paid to the Company absolutely net at all times during the term, and that all expenses for insurance, repair, maintenance and operation of the Premises and all other obligations of every kind and nature whatsoever relating to the use and operation of the Premises arising or becoming due during or with respect to the term of this Agreement shall be paid or discharged by CalPeak in addition to Base Rent. Without limiting the foregoing, in addition to Base Rent and Percentage Rent, CalPeak shall pay as Additional Rent hereunder the following: (i) the cost of a Company representative, as may be required by the Company from time to time, to verify safety and protection of Company property; and (ii) the cost of any repairs to or protection of any of the Company's facilities arising from CalPeak's use of the Premises. All such additional rent shall be due and payable to the Company within thirty (30) days after CalPeak's receipt of an invoice therefor.

(d) Rent. All sums of money required to be paid under this Agreement, including, without limitation, Base Rent, Percentage Rent, and those items described in Section 1.3(c) above or otherwise required to be paid by CalPeak to the Company hereunder ("Additional Rent"), shall be considered rent (and are sometimes collectively referred to herein as "Rent") whether or not specifically designated as such in any other Section of this Agreement. The Company shall have the same rights and remedies for non-payment of Additional Rent and Percentage Rent as those provided herein for the non-payment of Base Rent.

(e) Proration. CalPeak's obligation to pay Base Rent and Additional Rent for the final calendar year of the term shall be appropriately prorated.

2. USE OF ELECTRICITY AND GAS.

During the term, CalPeak shall pay or cause to be paid all charges for water, gas, heat, light, power, sewer, telephone service and all other public or private utility services and all sprinkler systems and protective services at any time rendered to or in connection with the Premises, the Unit or any part thereof and shall comply with all contracts relating to such services.

This Agreement covers only the use of the Premises as stated in Section 1 above. It does not include any right to use the Company's electric facilities or to receive gas or electricity service. CalPeak's electricity or gas usage is not covered under this Agreement, and shall be covered by electric and gas tariffs, a Special Facilities Agreement, an Interconnection Agreement and a stand-by service contract. The Company does not warrant nor represent that gas or electricity is readily available for CalPeak's use under the terms of this Agreement.

3. INTERCONNECTIONS.

Interconnection of the Unit to the Company's substation will be governed by and subject to a Special Facilities Agreement and Interconnection Agreement and is not covered under this Agreement.

4. DEFAULT; TERMINATION.

4.1 Events of Default - CalPeak.

(a) In addition to any other event specified in this Agreement as an event of default, the occurrence of any one or more of the following events during the term (each, individually, an "Event of Default" and collectively, "Events of Default") shall constitute a breach of this Agreement by CalPeak, in which event the Company may exercise the rights set forth in Section 4.2 or as otherwise provided at law or in equity: (a) CalPeak shall fail to pay any Base Rent, Percentage Rent or any Additional Rent payable by CalPeak under this Agreement (or cure any other default which is curable by the payment of money) within ten (10) days following receipt of written notice from the Company specifying such failure; or (b) CalPeak shall default in the performance of or compliance with any of the other covenants, agreements, terms or conditions of this Agreement to be performed or observed by CalPeak (other than a failure listed in clause (a) above), and, unless expressly provided elsewhere in this Agreement that no notice and/or opportunity to cure such default is to be afforded CalPeak, or unless a different cure period is specified, such default shall continue for a period of thirty (30) days after written notice thereof from the Company to CalPeak, or, in the case of a default which cannot with due diligence be cured within thirty (30) days, CalPeak fails to commence such cure promptly within such thirty (30) day period and thereafter diligently prosecute such cure to completion; or (c) CalPeak shall terminate or abandon the use of the Premises or the Unit located thereon; or (d) any Guarantor of this Agreement shall default beyond any applicable notice and grace period under such guaranty.

(b) CalPeak acknowledges and agrees that, notwithstanding the foregoing provisions of Section 4.1(a), CalPeak shall be in default for purposes of Section 1161 of the California Code of Civil Procedure immediately following CalPeak's failure to perform or comply with any covenants, agreements, terms or conditions of this Agreement to be performed or observed by CalPeak, and that the notices required to be given by the Company under said Section 4.1(a) shall, in each case, be in lieu of, and not in addition to, any notice required under Section 1161 of the California Code of Civil

Procedure, and shall be deemed to satisfy the requirement, if any, that notice be given pursuant to such section.

4.2 Termination of this Agreement by the Company. Upon the occurrence of any Event of Default, the Company shall have the option to pursue any one or more of the following remedies without further notice or demand whatsoever:

(a) In any notice given pursuant to Section 4.1(a) above, the Company in its sole discretion may elect to declare a forfeiture of this Agreement, and provided that the Company's notice states such an election, CalPeak's right to possession shall terminate and this Agreement shall terminate, unless on or before the date specified in such notice all arrears of Rent and all other sums payable by CalPeak under this Agreement, and all costs and expenses incurred by or on behalf of the Company hereunder, including attorneys' fees incurred in connection with such defaults, shall have been paid by CalPeak and all other breaches of this Agreement by CalPeak at the time existing shall have been fully remedied to the satisfaction of the Company. Upon such termination, the Company shall have the right to recover from CalPeak damages in the amounts set forth in Civil Code Section 1951.2, including, without limitation, the worth at the time of award of the amount by which all unpaid Rent for the balance of the term of this Agreement after the time of award exceeds the amount of such rental loss that CalPeak proves could be reasonably avoided; provided, however, that any such calculation of damages based on the future rental stream under this Agreement shall take into account CalPeak's right of early termination contained in Section 4.4 below.

(b) Even though CalPeak has breached this Agreement, this Agreement shall continue in effect for so long as the Company does not terminate CalPeak's right to possession, and the Company shall have the right to enforce all its rights and remedies under this Agreement, including the remedies described in California Civil Code Section 1951.4 (granting a landlord the right to continue a lease in effect after a tenant's breach and abandonment and to recover all rent as it becomes due if the tenant has the right to sublet or assign, subject only to reasonable limitations); provided, however, that the Company's rights under this Section 4.2(b) shall be subject to CalPeak's right of early termination contained in Section 4.4 below. Acts of maintenance or preservation to efforts to relet the Premises or the appointment of a receiver upon initiative of the Company to protect the Company's interest under this Agreement, shall not constitute a termination of CalPeak's right to possession unless written notice of termination is given by the Company to CalPeak.

4.3 Company Defaults; CalPeak Right of Termination. In the event that the Company defaults in the performance of or compliance with any of the covenants, agreements, terms or conditions of this Agreement to be performed or observed by the Company, and such default shall continue for a period of thirty (30) days after written notice thereof from CalPeak to the Company, or, in the case of a default which cannot with due diligence be cured within thirty (30) days, the Company fails to commence such cure promptly within such thirty (30) day period and thereafter diligently prosecute such cure to completion, CalPeak shall have the right, without limiting any of its other rights or remedies, to terminate this Agreement by written notice to the Company.

4.4 Cumulative Remedies. All of the remedies afforded to CalPeak and the Company under this Agreement shall be in addition to all other remedies such parties may have at law or in equity. Waiver by CalPeak or the Company of any breach of any obligation by the other party hereunder shall be effective only if it is in writing, and shall not be deemed a waiver of any other breach, or any subsequent breach of the same obligation. The Company's acceptance of payment by CalPeak shall not constitute a waiver of any breach by CalPeak, and if the acceptance occurs after the Company's notice to CalPeak, or termination of the Agreement or of CalPeak's right to possession, the acceptance shall not affect such notice or termination. Acceptance of payment by the Company after

commencement of a legal proceeding or final judgment shall not affect such proceeding or judgment. The Company may advance such monies and take such other actions for CalPeak's account as reasonably may be required to cure or mitigate any default by CalPeak. CalPeak shall immediately reimburse the Company for any such advance, and such sums shall bear interest at the Interest Rate (as defined in Section 30 below) until paid.

4.5 Right of Early Termination. At any time during the Term, CalPeak shall have the right to terminate this Agreement (the "Early Termination Right") upon at least six (6) months' prior written notice to the Company, in which event this Agreement shall terminate as of the termination date specified in such notice (the "Early Termination Date"); however, CalPeak's right to exercise the Early Termination Right is expressly conditioned on CalPeak's payment to the Company of (a) all Base Rent, Percentage Rent and Additional Rent due through the Early Termination Date and (b) within ten (10) days following the Early Termination Date, a lump sum termination payment equal to the total Base Rent otherwise payable by CalPeak for the six (6) months following the Early Termination Date.

5. ACKNOWLEDGMENT OF TITLE. CalPeak's use of the Premises shall not convey to CalPeak any title, or right in the fee interest in the Premises, and CalPeak agrees not to make any claim of right or title, or to assail the Company's fee title to the Premises. The Parties hereto agree that neither this Agreement, nor the obligations created herein, constitute nor create a relationship between the Parties of "common control", as the term "common control" has been defined and interpreted by United States Environmental Protection Agency within the scope of the Clean Air Act Amendments of 1990.

6. CONDITION OF PREMISES.

CalPeak agrees that that no representations or warranties by or on behalf of the Company have been made to CalPeak as to the environmental condition of the Premises, including, but not limited to, the existence of Hazardous Materials (as defined in Section 9.4 below) in, on or underneath the Premises. The Company agrees to provide CalPeak with a copy of the environmental reports relating to the Premises described on Exhibit F attached hereto (the "Environmental Reports"), subject to the confidentiality provision set forth below in this Section 6. CalPeak acknowledges that notwithstanding any finding contained in the Environmental Reports as to the condition of the Premises, there may be a presence of Hazardous Materials, fuel or chemical storage tanks, electric and magnetic fields or other substances, material, products or conditions on or under the Premises, hereinafter referred to as "potential environmental hazards", and that the disclosure of the matters within the Environmental Reports completely satisfies the Company's obligation, if any, to provide written notice to CalPeak pursuant to California Health and Safety Code Section 25359.7(a) and satisfies any and all other obligations, either statutory, contractual or common law, to disclose the environmental condition of the Premises to CalPeak. CalPeak accepts the Premises "as is", but is strongly advised by the Company to consider, if it has not already done so, the condition and suitability of all aspects of the Premises and all matters affecting its suitability for the uses specifically granted herein, including, but not limited to, the potential environmental hazards listed herein; provided that CalPeak shall not conduct any invasive testing on the Premises without the Company's prior written consent.

CalPeak shall not disclose to a third party the Environmental Reports or any information contained therein, except to its professional advisors or in order to comply with any applicable law or regulation or in connection with any court or regulatory proceeding; provided, however, that in the latter case, CalPeak will provide the Company with prompt written notice so that the Company may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Section. In the event that such protective order or other remedy is not obtained, the Company will waive compliance with provisions of this Section to allow CalPeak to comply with such legal obligation. The

Company shall be entitled to all remedies available at law or in equity to enforce or seek relief in connection with this confidentiality obligation.

7. CALPEAK'S CONDUCT ON PREMISES.

7.1 CalPeak's Sole Risk. Except as set forth herein or in the Special Facilities Agreement or Interconnection Agreement, CalPeak shall use the Premises at its sole risk and expense.

7.2 Disclosure of Hazardous Materials. Prior to the Commencement Date and on January 1 of each subsequent year, including January 1 of the year after the termination of this Agreement, CalPeak shall disclose to Sandra Olson, PG&E's Environmental Representative, at the address set forth on Exhibit H, the names and amounts of any and all Hazardous Materials which are generated, stored, used or disposed of on the Premises by CalPeak or its employees, agents, contractors, licensees or invitees or which CalPeak intends to generate, store or use on the Premises. No other Hazardous Materials may be generated, stored or used on the Premises. CalPeak shall not dispose of, release or discharge any Hazardous Materials on or from the Premises.

7.3 Compliance with Laws. CalPeak shall comply with all local, state, and federal laws, regulations, rules and orders which pertain or are applicable to the activities of CalPeak hereunder ("Applicable Laws"), including, but not limited to, those laws whether existing or new which relate to the use, storage, handling, treatment, or disposal of Hazardous Materials, or to health, safety, noise, environmental protection, or air and water quality. CalPeak shall furnish evidence of such compliance upon the Company's request and to the Company's satisfaction.

7.4 Notice of Violations. CalPeak shall notify the Company in writing within forty-eight (48) hours of any notice of violation, investigation, order or enforcement proceeding against CalPeak which in any way relates to the use, storage, handling, treatment release, discharge, or disposal of Hazardous Materials on the Premises; or to any suspected contamination of any soil or groundwater on the Premises. Such notice shall include a complete copy of any order, complaint, agreement, or other document in CalPeak's possession, which has been issued, executed or proposed, whether in draft or final form.

7.5 Remedial Work. In the event of any investigation or monitoring of site conditions or any clean-up, containment, restoration, removal or other remedial work (collectively, the "Remedial Work") is required under any Applicable Laws, by any judicial order, or by any governmental entity as the result of the presence, suspected presence, release or suspected release of any Hazardous Materials in or into the air, soil, surface water or groundwater at, on, about, under or within the Premises or any portion thereof resulting from the operations or activities on the Premises of CalPeak or its agents, employees, contractors, invitees, or licensees, then, at the Company's option, either CalPeak shall perform or cause to be performed the Remedial Work or the Company may cause such Remedial Work to be performed and CalPeak shall reimburse the Company within thirty (30) days following demand therefor. All Remedial Work performed by CalPeak shall be performed in compliance with all Applicable Laws and by one or more contractors, selected by CalPeak and approved in advance in writing by the Company (and under the supervision of a consulting engineer selected by CalPeak and approved in advance in writing by the Company), in accordance with a work plan approved by the Company in the Company's reasonable discretion. All costs and expenses of such Remedial Work shall be paid by CalPeak, including, without limitation, the charges of such contractor(s), the consulting engineer, and the Company's reasonable attorneys' fees and costs incurred in connection with monitoring or review of such Remedial Work.

7.6 No Interference. CalPeak shall not in any way interfere or permit any interference with the Company's use of its Property. Interference shall include, but not be limited to, any activity by CalPeak that places any of the Company's gas or electric facilities in violation of any of the provisions of General Order Nos. 95 (Overhead Electric), 112 (Gas), or 128 (Underground Electric) of the CPUC or any other applicable provisions of the laws and regulations of the State of California or other governmental agencies (whether federal or state) under which the operations of utility facilities are controlled or regulated. CalPeak shall maintain the Premises reasonably consistent with the surrounding Property and shall secure it with its own fence and gate.

7.7 Minimum Clearances from Electric Conductors. CalPeak shall not erect, handle, or operate any tools, machinery, apparatus, equipment, or materials closer to any of the Company'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.

7.8 Restrictions on Drilling, Boring and Excavating. CalPeak shall not drill, bore, or excavate within ten (10) feet of any of the Company's underground facilities, including, but not limited to, gas pipelines, valves, regulators or electric conduits.

7.9 Required Cessation of Activities. In the event the Company's on-site representative determines that CalPeak's activities in any way currently endanger, or reasonably could be anticipated to imminently endanger, any of the Company's Property, utility facilities, the environment, or the health or safety of any person or persons, the Company's representative may, at his/her sole discretion, temporarily halt CalPeak's activities until proper and appropriate protective measures may be taken to eliminate such endangerment. CalPeak shall indemnify and hold the Company harmless from any claims in any way resulting from any delay or action caused or taken by a Company representative under this Section 7.9. The Company's right to halt activities under this Section 7.9 shall not in any way affect or alter CalPeak's obligations under Section 9, entitled, "INDEMNIFICATION" below, nor shall it release CalPeak from any of its obligations hereunder that pertain to health, safety, or the protection of the environment.

7.10 Minimize Noise Effects. CalPeak shall design, construct and operate the Unit in such a way so as to minimize noise effects on the area surrounding the Premises in compliance with Applicable Laws. CalPeak shall use best efforts to address and mitigate noise concerns, if any, raised by landowners adjacent to the Premises. Such efforts shall include, but not be limited to, prompt response to issues and concerns raised by such landowners relating to noise generated by operations on the Premises and courtesy notification to landowners of planned construction or unusual increases in noise levels.

7.11 Environmental Plans. CalPeak shall, at its sole expense, prepare all environmental plans related to the Unit and CalPeak's use of the Premises ("Environmental Plans") as required by local, state, and federal governmental authorities, laws, regulations or rules. These may include a Facility Environmental Emergency Plan, Spill Prevention Control and Countermeasure Plan, or Hazardous Materials Business Plan, and other filings and plans. CalPeak's Environmental Plans shall be consistent with the Company's use of the Property and the Company's environmental plans for the Property, and CalPeak shall submit its Environmental Plans to Sandra Olson, PG&E's Environmental Representative, at the address set forth on Exhibit H, for the Company's review and approval at least twenty (20) days prior to their submittal to any governmental agency(ies). The Company's approval of such Environmental Plans shall not be unreasonably withheld or delayed. In no event shall CalPeak commence business operations on the Premises without first having received the Company's approval of the Environmental Plans.

7.12 Company Access to the Premises. The Company shall have unimpaired access to the Premises at all times and may have representatives on site to witness various activities of CalPeak including, but not limited to, construction activities. The Company may at any time take samples of any air, soil or groundwater at its sole discretion but at its own expense, unless the testing shall indicate, that CalPeak has violated any provisions of this Agreement, in which case CalPeak shall reimburse the Company for the cost of such environmental testing immediately upon demand. CalPeak shall notify the Company in writing three (3) business days prior to the commencement of any excavation, construction, installation, operation or any other significant activities on the Premises.

7.13 Groundwater Wells. CalPeak shall have the right to test, drill, and operate groundwater wells on the Premises, at no cost to the Company; provided that: (a) prior to commencing any activity on the Premises with respect to a groundwater well, (i) CalPeak submits to Sandra Olson, PG&E's Environmental Representative, at the address set forth on Exhibit H, for the Company's review and approval, in its reasonable discretion, detailed plans for the testing, drilling, and operation of any proposed groundwater well; (ii) the Company approves such plans in writing; and (iii) CalPeak obtains all Governmental Approvals required for the testing, drilling, and operation of such groundwater well; and (b) CalPeak tests, drills, and operates such groundwater well in a workmanlike manner and in strict compliance with the plans approved by the Company and all Applicable Laws.

7.14 Alterations. Following the initial construction of the Unit, CalPeak shall make no changes or alterations to the Unit ("Alterations") that require Governmental Approval without the prior written consent of the Company, which consent shall not be unreasonably withheld, conditioned or delayed. CalPeak shall make any and all Alterations to the Unit in a good and workmanlike manner and in accordance with all Applicable Laws.

8. PERMITS, AUTHORIZATIONS AND NOTIFICATIONS.

8.1 Governmental Approvals and Notifications. CalPeak shall obtain and maintain, at no cost to the Company, all permits, approvals and authorizations from all local, state, and federal governmental or permitting authorities (collectively, "Governmental Approvals") and shall provide all notifications to all such authorities ("Governmental Notifications"), as required for CalPeak's use of or activities on the Premises, including, without limitation, the construction, siting, installation, operation, demolition, and removal of the Unit. Such Governmental Approvals and Governmental Notifications shall include, but not be limited to, those pertaining to air quality, management and storage of Hazardous Materials. CalPeak shall obtain all discretionary Governmental Approvals and provide all Governmental Notifications required for the siting, construction, and operation of the Unit prior to the start of any work on the Premises for the installation of the Unit.

8.2 Land Use Entitlements. CalPeak is authorized to apply for, but not accept, all necessary land use entitlements, permits and authorizations, and to provide all notifications required in connection therewith, on behalf of the Company as the owner of the Premises at no cost to the Company. At CalPeak's request, the Company shall provide written documentation addressed to CalPeak and to all relevant governmental or permitting authorities authorizing such activity by CalPeak. The Company shall cooperate with CalPeak in obtaining such land use entitlements, permits and authorizations. The Company shall sign and accept such permits unless it has objections to them. As set forth in Section 1.2, the term of this Agreement shall not commence if any such permits contain conditions that are objectionable to the Company.

8.3 Entitlement Conditions. In the event that, either before or after the Commencement Date, any governmental or permitting authority imposes any conditions or requirements that will affect the Premises or the Company after the termination of this Agreement in any manner (such

as, but not limited to landscaping or environmental requirements) as the result of CalPeak's acts or omissions under the terms of this Agreement, CalPeak shall immediately submit such conditions or requirements for the Company's review. CalPeak shall be required to implement such condition or requirements at CalPeak's sole expense, including any continuing conditions or requirements, including, but not limited to, the maintenance of landscaping or the monitoring of environmental conditions; provided, however, that if any such conditions or requirements are imposed after the Commencement Date, and CalPeak, in its reasonable judgment, disagrees with any such condition or requirement, CalPeak shall have the right to terminate this Agreement upon sixty (60) days' notice to the Company. The obligations of this section shall survive termination or expiration of this Agreement.

9. INDEMNIFICATION; WAIVER AND RELEASE.

9.1 Indemnification Generally. CalPeak shall, to the maximum extent permitted by law, protect, indemnify, hold harmless and defend the Company, its affiliates, subsidiaries, parent company, officers, managers, directors, agents, and employees (the Company and such other parties are, collectively, the "Indemnitees"), from and against all claims, demands, losses, damages, costs, expenses (including reasonable attorneys' and consultants' fees and expenses) and liability (legal, contractual or otherwise) (collectively, "Claims"), which arise from or are in any way connected with any:

- (a) Injury to or death of persons, including but not limited to employees of the Company or CalPeak;
- (b) Injury to property or other interests of the Company, CalPeak, or any third party;
- (c) Violation of a local, state or federal common law, statute, regulation, or ordinance, including but not limited to Environmental Laws (as defined in Section 9.4 below);
- (d) Strict liability imposed by any law or regulation;

so long as such Claims arise from or are in any way connected with CalPeak's use of the Premises or its performance of, or failure to perform, this Agreement, excepting only (i) Claims to the extent arising from the gross negligence or willful misconduct of the Company, its officers, managers, or employees or agents, or (ii) Claims arising from the presence of Hazardous Materials existing on the Premises as of the Commencement Date, unless such Claims arise from the negligence or intentional misconduct of CalPeak, its officers, managers, employees or agents (collectively, "CalPeak Parties") or the exacerbation by any CalPeak Parties of environmental conditions on the Premises as of the Commencement Date. CalPeak's obligations under this Section 9.1 shall survive the expiration or earlier termination of this Agreement.

9.2 Environmental Claims. CalPeak acknowledges that any Claims that are caused by or arise from the presence, movement, use, release, emission, discharge, or spill of any Hazardous Materials and that are caused by or arise from CalPeak's use of the Premises, including, without limitation, the exacerbation by any CalPeak Parties of environmental conditions on the Premises as of the Commencement Date, are expressly within the scope of the foregoing indemnity. Likewise, the costs, expenses, and legal liability for environmental investigations, monitoring, containment, abatement, removal, repair, cleanup, restoration, remedial work, penalties, and fines arising from strict liability or the violation of any local, state, or federal law or regulation, attorney's fees, disbursements, and other response costs incurred as a result of such presence, movement, use, releases or spills are expressly within the scope of the foregoing indemnity. In no event shall CalPeak have any responsibility for any Claims related to any release or threatened release of any Hazardous Materials on, from, into or onto the

Premises, the Property or any adjacent property except to the extent caused by or arising from CalPeak's activities or the activities of its employees, agents or contractors.

9.3 Defense Requirements. CalPeak shall, at the Company's request, defend, with counsel approved in writing by the Company, any action, claim, or suit asserting a claim which is covered by the indemnity described in Section 9.1. CalPeak shall pay all costs and expenses that may be incurred by the Company in enforcing such indemnity, including reasonable attorney's fees of both in-house and outside counsel.

9.4 Definition of Hazardous Materials. For purposes of this Agreement, the term "Hazardous Materials" means (a) petroleum or petroleum products, natural or synthetic gas, asbestos in any form, urea formaldehyde foam insulation, radon gas, polychlorinated biphenyls (PCB), special nuclear or byproduct material, lead based paint and other lead contamination; (b) any substances defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous wastes," "restricted hazardous wastes," "toxic substances," "toxic pollutants," "contaminants" or "pollutants," or words of similar import, under any applicable federal, state or local statute, law, rule, regulation, ordinance, code, policy or rule of common law now or hereafter in effect and in each case as amended, and any judicial or administrative interpretation thereof, including any judicial or administrative order, consent decree or judgment, relating to the environment, health, safety or Hazardous Materials (collectively, "Environmental Laws"); and (c) any other substance to which exposure which is regulated by any governmental authority.

9.5 CalPeak's Waiver and Release. The Company shall not be liable to CalPeak for, and CalPeak hereby waives and releases the Company and its affiliates and officers from, any and all liability, whether in contract, tort or on any other basis, for any injury, damage or loss to CalPeak, CalPeak's business, loss of CalPeak's profits or other financial loss to CalPeak resulting from or attributable to an occurrence on the Premises, the condition of the Premises, or the use or occupancy of the Premises, except to the extent that such injury, damage, or loss was proximately caused by the Company's gross negligence or willful misconduct and except as otherwise expressly provided in this Agreement.

9.6 Company Indemnification. The Company shall, to the maximum extent permitted by law, protect, defend, indemnify and hold harmless CalPeak, its affiliates, subsidiaries, parent company, officers, managers, directors, agents, and employees from and against any and all Claims brought or suffered by third parties (which, for purposes of this Agreement, means all persons or entities other than CalPeak, its successors-in-interest and their respective partners, affiliates, subsidiaries, parent company, officers, managers, directors, agents, and employees) arising out of (a) the Company's gross negligence or willful misconduct, or (b) the presence of Hazardous Materials existing on the Premises as of the Commencement Date, unless such Claims arise from the negligence or intentional misconduct of any CalPeak Parties or the exacerbation by any CalPeak Parties of environmental conditions on the Premises as of the Commencement Date.

9.7 Special/Consequential Damages. In no event shall either Party be liable to the other Party for any special, punitive, incidental, indirect, or consequential damages arising out of or in connection with this Agreement, however caused, whether arising in contract, tort (including negligence) strict liability, or otherwise.

10. INSURANCE.

CalPeak shall maintain in effect during the term of this Agreement insurance as set forth on Exhibit D attached hereto and incorporated herein.

11. TAXES.

CalPeak shall pay any tax, assessment, lien, license fee, license tax, tax or excise on rent, or any other levy, charge or expense, together with any statutory interest thereon, imposed or required at any time by any federal, state, county or municipal authority having jurisdiction, or any political subdivision thereof, on any of CalPeak's personal property or improvements installed on the Premises, including, without limitation, the Unit.

12. APPLICABLE LAW.

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.

13. LIENS.

In the event that any liens or stop notices are filed or placed on the Premises as a result of or in connection with the furnishing of materials or services by anyone to CalPeak, or otherwise in connection with this Agreement granted hereunder or the use of the Premises by CalPeak, CalPeak shall immediately take all action necessary to obtain the release of all such liens and stop notices, hold the Company harmless from and pay the Company for all costs incurred and amounts paid to obtain any such release.

14. NOTICES.

All notices to be given under this Agreement shall be in writing and either: (a) sent by certified mail, return receipt requested, in which case notice shall be deemed delivered three (3) business days after deposit, postage prepaid in the United States mail, or (b) sent by a nationally recognized overnight courier, in which case notice shall be deemed delivered one (1) business day after deposit with this courier, or (c) sent by telecopy or similar means, if a copy of the notice is also sent by United States Certified Mail, in which case notice shall be deemed delivered on transmittal by telecopier or other similar means provided that a transmission report is generated reflecting the accurate transmission of the notices, as follows:

Company: PACIFIC GAS AND ELECTRIC COMPANY
P.O. Box 770000, Mail Code N10A
San Francisco, CA 94177
Attn.: Lu de Silva
Manager, Building and Land Services
Fax Number: (415) 973-6979

Hand Delivery address:

77 Beale Street, Mail Code N10A
San Francisco, CA 94105

With copy to: PACIFIC GAS AND ELECTRIC COMPANY
Attn.: Land Agent
3185 M Street
Merced, CA 95348

And

Sharon Silverman, Esq.
PACIFIC GAS AND ELECTRIC COMPANY
P.O. Box 7442, Mail Code B30A
San Francisco, CA 94120

CalPeak: CALPEAK POWER LLC
701 "B" Street, Suite 340
San Diego, CA 92101
Attn: Charles Hinckley

With copy to: Latham & Watkins
565 Montgomery Street, Suite 1900
San Francisco, CA 94111
Attn: Kenneth Whiting

These addresses may be changed by written notice to the other Party provided that no notice of a change of address shall be effective until actual receipt by the Parties of the notice. Copies of notices, if any are so indicated, are for informational purposes only, and a failure to give or receive copies of any notice shall not be deemed a failure to give notice.

15. ASSIGNMENT/ENCUMBRANCE.

15.1 Assignment. This Agreement is personal to CalPeak, and CalPeak shall not assign, sublease, or otherwise transfer its interest, rights, or obligations under the Agreement in whole or in part. Any assignment, sublease, or other transfer of rights or delegation of duties under this Agreement by CalPeak shall be null and void. Notwithstanding the foregoing, the Company acknowledges and agrees that, without the Company's consent, (a) CalPeak shall have the right to assign this Agreement to a site-specific project entity formed by United Technologies Energy Holdings or to an affiliate of CalPeak (an entity which is controlled by, controls, or is under common control with, CalPeak) and (b) CalPeak shall have the right to encumber this Agreement to one or more commercial lenders as set forth in this Section 15; provided that, in the case of an assignment pursuant to clause (a) above, (i) CalPeak shall not be in default (beyond applicable notice and cure periods) in the performance of any of its obligations under this Agreement at the time of the assignment; (ii) CalPeak delivers to the Company a notice of proposed assignment at least thirty (30) days prior to the effective date thereof and promptly supplies the Company with any documents or information reasonably requested by the Company regarding such assignment or assignee, including, but not limited to, copies of the instrument of assignment and copies of documents establishing to the reasonable satisfaction of the Company that the transaction in question is one permitted hereunder, and (iii) no such permitted assignee shall have the right to further assign this Agreement without the prior written consent of the Company, which shall not be unreasonably withheld; and (iv) any such proposed assignment is made for a good faith operating business purpose and not, whether in a single transaction or in a series of transactions, be entered into as a subterfuge to evade the obligations and restrictions relating to assignments and subleases set forth in this Agreement. "Control," as used in this Section, shall mean the ownership, directly or indirectly, of at

least fifty-one percent (51%) of the voting securities of, or possession of the right to vote, in the ordinary direction of its affairs, of at least fifty-one percent (51%) of the voting interest in, any person or entity.

15.2 Encumbrance by Leasehold Mortgagee. CalPeak shall have the right at any time and from time to time during the term of this Agreement, with prior notice to the Company, to encumber its leasehold estate hereunder with a mortgage, deed of trust or other security instrument (a "Leasehold Mortgage") in favor of a third party or third parties (a "Leasehold Mortgagee"), upon condition that all rights acquired under such Leasehold Mortgage shall be subject to each and all of the covenants, conditions and restrictions set forth in this Agreement, and all rights and interests of the Company herein, none of which covenants, conditions and restrictions is or shall be waived by the Company by reason of the rights given to CalPeak under this Section 15.

15.3 Notices of Default; Right to Cure.

(a) The Company shall deliver to the Leasehold Mortgagee a copy of all notices relating to CalPeak's failure to perform its obligations under this Agreement concurrently with the delivery thereof to the CalPeak. For such purpose, CalPeak shall notify the Company of the name and address for each Leasehold Mortgagee in writing. The Company shall only have the obligation to deliver notices to a Leasehold Mortgagee for whom it has received written notification from CalPeak pursuant to the terms of this Agreement.

(b) In the event of any default by CalPeak under any of the provisions of this Agreement, the Leasehold Mortgagee shall have the right, but not the obligation, to cure such default, and will have the same grace period, if any, as is given CalPeak for remedying such default or causing it to be remedied, plus, in the event of a monetary default, or in the event of a non-monetary default that can be cured within thirty (30) days, an additional period of fifteen (15) days after the later of (i) expiration of CalPeak's grace period or (ii) the delivery by the Company to the Leasehold Mortgagee of such notice of default. If prior to the expiration of the grace period specified in this section, the Leasehold Mortgagee shall cure all monetary defaults and give the Company written notice that it intends to undertake the cure of such non-monetary default or to exercise its rights to acquire the interest of CalPeak in this Agreement by foreclosure or otherwise, and shall immediately commence and then proceed with all due diligence to completion, then the Company shall not terminate or take any action to effect a termination of this Agreement or reenter or take possession of the Premises so long as the Leasehold Mortgagee is diligently effecting such foreclosure (or deed in lieu) or curing such default; provided, however, that the Company does not waive its rights under this Agreement or to declare any subsequent events of default hereunder or exercise any of its rights and remedies under this Agreement, subject to the notice and cure rights of the Leasehold Mortgagee.

(c) The Company shall accept such performance by the Leasehold Mortgagee as though the same had been performed by the CalPeak; and for such purpose the Company hereby authorizes the Leasehold Mortgagee to enter upon the Premises and to exercise any of the CalPeak's rights and duties under this Agreement.

15.4 New Agreement. If this Agreement terminates for any reason prior to the Expiration Date other than for an uncured default, or in the event of the rejection of this Agreement by CalPeak or trustee in bankruptcy under the provisions of Bankruptcy Code, 11 USC § 365, then within fifteen (15) days following such termination or such rejection of this Agreement, the Leasehold Mortgagee shall have the right, but not the obligation, to receive from the Company, a duly executed and valid and enforceable Agreement granting the Leasehold Mortgagee the right to use the Premises for the balance of the then unexpired term of this Agreement (immediately prior to the termination or rejection) containing provisions identical to the provisions of this Agreement, except such provisions designating

the parties thereto and providing for the right of assignment and subletting by the Leasehold Mortgagee, subject to the consent of the Company, which consent shall not be unreasonably withheld or delayed, and accompanied by a duly executed memorandum of such new Agreement in suitable form for recording. In connection with such new Agreement, the ownership of the Unit located on the Premises, if any, shall be deemed to have been transferred to the Leasehold Mortgagee, and in the event of a subsequent assignment by the Leasehold Mortgagee, then to such assignee and its successors and assigns. The Company's obligation to enter into the new Agreement shall be conditioned upon the following: (a) the Leasehold Mortgagee shall have cured all monetary defaults and commenced, and diligently prosecuted to completion, the cure of all non-monetary defaults; and (b) the Leasehold Mortgagee shall reimburse the Company for all reasonable costs and expenses incurred in entering into the new lease.

15.5 Personal Property. The Company acknowledges and agrees that (a) the Unit and all ancillary equipment or fixtures installed or used by CalPeak in connection therewith or otherwise in connection with CalPeak's activities on the Premises shall be and remain personal property even though they may be affixed to or placed on the Premises, (b) CalPeak may grant one or more security interests or liens in such personal property to one or more Leasehold Mortgagees or other financing lenders and (c) upon request, the Company shall execute and deliver to any such Leasehold Mortgagee or lender a commercially reasonable landlord waiver disclaiming any interest in such personal property.

15.6 Miscellaneous.

(a) CalPeak's interest in this Agreement may be assigned pursuant to judicial or non-judicial foreclosure or a conveyance in lieu of foreclosure (a "Foreclosure Transfer"). Any transferee under a Foreclosure Transfer, and any Leasehold Mortgagee that acquires CalPeak's interest under a new lease pursuant to this Agreement, may assign this Agreement subject to the consent of the Company, which consent shall not be unreasonably withheld or delayed, and shall thereupon be released from all liability as CalPeak under this Agreement from and after the date of such assignment.

(b) The cancellation, surrender or amendment of this Agreement by CalPeak shall not be effective as against a Leasehold Mortgagee without the written consent of the Leasehold Mortgagee.

(c) Within fifteen (15) days after written request therefor from a Leasehold Mortgagee, the Company shall deliver to the Leasehold Mortgagee (and any other party identified by the Leasehold Mortgagee) an estoppel certificate signed by the Company in form reasonably designated by the Leasehold Mortgagee which certifies as to: (i) the rent payable under the Agreement; (ii) the term of this Agreement and the rights of CalPeak, if any, to extend the term of this Agreement; (iii) the nature of any defaults by CalPeak alleged by the Company; and (iv) any other matters reasonably requested by the Leasehold Mortgagee.

(d) At the request of any Leasehold Mortgagee, the Company and CalPeak shall execute and record in the public records an appropriate memorandum of this Agreement. Upon the termination or expiration of this Agreement and upon receipt of a request from the Company to execute a quitclaim in favor of the Company which results in the removal of the memorandum from title, CalPeak shall execute and cause to be recorded such quitclaim instrument. If CalPeak fails to execute and record a quitclaim instrument within ten (10) days after receipt of the Company's request therefore, the Company may act as CalPeak's attorney-in-fact to cause such instrument to be executed and recorded.

16. CONDEMNATION.

16.1 Taking of the Premises. As used in this Section 16, the term "Taking" shall mean a condemnation or Taking of all or any portion of the Premises in any manner for public or quasi-public use, including but not limited to a conveyance or assignment in lieu of a condemnation or Taking. In the event of a Taking of all or any part of the Premises, or of any portion of or element of CalPeak's non-exclusive access or other appurtenant rights, this Agreement shall terminate as to the part so taken as of the earlier of the date of the vesting of title or the date of dispossession of CalPeak as a result of such Taking ("Date of Taking"). In the event of a Taking of all of the Premises, this Agreement shall automatically terminate as of the Date of Taking. In the event of a partial Taking of the Premises, either the Company or CalPeak shall have the right to terminate this Agreement as to the balance of the Premises as of the Date of Taking, by notice to the other within thirty (30) days following notice of the date on which such vesting or dispossession will occur.

16.2 Condemnation Award. In the event of any Taking, the Company shall be entitled to any and all compensation, damages, income, rent, awards, or any interest therein whatsoever which may be paid or made in connection therewith, and CalPeak shall have no claim against the Company for the value of any unexpired term of this Agreement or otherwise. In the event of a partial Taking of the Premises which does not result in a termination of this Agreement, the Base Rent thereafter to be paid shall be equitably reduced by the Company. CalPeak may independently claim for the value of the Unit, and for the value of its other personal property or moving expenses, provided that no claim shall diminish the claim of the Company. In the event of a partial Taking of the Premises which does not result in a termination of this Agreement, the Company shall not be obligated to replace, repair or restore any improvements to the Premises or alterations to the Premises made by or on behalf of CalPeak.

16.3 Termination on Taking. The parties acknowledge that the provisions of this Section 16 are adopted pursuant to California Code of Civil Procedure Section 1265.160, in lieu of the provisions of California Code of Civil Procedure Sections 1265.110 through 1265.150, and CalPeak hereby waives and releases any right given CalPeak to terminate this Agreement in the event of a Taking of the Premises or portion thereof under any Applicable Laws.

17. DAMAGE OR DESTRUCTION.

If the Premises, the Unit or any other leasehold improvements, or any portion thereof, are damaged or destroyed by the elements, fire or other casualty ("Casualty"), neither the Company nor CalPeak shall be obligated to repair, restore, or rebuild (collectively, "Restore") all or any portion of the Premises, the Unit or other leasehold improvements so damaged or destroyed. CalPeak, however, may, subject to the Company's approval of its proposed restoration plan, which approval shall not be unreasonably withheld, elect to Restore all or any portion of the Premises, the Unit or other leasehold improvements so damaged or destroyed. If CalPeak elects not to Restore the damaged Premises, Unit or other leasehold improvements following a Casualty, and elects to cease operations from the Premises, the Company and, so long as CalPeak is not then in default under any of its obligations under this Agreement beyond applicable notice and cure periods, CalPeak may terminate this Agreement by giving written notice to the other party ("Termination Notice"), in which event (a) this Agreement shall be terminated effective as of the date set forth in such Termination Notice (which shall be not less than one hundred twenty (120), nor more than one hundred eighty (180), days following the date of such Termination Notice) ("Termination Date"), (b) CalPeak shall continue to pay Rent hereunder until the Termination Date, and (c) CalPeak shall surrender possession of the Premises to the Company in the condition required by Section 22 below on or before the Termination Date.

18. EXCULPATION.

Notwithstanding anything to the contrary provided in this Agreement, neither the Company nor any of the other Indemnitees, nor their successors, assigns, agents, or any mortgagee in possession shall have any personal liability with respect to any provisions of this Agreement and, if the Company is in breach or default with respect to its obligations or otherwise, the Company's liability shall be limited to the value of the Company's interest in the Property for the satisfaction of CalPeak's remedies.

19. NO JOINT VENTURE.

Nothing contained in this Agreement shall be interpreted as creating a joint venture, partnership, or any other relationship between the Parties, other than the relation of a lessor and a lessee as described in this Agreement.

20. SURVIVAL.

Upon termination or expiration of this Agreement granted hereunder, all provisions of this Agreement that by their nature are intended to survive shall survive such termination or expiration.

21. REPRESENTATION BY LEGAL COUNSEL.

The provisions of this Agreement, and the exhibits referred to herein, have been prepared, examined, negotiated and revised by each Party and their respective lawyers, and no implication shall be drawn and no provision shall be construed against any Party hereto by virtue of the purported identity of the drafter of this Agreement, or any portion thereof.

22. SURRENDER.

22.1 On or before the expiration or earlier termination of this Agreement, CalPeak shall at, its sole cost and expense, remove from the Premises the Unit and all debris and waste material resulting from CalPeak's activities or the activities of its employees, agents or contractors, and restore the Premises as nearly as possible to the condition that existed prior to CalPeak's entry upon the Premises. Such restoration shall include, but not be limited to, all Remedial Work required by Applicable Laws. CalPeak's failure to restore the Premises to the condition required hereunder prior to the Expiration Date or earlier termination of this Agreement shall constitute CalPeak's holding over on the Premises for purposes of Section 23 below. CalPeak acknowledges that its obligations under this Section 22.1 shall not be complete until CalPeak furnishes the Company with (a) the written results of environmental tests which demonstrate that the Premises is not affected by Hazardous Materials resulting from CalPeak's operations or activities on the Premises, and (b) a "no further action" letter or letters from all applicable government or regulatory agencies with jurisdiction or authority over Hazardous Materials present (or that may be present) on the Premises, stating that no further remediation or monitoring is required to address potential contamination associated with the Unit.

22.2 At least one hundred eighty (180) days prior to the expiration of this Agreement, or upon any earlier termination of this Agreement, as soon as practicable (but in no event later than thirty (30) days after such earlier termination) but in all events prior to commencing the restoration of the Premises, CalPeak shall submit to Sandra Olson, PG&E's Environmental Representative, at the address set forth on Exhibit H, for the Company's review and approval, a plan for the demolition and removal of the Unit (the "Demolition Plan") and a plan for conducting environmental tests to determine whether the Premises is affected by Hazardous Materials resulting from CalPeak's operations or activities on the Premises ("Testing Plan"). CalPeak's Testing Plan shall be prepared by an independent environmental consulting company (the "Environmental Consultant") proficient in such environmental testing and approved by the Company. The Testing Plan must include the following: (a) a list of the locations and

types of Hazardous Materials generated, handled, used, stored, spilled, released, discharged or disposed of in, on or about the Premises by CalPeak or its agents, contractors, employees, licensees or invitees during the Term; (b) the location and depths of all samples, including, without limitation, soil and groundwater samples, to be taken; and (c) an explanation by the Environmental Consultant supporting the method and scope of the Testing Plan.

22.3 The Company shall approve or disapprove the Demolition Plan and Testing Plan within thirty (30) days after receipt thereof. If the Company disapproves the Demolition Plan and/or the Testing Plan, the Company shall state in writing the reasons for its disapproval. CalPeak shall then revise the disapproved Plan to address the Company's objections and resubmit the Plan to the person identified above within fifteen (15) days after receipt of the Company's disapproval. The Company shall approve or disapprove of any such revisions to the Demolition Plan and/or Testing Plan within fifteen (15) days after receipt thereof. This procedure shall be repeated until the Company approves the Demolition Plan ("Approved Demolition Plan") and the Testing Plan ("Approved Testing Plan") The Company and CalPeak agree to work in good faith to agree upon the Approved Demolition Plan and the Approved Testing Plan. CalPeak shall complete the environmental tests required under the Approved Testing Plan (the "Environmental Tests") within forty-five (45) days after CalPeak completes the removal of the Unit.

22.4 Within thirty (30) days after the Environmental Tests are completed, CalPeak shall submit to Sandra Olson, PG&E's Environmental Representative, at the address set forth on Exhibit H, for the Company's review and approval an investigation report which sets forth in detail the results of the Environmental Tests. If, after its review of such Investigation Report, the Company determines that the Premises are affected by Hazardous Materials resulting from CalPeak's operations or activities on the Premises and that Remedial Work is necessary to restore the Premises to the condition required hereunder, the Company shall notify CalPeak of such determination in writing, and such Remedial Work shall be completed as provided in Section 7.5 of this Agreement.

22.5 Notwithstanding the foregoing, at the Company's sole option, the Company may elect to remove the Unit and perform the removal, restoration and remediation, if any, as described above, in which event CalPeak shall pay the Company for the costs and expenses incurred by the Company in connection therewith within thirty (30) days of receipt of an invoice from the Company.

23. HOLDING OVER.

If CalPeak remains in possession of the Premises after the expiration or other termination of the term of this Agreement, then, at the Company's option, CalPeak shall be deemed to be occupying the Premises as a month-to-month tenant only, at a monthly rental equal to the sum of (a) two (2) times the Base Rent payable during last month of the term, plus (b) Percentage Rent for such holdover period. CalPeak shall also pay all Additional Rent payable under the terms of this Agreement, prorated for each month during which the CalPeak remains in possession. CalPeak shall defend, protect, indemnify and hold the Company harmless from and against any and all Claims resulting from failure to surrender possession upon the Expiration Date or sooner termination of the term, including, without limitation, any claims made by any succeeding tenant and such obligations shall survive the expiration or sooner termination of this Agreement.

24. EXHIBITS.

The following Exhibits attached to this Agreement are incorporated herein by this reference:

Exhibit A-1 Map of Premises

Exhibit A-2	Legal Description of Premises
Exhibit B	Identification of Unit
Exhibit C	Environmental/Safety Performance Requirements
Exhibit D	Insurance Requirements
Exhibit E	Guaranty
Exhibit F	Environmental Reports
Exhibit G	Construction Plans
Exhibit H	List of PG&E Representatives

25. ATTORNEY FEE CLAUSE.

If either Party files any action or brings any proceeding against the other arising from or related to this Agreement, the prevailing party shall be entitled to recover from the other Party as an element of its costs of suit and not as damages, reasonable attorneys' fees (of both in-house and outside counsel), costs and expenses incurred in the action or proceeding, including any appeal thereof. The "prevailing party" within the meaning of this section shall be the Party to the action or proceeding who is entitled to recover its costs of suit for the proceeding, whether or not the same proceeds to final judgment. A Party not entitled to recover its costs shall not recover its attorneys' fees.

26. EXECUTION.

The Parties and the individuals executing this Agreement on behalf of the Parties, each represent, by executing this Agreement, that he or she is duly authorized to do so and to bind the respective Party to its terms.

27. TIME OF ESSENCE.

Time is of the essence with respect to each and every provision of this Agreement.

28. FORCE MAJEURE.

The obligations of each of the Parties under this Agreement (other than obligations to pay money) shall be temporarily excused if such Party is prevented or delayed in performing such obligations by reason of any strikes, lockouts or labor disputes; government restrictions, regulations, controls, action or inaction; civil commotion; extraordinary weather, fire or other acts of God; or other circumstances beyond such Party's reasonable control.

29. ENTIRE AGREEMENT.

This Agreement, together with any written modifications or amendments to this Agreement hereafter entered into, shall constitute the entire agreement between the parties relative to the subject matter hereof, and shall supersede any prior agreement or understanding, if any, whether written or oral, which CalPeak may have had relating to the subject matter hereof with the Company.

30. INTEREST.

In addition to all other rights and remedies provided the Company, all amounts payable by CalPeak to the Company hereunder which shall remain unpaid for five (5) days after their respective due dates shall bear interest from the date that the same became due and payable to and including the date of payment, whether or not demand is made therefor, at the lesser of (i) the rate of twelve percent (12%) per

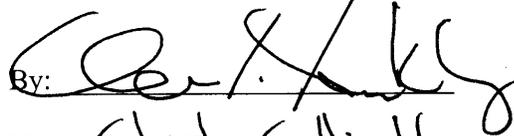
annum or (ii) the maximum interest rate, if any, permitted to be charged on such delinquent amounts under the law of the State of California (the "Interest Rate").

31. GUARANTY.

This Agreement shall not become effective unless and until the guaranty in the form attached hereto as Exhibit E (the "Guaranty") is duly executed by UT Finance Corporation ("Guarantor"), and delivered to the Company. CalPeak acknowledges that the Guaranty is a material inducement to the execution of this Agreement by the Company.

The parties have read this Agreement, understand it and agree to be bound by its terms as of the Effective Date.

CALPEAK POWER LLC

By: 

Name: Charles C. Hinchey

Title: Vice President

Date: 7 July 01

PACIFIC GAS AND ELECTRIC COMPANY

By: 

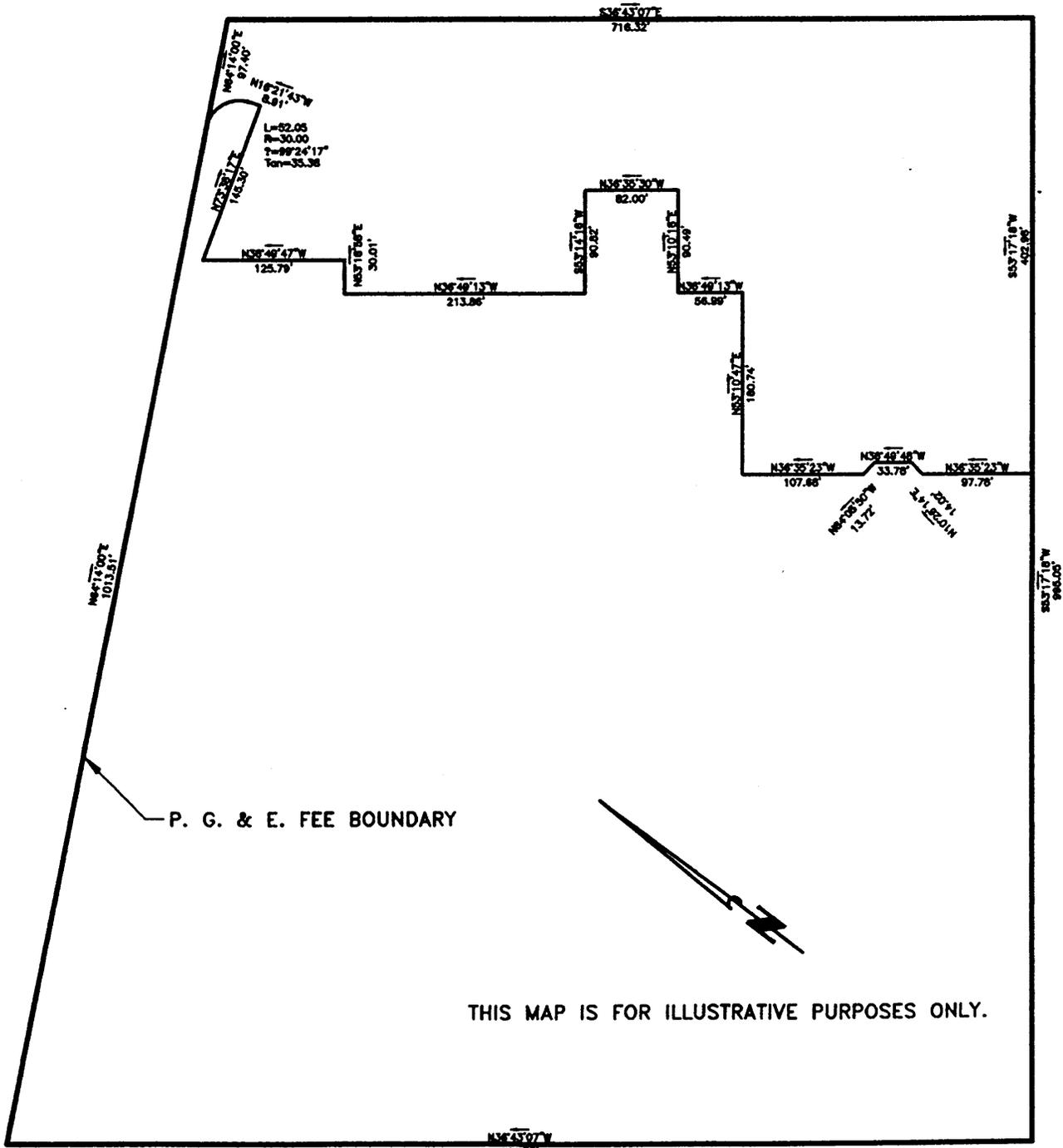
Name: Lu de Silva

Title: Manager, Land Services

Date: 8.15.01



MAP OF PREMISES
EXHIBIT "A-1"



THIS MAP IS FOR ILLUSTRATIVE PURPOSES ONLY.

EXHIBIT A-2

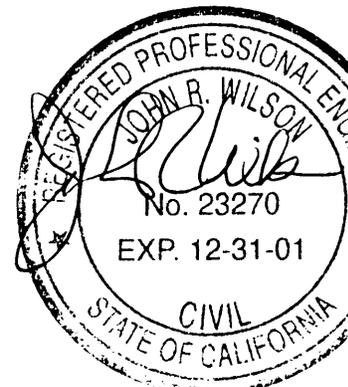
LEGAL DESCRIPTION OF PREMISES

EXHIBIT 'A-2'

BEING A PORTION OF THE SOUTHWEST QUARTER OF SECTION 5, TOWNSHIP 15 SOUTH, RANGE 13 EAST, M.D.B.& M., MORE PARTICULARLY DESCRIBED AS FOLLOWS;

COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 5, AS SHOWN ON RECORD OF SURVEY, RECORDED IN BOOK 34 OF RECORD OF SURVEYS AT PAGE 99, IN THE OFFICE OF THE FRESNO COUNTY RECORDER; THENCE NORTHERLY ALONG THE WEST LINE OF SAID SECTION 5, NORTH 00° 20' 06" EAST, A DISTANCE OF 1760.25 FEET, TO A POINT ON THE SOUTHERLY RIGHT-OF-WAY LINE OF 'PANOCHÉ ROAD', AS SHOWN ON SAID RECORD OF SURVEY; THENCE NORTHEASTERLY ALONG SAID SOUTHERLY RIGHT-OF-WAY, NORTH 64° 13' 59" EAST, A DISTANCE OF 69.62 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE TO THE NORTHWEST, HAVING A RADIUS OF 56,340.00 FEET; THENCE NORTHEASTERLY ALONG SAID CURVE, AND ALONG SAID SOUTHERLY RIGHT-OF-WAY AS SHOWN ON SAID RECORD OF SURVEY, THROUGH A CENTRAL ANGLE OF 00° 31' 07", AND A DISTANCE OF 509.96 FEET; THENCE CONTINUING ALONG SAID SOUTHERLY RIGHT-OF-WAY, NORTH 64° 13' 59" EAST, A DISTANCE OF 64.27 FEET; THENCE DEPARTING FROM SAID SOUTHERLY RIGHT-OF-WAY SOUTH 36° 43' 07" EAST, A DISTANCE OF 908.75 FEET; THENCE NORTH 53° 17' 18" EAST, A DISTANCE OF 995.05 FEET; THENCE SOUTH 71° 59' 01" WEST, A DISTANCE OF 5.626 FEET TO THE TRUE POINT OF BEGINNING;

THENCE SOUTH 53°17'18" WEST, A DISTANCE OF 402.98 FEET; THENCE NORTH 36°35'23" WEST, A DISTANCE OF 97.78 FEET; THENCE NORTH 10°26'14" EAST, A DISTANCE OF 14.02 FEET; THENCE NORTH 36°49'48" WEST, A DISTANCE OF 33.78 FEET; THENCE NORTH 84°05'50" WEST, A DISTANCE 13.72 FEET; THENCE NORTH 36°35'23" WEST, A DISTANCE OF 107.68 FEET; THENCE NORTH 53°10'47" EAST, A DISTANCE OF 160.74 FEET; THENCE NORTH 36°49'13 WEST; A DISTANCE OF 56.99 FEET; NORTH 53°10'18" EAST, A DISTANCE OF 90.49 FEET; THENCE NORTH 36°35'30" WEST, A DISTANCE OF 82.00 FEET; THENCE SOUTH 53°14'16" WEST, A DISTANCE OF 90.82 FEET; THENCE NORTH 36°49'13" WEST, A DISTANCE OF 213.86 FEET; THENCE NORTH 53°16'58" EAST, A DISTANCE OF 30.01 FEET; THENCE NORTH 36°49'47" WEST, A DISTANCE OF 125.79 FEET; NORTH 73°38'17" EAST, A DISTANCE OF 145.30 FEET, THENCE NORTH 16°21' 43" WEST, A DISTANCE OF 8.91 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE TO THE SOUTH AND HAVING A RADIUS OF 30.00 FEET, THENCE NORTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 99°24'17" AN ARC DISTANCE OF 52.05 FEET; THENCE NORTH 64°14'00" EAST, A DISTANCE OF 97.40 FEET; THENCE SOUTH 36°43'07" EAST, A DISTANCE OF 716.32 FEET TO THE TRUE POINT OF BEGINNING.



629-01

EXHIBIT B

IDENTIFICATION OF UNIT

The Unit shall consist of the following:

One Pratt and Whitney 49-megawatt (MW) FT8 Twin Pac aero-derivative combustion turbine-generator.

The FT8 Twin Pac consists of three primary units: the natural gas turbine unit, the generator unit, and the electrical/control unit.

Turbine and Generator units consist of two opposed gas turbines directly connected through a diaphragm coupling to a single double-ended electric generator.

The electrical/control unit includes 15kV switchgear and all of the controls and instruments necessary for operation.

Emissions control equipment and structures including:

SCR with related catalyst, control skid, pumps, tanks; CO catalyst; CEM/DAS; ducting, exhaust stack and silencer.

Fuel gas compressor skid

Electrical equipment including transformers and breakers

Other related and ancillary equipment including, but not limited to:

Evaporative cooling water equipment including skids, pumps and tanks

Fire protection equipment

EXHIBIT C

ENVIRONMENTAL/SAFETY PERFORMANCE REQUIREMENTS

CalPeak is responsible for its own environmental and safety management and is expected to manage independently in this regard. However, the Company expects CalPeak to meet similar high compliance standards as the Company holds for its own facilities.

The following are environmental and safety requirements with which the CalPeak shall comply. This list is not inclusive of all environmental and safety requirements and is not meant to be used as a substitute for Federal, State, or local laws, regulations, and ordinances.

1. WASTE MANAGEMENT

- A. CalPeak shall obtain its own hazardous waste generator EPA ID number for its operation and shall handle all aspects of waste management separate from the Company's operation.

2. HAZARDOUS MATERIALS MANAGEMENT

- A. CalPeak shall prepare and submit to the proper regulatory agencies its own Hazardous Materials Business Plan and Hazardous Materials Inventory pertaining to Hazardous Materials handled on the Premises of the operation covered under the Agreement.
- B. CalPeak shall prepare a Spill Prevention Control and Countermeasure Plan in accordance with applicable regulations.
- C. CalPeak shall construct adequate berms and secondary containment in accordance with applicable laws and regulations to protect property from contact with Hazardous Materials, including oil filled equipment, such as transformers, in the event of a leak or spill.

3. WATER QUALITY

- A. CalPeak shall implement a means to control all water discharges, including storm water runoff, so that discharges do not cause erosion or adverse environmental impact.
- B. Except as otherwise expressly provided, CalPeak shall not initiate any well installation on the property without prior written approval from the Company.
- C. Except as otherwise expressly provided, the Agreement does not grant access or use rights to any surface or subsurface minerals or resources, including groundwater.

4. BASELINE SITE CONDITIONS

- A. CalPeak shall assume responsibility for identifying and addressing any endangered species and historic or cultural artifact issues associated with the site.

5. INCIDENT REPORTING

- A. In the event of a release of any Hazardous Materials or any emergency that poses a threat to the public, Company employees, Company property, or the environment, CalPeak shall do all things necessary to contain and control the release or emergency, make appropriate governmental notifications, and notify the Company immediately.

6. SAFETY

- A. All CalPeak's employees, contractors, and subcontractors working on the property shall attend a briefing provided by the Company on electrical substation safety. CalPeak shall have its own safety program for its employees, contractors, and subcontractors working at the site and shall include adequate information on substation safety for those personnel who did not attend the Company's briefing. CalPeak shall inform the Company if any of its employees, contractors, or subcontractors requires access to the Company's adjacent substation facility. The Company may require further training for those individuals prior to granting access to the substation.

EXHIBIT D

INSURANCE REQUIREMENTS

CalPeak shall maintain the following insurance coverage. The Company reserves the right to alter insurance requirements based on project scope and for larger or multiple units. CalPeak is also responsible for its agents and contractors' maintaining sufficient limits of the appropriate insurance coverage.

A. Workers' Compensation and Employers' Liability

1. Workers' Compensation insurance or self-insurance indicating compliance with any applicable labor codes, acts, laws or statutes, state or federal, where CalPeak performs work.
2. Employers' 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 Premises and the use, occupancy and activities by and on behalf of CalPeak and CalPeak Parties on or about the Premises, including in construction of the Unit and other related activities on the Premises, against claims for personal injury (including bodily injury and 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 as reasonably approved by the Company, covering liability imposed by applicable laws upon CalPeak and CalPeak Parties and including, but not limited to, coverage for, premises and operations (including the use of owned and non-owned equipment), contractual liability for both oral and written contracts (covering CalPeak's indemnification obligations under this Agreement), broad-form property damage liability, personal injury liability and advertising liability, products and completed operations, independent contractors and owners' and contractors' protective liability, with deletion of the exclusion for explosion, collapse or underground hazard ("Commercial General Liability Insurance"), having limits of not less than Ten Million Dollars (\$10,000,000) per occurrence for bodily injury, death and property damage, Ten Million Dollars (\$10,000,000) for personal injury liability, and Ten Million Dollars (\$10,000,000) aggregate for products and completed operations, and Ten Million Dollars (\$10,000,000) general aggregate. 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 ten (10) years following completion of construction of the Unit.
3. Coverage shall: a) by "Additional Insured" endorsement (ISO Additional Insured form CG 2026, or a substitute providing equivalent coverage, as reasonably approved by the Company), add as insureds the Company, its directors, officers, agents and employees with respect to liability arising out of work performed by or for CalPeak; and b) be endorsed to specify that CalPeak's insurance is primary and that any insurance or self-insurance maintained by the Company shall not contribute with it.

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 1 "any auto."
2. The limit shall not be less than \$5,000,000 each accident for bodily injury and property damage.
3. Coverage shall be endorsed in accordance with Section 30 of the Motor Carrier Act of 1980 (Category 2).

D. Pollution Liability

1. Coverage for bodily injury, property damage, including clean up costs and defense costs resulting from sudden 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 \$10,000,000 each occurrence for bodily injury and property damage.

E. Additional Insurance Provisions

1. Before commencing performance of work under this Agreement, CalPeak shall furnish the Company with certificates of insurance and endorsements of all required insurance for CalPeak.
2. The documentation shall state that coverage shall not be canceled except after thirty (30) days prior written notice has been given to the Company.
3. The documentation must be signed by a person authorized by that insurer to bind coverage on its behalf and shall be submitted to:

Pacific Gas and Electric Company
Insurance Department - B24H
Post Office Box 770000
San Francisco, CA 94177

A copy of all such insurance documents shall be sent to June Nakanishi, PG&E's Insurance Representative, with a copy to the Company's Land Agent, at their respective addresses set forth on Exhibit H.

4. The Company may inspect the original policies or require complete certified copies, at any time.
5. Upon request, CalPeak shall furnish the Company the same evidence of insurance for its agents or contractors as the Company requires of CalPeak.
6. All insurance required under this Agreement shall be effected under valid enforceable policies issued by insurers of recognized responsibility and licensed to do business in the State of

California. Such insurance shall be provided by a company (or companies) having a general policy holder's rating in the most current edition of A.M. Best's Key Rating Guide of A:X or better.

GUARANTY

The undersigned, UT Finance Corporation (the "Guarantor"), unconditionally guarantees to Pacific Gas and Electric Company (the "Company"), the due and timely payment and performance of all obligations of CalPeak Power LLC ("CalPeak") under that certain Agreement to Lease Real Property for Installation of Generators dated as of June 28, 2001, by and between the Company and CalPeak (the "Agreement") up to, but not exceeding, the aggregate liability of Fifteen Million Dollars (\$15,000,000). Guarantor agrees that the Agreement is enforceable against CalPeak in accordance with its terms. This Guaranty is irrevocable until such obligations are performed in full, irrespective of (i) any modifications or amendments to the Agreement, (ii) the bankruptcy or insolvency of CalPeak, (iii) any change in the time, manner or place of performance of any or all of the obligations of CalPeak guaranteed hereby, or (iv) any amendment to, or waiver of, or consent to departure from, any or all of the obligations of CalPeak under the Agreement. The obligations of Guarantor hereunder shall not be impaired, diminished, released or reduced by any occurrence or circumstance which might otherwise constitute a defense available to, or a discharge of, Guarantor or any other person or entity with regard to all or any part of the obligations guaranteed hereby. In the event that the Company must rescind or restore any payment, or part thereof, received by the Company in satisfaction of the obligations of CalPeak under the Agreement, any prior release or discharge from the terms of this Guaranty shall be without effect, and in this Guaranty shall remain in full force and effect. Guarantor waives all requirements for notice or demand which may lawfully be waived under any applicable law; however, Guarantor reserves the right to assert any claims and defenses that CalPeak is entitled to assert under the Agreement. This Guaranty is an absolute, continuing guaranty of payment and performance and not a guarantee of collection; no beneficiary of this Guarantee shall be required to sue or exhaust any remedies against CalPeak prior to making a demand hereunder and enforcing this Guaranty. This Guaranty shall be governed by the laws of the State of New York, U.S.A., without giving effect to the provisions, policies or principles thereof relating to conflict of laws and Guarantor submits to the personal jurisdiction of the courts of the State of New York and the U.S. federal courts located in New York for purposes of any suit, action or proceeding relating this Guaranty.

Guarantor further agrees to pay to the Company any and all reasonable costs and expenses (including court costs and reasonable attorneys' fees) incurred by the Company in the preservation and/or enforcement of its rights and remedies hereunder, provided that it is ultimately determined (by the parties, an arbitral tribunal, a court or otherwise) that the Company is entitled to payment by Guarantor.

UT FINANCE CORPORATION

By: 

Name: _____

Title: _____

Dated: _

EXHIBIT F

ENVIRONMENTAL REPORTS

Document	Author	Date
Report of Soil Testing Adjacent to Mineral Oil-filled Equipment at PG&E Substations	Technical and Ecological Services	3/98
Modified Phase I Environmental Site Assessment Report	Jonas and Associates, Inc.	5/15/01

EXHIBIT G
CONSTRUCTION PLANS

Exhibit G
Panoche Project Construction Plans

1. CalPeak Construction Schedule (attached)
2. Construction Drawings:
 - a. Civil – Cover Sheet (Drawing No. CPC-0001)
 - b. Civil – General Notes (Drawing No. CPC-0010)
 - c. Civil – Overall Site Utilities Plan (Drawing No. CPCU0800)
 - d. Civil – Overall Site Surfaces (Drawing No. CPCS0900)
 - e. Civil – Overall Site Grading Plan (Drawing No. CPCF1000)
 - f. Mechanical – General Arrangement Plan (Drawing No. CPM-7000)
 - g. Mechanical – General Arrangement Elevations (Drawing No. CPM-7001)

EXHIBIT H

LIST OF PG&E REPRESENTATIVES

MAINTENANCE SUPERVISOR (NOTICE BEFORE ENTRY)	Joseph Lafferty Maintenance Supervisor c/o Wilson Substation 3185 M Street Merced, CA 95340 Delivery Address: 4400 E. HWY 140 Merced, CA 95341 Ph: (209) 726-7633 Fax: (209) 726-7635
LAND AGENT	PACIFIC GAS AND ELECTRIC COMPANY Attn.: Dennis Garcia Land Agent 3185 "M" Street Merced, CA 95348 Ph: (209) 726-6350 Fax: (209) 726-6449
ENVIRONMENTAL MATTERS	PACIFIC GAS AND ELECTRIC COMPANY Attn: Sandra Olson Compliance Plans Section, Environmental Affairs Department P.O. Box 770000, Mail Code B24A San Francisco, CA 94177 Delivery address: 77 Beale Street Mail Code B24A, Room 2429D San Francisco, CA 94105

INSURANCE MATTERS	<p>PACIFIC GAS AND ELECTRIC COMPANY Attn: June Nakanishi Insurance Department P.O. Box 770000, Mail Code B24H San Francisco, CA 94177</p> <p>Delivery address:</p> <p>77 Beale Street Mail Code B24H, Room 2471 San Francisco, CA 94105</p> <p>Ph: (415) 973-6866 Fax: (415) 973-6869</p>
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Advice 3499-E

Attachment 2

**(ORIGINAL AGREEMENT TO LEASE REAL PROPERTY FOR INSTALLATION
OF GENERATORS – PG&E'S VACA DIXON SUBSTATION)**

Signed
ORIGINAL
Up original Commencement Agreement
AGREEMENT TO LEASE REAL PROPERTY
FOR INSTALLATION OF GENERATORS

This Agreement ("Agreement") is entered into by and between **PACIFIC GAS AND ELECTRIC COMPANY**, a California corporation (the "Company"), and **CALPEAK POWER LLC**, a Delaware limited liability company ("CalPeak"), hereafter also referred to individually as "Party" and collectively as "Parties." This Agreement is dated for reference purposes only as of August 22, 2001 ("Effective Date").

RECITALS

- A. CalPeak wishes to place its generation facilities on real property owned by the Company and commonly referred to as "PG&E's Vaca Dixon Substation" (the "Property"); and
- B. The Company is willing to lease to CalPeak, subject to the terms and conditions set forth below, including, without limitation, the Commencement Date Conditions described in Section 1.2(a) below, a portion of the Property on which CalPeak desires to construct its generation facilities.

1. LEASE.

1.1 Scope of Lease.

(a) Lease of Premises. The Company hereby leases to CalPeak and CalPeak hereby leases from the Company, on the terms and conditions stated herein, the premises generally identified on the map attached hereto as Exhibit A-1 and incorporated herein, and legally described in Exhibit A-2 attached hereto and incorporated herein (the "Premises"), for the purpose of installing, operating and maintaining a natural gas fueled electric power generation plant and related equipment (collectively, the "Unit") within the Premises. A description of the Unit to be installed by CalPeak is attached to this Agreement as Exhibit B.

(b) Allowed Use Of Premises. CalPeak shall use the Premises to install, maintain and operate the Unit. The Unit shall be interconnected solely to the Company's electric system, pursuant to, and in accordance with, the Special Facilities Agreement and Interconnection Agreement described in Section 3 below. In addition, to enable CalPeak to operate the Unit, the Company hereby grants the following non-exclusive rights to CalPeak:

(i) Necessary vehicular and pedestrian ingress and egress rights to and from the Premises over adjoining lands of the Company along the routes shown on Exhibit A-1. The Company may reasonably change access locations during the term of this Agreement in its sole and absolute discretion, provided the change does not materially adversely impact CalPeak's operations. CalPeak, with the Company's prior written consent, shall have the right to improve the access route from time to time as required by CalPeak's operations.

(ii) During the initial construction of the Unit only, the temporary use of the portion of the Property specified on Exhibit A-1 as the "Vaca-Dixon Laydown Area" (which is legally described on Exhibit A-2 attached hereto), and during the demolition and removal of the Unit, either such portion of the Property or another portion of the Property designated by the Company and reasonably acceptable to CalPeak, for the storing of construction materials, machinery and other items necessary to construct the Unit or related to the demolition and removal of the Unit, as the case may be;

provided that CalPeak's temporary use of such portion of the Property must not unreasonably interfere with the remainder of the Property or the Company's use thereof.

(iii) The right to arrange for the provision of utility service, including municipal water and storm drain service, to the Unit.

(iv) The right to drill for water as specified in Section 7.13 below.

All other rights of use of and access to the adjoining lands are expressly reserved by and to the Company. In no event shall CalPeak perform any activities or have the right to use any space or access within the fenced perimeters of the Company's electric substation, except as set forth in the Special Facilities Agreement and the Interconnection Agreement to be executed by the Parties.

(c) Approval of CalPeak's Plans by the Company. Siting, installation, construction, operation, demolition and removal of the Unit are conditioned upon the Company's review and approval of CalPeak's plans, including, but not limited to, the Development Plan (as defined in Section 1.2(g) below) and CalPeak's Environmental Plans (as defined in Section 7.11 below), and CalPeak's acceptance of and compliance with all of the Company's environmental, health and safety requirements set forth in Exhibit C attached hereto and incorporated herein.

(d) Modification of Existing Facilities. CalPeak agrees that if the Company's existing facilities on the Property or environmental plans relating thereto must be modified, or if additional facilities or other environmental plans are required, as a result of CalPeak's use of the Premises, CalPeak shall bear all costs and expenses thereof; provided, however, that the Company, in its sole discretion, may elect to perform any work required that affects the Company's facilities or environmental plans, in which case CalPeak shall reimburse the Company for the costs associated with such work, including the Company's internal costs.

(e) Notice Prior to Entry. At least three (3) days prior to its entry upon the Premises, CalPeak shall notify Darryl Williams, PG&E's Maintenance Supervisor at the address and phone number set forth on Exhibit H, in order that a representative of the Company may be present to observe CalPeak's activities to verify safety and protection of the Company's property and facilities and compliance with the terms and conditions of this Agreement.

1.2 Term of Agreement:

(a) Conditions to Commencement Date. The term of this Agreement, and CalPeak's right to possession and use of the Premises, shall commence (the "Commencement Date") upon the later to occur of the following: (i) CalPeak's receipt of all discretionary Governmental Approvals (as defined in Section 8.1 below) required for the siting, construction, and operation of the Unit, with conditions that are acceptable to both the Company and CalPeak in their sole discretion, and said approvals are no longer subject to judicial review, (ii) if the Company or CalPeak so requires pursuant to Section 1.2(b) below, the receipt of Bankruptcy Approval on terms and conditions satisfactory to the Company and CalPeak in their sole discretion, or (iii) if the Company or CalPeak so requires pursuant to Section 1.2(c) below, the receipt of CPUC Approval on terms and conditions satisfactory to the Company and CalPeak in their sole discretion (collectively, the "Commencement Date Conditions"). CalPeak and the Company shall execute a memorandum specifying the Commencement Date, which memorandum shall be in recordable form. This Agreement shall terminate ten (10) years and four (4) months following the Commencement Date at 24:00 hours (the "Expiration Date"). This Agreement shall be a binding contractual obligation effective upon execution and delivery hereof by the Company and CalPeak.

Following the Commencement Date, the Company shall prepare and deliver to CalPeak a Commencement Date Confirmation substantially setting forth both the Commencement Date and Expiration Date for this Agreement. CalPeak shall execute the Commencement Date Confirmation and deliver the executed original of the same to Landlord within thirty (30) days of CalPeak's receipt thereof.

(b) Bankruptcy Approvals. CalPeak acknowledges that the Company is a debtor in possession in a Chapter 11 reorganization case pending in the United States Bankruptcy Court for the Northern District of California, San Francisco Division (the "Bankruptcy Court"). Although the Company believes that leasing of the Premises to CalPeak pursuant to this Agreement is in the ordinary course of the Company's business, and therefore that pursuant to 11 U.S.C. § 363(c), no notice and hearing (or any Bankruptcy Court approval) is required, if the Company or CalPeak determines for any reason prior to the Commencement Date that approval of the Bankruptcy Court ("Bankruptcy Approval") will be required as a condition precedent to the Company's leasing of the Premises to CalPeak, the term of this Agreement shall not commence until the Company obtains Bankruptcy Approval on terms and conditions satisfactory to the Company and CalPeak in their sole discretion. CalPeak further acknowledges and agrees that the Company makes no representation or warranty with respect to Bankruptcy Approval, and CalPeak hereby waives all claims against the Company which may arise out of losses, expenses or damages suffered or incurred by CalPeak as a result of the need for the Bankruptcy Approval, or the Company's failure to obtain Bankruptcy Approval.

(c) CPUC Approval. If the Company or CalPeak determines for any reason prior to the Commencement Date that approval of the California Public Utilities Commission ("CPUC") will be required as a condition precedent to the Company's leasing of the Premises to CalPeak, the term of this Agreement shall not commence until the Company obtains such approval ("CPUC Approval") on terms and conditions satisfactory to the Company and CalPeak in their sole discretion. CalPeak shall cooperate with the Company by providing supporting data, review and other services to assist the Company in obtaining CPUC Approval. CalPeak further acknowledges and agrees that the Company makes no representation or warranty with respect to CPUC Approval, and CalPeak hereby waives all claims against the Company which may arise out of losses, expenses or damages suffered or incurred by CalPeak as a result of the need for the CPUC Approval, or the Company's failure to obtain CPUC Approval.

(d) Termination Rights. In the event that all discretionary Governmental Approvals required for the siting, construction and operation of the Unit and any required Bankruptcy or CPUC Approvals have not been obtained within twelve (12) months after the Effective Date, CalPeak and the Company shall each have the option to terminate this Agreement by written notice to the other Party at any time prior to the Commencement Date, in which event all of the Parties' rights and obligations hereunder shall terminate, except for those which expressly survive termination.

• (e) Potential Use Conflict.

(i) If during the term of this Agreement the Company determines that (a) an expansion, modification or improvement of the substation located on the Property is required for safety or regulatory compliance, and such expansion, modification or improvement will create a conflict with CalPeak's use and occupancy of the Premises, or (b) any electrical or natural gas lines must be moved, rerouted, relocated or redesigned because of CalPeak's use and occupancy of the Premises (a "Use Conflict"), the Company shall promptly notify CalPeak of that fact and inform CalPeak of the Company's proposed "least cost" solution to the conflict ("Use Conflict Notice"). Within thirty (30) days after CalPeak's receipt of the Company's Use Conflict Notice, CalPeak shall either: (A) agree to implement the solution proposed by the Company in its Use Conflict Notice, or (B) deliver to the

Company in writing for the Company's consideration an alternative "least cost" solution. CalPeak's failure to do (A) or (B) in the preceding sentence within the time specified shall constitute CalPeak's agreement to and acceptance of the "least cost" solution proposed by the Company. The Company and CalPeak agree to confer and cooperate with the other to determine a "least cost" solution to the Use Conflict; provided, however, that the Company's determination of the "least cost" solution shall be final and binding on the parties.

(ii) If the Company delivers a Use Conflict Notice to CalPeak at any time during the first five (5) years of the term of this Agreement, the Company shall bear all costs incurred by the Company and CalPeak to effect the "least cost" solution. If the Company delivers a Use Conflict Notice to CalPeak at any time during the second five (5) years of the term of this Agreement, CalPeak shall either (A) bear all reasonable costs that the Company incurs to effect the "least cost" solution, or (B) elect to terminate this Agreement by written notice to the Company within thirty (30) days following CalPeak's receipt from the Company of the estimated cost of implementation of the "least cost" solution (which estimate CalPeak agrees shall not be binding on the Company or the contractor(s) making such estimate).

(f) Construction of the Unit. Following the Commencement Date (or, if later, upon CalPeak's receipt of all of the Governmental Approvals), CalPeak shall proceed in a diligent and workmanlike manner to construct and install the Unit in accordance with those certain Construction Plans described on Exhibit G attached hereto (the "Construction Plans"), and in accordance with all Applicable Laws.

(g) Development Plan.

(i) Prior to the Effective Date, CalPeak has submitted to the Company, and the Company has approved, a plan for siting, construction, and operation of the Unit (the "Development Plan"). The Development Plan (A) includes a list all proposed entitlements, permits, licenses and other Governmental Approvals required for siting, construction, and operation of the Unit, (B) sets forth in detail the required steps and schedule for obtaining the Governmental Approvals, and (C) includes the Construction Plans. Any amendments to the Development Plan shall be subject to the Company's review and approval, which approval shall not be unreasonably withheld or delayed. The Company's review and approval of the Development Plan and any amendments thereto shall not create any liability of any kind on the part of the Company, or constitute a representation on the part of the Company or any person consulted by the Company in connection with such review and approval regarding such documents. CalPeak shall also obtain the Company's prior written approval of the civil engineer for the project, which approval shall not be unreasonably withheld or delayed.

(ii) Subject to the provisions of Section 1.2(g)(i) above and Section 8.2 below, CalPeak shall have the right to process all applications, agreements, documents and other instruments or entitlements necessary or appropriate for the siting, construction and operation of the Unit on the Premises. CalPeak shall proceed with such processing in a diligent manner at its sole cost and expense. Any documents filed or other actions taken by CalPeak pursuant to this Section 1.2(g) which are consistent with the Development Plan shall not require additional approval from the Company; provided that CalPeak shall deliver to the Company copies of any documents filed by CalPeak pursuant to this Section 1.2(g) concurrently with any such filing. Any documents filed or other actions taken by CalPeak pursuant to this Section 1.2(g) which are not consistent with the Development Plan shall require the Company's prior written approval, which approval will not be unreasonably withheld or delayed. The Company shall reasonably cooperate with, and assist CalPeak in, the processing of such items under this

Section 1.2(g), provided that the Company shall not be required to expend any sums, nor assume any liability, nor agree to any invasive testing, with respect thereto.

1.3 Rent.

(a) Base Rent. On or before the Commencement Date, and on or before each anniversary of the Commencement Date during the term of this Agreement, CalPeak shall pay to the Company, at the address set forth herein or at such other place as the Company shall designate in writing, annual base rent (the "Base Rent"), without deduction, offset or abatement, calculated as follows:

(i) For the first year of the term of this Agreement, the Base Rent payable by CalPeak hereunder shall equal One Hundred Thousand Dollars (\$100,000);

(ii) On the first anniversary of the Commencement Date, and on each successive anniversary thereof during the term of this Agreement (each, an "Adjustment Date"), CalPeak shall pay to the Company Base Rent for the next succeeding year equal to the Base Rent payable by CalPeak for the first year of the term (i.e., \$100,000) multiplied by a fraction, the numerator of which shall equal the "Anniversary Index" (defined below) and the denominator of which shall equal the "Base Index" (defined below); provided, however, in no event shall the Base Rent payable following an Adjustment Date be less than the Base Rent payable immediately prior thereto. For purposes hereof, the "Anniversary Index" shall mean the "CPI" (defined below) published for the month which is two (2) months prior to the applicable Adjustment Date and the "Base Index" shall mean the CPI published for the month which is two (2) months prior to the Commencement Date. The "CPI" shall mean the United States Department of Labor, Bureau of Labor Statistics Consumer Price Index for All Urban Consumers, San Francisco - Oakland - San Jose, California, "All Items" (1982-1984 = 100). If, at any time during the term of this Agreement, the CPI shall be discontinued, the Company and CalPeak shall mutually and reasonably agree to substitute such other official index published by the Bureau of Labor Statistics, or by another nationally recognized publisher of similar statistical information, as is then generally recognized and accepted for like determinations of purchasing power.

(b) Percentage Rent.

(i) In addition to the payment of Base Rent, CalPeak shall pay the Company percentage rent ("Percentage Rent") for each calendar year (or portion thereof) occurring during the term of this Agreement equal to the amount, if any, by which (A) one and eighty-one one-hundredths percent (1.81%) of (1) the gross revenue from CalPeak's sale of energy produced by the Unit to all parties during such calendar year (or portion thereof) ("Gross Sales Proceeds"), minus (2) the costs of fuel incurred by CalPeak in the production of such energy ("Related Fuel Costs"), exceeds (B) the Base Rent payable by CalPeak for such calendar year (or portion thereof). CalPeak shall pay Percentage Rent in accordance with the provisions of Sections 1.3(b)(ii) and 1.3(b)(iii) below.

(ii) CalPeak shall furnish to the Company, within thirty (30) days after the expiration of each calendar year during the term, and within thirty (30) days after the expiration or earlier termination of this Agreement, a statement certified by a senior financial officer of CalPeak setting forth the amount of Gross Sales Proceeds, Related Fuel Costs and any Percentage Rent for the preceding calendar year (or portion thereof). Concurrently with the delivery of such annual statement, CalPeak shall pay to the Company the Percentage Rent, if any, due for such calendar year (or portion thereof).

(iii) In addition, CalPeak shall furnish to the Company, within one hundred twenty (120) days after the expiration of each calendar year during the term, and within one hundred twenty (120) days after the expiration or earlier termination of this Agreement, an income statement for the Unit for the preceding calendar year (or portion thereof) certified by a certified public accountant. Concurrently with the delivery of such statement, CalPeak shall pay the Company any Percentage Rent due for such year (or portion thereof), in excess of the amounts previously paid by CalPeak in respect of such year (or portion thereof). Any overpayment of Percentage Rent for such calendar year, or portion thereof, shall be promptly refunded to CalPeak, so long as CalPeak is not then in default under the terms of this Agreement.

(iv) CalPeak shall keep and maintain full, complete and appropriate books of account and records of Gross Sales Proceeds and Related Fuel Costs relating to the Premises in accordance with generally accepted accounting principles. CalPeak shall retain all documentation relating to the Percentage Rent calculation for any year for a period of four (4) years. The Company shall have the right to audit such documentation at CalPeak's place of business during normal business hours upon seventy-two (72) hours' prior written notice to CalPeak. Such audit shall be conducted in such a manner that does not unreasonably impact CalPeak's operations. If an audit or examination by the Company of CalPeak's records of Gross Sales Proceeds and Related Fuel Costs discloses that Percentage Rent has been underpaid, CalPeak shall immediately pay the Company all delinquent Percentage Rent, together with interest thereon at the rate set forth in Section 29. If any statement of Percentage Rent previously made by CalPeak to the Company shall be found to understate the amount of Percentage Rent payable by CalPeak as shown by such audit by more than five percent (5%), CalPeak shall pay to the Company the cost of such audit within thirty (30) days following CalPeak's receipt of the Company's demand therefor, otherwise the cost of such audit shall be paid by the Company. If an audit or examination by the Company of CalPeak's records of Gross Sales Proceeds and Percentage Rent discloses that Percentage Rent has been overpaid, the Company shall pay CalPeak within thirty (30) days, without interest, the amount by which such overpayment exceeds the cost of the Company's audit or examination. If any audit shall be commenced by the Company, or if there shall arise a difference or dispute concerning Percentage Rent, then CalPeak's books of account and records pertaining to the period of time to which the audited or disputed statements of Gross Sales Proceeds or Related Fuel Costs apply (including all supporting data and any other records from which such amounts may be tested or determined) shall be preserved and retained by CalPeak until a final resolution or final determination of such dispute or difference, regardless of whether the time required for such final resolution or determination extends beyond the four (4)-year required record retention period.

(c) Additional Rent. It is the intent of this Agreement that, except as expressly set forth herein, the Base Rent shall be paid to the Company absolutely net at all times during the term, and that all expenses for insurance, repair, maintenance and operation of the Premises and all other obligations of every kind and nature whatsoever relating to the use and operation of the Premises arising or becoming due during or with respect to the term of this Agreement shall be paid or discharged by CalPeak in addition to Base Rent. Without limiting the foregoing, in addition to Base Rent and Percentage Rent, CalPeak shall pay as Additional Rent hereunder the following: (i) the cost of a Company representative, as may be required by the Company from time to time, to verify safety and protection of Company property; and (ii) the cost of any repairs to or protection of any of the Company's facilities arising from CalPeak's use of the Premises. All such additional rent shall be due and payable to the Company within thirty (30) days after CalPeak's receipt of an invoice therefor.

(d) Rent. All sums of money required to be paid under this Agreement, including, without limitation, Base Rent, Percentage Rent, and those items described in Section 1.3(c) above or otherwise required to be paid by CalPeak to the Company hereunder ("Additional Rent"), shall

be considered rent (and are sometimes collectively referred to herein as "Rent") whether or not specifically designated as such in any other Section of this Agreement. The Company shall have the same rights and remedies for non-payment of Additional Rent and Percentage Rent as those provided herein for the non-payment of Base Rent.

(e) Proration. CalPeak's obligation to pay Base Rent and Additional Rent for the final calendar year of the term shall be appropriately prorated.

2. USE OF ELECTRICITY AND GAS.

During the term, CalPeak shall pay or cause to be paid all charges for water, gas, heat, light, power, sewer, telephone service and all other public or private utility services and all sprinkler systems and protective services at any time rendered to or in connection with the Premises, the Unit or any part thereof and shall comply with all contracts relating to such services.

This Agreement covers only the use of the Premises as stated in Section 1 above. It does not include any right to use the Company's electric facilities or to receive gas or electricity service. CalPeak's electricity or gas usage is not covered under this Agreement, and shall be covered by electric and gas tariffs, a Special Facilities Agreement, an Interconnection Agreement and a stand-by service contract. The Company does not warrant nor represent that gas or electricity is readily available for CalPeak's use under the terms of this Agreement.

3. INTERCONNECTIONS.

Interconnection of the Unit to the Company's substation will be governed by and subject to a Special Facilities Agreement and Interconnection Agreement and is not covered under this Agreement.

4. DEFAULT; TERMINATION.

4.1 Events of Default - CalPeak.

(a) In addition to any other event specified in this Agreement as an event of default, the occurrence of any one or more of the following events during the term (each, individually, an "Event of Default" and collectively, "Events of Default") shall constitute a breach of this Agreement by CalPeak, in which event the Company may exercise the rights set forth in Section 4.2 or as otherwise provided at law or in equity: (a) CalPeak shall fail to pay any Base Rent, Percentage Rent or any Additional Rent payable by CalPeak under this Agreement (or cure any other default which is curable by the payment of money) within ten (10) days following receipt of written notice from the Company specifying such failure; or (b) CalPeak shall default in the performance of or compliance with any of the other covenants, agreements, terms or conditions of this Agreement to be performed or observed by CalPeak (other than a failure listed in clause (a) above), and, unless expressly provided elsewhere in this Agreement that no notice and/or opportunity to cure such default is to be afforded CalPeak, or unless a different cure period is specified, such default shall continue for a period of thirty (30) days after written notice thereof from the Company to CalPeak, or, in the case of a default which cannot with due diligence be cured within thirty (30) days, CalPeak fails to commence such cure promptly within such thirty (30) day period and thereafter diligently prosecute such cure to completion; or (c) CalPeak shall terminate or abandon the use of the Premises or the Unit located thereon; or (d) any Guarantor of this Agreement shall default beyond any applicable notice and grace period under such guaranty.

(b) CalPeak acknowledges and agrees that, notwithstanding the foregoing provisions of Section 4.1(a), CalPeak shall be in default for purposes of Section 1161 of the California Code of Civil Procedure immediately following CalPeak's failure to perform or comply with any covenants, agreements, terms or conditions of this Agreement to be performed or observed by CalPeak, and that the notices required to be given by the Company under said Section 4.1(a) shall, in each case, be in lieu of, and not in addition to, any notice required under Section 1161 of the California Code of Civil Procedure, and shall be deemed to satisfy the requirement, if any, that notice be given pursuant to such section.

4.2 Termination of this Agreement by the Company. Upon the occurrence of any Event of Default, the Company shall have the option to pursue any one or more of the following remedies without further notice or demand whatsoever:

(a) In any notice given pursuant to Section 4.1(a) above, the Company in its sole discretion may elect to declare a forfeiture of this Agreement, and provided that the Company's notice states such an election, CalPeak's right to possession shall terminate and this Agreement shall terminate, unless on or before the date specified in such notice all arrears of Rent and all other sums payable by CalPeak under this Agreement, and all costs and expenses incurred by or on behalf of the Company hereunder, including attorneys' fees incurred in connection with such defaults, shall have been paid by CalPeak and all other breaches of this Agreement by CalPeak at the time existing shall have been fully remedied to the satisfaction of the Company. Upon such termination, the Company shall have the right to recover from CalPeak damages in the amounts set forth in Civil Code Section 1951.2, including, without limitation, the worth at the time of award of the amount by which all unpaid Rent for the balance of the term of this Agreement after the time of award exceeds the amount of such rental loss that CalPeak proves could be reasonably avoided; provided, however, that any such calculation of damages based on the future rental stream under this Agreement shall take into account CalPeak's right of early termination contained in Section 4.4 below.

(b) Even though CalPeak has breached this Agreement, this Agreement shall continue in effect for so long as the Company does not terminate CalPeak's right to possession, and the Company shall have the right to enforce all its rights and remedies under this Agreement, including the remedies described in California Civil Code Section 1951.4 (granting a landlord the right to continue a lease in effect after a tenant's breach and abandonment and to recover all rent as it becomes due if the tenant has the right to sublet or assign, subject only to reasonable limitations); provided, however, that the Company's rights under this Section 4.2(b) shall be subject to CalPeak's right of early termination contained in Section 4.4 below. Acts of maintenance or preservation to efforts to relet the Premises or the appointment of a receiver upon initiative of the Company to protect the Company's interest under this Agreement, shall not constitute a termination of CalPeak's right to possession unless written notice of termination is given by the Company to CalPeak.

4.3 Company Defaults; CalPeak Right of Termination. In the event that the Company defaults in the performance of or compliance with any of the covenants, agreements, terms or conditions of this Agreement to be performed or observed by the Company, and such default shall continue for a period of thirty (30) days after written notice thereof from CalPeak to the Company, or, in the case of a default which cannot with due diligence be cured within thirty (30) days, the Company fails to commence such cure promptly within such thirty (30) day period and thereafter diligently prosecute such cure to completion, CalPeak shall have the right, without limiting any of its other rights or remedies, to terminate this Agreement by written notice to the Company.

4.4 Cumulative Remedies. All of the remedies afforded to CalPeak and the Company under this Agreement shall be in addition to all other remedies such parties may have at law or in equity. Waiver by CalPeak or the Company of any breach of any obligation by the other party hereunder shall be effective only if it is in writing, and shall not be deemed a waiver of any other breach, or any subsequent breach of the same obligation. The Company's acceptance of payment by CalPeak shall not constitute a waiver of any breach by CalPeak, and if the acceptance occurs after the Company's notice to CalPeak, or termination of the Agreement or of CalPeak's right to possession, the acceptance shall not affect such notice or termination. Acceptance of payment by the Company after commencement of a legal proceeding or final judgment shall not affect such proceeding or judgment. The Company may advance such monies and take such other actions for CalPeak's account as reasonably may be required to cure or mitigate any default by CalPeak. CalPeak shall immediately reimburse the Company for any such advance, and such sums shall bear interest at the Interest Rate (as defined in Section 30 below) until paid.

4.5 Right of Early Termination. At any time during the Term, CalPeak shall have the right to terminate this Agreement (the "Early Termination Right") upon at least six (6) months' prior written notice to the Company, in which event this Agreement shall terminate as of the termination date specified in such notice (the "Early Termination Date"); however, CalPeak's right to exercise the Early Termination Right is expressly conditioned on CalPeak's payment to the Company of (a) all Base Rent, Percentage Rent and Additional Rent due through the Early Termination Date and (b) within ten (10) days following the Early Termination Date, a lump sum termination payment equal to the total Base Rent otherwise payable by CalPeak for the six (6) months following the Early Termination Date.

5. ACKNOWLEDGMENT OF TITLE.

CalPeak's use of the Premises shall not convey to CalPeak any title, or right in the fee interest in the Premises; and CalPeak agrees not to make any claim of right or title, or to assail the Company's fee title to the Premises. The Parties hereto agree that neither this Agreement, nor the obligations created herein, constitute nor create a relationship between the Parties of "common control", as the term "common control" has been defined and interpreted by United States Environmental Protection Agency within the scope of the Clean Air Act Amendments of 1990.

6. CONDITION OF PREMISES.

CalPeak agrees that that no representations or warranties by or on behalf of the Company have been made to CalPeak as to the environmental condition of the Premises, including, but not limited to, the existence of Hazardous Materials (as defined in Section 9.4 below) in, on or underneath the Premises. The Company agrees to provide CalPeak with a copy of the environmental reports relating to the Premises described on Exhibit F attached hereto (the "Environmental Reports"), subject to the confidentiality provision set forth below in this Section 6. CalPeak acknowledges that notwithstanding any finding contained in the Environmental Reports as to the condition of the Premises, there may be a presence of Hazardous Materials, fuel or chemical storage tanks, electric and magnetic fields or other substances, material, products or conditions on or under the Premises, hereinafter referred to as "potential environmental hazards", and that the disclosure of the matters within the Environmental Reports completely satisfies the Company's obligation, if any, to provide written notice to CalPeak pursuant to California Health and Safety Code Section 25359.7(a) and satisfies any and all other obligations, either statutory, contractual or common law, to disclose the environmental condition of the Premises to CalPeak. CalPeak accepts the Premises "as is", but is strongly advised by the Company to consider, if it has not already done so, the condition and suitability of all aspects of the Premises and all matters affecting its suitability for the uses specifically granted herein, including, but not limited to, the potential

environmental hazards listed herein; provided that CalPeak shall not conduct any invasive testing on the Premises without the Company's prior written consent.

CalPeak shall not disclose to a third party the Environmental Reports or any information contained therein, except to its professional advisors or in order to comply with any applicable law or regulation or in connection with any court or regulatory proceeding; provided, however, that in the latter case, CalPeak will provide the Company with prompt written notice so that the Company may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Section. In the event that such protective order or other remedy is not obtained, the Company will waive compliance with provisions of this Section to allow CalPeak to comply with such legal obligation. The Company shall be entitled to all remedies available at law or in equity to enforce or seek relief in connection with this confidentiality obligation.

7. CALPEAK'S CONDUCT ON PREMISES.

7.1 CalPeak's Sole Risk. Except as set forth herein or in the Special Facilities Agreement or Interconnection Agreement, CalPeak shall use the Premises at its sole risk and expense.

7.2 Disclosure of Hazardous Materials. Prior to the Commencement Date and on January 1 of each subsequent year, including January 1 of the year after the termination of this Agreement, CalPeak shall disclose to Sandra Olson, PG&E's Environmental Representative, at the address set forth on Exhibit H, the names and amounts of any and all Hazardous Materials which are generated, stored, used or disposed of on the Premises by CalPeak or its employees, agents, contractors, licensees or invitees or which CalPeak intends to generate, store or use on the Premises. No other Hazardous Materials may be generated, stored or used on the Premises. CalPeak shall not dispose of, release or discharge any Hazardous Materials on or from the Premises.

7.3 Compliance with Laws. CalPeak shall comply with all local, state, and federal laws, regulations, rules and orders which pertain or are applicable to the activities of CalPeak hereunder ("Applicable Laws"), including, but not limited to, those laws whether existing or new which relate to the use, storage, handling, treatment, or disposal of Hazardous Materials, or to health, safety, noise, environmental protection, or air and water quality. CalPeak shall furnish evidence of such compliance upon the Company's request and to the Company's satisfaction.

7.4 Notice of Violations. CalPeak shall notify the Company in writing within forty-eight (48) hours of any notice of violation, investigation, order or enforcement proceeding against CalPeak which in any way relates to the use, storage, handling, treatment release, discharge, or disposal of Hazardous Materials on the Premises; or to any suspected contamination of any soil or groundwater on the Premises. Such notice shall include a complete copy of any order, complaint, agreement, or other document in CalPeak's possession, which has been issued, executed or proposed, whether in draft or final form.

7.5 Remedial Work. In the event of any investigation or monitoring of site conditions or any clean-up, containment, restoration, removal or other remedial work (collectively, the "Remedial Work") is required under any Applicable Laws, by any judicial order, or by any governmental entity as the result of the presence, suspected presence, release or suspected release of any Hazardous Materials in or into the air, soil, surface water or groundwater at, on, about, under or within the Premises or any portion thereof resulting from the operations or activities on the Premises of CalPeak or its agents, employees, contractors, invitees, or licensees, then, at the Company's option, either CalPeak shall perform or cause to be performed the Remedial Work or the Company may cause such Remedial Work to

be performed and CalPeak shall reimburse the Company within thirty (30) days following demand therefor. All Remedial Work performed by CalPeak shall be performed in compliance with all Applicable Laws and by one or more contractors, selected by CalPeak and approved in advance in writing by the Company (and under the supervision of a consulting engineer selected by CalPeak and approved in advance in writing by the Company), in accordance with a work plan approved by the Company in the Company's reasonable discretion. All costs and expenses of such Remedial Work shall be paid by CalPeak, including, without limitation, the charges of such contractor(s), the consulting engineer, and the Company's reasonable attorneys' fees and costs incurred in connection with monitoring or review of such Remedial Work.

7.6 No Interference. CalPeak shall not in any way interfere or permit any interference with the Company's use of its Property. Interference shall include, but not be limited to, any activity by CalPeak that places any of the Company's gas or electric facilities in violation of any of the provisions of General Order Nos. 95 (Overhead Electric), 112 (Gas), or 128 (Underground Electric) of the CPUC or any other applicable provisions of the laws and regulations of the State of California or other governmental agencies (whether federal or state) under which the operations of utility facilities are controlled or regulated. CalPeak shall maintain the Premises reasonably consistent with the surrounding Property and shall secure it with its own fence and gate.

7.7 Minimum Clearances from Electric Conductors. CalPeak shall not erect, handle, or operate any tools, machinery, apparatus, equipment, or materials closer to any of the Company'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.

7.8 Restrictions on Drilling, Boring and Excavating. CalPeak shall not drill, bore, or excavate within ten (10) feet of any of the Company's underground facilities, including, but not limited to, gas pipelines, valves, regulators or electric conduits.

7.9 Required Cessation of Activities. In the event the Company's on-site representative determines that CalPeak's activities in any way currently endanger, or reasonably could be anticipated to imminently endanger, any of the Company's Property, utility facilities, the environment, or the health or safety of any person or persons, the Company's representative may, at his/her sole discretion, temporarily halt CalPeak's activities until proper and appropriate protective measures may be taken to eliminate such endangerment. CalPeak shall indemnify and hold the Company harmless from any claims in any way resulting from any delay or action caused or taken by a Company representative under this Section 7.9. The Company's right to halt activities under this Section 7.9 shall not in any way affect or alter CalPeak's obligations under Section 9, entitled, "INDEMNIFICATION" below, nor shall it release CalPeak from any of its obligations hereunder that pertain to health, safety, or the protection of the environment.

7.10 Minimize Noise Effects. CalPeak shall design, construct and operate the Unit in such a way so as to minimize noise effects on the area surrounding the Premises in compliance with Applicable Laws. CalPeak shall use best efforts to address and mitigate noise concerns, if any, raised by landowners adjacent to the Premises. Such efforts shall include, but not be limited to, prompt response to issues and concerns raised by such landowners relating to noise generated by operations on the Premises and courtesy notification to landowners of planned construction or unusual increases in noise levels.

7.11 Environmental Plans. CalPeak shall, at its sole expense, prepare all environmental plans related to the Unit and CalPeak's use of the Premises ("Environmental Plans") as

required by local, state, and federal governmental authorities, laws, regulations or rules. These may include a Facility Environmental Emergency Plan, Spill Prevention Control and Countermeasure Plan, or Hazardous Materials Business Plan, and other filings and plans. CalPeak's Environmental Plans shall be consistent with the Company's use of the Property and the Company's environmental plans for the Property, and CalPeak shall submit its Environmental Plans to Sandra Olson, PG&E's Environmental Representative, at the address set forth on Exhibit H, for the Company's review and approval at least twenty (20) days prior to their submittal to any governmental agency(ies). The Company's approval of such Environmental Plans shall not be unreasonably withheld or delayed. In no event shall CalPeak commence business operations on the Premises without first having received the Company's approval of the Environmental Plans.

7.12 Company Access to the Premises. The Company shall have unimpaired access to the Premises at all times and may have representatives on site to witness various activities of CalPeak including, but not limited to, construction activities. The Company may at any time take samples of any air, soil or groundwater at its sole discretion but at its own expense, unless the testing shall indicate, that CalPeak has violated any provisions of this Agreement, in which case CalPeak shall reimburse the Company for the cost of such environmental testing immediately upon demand. CalPeak shall notify the Company in writing three (3) business days prior to the commencement of any excavation, construction, installation, operation or any other significant activities on the Premises.

7.13 Groundwater Wells. CalPeak shall have the right to test, drill, and operate groundwater wells on the Premises, at no cost to the Company; provided that: (a) prior to commencing any activity on the Premises with respect to a groundwater well, (i) CalPeak submits to Sandra Olson, PG&E's Environmental Representative, at the address set forth on Exhibit H, for the Company's review and approval, in its reasonable discretion, detailed plans for the testing, drilling, and operation of any proposed groundwater well; (ii) the Company approves such plans in writing; and (iii) CalPeak obtains all Governmental Approvals required for the testing, drilling, and operation of such groundwater well; and (b) CalPeak tests, drills, and operates such groundwater well in a workmanlike manner and in strict compliance with the plans approved by the Company and all Applicable Laws.

7.14 Alterations. Following the initial construction of the Unit, CalPeak shall make no changes or alterations to the Unit ("Alterations") that require Governmental Approval without the prior written consent of the Company, which consent shall not be unreasonably withheld, conditioned or delayed. CalPeak shall make any and all Alterations to the Unit in a good and workmanlike manner and in accordance with all Applicable Laws.

8. PERMITS, AUTHORIZATIONS AND NOTIFICATIONS.

8.1 Governmental Approvals and Notifications. CalPeak shall obtain and maintain, at no cost to the Company, all permits, approvals and authorizations from all local, state, and federal governmental or permitting authorities (collectively, "Governmental Approvals") and shall provide all notifications to all such authorities ("Governmental Notifications"), as required for CalPeak's use of or activities on the Premises, including, without limitation, the construction, siting, installation, operation, demolition, and removal of the Unit. Such Governmental Approvals and Governmental Notifications shall include, but not be limited to, those pertaining to air quality, management and storage of Hazardous Materials. CalPeak shall obtain all discretionary Governmental Approvals and provide all Governmental Notifications required for the siting, construction, and operation of the Unit prior to the start of any work on the Premises for the installation of the Unit.

8.2 Land Use Entitlements. CalPeak is authorized to apply for, but not accept, all necessary land use entitlements, permits and authorizations, and to provide all notifications required in connection therewith, on behalf of the Company as the owner of the Premises at no cost to the Company. At CalPeak's request, the Company shall provide written documentation addressed to CalPeak and to all relevant governmental or permitting authorities authorizing such activity by CalPeak. The Company shall cooperate with CalPeak in obtaining such land use entitlements, permits and authorizations. The Company shall sign and accept such permits unless it has objections to them. As set forth in Section 1.2, the term of this Agreement shall not commence if any such permits contain conditions that are objectionable to the Company.

8.3 Entitlement Conditions. In the event that, either before or after the Commencement Date, any governmental or permitting authority imposes any conditions or requirements that will affect the Premises or the Company after the termination of this Agreement in any manner (such as, but not limited to landscaping or environmental requirements) as the result of CalPeak's acts or omissions under the terms of this Agreement, CalPeak shall immediately submit such conditions or requirements for the Company's review. CalPeak shall be required to implement such condition or requirements at CalPeak's sole expense, including any continuing conditions or requirements, including, but not limited to, the maintenance of landscaping or the monitoring of environmental conditions; provided, however, that if any such conditions or requirements are imposed after the Commencement Date, and CalPeak, in its reasonable judgment, disagrees with any such condition or requirement, CalPeak shall have the right to terminate this Agreement upon sixty (60) days' notice to the Company. The obligations of this section shall survive termination or expiration of this Agreement.

9. INDEMNIFICATION; WAIVER AND RELEASE.

9.1 Indemnification Generally. CalPeak shall, to the maximum extent permitted by law, protect, indemnify, hold harmless and defend the Company, its affiliates, subsidiaries, parent company, officers, managers, directors, agents, and employees (the Company and such other parties are, collectively, the "Indemnitees"), from and against all claims, demands, losses, damages, costs, expenses (including reasonable attorneys' and consultants' fees and expenses) and liability (legal, contractual or otherwise) (collectively, "Claims"), which arise from or are in any way connected with any:

- (a) Injury to or death of persons, including but not limited to employees of the Company or CalPeak;
- (b) Injury to property or other interests of the Company, CalPeak, or any third party;
- (c) Violation of a local, state or federal common law, statute, regulation, or ordinance, including but not limited to Environmental Laws (as defined in Section 9.4 below);
- (d) Strict liability imposed by any law or regulation;

so long as such Claims arise from or are in any way connected with CalPeak's use of the Premises or its performance of, or failure to perform, this Agreement, excepting only (i) Claims to the extent arising from the gross negligence or willful misconduct of the Company, its officers, managers, or employees or agents, or (ii) Claims arising from the presence of Hazardous Materials existing on the Premises as of the Commencement Date, unless such Claims arise from the negligence or intentional misconduct of CalPeak, its officers, managers, employees or agents (collectively, "CalPeak Parties") or the exacerbation by any CalPeak Parties of environmental conditions on the Premises as of the Commencement Date.

CalPeak's obligations under this Section 9.1 shall survive the expiration or earlier termination of this Agreement.

9.2 Environmental Claims. CalPeak acknowledges that any Claims that are caused by or arise from the presence, movement, use, release, emission, discharge, or spill of any Hazardous Materials and that are caused by or arise from CalPeak's use of the Premises, including, without limitation, the exacerbation by any CalPeak Parties of environmental conditions on the Premises as of the Commencement Date, are expressly within the scope of the foregoing indemnity. Likewise, the costs, expenses, and legal liability for environmental investigations, monitoring, containment, abatement, removal, repair, cleanup, restoration, remedial work, penalties, and fines arising from strict liability or the violation of any local, state, or federal law or regulation, attorney's fees, disbursements, and other response costs incurred as a result of such presence, movement, use, releases or spills are expressly within the scope of the foregoing indemnity. In no event shall CalPeak have any responsibility for any Claims related to any release or threatened release of any Hazardous Materials on, from, into or onto the Premises, the Property or any adjacent property except to the extent caused by or arising from CalPeak's activities or the activities of its employees, agents or contractors.

9.3 Defense Requirements. CalPeak shall, at the Company's request, defend, with counsel approved in writing by the Company, any action, claim, or suit asserting a claim which is covered by the indemnity described in Section 9.1. CalPeak shall pay all costs and expenses that may be incurred by the Company in enforcing such indemnity, including reasonable attorney's fees of both in-house and outside counsel.

9.4 Definition of Hazardous Materials. For purposes of this Agreement, the term "Hazardous Materials" means (a) petroleum or petroleum products, natural or synthetic gas, asbestos in any form, urea formaldehyde foam insulation, radon gas, polychlorinated biphenyls (PCB), special nuclear or byproduct material, lead based paint and other lead contamination; (b) any substances defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous wastes," "restricted hazardous wastes," "toxic substances," "toxic pollutants," "contaminants" or "pollutants," or words of similar import, under any applicable federal, state or local statute, law, rule, regulation, ordinance, code, policy or rule of common law now or hereafter in effect and in each case as amended, and any judicial or administrative interpretation thereof, including any judicial or administrative order, consent decree or judgment, relating to the environment, health, safety or Hazardous Materials (collectively, "Environmental Laws"); and (c) any other substance to which exposure which is regulated by any governmental authority.

9.5 CalPeak's Waiver and Release. The Company shall not be liable to CalPeak for, and CalPeak hereby waives and releases the Company and its affiliates and officers from, any and all liability, whether in contract, tort or on any other basis, for any injury, damage or loss to CalPeak, CalPeak's business, loss of CalPeak's profits or other financial loss to CalPeak resulting from or attributable to an occurrence on the Premises, the condition of the Premises, or the use or occupancy of the Premises, except to the extent that such injury, damage, or loss was proximately caused by the Company's gross negligence or willful misconduct and except as otherwise expressly provided in this Agreement.

9.6 Company Indemnification. The Company shall, to the maximum extent permitted by law, protect, defend, indemnify and hold harmless CalPeak, its affiliates, subsidiaries, parent company, officers, managers, directors, agents, and employees from and against any and all Claims brought or suffered by third parties (which, for purposes of this Agreement, means all persons or entities other than CalPeak, its successors-in-interest and their respective partners, affiliates, subsidiaries,

parent company, officers, managers, directors, agents, and employees) arising out of (a) the Company's gross negligence or willful misconduct, or (b) the presence of Hazardous Materials existing on the Premises as of the Commencement Date, unless such Claims arise from the negligence or intentional misconduct of any CalPeak Parties or the exacerbation by any CalPeak Parties of environmental conditions on the Premises as of the Commencement Date.

9.7 Special/Consequential Damages. In no event shall either Party be liable to the other Party for any special, punitive, incidental, indirect, or consequential damages arising out of or in connection with this Agreement, however caused, whether arising in contract, tort (including negligence) strict liability, or otherwise.

10. INSURANCE.

CalPeak shall maintain in effect during the term of this Agreement insurance as set forth on Exhibit D attached hereto and incorporated herein.

11. TAXES.

CalPeak shall pay any tax, assessment, lien, license fee, license tax, tax or excise on rent, or any other levy, charge or expense, together with any statutory interest thereon, imposed or required at any time by any federal, state, county or municipal authority having jurisdiction, or any political subdivision thereof, on any of CalPeak's personal property or improvements installed on the Premises, including, without limitation, the Unit.

12. APPLICABLE LAW.

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.

13. LIENS.

In the event that any liens or stop notices are filed or placed on the Premises as a result of or in connection with the furnishing of materials or services by anyone to CalPeak, or otherwise in connection with this Agreement granted hereunder or the use of the Premises by CalPeak, CalPeak shall immediately take all action necessary to obtain the release of all such liens and stop notices, hold the Company harmless from and pay the Company for all costs incurred and amounts paid to obtain any such release.

14. NOTICES.

All notices to be given under this Agreement shall be in writing and either: (a) sent by certified mail, return receipt requested, in which case notice shall be deemed delivered three (3) business days after deposit, postage prepaid in the United States mail, or (b) sent by a nationally recognized overnight courier, in which case notice shall be deemed delivered one (1) business day after deposit with this courier, or (c) sent by telecopy or similar means, if a copy of the notice is also sent by United States Certified Mail, in which case notice shall be deemed delivered on transmittal by telecopier or other similar means provided that a transmission report is generated reflecting the accurate transmission of the notices, as follows:

Company: PACIFIC GAS AND ELECTRIC COMPANY
P.O. Box 770000, Mail Code N10A
San Francisco, CA 94177
Attn.: Lu de Silva
Manager, Building and Land Services
Fax Number: (415) 973-6979

Hand Delivery address:

77 Beale Street, Mail Code N10A
San Francisco, CA 94105

With copy to: PACIFIC GAS AND ELECTRIC COMPANY
Attn.: Land Agent
343 Sacramento Street
Auburn, CA 95603
Phone: (530) 889-3131
Fax: (530) 889-3392

And

Sharon Silverman, Esq.
PACIFIC GAS AND ELECTRIC COMPANY
P.O. Box 7442, Mail Code B30A
San Francisco, CA 94120

CalPeak: CALPEAK POWER LLC
701 "B" Street, Suite 340
San Diego, CA 92101
Attn: Charles Hinckley

With copy to: Latham & Watkins
565 Montgomery Street, Suite 1900
San Francisco, CA 94111
Attn: Kenneth Whiting

These addresses may be changed by written notice to the other Party provided that no notice of a change of address shall be effective until actual receipt by the Parties of the notice. Copies of notices, if any are

so indicated, are for informational purposes only, and a failure to give or receive copies of any notice shall not be deemed a failure to give notice.

15. ASSIGNMENT/ENCUMBRANCE.

15.1 Assignment. This Agreement is personal to CalPeak, and CalPeak shall not assign, sublease, or otherwise transfer its interest, rights, or obligations under the Agreement in whole or in part. Any assignment, sublease, or other transfer of rights or delegation of duties under this Agreement by CalPeak shall be null and void. Notwithstanding the foregoing, the Company acknowledges and agrees that, without the Company's consent, (a) CalPeak shall have the right to assign this Agreement to a site-specific project entity formed by United Technologies Energy Holdings or to an affiliate of CalPeak (an entity which is controlled by, controls, or is under common control with, CalPeak) and (b) CalPeak shall have the right to encumber this Agreement to one or more commercial lenders as set forth in this Section 15; provided that, in the case of an assignment pursuant to clause (a) above, (i) CalPeak shall not be in default (beyond applicable notice and cure periods) in the performance of any of its obligations under this Agreement at the time of the assignment; (ii) CalPeak delivers to the Company a notice of proposed assignment at least thirty (30) days prior to the effective date thereof and promptly supplies the Company with any documents or information reasonably requested by the Company regarding such assignment or assignee, including, but not limited to, copies of the instrument of assignment and copies of documents establishing to the reasonable satisfaction of the Company that the transaction in question is one permitted hereunder, and (iii) no such permitted assignee shall have the right to further assign this Agreement without the prior written consent of the Company, which shall not be unreasonably withheld; and (iv) any such proposed assignment is made for a good faith operating business purpose and not, whether in a single transaction or in a series of transactions, be entered into as a subterfuge to evade the obligations and restrictions relating to assignments and subleases set forth in this Agreement. "Control," as used in this Section, shall mean the ownership, directly or indirectly, of at least fifty-one percent (51%) of the voting securities of, or possession of the right to vote, in the ordinary direction of its affairs, of at least fifty-one percent (51%) of the voting interest in, any person or entity.

15.2 Encumbrance by Leasehold Mortgagee. CalPeak shall have the right at any time and from time to time during the term of this Agreement, with prior notice to the Company, to encumber its leasehold estate hereunder with a mortgage, deed of trust or other security instrument (a "Leasehold Mortgage") in favor of a third party or third parties (a "Leasehold Mortgagee"), upon condition that all rights acquired under such Leasehold Mortgage shall be subject to each and all of the covenants, conditions and restrictions set forth in this Agreement, and all rights and interests of the Company herein, none of which covenants, conditions and restrictions is or shall be waived by the Company by reason of the rights given to CalPeak under this Section 15.

15.3 Notices of Default; Right to Cure.

(a) The Company shall deliver to the Leasehold Mortgagee a copy of all notices relating to CalPeak's failure to perform its obligations under this Agreement concurrently with the delivery thereof to the CalPeak. For such purpose, CalPeak shall notify the Company of the name and address for each Leasehold Mortgagee in writing. The Company shall only have the obligation to deliver notices to a Leasehold Mortgagee for whom it has received written notification from CalPeak pursuant to the terms of this Agreement.

(b) In the event of any default by CalPeak under any of the provisions of this Agreement, the Leasehold Mortgagee shall have the right, but not the obligation, to cure such default, and will have the same grace period, if any, as is given CalPeak for remedying such default or causing it

to be remedied, plus, in the event of a monetary default, or in the event of a non-monetary default that can be cured within thirty (30) days, an additional period of fifteen (15) days after the later of (i) expiration of CalPeak's grace period or (ii) the delivery by the Company to the Leasehold Mortgagee of such notice of default. If prior to the expiration of the grace period specified in this section, the Leasehold Mortgagee shall cure all monetary defaults and give the Company written notice that it intends to undertake the cure of such non-monetary default or to exercise its rights to acquire the interest of CalPeak in this Agreement by foreclosure or otherwise, and shall immediately commence and then proceed with all due diligence to completion, then the Company shall not terminate or take any action to effect a termination of this Agreement or reenter or take possession of the Premises so long as the Leasehold Mortgagee is diligently effecting such foreclosure (or deed in lieu) or curing such default; provided, however, that the Company does not waive its rights under this Agreement or to declare any subsequent events of default hereunder or exercise any of its rights and remedies under this Agreement, subject to the notice and cure rights of the Leasehold Mortgagee.

(c) The Company shall accept such performance by the Leasehold Mortgagee as though the same had been performed by the CalPeak; and for such purpose the Company hereby authorizes the Leasehold Mortgagee to enter upon the Premises and to exercise any of the CalPeak's rights and duties under this Agreement.

15.4 New Agreement. If this Agreement terminates for any reason prior to the Expiration Date other than for an uncured default, or in the event of the rejection of this Agreement by CalPeak or trustee in bankruptcy under the provisions of Bankruptcy Code, 11 USC § 365, then within fifteen (15) days following such termination or such rejection of this Agreement, the Leasehold Mortgagee shall have the right, but not the obligation, to receive from the Company, a duly executed and valid and enforceable Agreement granting the Leasehold Mortgagee the right to use the Premises for the balance of the then unexpired term of this Agreement (immediately prior to the termination or rejection) containing provisions identical to the provisions of this Agreement, except such provisions designating the parties thereto and providing for the right of assignment and subletting by the Leasehold Mortgagee, subject to the consent of the Company, which consent shall not be unreasonably withheld or delayed, and accompanied by a duly executed memorandum of such new Agreement in suitable form for recording. In connection with such new Agreement, the ownership of the Unit located on the Premises, if any, shall be deemed to have been transferred to the Leasehold Mortgagee, and in the event of a subsequent assignment by the Leasehold Mortgagee, then to such assignee and its successors and assigns. The Company's obligation to enter into the new Agreement shall be conditioned upon the following: (a) the Leasehold Mortgagee shall have cured all monetary defaults and commenced, and diligently prosecuted to completion, the cure of all non-monetary defaults; and (b) the Leasehold Mortgagee shall reimburse the Company for all reasonable costs and expenses incurred in entering into the new lease.

15.5 Personal Property. The Company acknowledges and agrees that (a) the Unit and all ancillary equipment or fixtures installed or used by CalPeak in connection therewith or otherwise in connection with CalPeak's activities on the Premises shall be and remain personal property even though they may be affixed to or placed on the Premises, (b) CalPeak may grant one or more security interests or liens in such personal property to one or more Leasehold Mortgagees or other financing lenders and (c) upon request, the Company shall execute and deliver to any such Leasehold Mortgagee or lender a commercially reasonable landlord waiver disclaiming any interest in such personal property.

15.6 Miscellaneous.

(a) CalPeak's interest in this Agreement may be assigned pursuant to judicial or non-judicial foreclosure or a conveyance in lieu of foreclosure (a "Foreclosure Transfer").

Any transferee under a Foreclosure Transfer, and any Leasehold Mortgagee that acquires CalPeak's interest under a new lease pursuant to this Agreement, may assign this Agreement subject to the consent of the Company, which consent shall not be unreasonably withheld or delayed, and shall thereupon be released from all liability as CalPeak under this Agreement from and after the date of such assignment.

(b) The cancellation, surrender or amendment of this Agreement by CalPeak shall not be effective as against a Leasehold Mortgagee without the written consent of the Leasehold Mortgagee.

(c) Within fifteen (15) days after written request therefor from a Leasehold Mortgagee, the Company shall deliver to the Leasehold Mortgagee (and any other party identified by the Leasehold Mortgagee) an estoppel certificate signed by the Company in form reasonably designated by the Leasehold Mortgagee which certifies as to: (i) the rent payable under the Agreement; (ii) the term of this Agreement and the rights of CalPeak, if any, to extend the term of this Agreement; (iii) the nature of any defaults by CalPeak alleged by the Company; and (iv) any other matters reasonably requested by the Leasehold Mortgagee.

(d) At the request of any Leasehold Mortgagee, the Company and CalPeak shall execute and record in the public records an appropriate memorandum of this Agreement. Upon the termination or expiration of this Agreement and upon receipt of a request from the Company to execute a quitclaim in favor of the Company which results in the removal of the memorandum from title, CalPeak shall execute and cause to be recorded such quitclaim instrument. If CalPeak fails to execute and record a quitclaim instrument within ten (10) days after receipt of the Company's request therefore, the Company may act as CalPeak's attorney-in-fact to cause such instrument to be executed and recorded.

16. CONDEMNATION.

16.1 Taking of the Premises. As used in this Section 16, the term "Taking" shall mean a condemnation or Taking of all or any portion of the Premises in any manner for public or quasi-public use, including but not limited to a conveyance or assignment in lieu of a condemnation or Taking. In the event of a Taking of all or any part of the Premises, or of any portion of or element of CalPeak's non-exclusive access or other appurtenant rights, this Agreement shall terminate as to the part so taken as of the earlier of the date of the vesting of title or the date of dispossession of CalPeak as a result of such Taking ("Date of Taking"). In the event of a Taking of all of the Premises, this Agreement shall automatically terminate as of the Date of Taking. In the event of a partial Taking of the Premises, either the Company or CalPeak shall have the right to terminate this Agreement as to the balance of the Premises as of the Date of Taking, by notice to the other within thirty (30) days following notice of the date on which such vesting or dispossession will occur.

16.2 Condemnation Award. In the event of any Taking, the Company shall be entitled to any and all compensation, damages, income, rent, awards, or any interest therein whatsoever which may be paid or made in connection therewith, and CalPeak shall have no claim against the Company for the value of any unexpired term of this Agreement or otherwise. In the event of a partial Taking of the Premises which does not result in a termination of this Agreement, the Base Rent thereafter to be paid shall be equitably reduced by the Company. CalPeak may independently claim for the value of the Unit, and for the value of its other personal property or moving expenses, provided that no claim shall diminish the claim of the Company. In the event of a partial Taking of the Premises which does not result in a termination of this Agreement, the Company shall not be obligated to replace, repair or restore any improvements to the Premises or alterations to the Premises made by or on behalf of CalPeak.

16.3 Termination on Taking. The parties acknowledge that the provisions of this Section 16 are adopted pursuant to California Code of Civil Procedure Section 1265.160, in lieu of the provisions of California Code of Civil Procedure Sections 1265.110 through 1265.150, and CalPeak hereby waives and releases any right given CalPeak to terminate this Agreement in the event of a Taking of the Premises or portion thereof under any Applicable Laws.

17. DAMAGE OR DESTRUCTION.

If the Premises, the Unit or any other leasehold improvements, or any portion thereof, are damaged or destroyed by the elements, fire or other casualty ("Casualty"), neither the Company nor CalPeak shall be obligated to repair, restore, or rebuild (collectively, "Restore") all or any portion of the Premises, the Unit or other leasehold improvements so damaged or destroyed. CalPeak, however, may, subject to the Company's approval of its proposed restoration plan, which approval shall not be unreasonably withheld, elect to Restore all or any portion of the Premises, the Unit or other leasehold improvements so damaged or destroyed. If CalPeak elects not to Restore the damaged Premises, Unit or other leasehold improvements following a Casualty, and elects to cease operations from the Premises, the Company and, so long as CalPeak is not then in default under any of its obligations under this Agreement beyond applicable notice and cure periods, CalPeak may terminate this Agreement by giving written notice to the other party ("Termination Notice"), in which event (a) this Agreement shall be terminated effective as of the date set forth in such Termination Notice (which shall be not less than one hundred twenty (120), nor more than one hundred eighty (180), days following the date of such Termination Notice) ("Termination Date"), (b) CalPeak shall continue to pay Rent hereunder until the Termination Date, and (c) CalPeak shall surrender possession of the Premises to the Company in the condition required by Section 22 below on or before the Termination Date.

18. EXCULPATION.

Notwithstanding anything to the contrary provided in this Agreement, neither the Company nor any of the other Indemnitees, nor their successors, assigns, agents, or any mortgagee in possession shall have any personal liability with respect to any provisions of this Agreement and, if the Company is in breach or default with respect to its obligations or otherwise, the Company's liability shall be limited to the value of the Company's interest in the Property for the satisfaction of CalPeak's remedies.

19. NO JOINT VENTURE.

Nothing contained in this Agreement shall be interpreted as creating a joint venture, partnership, or any other relationship between the Parties, other than the relation of a lessor and a lessee as described in this Agreement.

20. SURVIVAL.

Upon termination or expiration of this Agreement granted hereunder, all provisions of this Agreement that by their nature are intended to survive shall survive such termination or expiration.

21. REPRESENTATION BY LEGAL COUNSEL.

The provisions of this Agreement, and the exhibits referred to herein, have been prepared, examined, negotiated and revised by each Party and their respective lawyers, and no

implication shall be drawn and no provision shall be construed against any Party hereto by virtue of the purported identity of the drafter of this Agreement, or any portion thereof.

22. SURRENDER.

22.1 On or before the expiration or earlier termination of this Agreement, CalPeak shall at, its sole cost and expense, remove from the Premises the Unit and all debris and waste material resulting from CalPeak's activities or the activities of its employees, agents or contractors, and restore the Premises as nearly as possible to the condition that existed prior to CalPeak's entry upon the Premises. Such restoration shall include, but not be limited to, all Remedial Work required by Applicable Laws. CalPeak's failure to restore the Premises to the condition required hereunder prior to the Expiration Date or earlier termination of this Agreement shall constitute CalPeak's holding over on the Premises for purposes of Section 23 below. CalPeak acknowledges that its obligations under this Section 22.1 shall not be complete until CalPeak furnishes the Company with (a) the written results of environmental tests which demonstrate that the Premises is not affected by Hazardous Materials resulting from CalPeak's operations or activities on the Premises, and (b) a "no further action" letter or letters from all applicable government or regulatory agencies with jurisdiction or authority over Hazardous Materials present (or that may be present) on the Premises, stating that no further remediation or monitoring is required to address potential contamination associated with the Unit.

22.2 At least one hundred eighty (180) days prior to the expiration of this Agreement, or upon any earlier termination of this Agreement, as soon as practicable (but in no event later than thirty (30) days after such earlier termination) but in all events prior to commencing the restoration of the Premises, CalPeak shall submit to Sandra Olson, PG&E's Environmental Representative, at the address set forth on Exhibit H, for the Company's review and approval, a plan for the demolition and removal of the Unit (the "Demolition Plan") and a plan for conducting environmental tests to determine whether the Premises is affected by Hazardous Materials resulting from CalPeak's operations or activities on the Premises ("Testing Plan"). CalPeak's Testing Plan shall be prepared by an independent environmental consulting company (the "Environmental Consultant") proficient in such environmental testing and approved by the Company. The Testing Plan must include the following: (a) a list of the locations and types of Hazardous Materials generated, handled, used, stored, spilled, released, discharged or disposed of in, on or about the Premises by CalPeak or its agents, contractors, employees, licensees or invitees during the Term; (b) the location and depths of all samples, including, without limitation, soil and groundwater samples, to be taken; and (c) an explanation by the Environmental Consultant supporting the method and scope of the Testing Plan.

22.3 The Company shall approve or disapprove the Demolition Plan and Testing Plan within thirty (30) days after receipt thereof. If the Company disapproves the Demolition Plan and/or the Testing Plan, the Company shall state in writing the reasons for its disapproval. CalPeak shall then revise the disapproved Plan to address the Company's objections and resubmit the Plan to the person identified above within fifteen (15) days after receipt of the Company's disapproval. The Company shall approve or disapprove of any such revisions to the Demolition Plan and/or Testing Plan within fifteen (15) days after receipt thereof. This procedure shall be repeated until the Company approves the Demolition Plan ("Approved Demolition Plan") and the Testing Plan ("Approved Testing Plan") The Company and CalPeak agree to work in good faith to agree upon the Approved Demolition Plan and the Approved Testing Plan. CalPeak shall complete the environmental tests required under the Approved Testing Plan (the "Environmental Tests") within forty-five (45) days after CalPeak completes the removal of the Unit.

22.4 Within thirty (30) days after the Environmental Tests are completed, CalPeak shall submit to Sandra Olson, PG&E's Environmental Representative, at the address set forth on Exhibit H, for the Company's review and approval an investigation report which sets forth in detail the results of the Environmental Tests. If, after its review of such Investigation Report, the Company determines that the Premises are affected by Hazardous Materials resulting from CalPeak's operations or activities on the Premises and that Remedial Work is necessary to restore the Premises to the condition required hereunder, the Company shall notify CalPeak of such determination in writing, and such Remedial Work shall be completed as provided in Section 7.5 of this Agreement.

22.5 Notwithstanding the foregoing, at the Company's sole option, the Company may elect to remove the Unit and perform the removal, restoration and remediation, if any, as described above, in which event CalPeak shall pay the Company for the costs and expenses incurred by the Company in connection therewith within thirty (30) days of receipt of an invoice from the Company.

23. HOLDING OVER.

If CalPeak remains in possession of the Premises after the expiration or other termination of the term of this Agreement, then, at the Company's option, CalPeak shall be deemed to be occupying the Premises as a month-to-month tenant only, at a monthly rental equal to the sum of (a) two (2) times the Base Rent payable during last month of the term, plus (b) Percentage Rent for such holdover period. CalPeak shall also pay all Additional Rent payable under the terms of this Agreement, prorated for each month during which the CalPeak remains in possession. CalPeak shall defend, protect, indemnify and hold the Company harmless from and against any and all Claims resulting from failure to surrender possession upon the Expiration Date or sooner termination of the term, including, without limitation, any claims made by any succeeding tenant and such obligations shall survive the expiration or sooner termination of this Agreement.

24. EXHIBITS.

The following Exhibits attached to this Agreement are incorporated herein by this reference:

Exhibit A-1	Map of Premises
Exhibit A-2	Legal Description of Premises
Exhibit B	Identification of Unit
Exhibit C	Environmental/Safety Performance Requirements
Exhibit D	Insurance Requirements
Exhibit E	Guaranty
Exhibit F	Environmental Reports
Exhibit G	Construction Plans
Exhibit H	List of PG&E Representatives

25. ATTORNEY FEE CLAUSE.

If either Party files any action or brings any proceeding against the other arising from or related to this Agreement, the prevailing party shall be entitled to recover from the other Party as an element of its costs of suit and not as damages, reasonable attorneys' fees (of both in-house and outside counsel), costs and expenses incurred in the action or proceeding, including any appeal thereof. The "prevailing party" within the meaning of this section shall be the Party to the action or proceeding who is

entitled to recover its costs of suit for the proceeding, whether or not the same proceeds to final judgment. A Party not entitled to recover its costs shall not recover its attorneys' fees.

26. EXECUTION.

The Parties and the individuals executing this Agreement on behalf of the Parties, each represent, by executing this Agreement, that he or she is duly authorized to do so and to bind the respective Party to its terms.

27. TIME OF ESSENCE.

Time is of the essence with respect to each and every provision of this Agreement.

28. FORCE MAJEURE.

The obligations of each of the Parties under this Agreement (other than obligations to pay money) shall be temporarily excused if such Party is prevented or delayed in performing such obligations by reason of any strikes, lockouts or labor disputes; government restrictions, regulations, controls, action or inaction; civil commotion; extraordinary weather, fire or other acts of God; or other circumstances beyond such Party's reasonable control.

29. ENTIRE AGREEMENT.

This Agreement, together with any written modifications or amendments to this Agreement hereafter entered into, shall constitute the entire agreement between the parties relative to the subject matter hereof, and shall supersede any prior agreement or understanding, if any, whether written or oral, which CalPeak may have had relating to the subject matter hereof with the Company.

30. INTEREST.

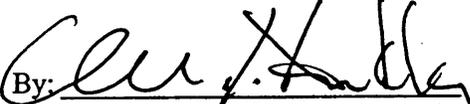
In addition to all other rights and remedies provided the Company, all amounts payable by CalPeak to the Company hereunder which shall remain unpaid for five (5) days after their respective due dates shall bear interest from the date that the same became due and payable to and including the date of payment, whether or not demand is made therefor, at the lesser of (i) the rate of twelve percent (12%) per annum or (ii) the maximum interest rate, if any, permitted to be charged on such delinquent amounts under the law of the State of California (the "Interest Rate").

31. GUARANTY.

This Agreement shall not become effective unless and until the guaranty in the form attached hereto as Exhibit E (the "Guaranty") is duly executed by UT Finance Corporation ("Guarantor"), and delivered to the Company. CalPeak acknowledges that the Guaranty is a material inducement to the execution of this Agreement by the Company.

The parties have read this Agreement, understand it and agree to be bound by its terms as of the Effective Date.

CALPEAK POWER LLC

By: 
Name: Charles C. Hinckley
Title: Vice President
Date: 8/21/01

PACIFIC GAS AND ELECTRIC COMPANY

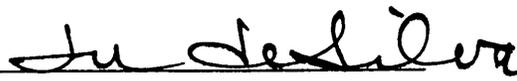
By: 
Name: Lu de Silva
Manager, Land Services
Title: _____
Date: 8.27.01

EXHIBIT A-1

MAP OF PREMISES

The Premises — identified as "Vaca-Dixon Facility Location" on the attached Map, prepared by John R. Wilson, Civil Engineer, dated July 24, 2001.

The Laydown Area — identified as "Vaca-Dixon Laydown Area" on the attached Map, prepared by John R. Wilson, Civil Engineer, dated July 24, 2001.

EXHIBIT "A-1"
 (THIS MAP IS FOR ILLUSTRATIVE PURPOSES ONLY)

N/4 COR. SEC. 1
 T. 6N., R. 1W., M.D.B.&M.

**VACA-DIXON
 FACILITY LOCATION**



S89°26'49"W 40.00'

S90°00'00"E 205.01'

N00°00'09"E 218.67'

S00°00'00"W 258.67'

N27°12'24"E 73.08'

S89°59'39"W 97.41'

S15°13'50"W 55.27'

N00°00'00"E 33.01'

N90°00'00"W 29.50'

N45°00'00"W 28.28'

S38°15'16"W 66.22'

N00°14'00"W 2282.02'

N00°00'00"E 914.66'

S00°00'00"W 893.67'

N87°05'24"E 75.93'

S87°05'24"W 28.41'
 N44°44'18"W 10.84'



JOHN R. WILSON
CIVIL ENGINEER

CIVIL ENGINEERING SURVEYING
 1400 DR., SUITE 132 BAKERSFIELD, CA 93309 (661) 325-4862 FAX (661) 325-5128
 Email: jwrce@aol.com

EXHIBIT "A-1"
 (THIS MAP IS FOR ILLUSTRATIVE PURPOSES ONLY)

N/4 COR. SEC. 1
 T. 6N., R. 1W.,
 M.D.B.&M.

S89°26'49"W 40.00'

S90°00'00"E 5.01'

N27°12'24"E 73.08'

N87°05'24"E 75.93'

N90°00'00"E 355.16'

VACA-DIXON
 LAYDOWN
 AREA

N00°00'00"E 421.40'

N00°00'09"E 218.67'

N00°14'00"W 2282.02'

N00°00'00"E 914.66'

S90°00'00"E 261.56'

S12°31'21"W 431.69'

S87°05'24"W 28.41'



JOHN R. WILSON
CIVIL ENGINEER

CIVIL ENGINEERING SURVEYING
 1400 DR., SUITE 132 BAKERSFIELD, CA 93309 (661) 325-4862 FAX (661) 325-5126
 Email: jwrce@aol.com

EXHIBIT A-2

LEGAL DESCRIPTION OF PREMISES

BEING A PORTION OF SECTION 1, TOWNSHIP 6 NORTH, RANGE 1 WEST, M. D. B. & M., COUNTY OF SOLANO, STATE OF CALIFORNIA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOW;

COMMENCING AT A POINT MARKING THE MOST NORTHERLY CORNER OF THAT CERTAIN PARCEL OF LAND ACQUIRED BY THE STATE OF CALIFORNIA BY DEED RECORDED MARCH 15, 1956 IN BOOK 819 OF OFFICIAL RECORDS, AT PAGE 281, INSTRUMENT NO. 4989, SOLANO COUNTY RECORDS; THENCE ALONG THE EASTERLY LINE OF THAT CERTAIN 2.3 ACRE PARCEL OF LAND ACQUIRED BY HENRY LORENZ, ET UX, BY DIRECTOR'S DEED RECORDED JANUARY 2, 1952 IN BOOK 606 OF OFFICIAL RECORDS, PAGE 462, INSTRUMENT NO. 23, SOLANO COUNTY RECORDS, ALSO BEING A POINT ON THE EASTERLY LINE OF THAT CERTAIN PARCEL OF LAND ACQUIRED BY THE STATE OF CALIFORNIA FROM PACIFIC GAS & ELECTRIC COMPANY BY DOCUMENT RECORDED IN BOOK 1419, AT PAGE 42, OFFICIAL RECORDS, COUNTY OF SOLANO, NORTH 00° 03' 00" EAST, A DISTANCE OF 142.30 FEET; THENCE LEAVING SAID EASTERLY LINE OF SAID 2.3 ACRE PARCEL, AND CONTINUING ALONG THE NORTHERLY LINE OF SAID PARCEL ACQUIRED FROM PACIFIC GAS & ELECTRIC COMPANY, NORTH 87° 05' 24" EAST, A DISTANCE OF 75.93 FEET TO THE TRUE POINT OF BEGINNING; THENCE ALONG SAID LAST DESCRIBED LINE, SOUTH 87° 05' 24" WEST, A DISTANCE OF 28.41 FEET; THENCE NORTH 00° 00' 00" EAST, A DISTANCE OF 914.66 FEET; THENCE NORTH 27° 12' 24" EAST, A DISTANCE OF 73.08 FEET; THENCE NORTH 00°00'09" EAST, A DISTANCE OF 218.77 FEET; THENCE SOUTH 90°00'00" EAST, A DISTANCE OF 205.01 FEET; THENCE SOUTH 00°00'00" WEST, A DISTANCE OF 258.67 FEET; THENCE SOUTH 15°13'50" WEST, A DISTANCE OF 55.27 FEET; THENCE NORTH 90°00'00" WEST, A DISTANCE OF 29.50 FEET; THENCE NORTH 00°00'00" EAST, A DISTANCE OF 33.01 FEET; THENCE NORTH 45°00'00" WEST, A DISTANCE OF 28.28 FEET; THENCE SOUTH 89°59'39" WEST, A DISTANCE OF 97.41 FEET; THENCE SOUTH 38° 15' 16" WEST, A DISTANCE OF 66.22 FEET; THENCE SOUTH 00° 00' 00" WEST, A DISTANCE OF 893.67 FEET; THENCE NORTH 44° 44' 18" WEST, A DISTANCE OF 10.84 FEET TO THE TRUE POINT OF BEGINNING.

7-24-01

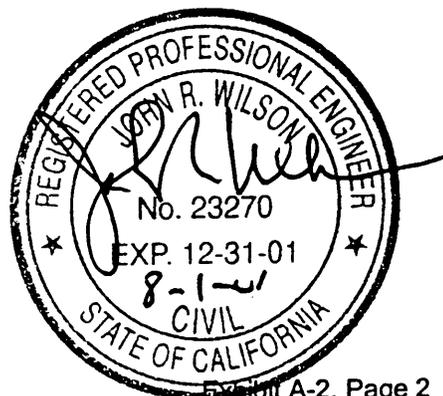


Exhibit A-2, Page 2

(LAYDOWN AREA)

BEING A PORTION OF SECTION 1, TOWNSHIP 6 NORTH, RANGE 1 WEST, M. D. B. & M., COUNTY OF SOLANO, STATE OF CALIFORNIA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOW;

COMMENCING AT A POINT MARKING THE MOST NORTHERLY CORNER OF THAT CERTAIN PARCEL OF LAND ACQUIRED BY THE STATE OF CALIFORNIA BY DEED RECORDED MARCH 15, 1956 IN BOOK 819 OF OFFICIAL RECORDS, AT PAGE 281, INSTRUMENT NO. 4989, SOLANO COUNTY RECORDS; THENCE ALONG THE EASTERLY LINE OF THAT CERTAIN 2.3 ACRE PARCEL OF LAND ACQUIRED BY HENRY LORENZ, ET UX, BY DIRECTOR'S DEED RECORDED JANUARY 2, 1952 IN BOOK 606 OF OFFICIAL RECORDS, PAGE 462, INSTRUMENT NO. 23, SOLANO COUNTY RECORDS, ALSO BEING A POINT ON THE EASTERLY LINE OF THAT CERTAIN PARCEL OF LAND ACQUIRED BY THE STATE OF CALIFORNIA FROM PACIFIC GAS & ELECTRIC COMPANY BY DOCUMENT RECORDED IN BOOK 1419, AT PAGE 42, OFFICIAL RECORDS, COUNTY OF SOLANO, NORTH 00° 03' 00" EAST, A DISTANCE OF 142.30 FEET; THENCE LEAVING SAID EASTERLY LINE OF SAID 2.3 ACRE PARCEL, AND CONTINUING ALONG THE NORTHERLY LINE OF SAID PARCEL ACQUIRED FROM PACIFIC GAS & ELECTRIC COMPANY, NORTH 87° 05' 24" EAST, A DISTANCE OF 75.93 FEET TO THE TRUE POINT OF BEGINNING; THENCE ALONG SAID LAST DESCRIBED LINE, SOUTH 87° 05' 24" WEST, A DISTANCE OF 28.41 FEET; THENCE NORTH 00° 00' 00" EAST, A DISTANCE OF 914.66 FEET; THENCE NORTH 27° 12' 24" EAST, A DISTANCE OF 73.08 FEET; THENCE NORTH 00°00'09" EAST, A DISTANCE OF 218.77 FEET; THENCE SOUTH 90°00'00" EAST, A DISTANCE OF 5.01 FEET; THENCE NORTH 00° 00' 00" EAST, A DISTANCE OF 421.40 FEET; THENCE SOUTH 90° 00'00" EAST, A DISTANCE OF 355.16 FEET; THENCE SOUTH 12° 31' 21" WEST, A DISTANCE OF 431.69 FEET; THENCE NORTH 90° 00' 00" WEST, A DISTANCE OF 261.56 FEET TO THE TRUE POINT OF BEGINNING.

7-24-01



EXHIBIT B
IDENTIFICATION OF UNIT

The Unit shall consist of the following:

One Pratt and Whitney 49-megawatt (MW) FT8 Twin Pac aero-derivative combustion turbine-generator.

The FT8 Twin Pac consists of three primary units: the natural gas turbine unit, the generator unit, and the electrical/control unit.

Turbine and Generator units consist of two opposed gas turbines directly connected through a diaphragm coupling to a single double-ended electric generator.

The electrical/control unit includes 15kV switchgear and all of the controls and instruments necessary for operation.

Emissions control equipment and structures including:

SCR with related catalyst, control skid, pumps, tanks; CO catalyst; CEM/DAS; ducting, exhaust stack sand silencer.

Fuel gas compressor skid

Electrical equipment including transformers and breakers

Other related and ancillary equipment including, but not limited to:

Evaporative cooling water equipment including skids, pumps and tanks

Fire protection equipment

EXHIBIT C

ENVIRONMENTAL/SAFETY PERFORMANCE REQUIREMENTS

CalPeak is responsible for its own environmental and safety management and is expected to manage independently in this regard. However, the Company expects CalPeak to meet similar high compliance standards as the Company holds for its own facilities.

The following are environmental and safety requirements with which the CalPeak shall comply. This list is not inclusive of all environmental and safety requirements and is not meant to be used as a substitute for Federal, State, or local laws, regulations, and ordinances.

1. WASTE MANAGEMENT

- A. CalPeak shall obtain its own hazardous waste generator EPA ID number for its operation and shall handle all aspects of waste management separate from the Company's operation.

2. HAZARDOUS MATERIALS MANAGEMENT

- A. CalPeak shall prepare and submit to the proper regulatory agencies its own Hazardous Materials Business Plan and Hazardous Materials Inventory pertaining to Hazardous Materials handled on the Premises of the operation covered under the Agreement.
- B. CalPeak shall prepare a Spill Prevention Control and Countermeasure Plan in accordance with applicable regulations.
- C. CalPeak shall construct adequate berms and secondary containment in accordance with applicable laws and regulations to protect property from contact with Hazardous Materials, including oil filled equipment, such as transformers, in the event of a leak or spill.

3. WATER QUALITY

- A. CalPeak shall implement a means to control all water discharges, including storm water runoff, so that discharges do not cause erosion or adverse environmental impact.
- B. Except as otherwise expressly provided, CalPeak shall not initiate any well installation on the property without prior written approval from the Company.
- C. Except as otherwise expressly provided, the Agreement does not grant access or use rights to any surface or subsurface minerals or resources, including groundwater.

4. BASELINE SITE CONDITIONS

- A. CalPeak shall assume responsibility for identifying and addressing any endangered species and historic or cultural artifact issues associated with the site.

5. INCIDENT REPORTING

- A. In the event of a release of any Hazardous Materials or any emergency that poses a threat to the public, Company employees, Company property, or the environment, CalPeak shall do all things necessary to contain and control the release or emergency, make appropriate governmental notifications, and notify the Company immediately.

6. SAFETY

- A. All CalPeak's employees, contractors, and subcontractors working on the property shall attend a briefing provided by the Company on electrical substation safety. CalPeak shall have its own safety program for its employees, contractors, and subcontractors working at the site and shall include adequate information on substation safety for those personnel who did not attend the Company's briefing. CalPeak shall inform the Company if any of its employees, contractors, or subcontractors requires access to the Company's adjacent substation facility. The Company may require further training for those individuals prior to granting access to the substation.

EXHIBIT D

INSURANCE REQUIREMENTS

CalPeak shall maintain the following insurance coverage. The Company reserves the right to alter insurance requirements based on project scope and for larger or multiple units. CalPeak is also responsible for its agents and contractors' maintaining sufficient limits of the appropriate insurance coverage.

A. Workers' Compensation and Employers' Liability

1. Workers' Compensation insurance or self-insurance indicating compliance with any applicable labor codes, acts, laws or statutes, state or federal, where CalPeak performs work.
2. Employers' 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 Premises and the use, occupancy and activities by and on behalf of CalPeak and CalPeak Parties on or about the Premises, including in construction of the Unit and other related activities on the Premises, against claims for personal injury (including bodily injury and 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 as reasonably approved by the Company, covering liability imposed by applicable laws upon CalPeak and CalPeak Parties and including, but not limited to, coverage for, premises and operations (including the use of owned and non-owned equipment), contractual liability for both oral and written contracts (covering CalPeak's indemnification obligations under this Agreement), broad-form property damage liability, personal injury liability and advertising liability, products and completed operations, independent contractors and owners' and contractors' protective liability, with deletion of the exclusion for explosion, collapse or underground hazard ("Commercial General Liability Insurance"), having limits of not less than Ten Million Dollars (\$10,000,000) per occurrence for bodily injury, death and property damage, Ten Million Dollars (\$10,000,000) for personal injury liability, and Ten Million Dollars (\$10,000,000) aggregate for products and completed operations, and Ten Million Dollars (\$10,000,000) general aggregate. 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 ten (10) years following completion of construction of the Unit.
3. Coverage shall: a) by "Additional Insured" endorsement (ISO Additional Insured form CG 2026, or a substitute providing equivalent coverage, as reasonably approved by the Company), add as insureds the Company, its directors, officers, agents and employees with respect to liability arising out of work performed by or for CalPeak; and b) be endorsed to specify that CalPeak's insurance is primary and that any insurance or self-insurance maintained by the Company shall not contribute with it.

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 1 "any auto."
2. The limit shall not be less than \$5,000,000 each accident for bodily injury and property damage.
3. Coverage shall be endorsed in accordance with Section 30 of the Motor Carrier Act of 1980 (Category 2).

D. Pollution Liability

1. Coverage for bodily injury, property damage, including clean up costs and defense costs resulting from sudden 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 \$10,000,000 each occurrence for bodily injury and property damage.

E. Additional Insurance Provisions

1. Before commencing performance of work under this Agreement, CalPeak shall furnish the Company with certificates of insurance and endorsements of all required insurance for CalPeak.
2. The documentation shall state that coverage shall not be canceled except after thirty (30) days prior written notice has been given to the Company.
3. The documentation must be signed by a person authorized by that insurer to bind coverage on its behalf and shall be submitted to:

Pacific Gas and Electric Company
Insurance Department - B24H
Post Office Box 770000
San Francisco, CA 94177

A copy of all such insurance documents shall be sent to June Nakanishi, PG&E's Insurance Representative, with a copy to the Company's Land Agent, at their respective addresses set forth on Exhibit H.

4. The Company may inspect the original policies or require complete certified copies, at any time.
5. Upon request, CalPeak shall furnish the Company the same evidence of insurance for its agents or contractors as the Company requires of CalPeak.

6. All insurance required under this Agreement shall be effected under valid enforceable policies issued by insurers of recognized responsibility and licensed to do business in the State of California. Such insurance shall be provided by a company (or companies) having a general policy holder's rating in the most current edition of A.M. Best's Key Rating Guide of A:X or better.

GUARANTY

The undersigned, UT Finance Corporation (the "Guarantor"), unconditionally guarantees to Pacific Gas and Electric Company (the "Company"), the due and timely payment and performance of all obligations of CalPeak Power LLC ("CalPeak") under that certain Agreement to Lease Real Property for Installation of Generators dated as of August 22, 2001, by and between the Company and CalPeak (the "Agreement"), pertaining to real property owned by the Company and commonly referred to as "PG&E's Vaca Dixon Substation", up to, but not exceeding, the aggregate liability of Fifteen Million Dollars (\$15,000,000). Guarantor agrees that the Agreement is enforceable against CalPeak in accordance with its terms. This Guaranty is irrevocable until such obligations are performed in full, irrespective of (i) any modifications or amendments to the Agreement, (ii) the bankruptcy or insolvency of CalPeak, (iii) any change in the time, manner or place of performance of any or all of the obligations of CalPeak guaranteed hereby, or (iv) any amendment to, or waiver of, or consent to departure from, any or all of the obligations of CalPeak under the Agreement. The obligations of Guarantor hereunder shall not be impaired, diminished, released or reduced by any occurrence or circumstance which might otherwise constitute a defense available to, or a discharge of, Guarantor or any other person or entity with regard to all or any part of the obligations guaranteed hereby. In the event that the Company must rescind or restore any payment, or part thereof, received by the Company in satisfaction of the obligations of CalPeak under the Agreement, any prior release or discharge from the terms of this Guaranty shall be without effect, and in this Guaranty shall remain in full force and effect. Guarantor waives all requirements for notice or demand which may lawfully be waived under any applicable law; however, Guarantor reserves the right to assert any claims and defenses that CalPeak is entitled to assert under the Agreement. This Guaranty is an absolute, continuing guaranty of payment and performance and not a guarantee of collection; no beneficiary of this Guarantee shall be required to sue or exhaust any remedies against CalPeak prior to making a demand hereunder and enforcing this Guaranty. This Guaranty shall be governed by the laws of the State of New York, U.S.A., without giving effect to the provisions, policies or principles thereof relating to conflict of laws and Guarantor submits to the personal jurisdiction of the courts of the State of New York and the U.S. federal courts located in New York for purposes of any suit, action or proceeding relating to this Guaranty.

Guarantor further agrees to pay to the Company any and all reasonable costs and expenses (including court costs and reasonable attorneys' fees) incurred by the Company in the preservation and/or enforcement of its rights and remedies hereunder, provided that it is ultimately determined (by the parties, an arbitral tribunal, a court or otherwise) that the Company is entitled to payment by Guarantor.

UT FINANCE CORPORATION

By: Name: Paul OechsliTitle: PresidentDated: 10/3/01

EXHIBIT E

FORM OF GUARANTY

The undersigned, UT Finance Corporation (the "Guarantor"), unconditionally guarantees to Pacific Gas and Electric Company (the "Company"), the due and timely payment and performance of all obligations of CalPeak Power LLC ("CalPeak") under that certain Agreement to Lease Real Property for Installation of Generators dated as of August 22, 2001, by and between the Company and CalPeak (the "Agreement"), pertaining to real property owned by the Company and commonly referred to as "PG&E's Vaca Dixon Substation", up to, but not exceeding, the aggregate liability of Fifteen Million Dollars (\$15,000,000). Guarantor agrees that the Agreement is enforceable against CalPeak in accordance with its terms. This Guaranty is irrevocable until such obligations are performed in full, irrespective of (i) any modifications or amendments to the Agreement, (ii) the bankruptcy or insolvency of CalPeak, (iii) any change in the time, manner or place of performance of any or all of the obligations of CalPeak guaranteed hereby, or (iv) any amendment to, or waiver of, or consent to departure from, any or all of the obligations of CalPeak under the Agreement. The obligations of Guarantor hereunder shall not be impaired, diminished, released or reduced by any occurrence or circumstance which might otherwise constitute a defense available to, or a discharge of, Guarantor or any other person or entity with regard to all or any part of the obligations guaranteed hereby. In the event that the Company must rescind or restore any payment, or part thereof, received by the Company in satisfaction of the obligations of CalPeak under the Agreement, any prior release or discharge from the terms of this Guaranty shall be without effect, and in this Guaranty shall remain in full force and effect. Guarantor waives all requirements for notice or demand which may lawfully be waived under any applicable law; however, Guarantor reserves the right to assert any claims and defenses that CalPeak is entitled to assert under the Agreement. This Guaranty is an absolute, continuing guaranty of payment and performance and not a guarantee of collection; no beneficiary of this Guarantee shall be required to sue or exhaust any remedies against CalPeak prior to making a demand hereunder and enforcing this Guaranty. This Guaranty shall be governed by the laws of the State of New York, U.S.A., without giving effect to the provisions, policies or principles thereof relating to conflict of laws and Guarantor submits to the personal jurisdiction of the courts of the State of New York and the U.S. federal courts located in New York for purposes of any suit, action or proceeding relating this Guaranty.

Guarantor further agrees to pay to the Company any and all reasonable costs and expenses (including court costs and reasonable attorneys' fees) incurred by the Company in the preservation and/or enforcement of its rights and remedies hereunder, provided that it is ultimately determined (by the parties, an arbitral tribunal, a court or otherwise) that the Company is entitled to payment by Guarantor.

UT FINANCE CORPORATION

By: _____

Name: _____

Title: _____

Dated: _____

EXHIBIT F

ENVIRONMENTAL REPORTS

Document	Author	Date
Analytical test results for PG&E-owned well, believed to be for the supply well at the Vaca-Dixon substation.	Anlab	4/18/94
Work Plan for the Assessment of Salt Accumulation and Related Groundwater Impacts at the City of Vacaville Gibson Canyon Creek Wastewater Treatment Plant	Wallace Kuhl & Associates	1/28/98
Letter to PG&E requesting access to substation for well installation.	J. McCall, City of Vacaville	9/3/98
Agreement for Installing Monitoring Well Between City of Vacaville and PG&E	PG&E	12/18/98
Quarterly Groundwater Monitoring and Sampling Report, 4 th Quarter 1998 and 1 st Quarter 1999	Wallace Kuhl & Associates	6/18/99
Letter to PG&E transmitting monitoring report	J. McCall, City of Vacaville	6/21/99
Letter to City of Vacaville commenting on monitoring report	D. Harnish, PG&E	7/1/99
Water Quality Laboratory Report	City of Vacaville	7/2/99
Letter to PG&E responding to comments.	J. McCall, City of Vacaville	7/28/99
Second Quarter 1999 Groundwater Monitoring and Sampling, Gibson Creek Wastewater Treatment Plant, Vacaville, CA	Wallace Kuhl & Associates	8/31/99
Engineering Report on Assessment of Salt Accumulation and Related Groundwater Impacts at the City of Vacaville Gibson Canyon Creek Wastewater Treatment Plant	Larry Walker Associates	9/15/99
Letter to Ms. J. McCall with comments on Report for Gibson Canyon Creek Wastewater Treatment Plant.	D. Harnish, PG&E	9/27/99
Letter to PG&E transmitting 8/31/99 Wallace Kuhl report.	J. McCall, City of Vacaville	9/29/99

Document	Author	Date
Letter Transmitting to CVRWQCB the 9/15/99 Larry Walker Report and 7/17/99 letter with PG&E comments.	J. McCall, City of Vacaville	9/30/99
Quarterly Groundwater Monitoring and Sampling Report, 4 th Quarter 1998 and 1 st Quarter 1999	Wallace Kuhl & Associates	6/18/99
Modified Phase I Environmental Site Assessment Report, Vaca Dixon Substation	Jonas and Associates Inc.	5/15/2001

EXHIBIT G
CONSTRUCTION PLANS

EXHIBIT H

LIST OF PG&E REPRESENTATIVES

<p>MAINTENANCE SUPERVISOR (NOTICE BEFORE ENTRY)</p>	<p>Darryl Williams Maintenance Supervisor 5221 Quinn Road Vacaville, CA 95688 Phone: (707) 452-1963 Fax: (707) 452-1973 DDW8@pge.com</p>
<p>LAND AGENT</p>	<p>Pacific Gas and Electric Company Attn.: Robert Steigmeyer, Land Agent</p> <p>Delivery Address:</p> <p>343 Sacramento Street Auburn, CA 95603 Phone: (530) 889-3131 Fax: (530) 889-3392 RLSz@pge.com</p>
<p>ENVIRONMENTAL MATTERS</p>	<p>PACIFIC GAS AND ELECTRIC COMPANY Attn: Sandra Olson Compliance Plans Section, Environmental Affairs Department P.O. Box 770000, Mail Code B24A San Francisco, CA 94177</p> <p>Delivery address:</p> <p>77 Beale Street Mail Code B24A, Room 2429D San Francisco, CA 94105</p>
<p>INSURANCE MATTERS</p>	<p>PACIFIC GAS AND ELECTRIC COMPANY Attn: June Nakanishi Insurance Department P.O. Box 770000, Mail Code B24H San Francisco, CA 94177</p> <p>Delivery address:</p> <p>77 Beale Street Mail Code B24H, Room 2471 San Francisco, CA 94105</p> <p>Phone: (415) 973-6866 Fax: (415) 973-6869</p>

Advice 3499-E

Attachment 3

**(SECOND AMENDMENT TO AGREEMENT TO LEASE REAL PROPERTY FOR
INSTALLATION OF GENERATORS – PG&E'S PANOCHE SUBSTATION)**

**SECOND AMENDMENT TO AGREEMENT TO
LEASE REAL PROPERTY FOR
INSTALLATION OF GENERATORS**

THIS SECOND AMENDMENT TO AGREEMENT TO LEASE REAL PROPERTY FOR INSTALLATION OF GENERATORS (this "Amendment") is made and entered into as of June 18, 2009 ("Effective Date"), by and between PACIFIC GAS AND ELECTRIC COMPANY, a California corporation ("Company") and CALPEAK POWER – PANOCHE LLC, a Delaware limited liability company ("CalPeak").

RECITALS:

A. The Company and CalPeak, as assignee of CalPeak Power LLC ("CalPeak Power"), are the parties to that certain Agreement to Lease Real Property for Installation of Generators dated, for reference purposes only, as of June 28, 2001 (the "Original Lease"), as previously amended by that certain First Amendment to Agreement to Lease Real Property for Installation of Generators dated as of May 26, 2006 (the "First Amendment"), for certain premises (the "Premises") located within the property commonly known as "PG&E's Panoche Substation" (the "Property"). The Original Lease, as amended by the First Amendment, is hereinafter referred to as the "Lease."

B. The term of the Lease is presently scheduled to expire on December 26, 2011. The Company and CalPeak wish to amend the Lease to extend the term and to make certain other amendments to the Lease, as more particularly set forth below.

NOW, THEREFORE, in consideration of the mutual promises contained herein, and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Company and CalPeak agree as follows:

1. Definitions. All capitalized terms not otherwise defined herein shall have the respective meanings ascribed to them in the Lease. All amendments to the Lease, except as otherwise specified herein, shall take effect on and as of the Effective Date.

2. Extension of Term.

(a) The third sentence of Section 1.2(a) of the Original Lease is hereby amended to read as follows:

This Agreement shall terminate at 11:59 p.m. on December 26, 2036 (the "Expiration Date").

For purposes of this Amendment, the period of time between the Expiration Date specified in the Original Lease, and the Expiration Date specified in this Section, will be referred to as the "Extension Period."

(b) Notwithstanding the foregoing, however, the extension of the term of the Original Lease contemplated by this Section 2 shall be conditioned on receipt by the Company of CPUC Approval, as defined and described in Section 8 below, of this Amendment.

3. Potential Use Conflict. Section 1.2(e) of the Original Lease is hereby amended in its entirety to read as follows:

(e) Potential Use Conflict.

(i) If during the term of this Agreement the Company determines that, for any reason, including safety, reliability or regulatory compliance, (a) an expansion, modification or improvement of the substation located on the Property is required, and such expansion, modification or improvement will create a conflict with CalPeak's use and occupancy of the Premises, or (b) any electrical or natural gas lines must be moved, rerouted, relocated or redesigned because of CalPeak's use and occupancy of the Premises (a "Use Conflict"), the Company may notify CalPeak of that fact (a "Use Conflict Notice"); provided, however, that the Company will not give a Use Conflict Notice (a) prior to December 31, 2010, or (b) after December 1, 2011 and prior to December 27, 2021, except for safety, reliability or regulatory compliance reasons. Any Use Conflict Notice shall include a description, including estimated costs, of a proposed "least cost" solution to the Use Conflict (which may include, without limitation, relocation of the Premises, the Unit, or other facilities or equipment of either the Company or CalPeak), or if the Company has been unable, in good faith, to devise a proposed solution to the Use Conflict, a statement to such effect, which may include a proposal to terminate this Lease. The Company shall endeavor to give such notice at least twelve (12) months prior to the date any relocation or other work is required to begin.

(ii) Within ninety (90) days after CalPeak's receipt of the Company's Use Conflict Notice, CalPeak shall either: (A) accept the Company's proposed resolution of the Use Conflict, in which case the Company and CalPeak shall promptly execute any instruments as may be necessary to relocate the Premises or otherwise implement such resolution), or (B) deliver to the Company in writing for the Company's consideration a proposed alternative solution to the Use Conflict (which may include, without limiting the generality of the foregoing, a construction work-around, a proposed relocation, a delay in performing such work, or some other proposal to resolve the Use Conflict). If CalPeak fails to give notice within such ninety (90) period, such failure shall constitute CalPeak's agreement to the terms of the Use Conflict Notice. Any costs of relocating the Unit and the Premises, if the parties agree to do so, and any incremental construction or other costs of implementing the "least cost" or other agreed-upon alternative solution to the Use Conflict shall be the responsibility of CalPeak (and CalPeak agrees that no estimate of such costs shall be binding on the Company or any contractor involved in making such estimate). The Company and CalPeak each agrees to confer and cooperate with the other in good faith to determine a mutually acceptable solution to the Use Conflict; provided, however,

that if no mutually acceptable solution is agreed upon by the Company and CalPeak, then the Company's determination, as specified in the Use Conflict Notice or as subsequently agreed to by the Company, shall be final and binding on the parties, unless CalPeak elects to terminate this Agreement by delivering written termination notice to the Company within thirty (30) days following receipt of written notice of the Company's final determination (with the termination being effective on a date set by CalPeak which shall be no later than 12 months after CalPeak's receipt of written notice of the Company's final determination).

4. Rent. Base Rent shall continue to adjust on each Adjustment Date in accordance with the provisions of Section 1.3(a)(ii) of the Original Lease. In addition, Section 1.3 of the Original Lease is hereby amended as follows:

(a) Section 1.3(a) of the Original Lease is amended by adding the following new subsection (iii) as follows:

(iii) Effective as of August 27, 2011 (the tenth anniversary of the Commencement Date) and as of each fifth (5th) Adjustment Date thereafter (each, a "Reset Date"), Base Rent shall be adjusted to equal the greater of: (1) the Base Rent that would otherwise have taken effect as of such Reset Date pursuant to Section 1.3(a)(ii) of this Agreement, or (2) the fair market rental value of the Premises, determined as specified in Section 1.3(f).

(b) The parties further agree that the term "Gross Sales Proceeds", which is defined in Section 1.3(b)(i) of the Original Lease, refers to the total revenues attributable to the operation of the Premises and the Unit, including both sales for cash or on credit terms and amounts received as service charges, fees, sales of capacity or other agreements to make energy available for sale, whether or not resulting in actual sales of energy, and all other revenues generated by businesses conducted on or from the leased Premises. The parties acknowledge that the foregoing provision is not intended to be a modification of the terms of the Original Lease, but to clarify its meaning, and accordingly the parties agree that such definition applies during the entire term of the Lease, and not just to future years.

(c) The following new Section 1.3(f) is hereby added to Section 1.3 of the Original Lease:

(f) For purposes of Section 1.3(a)(iii), the fair market rental value of the Premises as of any Reset Date shall be determined as follows:

(i) the Base Rent payable during the first year following a Reset Date shall be the fair market rental value of the Premises, determined as of the Reset Date, on the basis of an assumed lease term of five years, and otherwise on the terms of this Lease, determined in accordance with Sections 1.3(f)(ii) and (iii) below, provided that in no event shall the Base Rent payable as of any Reset Date be less than the Base Rent payable during the immediately preceding year. Thereafter, Base Rent shall increase annually as of Adjustment Date to reflect

changes in the Index as provided in Section 1.3(a)(ii), except that the term "Base Index" shall mean, with respect to the period between any Reset Date and the following Reset Date, the value of CPI published for the month two (2) months prior to such Reset Date.

(ii) At least ninety (90) days prior to each Reset Date, the Company shall deliver to CalPeak a written proposal of the fair market rental value of the Premises as of the upcoming Reset Date. Within ten (10) business days after receipt of the Company's proposal, CalPeak shall notify the Company in writing either (i) that CalPeak accepts the Company's proposal, or (ii) that CalPeak elects to submit the determination of fair market rental value to arbitration in accordance with the provisions of this Section 1.3(f). If CalPeak does not timely respond to the Company's proposal, the Company's proposal of fair market rental value shall be deemed accepted by CalPeak and be final and binding upon the parties. If CalPeak timely elects to submit the determination of fair market rental value to arbitration, the Company and CalPeak shall first negotiate in good faith in an attempt to agree upon the fair market rental value of the Premises as of the applicable Reset Date. If the Company and CalPeak are able to agree upon the fair market rental value within thirty (30) days following the Company's receipt of CalPeak's notice electing arbitration (or if CalPeak accepts, or is deemed to have accepted, the Company's initial proposal), then such agreement shall constitute a determination of fair market rental value for purposes of this Section, and the parties shall immediately execute an amendment to this Lease stating the Base Rent determined under Section 1.3 for the period beginning on such Reset Date. If the Company and CalPeak are unable to agree upon the fair market rental value within such negotiating period, then within ten (10) business days after the expiration of such negotiating period, the parties shall meet and concurrently deliver to each other their respective written determinations of fair market rental value with a written statement of the data on which such determination was based (each, a "Determination", and respectively, the "Company's Determination" and "CalPeak's Determination"). The Company's Determination may be more or less than its initial proposal of fair market rental value. If CalPeak's Determination of fair market rental value is greater than the Company's Determination, then the fair market rental value shall be the average of the two. In every other case, the fair market rental value shall be determined as set forth in Section 1.3(f)(iii) below, each party being bound by its Determination and such Determinations being the only two choices available to the arbitrators. If either party fails to deliver its Determination in a timely manner, then the fair market rental value as of the applicable Reset Date shall be the amount specified by the other party. If both parties fail to deliver their respective Determinations in a timely manner, then the fair market rental value shall be the amount specified in the Company's initial proposal. If the amount of the fair market rental value has not been determined as of the applicable Reset Date, CalPeak shall pay Base Rent at the rate set forth in the Company's Determination until the amount of the fair market rental value, and the resulting Base Rent effective as of such Reset Date, has been determined. When such determination is made, the Company shall credit any overpayment against

CalPeak's next installment of Base Rent, or CalPeak shall pay any deficiency to the Company within ten (10) days after demand.

(iii) If arbitration of fair market rental value is required under the foregoing provisions, the parties shall appoint arbitrators and the arbitrators shall determine the fair market rental value in accordance with the following procedure:

(A) For the purposes of such arbitration, the term "fair market rental value" shall mean the amount that a ready and willing tenant would pay, as of the applicable Reset Date, as monthly base rent to a ready and willing landlord of property comparable to the Premises if such property were exposed for lease on the open market for a reasonable period of time, taking into account all lawful purposes for which the Premises might be used, the economic form and structure of this Lease and other leases or sales of comparable properties in the relevant market, and such factors as percentage rent, CPI adjustments, free rent allowances or other concessions or charges, if any, being granted to or imposed on tenants in connection with comparable property.

Within fifteen (15) days after the parties exchange their Determinations, the Company and CalPeak shall each appoint a person who is a licensed California real estate broker or appraiser and who has been engaged, on a full-time basis, in the leasing, selling or appraisal of commercial real property in the market area in which the Property is located for at least the immediately preceding ten (10) years.

(B) Within ten (10) days after the appointment of the last appointed arbitrator, the two arbitrators so appointed shall appoint a third arbitrator, similarly qualified, who has no present business or professional relationship with either party, and has not performed professional services for either party within the previous five (5) years, and shall notify the parties of the identity of such third arbitrator. If the two arbitrators are unable to agree upon a third arbitrator, either party may, upon not less than five (5) days' written notice to the other party, apply to the office of the American Arbitration Association or JAMS/Endispute in San Francisco, California, for appointment of a third similarly qualified arbitrator. The three arbitrators are referred to herein as the "Arbitration Panel."

(C) Within thirty (30) days after the appointment of the third arbitrator, the Arbitration Panel shall conduct a hearing, at which the Company and CalPeak may each make supplemental oral and/or written presentations, with an opportunity for questioning by the members of the Arbitration Panel. The Arbitration Panel shall select either the Company's Determination or CalPeak's Determination as the fair market rental value and shall notify the Company and CalPeak thereof. The determination of the Arbitration Panel shall be limited solely to the issue of whether the Company's Determination or CalPeak's Determination of the fair market rental value is

closest to the actual fair market rental value. The Arbitration Panel shall have no power or authority to propose a middle ground or to modify either of the two proposals or the provisions of this Lease.

(D) The decision of the majority of the three members of the Arbitration Panel shall be binding upon the Company and CalPeak.

(E) If either the Company or CalPeak fails to appoint an arbitrator within the time period specified above, the arbitrator appointed by the other shall act as the sole arbitrator and shall reach a decision, notify the Company and CalPeak thereof, and such arbitrator's decision shall be binding upon the Company and CalPeak. In the event of the failure, refusal or inability of any arbitrator to act, a successor shall be appointed in the same manner as the original arbitrator.

(F) Each party shall pay the costs and fees of the arbitrator appointed by such party. The costs and fees of the third arbitrator shall be paid one half by the Company and one half by CalPeak.

(G) Time is hereby declared to be of the essence with respect to each time period for performance under this Section 1.3(f); provided, however, that a failure by the Company to deliver its initial proposal of fair market rental value pursuant to Section 1.3(f)(ii) by the date ninety (90) days prior to any Reset Date shall not constitute a default on the part of the Company, nor preclude the Company from giving such proposal at a later date, but in that event, if the fair market rental value of the Premises has not been determined by the Reset Date, the provisions of the last two sentences of Section 1.3(f)(ii) shall apply.

5. Notices. The notice addresses for the Company contained in Section 14 of the Original Lease are amended to read as follows:

Company: PACIFIC GAS AND ELECTRIC COMPANY
P.O. Box 770000, Mail Code N10A
San Francisco, CA 94177
Attention: Manager, Land Asset Management

If by personal delivery or overnight courier:

PACIFIC GAS AND ELECTRIC COMPANY
245 Market Street, Mail Code N10A
San Francisco, CA 94105
Attention: Manager, Land Asset Management

with a copy to: PACIFIC GAS AND ELECTRIC COMPANY
Attn: Land Agent
343 Sacramento Street
Auburn, CA 95603

and a copy to: Law Department
Pacific Gas and Electric Company
P.O. Box 7442
San Francisco, CA 94120
Attn: Director & Counsel, Contracts Section (Real Estate)

If by personal delivery or overnight courier:

Law Department
Pacific Gas and Electric Company
77 Beale Street, Mail Code B30A
San Francisco, CA 94105
Attn: Director & Counsel, Contracts Section (Real Estate)

6. PG&E's Environmental Representative. The Company hereby appoints its Director of Environmental Services to be PG&E's Environmental Representative under the Lease, in place of Sandra Olson, who was named as PG&E's Environmental Representative in the Original Lease. For purposes of Exhibit H of the Original Lease, the address of PG&E's Environmental Representative is as follows: Director, Environmental Services, 3401 Crow Canyon Road, San Ramon, CA 94583.

7. Letter of Credit.

(a) References in Section 3.2 of the First Amendment to the term of the Lease, the expiration of the Lease and the Expiration Date of the Lease shall be deemed to refer to the term, expiration, and Expiration Date as extended hereby.

(b) the first and second sentences of Section 3.2(a) of the First Amendment are hereby amended to read as follows:

(a) the Letter of Credit shall expire not earlier than twelve (12) months after the date of issuance and shall provide that it shall be automatically extended for successive twelve (12) month periods through a date (the "Letter of Credit Expiration Date") which is not before the earlier of (1) the date five (5) years after the date of issuance of such Letter of Credit, or (2) the date thirty (30) days after the Expiration Date of the Lease, unless written notice of non-renewal has been given by the issuing bank to the Company by certified mail, return receipt requested, not less than thirty (30) days prior to the current expiration date of such Letter of Credit. At least thirty (30) days prior to the Letter of Credit Expiration Date, CalPeak shall cause the Letter of Credit Expiration Date to be extended by at least an additional five (5) years, or shall

deliver a replacement Letter of Credit satisfying the requirements of this Section 3.2.

(c) The first sentence of Section 3.2(b) of the First Amendment is hereby amended by replacing clause (v) of such sentence with the following new clauses (v) and (vi):

... or (v) at any time following notification by Issuer to the Company that the Letter of Credit will not be renewed or extended as required under the Lease, until such time as a replacement Letter of Credit has been delivered to the Company in accordance with Section 3.2(a) above, or (vi) at any time within thirty (30) days prior to the Letter of Credit Expiration Date, until such time as a replacement Letter of Credit has been delivered to the Company in accordance with Section 3.2(a) above.

(d) The eleventh (third-to-last) paragraph of the form Letter of Credit attached as Exhibit B to the First Amendment (which paragraph begins with the words "It is a condition of this Letter of Credit that it shall be deemed automatically extended . . .") is hereby amended by replacing the sentence that reads "No renewal period shall extend beyond [January 31, 2012]" with the following: "No renewal period shall extend beyond [insert date not earlier than five (5) years following the issuance date]."

(e) Notwithstanding the foregoing, with respect to any replacement Letter of Credit delivered on or after December 1, 2011, if on the date of issuance of such replacement Letter of Credit, no Long Term Power Purchase Agreement (as defined below) then exists, then the replacement Letter of Credit may have a term of one year (without provisions for automatic extension), but shall otherwise be in the form of Exhibit B. Any such one-year Letter of Credit may be drawn upon by the Company at any time within thirty (30) days prior to its expiration date, until such time as a replacement Letter of Credit (or an amendment to the existing Letter of Credit) is delivered to the Company that satisfies the requirements of Section 3.2 of the First Amendment (as amended hereby). For purposes of the foregoing, a "Long Term Power Purchase Agreement" means a purchase agreement, having a remaining term of at least five (5) years, between CalPeak, on the one hand, and the Company or another creditworthy party, on the other hand, for the full power output of the Unit located at the Premises.

8. CPUC Approval. The term of the Original Lease shall not be extended hereby until such time as the Company (a) obtains the approval of the California Public Utilities Commission ("CPUC") of this Amendment, or (b) the CPUC determines that this Amendment, including the extension of the term of the Lease contemplated hereby, is exempt from any requirement that such approval be obtained (as applicable, "CPUC Approval"), in either case on terms and conditions satisfactory to the Company and CalPeak in their sole discretion. The Company agrees to file for CPUC Approval as soon as practicable following the execution of this Amendment and to use reasonable diligence in pursuing CPUC Approval following such filing. CalPeak shall cooperate with the Company by providing supporting data, review and other services to assist the Company in obtaining CPUC Approval. CalPeak further acknowledges and agrees that the Company makes no representation or warranty with respect to CPUC Approval, and CalPeak hereby waives all claims against the Company which may arise out of losses, expenses or damages suffered or incurred by CalPeak as a result of the need for

CPUC Approval, or the Company's failure to obtain CPUC Approval. If CPUC Approval has not been obtained within twelve (12) months following the date of filing with the CPUC for CPUC Approval, then at any time thereafter until CPUC Approval is obtained, CalPeak may terminate the effect of this Amendment on the Original Lease (except for this Section 8 and Sections 5, 6 and 9 hereof, which shall take effect and remain in full force and effect in any event) by giving written notice to the Company. If the Expiration Date (as defined in the Original Lease) occurs before CPUC Approval has been obtained, then the term of this Lease shall expire, and CalPeak shall surrender possession of the Premises in accordance with the provisions of Section 22 of the Original Lease, or the holdover provisions of Section 23 of the Original Lease shall apply, unless the Company and CalPeak have agreed otherwise, in their respective sole discretion, and any such agreement has been approved (or is exempt from a requirement for approval) by the CPUC. If and when CPUC Approval of this Amendment is received, this Amendment shall be immediately effective on a retroactive basis to the Effective Date. If this Lease is terminated due to a failure to obtain CPUC Approval, Base Rent for any partial month at the end of the term shall be prorated on the basis of an assumed thirty (30) day month and the actual number of days elapsed during such partial month, and Percentage Rent for any partial year at the end of the Lease term shall be reported and paid for such partial year within sixty (60) days following the date of such termination.

9. Brokers. CalPeak represents and warrants to the Company that no real estate broker, agent or finder negotiated or was instrumental in negotiating or representing CalPeak in the negotiation of this Amendment or the execution hereof. CalPeak shall pay the commission or fee of any broker, agent or finder acting for CalPeak or claiming any commissions or fees on the basis of contacts or dealings with CalPeak and not disclosed herein by CalPeak, and CalPeak shall indemnify and hold the Company harmless from and against any claims made by any such broker, agent or finder of or for CalPeak and any and all costs and damages suffered by the Company as a consequence thereof, including, without limitation, reasonable attorneys' fees. Similarly, the Company shall pay the commission or fee of any broker, agent or finder acting for the Company or claiming any commissions or fees on the basis of contacts or dealings with the Company and not disclosed herein by the Company, and the Company shall indemnify and hold CalPeak harmless from and against any claims made by any such broker, agent or finder of or for the Company and any and all costs and damages suffered by CalPeak as a consequence thereof, including, without limitation, reasonable attorneys' fees.

10. Conflict. In the event of any conflict between the provisions of the Lease and this Amendment, the provisions of this Amendment shall govern.

11. Ratification. The Lease as modified by this Amendment is hereby ratified and confirmed in all respects. CalPeak hereby certifies to the Company, as of the date CalPeak executes and delivers this Amendment to the Company, that there are no existing defenses against the enforcement of any of CalPeak's obligations under the Lease, that the Company is not in default under the Lease by reason of its failure to perform any obligations thereunder, and that there is no circumstance, event, condition or state of facts which, by the passage of time or the giving of notice, or both, could entitle CalPeak to any such defenses or constitute or result in such a default. Further, CalPeak hereby acknowledges and agrees that CalPeak has no claim against the Company by reason of any term or provision of the Lease, or any matter, fact, event or occurrence related to the Lease or the Premises.

12. Execution of Amendment. The submission of this Amendment to CalPeak for examination or execution does not create an option or constitute an offer to CalPeak to amend the Lease, on the terms and conditions contained herein, and this Amendment shall not become effective as an amendment to the Lease unless and until it has been executed and delivered by both the Company and CalPeak. By executing and delivering this Amendment, the person or persons signing on behalf of CalPeak represent and warrant that they have requisite authority to bind CalPeak.

13. Entire Agreement. The Lease, as amended hereby, contains the entire agreement of the Company and CalPeak with respect to the subject matter hereof, and there are no oral agreements between the Company and CalPeak affecting the Lease as hereby amended. This Amendment cancels and supersedes any and all previous negotiations, representations, agreements and understandings, if any, between the Company and CalPeak and their respective agents with respect to the subject matter thereof, and none shall be used to interpret or construe the Lease as amended hereby.

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IN WITNESS WHEREOF, the parties have executed this Amendment as of the date first written above.

COMPANY:

PACIFIC GAS AND ELECTRIC COMPANY,
a California corporation

By: _____

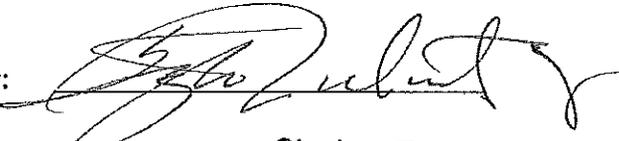
type or print name

Its: _____

Date: _____

CALPEAK:

CALPEAK POWER – PANOCHE LLC, a
Delaware limited liability company

By: 

Stephen T. Wertz
type or print name Vice President

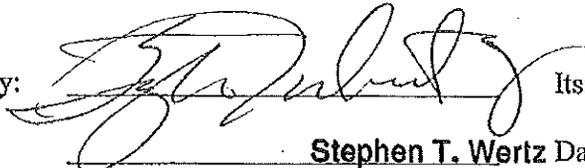
Its: _____

Date: _____

GUARANTOR:

The undersigned, CP Power, LLC, as the guarantor of the obligations of CalPeak under the Lease pursuant to that certain Guaranty executed by the undersigned in favor of the Company, hereby approves of, and agrees to, the within amendments, and acknowledges that it remains liable, to the extent specified in such Guaranty, for performance under the Lease, as so amended.

CP POWER, LLC, a Delaware limited liability company

By: 

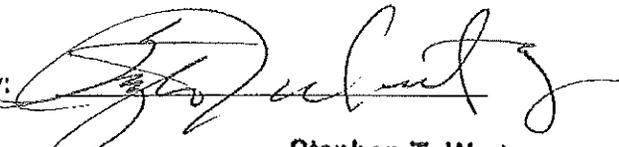
Stephen T. Wertz
type or print name Vice President

Its: _____

Date: _____

The undersigned, CalPeak Power LLC, as the original tenant named in the Lease being amended hereby, approves and agrees to the within amendments, and acknowledges that it remains liable for performance under the Lease, as so amended.

CALPEAK POWER LLC, a Delaware limited liability company

By: 

Stephen T. Wertz
type or print name Vice President

Its: _____

Date: _____

Advice 3499-E

Attachment 4

**(SECOND AMENDMENT TO AGREEMENT TO LEASE REAL PROPERTY FOR
INSTALLATION OF GENERATORS – PG&E'S VACA DIXON SUBSTATION)**

**SECOND AMENDMENT TO AGREEMENT TO
LEASE REAL PROPERTY FOR
INSTALLATION OF GENERATORS**

THIS SECOND AMENDMENT TO AGREEMENT TO LEASE REAL PROPERTY FOR INSTALLATION OF GENERATORS (this "Amendment") is made and entered into as of June 18, 2009 ("Effective Date"), by and between PACIFIC GAS AND ELECTRIC COMPANY, a California corporation ("Company") and CALPEAK POWER – VACA DIXON LLC, a Delaware limited liability company ("CalPeak").

RECITALS:

A. The Company and CalPeak, as assignee of CalPeak Power LLC ("CalPeak Power"), are the parties to that certain Agreement to Lease Real Property for Installation of Generators dated, for reference purposes only, as of August 22, 2001 (the "Original Lease"), as previously amended by that certain First Amendment to Agreement to Lease Real Property for Installation of Generators dated as of May 26, 2006 (the "First Amendment"), for certain premises (the "Premises") located within the property commonly known as "PG&E's Vaca Dixon Substation" (the "Property"). The Original Lease, as amended by the First Amendment, is hereinafter referred to as the "Lease."

B. The term of the Lease is presently scheduled to expire on December 26, 2011. The Company and CalPeak wish to amend the Lease to extend the term and to make certain other amendments to the Lease, as more particularly set forth below.

NOW, THEREFORE, in consideration of the mutual promises contained herein, and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Company and CalPeak agree as follows:

1. Definitions. All capitalized terms not otherwise defined herein shall have the respective meanings ascribed to them in the Lease. All amendments to the Lease, except as otherwise specified herein, shall take effect on and as of the Effective Date.

2. Extension of Term.

(a) The third sentence of Section 1.2(a) of the Original Lease is hereby amended to read as follows:

This Agreement shall terminate at 11:59 p.m. on December 26, 2036 (the "Expiration Date").

For purposes of this Amendment, the period of time between the Expiration Date specified in the Original Lease, and the Expiration Date specified in this Section, will be referred to as the "Extension Period."

(b) Notwithstanding the foregoing, however, the extension of the term of the Original Lease contemplated by this Section 2 shall be conditioned on receipt by the Company of CPUC Approval, as defined and described in Section 8 below, of this Amendment.

3. Potential Use Conflict. Section 1.2(e) of the Original Lease is hereby amended in its entirety to read as follows:

(e) Potential Use Conflict.

(i) If during the term of this Agreement the Company determines that, for any reason, including safety, reliability or regulatory compliance, (a) an expansion, modification or improvement of the substation located on the Property is required, and such expansion, modification or improvement will create a conflict with CalPeak's use and occupancy of the Premises, or (b) any electrical or natural gas lines must be moved, rerouted, relocated or redesigned because of CalPeak's use and occupancy of the Premises (a "Use Conflict"), the Company may notify CalPeak of that fact (a "Use Conflict Notice"); provided, however, that the Company will not give a Use Conflict Notice prior to December 27, 2021, except for safety, reliability or regulatory compliance reasons. Any Use Conflict Notice shall include a description, including estimated costs, of a proposed "least cost" solution to the Use Conflict (which may include, without limitation, relocation of the Premises, the Unit, or other facilities or equipment of either the Company or CalPeak), or if the Company has been unable, in good faith, to devise a proposed solution to the Use Conflict, a statement to such effect, which may include a proposal to terminate this Lease. The Company shall endeavor to give such notice at least twelve (12) months prior to the date any relocation or other work is required to begin.

(ii) Within ninety (90) days after CalPeak's receipt of the Company's Use Conflict Notice, CalPeak shall either: (A) accept the Company's proposed resolution of the Use Conflict, in which case the Company and CalPeak shall promptly execute any instruments as may be necessary to relocate the Premises or otherwise implement such resolution), or (B) deliver to the Company in writing for the Company's consideration a proposed alternative solution to the Use Conflict (which may include, without limiting the generality of the foregoing, a construction work-around, a proposed relocation, a delay in performing such work, or some other proposal to resolve the Use Conflict). If CalPeak fails to give notice within such ninety (90) period, such failure shall constitute CalPeak's agreement to the terms of the Use Conflict Notice. Any costs of relocating the Unit and the Premises, if the parties agree to do so, and any incremental construction or other costs of implementing the "least cost" or other agreed-upon alternative solution to the Use Conflict shall be the responsibility of CalPeak (and CalPeak agrees that no estimate of such costs shall be binding on the Company or any contractor involved in making such estimate). The Company and CalPeak each agrees to confer and cooperate with the other in good faith to determine a mutually acceptable solution to the Use Conflict; provided, however, that if no mutually acceptable solution is agreed upon by the Company and

CalPeak, then the Company's determination, as specified in the Use Conflict Notice or as subsequently agreed to by the Company, shall be final and binding on the parties, unless CalPeak elects to terminate this Agreement by delivering written termination notice to the Company within thirty (30) days following receipt of written notice of the Company's final determination (with the termination being effective on a date set by CalPeak which shall be no later than 12 months after CalPeak's receipt of written notice of the Company's final determination).

4. Rent. Base Rent shall continue to adjust on each Adjustment Date in accordance with the provisions of Section 1.3(a)(ii) of the Original Lease. In addition, Section 1.3 of the Original Lease is hereby amended as follows:

(a) Section 1.3(a) of the Original Lease is amended by adding the following new subsection (iii) as follows:

(iii) Effective as of August 27, 2011 (the tenth anniversary of the Commencement Date) and as of each fifth (5th) Adjustment Date thereafter (each, a "Reset Date"), Base Rent shall be adjusted to equal the greater of: (1) the Base Rent that would otherwise have taken effect as of such Reset Date pursuant to Section 1.3(a)(ii) of this Agreement, or (2) the fair market rental value of the Premises, determined as specified in Section 1.3(f).

(b) The parties further agree that the term "Gross Sales Proceeds", which is defined in Section 1.3(b)(i) of the Original Lease, refers to the total revenues attributable to the operation of the Premises and the Unit, including both sales for cash or on credit terms and amounts received as service charges, fees, sales of capacity or other agreements to make energy available for sale, whether or not resulting in actual sales of energy, and all other revenues generated by businesses conducted on or from the leased Premises. The parties acknowledge that the foregoing provision is not intended to be a modification of the terms of the Original Lease, but to clarify its meaning, and accordingly the parties agree that such definition applies during the entire term of the Lease, and not just to future years.

(c) The following new Section 1.3(f) is hereby added to Section 1.3 of the Original Lease:

(f) For purposes of Section 1.3(a)(iii), the fair market rental value of the Premises as of any Reset Date shall be determined as follows:

(i) the Base Rent payable during the first year following a Reset Date shall be the fair market rental value of the Premises, determined as of the Reset Date, on the basis of an assumed lease term of five years, and otherwise on the terms of this Lease, determined in accordance with Sections 1.3(f)(ii) and (iii) below, provided that in no event shall the Base Rent payable as of any Reset Date be less than the Base Rent payable during the immediately preceding year. Thereafter, Base Rent shall increase annually as of Adjustment Date to reflect changes in the Index as provided in Section 1.3(a)(ii), except that the term "Base

Index" shall mean, with respect to the period between any Reset Date and the following Reset Date, the value of CPI published for the month two (2) months prior to such Reset Date.

(ii) At least ninety (90) days prior to each Reset Date, the Company shall deliver to CalPeak a written proposal of the fair market rental value of the Premises as of the upcoming Reset Date. Within ten (10) business days after receipt of the Company's proposal, CalPeak shall notify the Company in writing either (i) that CalPeak accepts the Company's proposal, or (ii) that CalPeak elects to submit the determination of fair market rental value to arbitration in accordance with the provisions of this Section 1.3(f). If CalPeak does not timely respond to the Company's proposal, the Company's proposal of fair market rental value shall be deemed accepted by CalPeak and be final and binding upon the parties. If CalPeak timely elects to submit the determination of fair market rental value to arbitration, the Company and CalPeak shall first negotiate in good faith in an attempt to agree upon the fair market rental value of the Premises as of the applicable Reset Date. If the Company and CalPeak are able to agree upon the fair market rental value within thirty (30) days following the Company's receipt of CalPeak's notice electing arbitration (or if CalPeak accepts, or is deemed to have accepted, the Company's initial proposal), then such agreement shall constitute a determination of fair market rental value for purposes of this Section, and the parties shall immediately execute an amendment to this Lease stating the Base Rent determined under Section 1.3 for the period beginning on such Reset Date. If the Company and CalPeak are unable to agree upon the fair market rental value within such negotiating period, then within ten (10) business days after the expiration of such negotiating period, the parties shall meet and concurrently deliver to each other their respective written determinations of fair market rental value with a written statement of the data on which such determination was based (each, a "Determination", and respectively, the "Company's Determination" and "CalPeak's Determination"). The Company's Determination may be more or less than its initial proposal of fair market rental value. If CalPeak's Determination of fair market rental value is greater than the Company's Determination, then the fair market rental value shall be the average of the two. In every other case, the fair market rental value shall be determined as set forth in Section 1.3(f)(iii) below, each party being bound by its Determination and such Determinations being the only two choices available to the arbitrators. If either party fails to deliver its Determination in a timely manner, then the fair market rental value as of the applicable Reset Date shall be the amount specified by the other party. If both parties fail to deliver their respective Determinations in a timely manner, then the fair market rental value shall be the amount specified in the Company's initial proposal. If the amount of the fair market rental value has not been determined as of the applicable Reset Date, CalPeak shall pay Base Rent at the rate set forth in the Company's Determination until the amount of the fair market rental value, and the resulting Base Rent effective as of such Reset Date, has been determined. When such determination is made, the Company shall credit any overpayment against

CalPeak's next installment of Base Rent, or CalPeak shall pay any deficiency to the Company within ten (10) days after demand.

(iii) If arbitration of fair market rental value is required under the foregoing provisions, the parties shall appoint arbitrators and the arbitrators shall determine the fair market rental value in accordance with the following procedure:

(A) For the purposes of such arbitration, the term "fair market rental value" shall mean the amount that a ready and willing tenant would pay, as of the applicable Reset Date, as monthly base rent to a ready and willing landlord of property comparable to the Premises if such property were exposed for lease on the open market for a reasonable period of time, taking into account all lawful purposes for which the Premises might be used, the economic form and structure of this Lease and other leases or sales of comparable properties in the relevant market, and such factors as percentage rent, CPI adjustments, free rent allowances or other concessions or charges, if any, being granted to or imposed on tenants in connection with comparable property.

Within fifteen (15) days after the parties exchange their Determinations, the Company and CalPeak shall each appoint a person who is a licensed California real estate broker or appraiser and who has been engaged, on a full-time basis, in the leasing, selling or appraisal of commercial real property in the market area in which the Property is located for at least the immediately preceding ten (10) years.

(B) Within ten (10) days after the appointment of the last appointed arbitrator, the two arbitrators so appointed shall appoint a third arbitrator, similarly qualified, who has no present business or professional relationship with either party, and has not performed professional services for either party within the previous five (5) years, and shall notify the parties of the identity of such third arbitrator. If the two arbitrators are unable to agree upon a third arbitrator, either party may, upon not less than five (5) days' written notice to the other party, apply to the office of the American Arbitration Association or JAMS/Endispute in San Francisco, California, for appointment of a third similarly qualified arbitrator. The three arbitrators are referred to herein as the "Arbitration Panel."

(C) Within thirty (30) days after the appointment of the third arbitrator, the Arbitration Panel shall conduct a hearing, at which the Company and CalPeak may each make supplemental oral and/or written presentations, with an opportunity for questioning by the members of the Arbitration Panel. The Arbitration Panel shall select either the Company's Determination or CalPeak's Determination as the fair market rental value and shall notify the Company and CalPeak thereof. The determination of the Arbitration Panel shall be limited solely to the issue of whether the Company's Determination or CalPeak's Determination of the fair market rental value is

closest to the actual fair market rental value. The Arbitration Panel shall have no power or authority to propose a middle ground or to modify either of the two proposals or the provisions of this Lease.

(D) The decision of the majority of the three members of the Arbitration Panel shall be binding upon the Company and CalPeak.

(E) If either the Company or CalPeak fails to appoint an arbitrator within the time period specified above, the arbitrator appointed by the other shall act as the sole arbitrator and shall reach a decision, notify the Company and CalPeak thereof, and such arbitrator's decision shall be binding upon the Company and CalPeak. In the event of the failure, refusal or inability of any arbitrator to act, a successor shall be appointed in the same manner as the original arbitrator.

(F) Each party shall pay the costs and fees of the arbitrator appointed by such party. The costs and fees of the third arbitrator shall be paid one half by the Company and one half by CalPeak.

(G) Time is hereby declared to be of the essence with respect to each time period for performance under this Section 1.3(f); provided, however, that a failure by the Company to deliver its initial proposal of fair market rental value pursuant to Section 1.3(f)(ii) by the date ninety (90) days prior to any Reset Date shall not constitute a default on the part of the Company, nor preclude the Company from giving such proposal at a later date, but in that event, if the fair market rental value of the Premises has not been determined by the Reset Date, the provisions of the last two sentences of Section 1.3(f)(ii) shall apply.

5. Notices. The notice addresses for the Company contained in Section 14 of the Original Lease are amended to read as follows:

Company: PACIFIC GAS AND ELECTRIC COMPANY
P.O. Box 770000, Mail Code N10A
San Francisco, CA 94177
Attention: Manager, Land Asset Management

If by personal delivery or overnight courier:

PACIFIC GAS AND ELECTRIC COMPANY
245 Market Street, Mail Code N10A
San Francisco, CA 94105
Attention: Manager, Land Asset Management

with a copy to: PACIFIC GAS AND ELECTRIC COMPANY
Attn: Land Agent
343 Sacramento Street
Auburn, CA 95603

and a copy to: Law Department
Pacific Gas and Electric Company
P.O. Box 7442
San Francisco, CA 94120
Attn: Director & Counsel, Contracts Section (Real Estate)

If by personal delivery or overnight courier:

Law Department
Pacific Gas and Electric Company
77 Beale Street, Mail Code B30A
San Francisco, CA 94105
Attn: Director & Counsel, Contracts Section (Real Estate)

6. PG&E's Environmental Representative. The Company hereby appoints its Director of Environmental Services to be PG&E's Environmental Representative under the Lease, in place of Sandra Olson, who was named as PG&E's Environmental Representative in the Original Lease. For purposes of Exhibit H of the Original Lease, the address of PG&E's Environmental Representative is as follows: Director, Environmental Services, 3401 Crow Canyon Road, San Ramon, CA 94583.

7. Letter of Credit.

(a) References in Section 3.2 of the First Amendment to the term of the Lease, the expiration of the Lease and the Expiration Date of the Lease shall be deemed to refer to the term, expiration, and Expiration Date as extended hereby.

(b) the first and second sentences of Section 3.2(a) of the First Amendment are hereby amended to read as follows:

(a) the Letter of Credit shall expire not earlier than twelve (12) months after the date of issuance and shall provide that it shall be automatically extended for successive twelve (12) month periods through a date (the "Letter of Credit Expiration Date") which is not before the earlier of (1) the date five (5) years after the date of issuance of such Letter of Credit, or (2) the date thirty (30) days after the Expiration Date of the Lease, unless written notice of non-renewal has been given by the issuing bank to the Company by certified mail, return receipt requested, not less than thirty (30) days prior to the current expiration date of such Letter of Credit. At least thirty (30) days prior to the Letter of Credit Expiration Date, CalPeak shall cause the Letter of Credit Expiration Date to be extended by at least an additional five (5) years, or shall

deliver a replacement Letter of Credit satisfying the requirements of this Section 3.2.

(c) The first sentence of Section 3.2(b) of the First Amendment is hereby amended by replacing clause (v) of such sentence with the following new clauses (v) and (vi):

. . . or (v) at any time following notification by Issuer to the Company that the Letter of Credit will not be renewed or extended as required under the Lease, until such time as a replacement Letter of Credit has been delivered to the Company in accordance with Section 3.2(a) above, or (vi) at any time within thirty (30) days prior to the Letter of Credit Expiration Date, until such time as a replacement Letter of Credit has been delivered to the Company in accordance with Section 3.2(a) above.

(d) The eleventh (third-to-last) paragraph of the form Letter of Credit attached as Exhibit B to the First Amendment (which paragraph begins with the words "It is a condition of this Letter of Credit that it shall be deemed automatically extended . . .") is hereby amended by replacing the sentence that reads "No renewal period shall extend beyond [January 31, 2012]" with the following: "No renewal period shall extend beyond [insert date not earlier than five (5) years following the issuance date]."

(e) Notwithstanding the foregoing, with respect to any replacement Letter of Credit delivered on or after December 1, 2011, if on the date of issuance of such replacement Letter of Credit, no Long Term Power Purchase Agreement (as defined below) then exists, then the replacement Letter of Credit may have a term of one year (without provisions for automatic extension), but shall otherwise be in the form of Exhibit B. Any such one-year Letter of Credit may be drawn upon by the Company at any time within thirty (30) days prior to its expiration date, until such time as a replacement Letter of Credit (or an amendment to the existing Letter of Credit) is delivered to the Company that satisfies the requirements of Section 3.2 of the First Amendment (as amended hereby). For purposes of the foregoing, a "Long Term Power Purchase Agreement" means a purchase agreement, having a remaining term of at least five (5) years, between CalPeak, on the one hand, and the Company or another creditworthy party, on the other hand, for the full power output of the Unit located at the Premises.

8. CPUC Approval. The term of the Original Lease shall not be extended hereby until such time as the Company (a) obtains the approval of the California Public Utilities Commission ("CPUC") of this Amendment, or (b) the CPUC determines that this Amendment, including the extension of the term of the Lease contemplated hereby, is exempt from any requirement that such approval be obtained (as applicable, "CPUC Approval"), in either case on terms and conditions satisfactory to the Company and CalPeak in their sole discretion. The Company agrees to file for CPUC Approval as soon as practicable following the execution of this Amendment and to use reasonable diligence in pursuing CPUC Approval following such filing. CalPeak shall cooperate with the Company by providing supporting data, review and other services to assist the Company in obtaining CPUC Approval. CalPeak further acknowledges and agrees that the Company makes no representation or warranty with respect to CPUC Approval, and CalPeak hereby waives all claims against the Company which may arise out of losses, expenses or damages suffered or incurred by CalPeak as a result of the need for

CPUC Approval, or the Company's failure to obtain CPUC Approval. If CPUC Approval has not been obtained within twelve (12) months following the date of filing with the CPUC for CPUC Approval, then at any time thereafter until CPUC Approval is obtained, CalPeak may terminate the effect of this Amendment on the Original Lease (except for this Section 8 and Sections 5, 6 and 9 hereof, which shall take effect and remain in full force and effect in any event) by giving written notice to the Company. If the Expiration Date (as defined in the Original Lease) occurs before CPUC Approval has been obtained, then the term of this Lease shall expire, and CalPeak shall surrender possession of the Premises in accordance with the provisions of Section 22 of the Original Lease, or the holdover provisions of Section 23 of the Original Lease shall apply, unless the Company and CalPeak have agreed otherwise, in their respective sole discretion, and any such agreement has been approved (or is exempt from a requirement for approval) by the CPUC. If and when CPUC Approval of this Amendment is received, this Amendment shall be immediately effective on a retroactive basis to the Effective Date. If this Lease is terminated due to a failure to obtain CPUC Approval, Base Rent for any partial month at the end of the term shall be prorated on the basis of an assumed thirty (30) day month and the actual number of days elapsed during such partial month, and Percentage Rent for any partial year at the end of the Lease term shall be reported and paid for such partial year within sixty (60) days following the date of such termination.

9. Brokers. CalPeak represents and warrants to the Company that no real estate broker, agent or finder negotiated or was instrumental in negotiating or representing CalPeak in the negotiation of this Amendment or the execution hereof. CalPeak shall pay the commission or fee of any broker, agent or finder acting for CalPeak or claiming any commissions or fees on the basis of contacts or dealings with CalPeak and not disclosed herein by CalPeak, and CalPeak shall indemnify and hold the Company harmless from and against any claims made by any such broker, agent or finder of or for CalPeak and any and all costs and damages suffered by the Company as a consequence thereof, including, without limitation, reasonable attorneys' fees. Similarly, the Company shall pay the commission or fee of any broker, agent or finder acting for the Company or claiming any commissions or fees on the basis of contacts or dealings with the Company and not disclosed herein by the Company, and the Company shall indemnify and hold CalPeak harmless from and against any claims made by any such broker, agent or finder of or for the Company and any and all costs and damages suffered by CalPeak as a consequence thereof, including, without limitation, reasonable attorneys' fees.

10. Conflict. In the event of any conflict between the provisions of the Lease and this Amendment, the provisions of this Amendment shall govern.

11. Ratification. The Lease as modified by this Amendment is hereby ratified and confirmed in all respects. CalPeak hereby certifies to the Company, as of the date CalPeak executes and delivers this Amendment to the Company, that there are no existing defenses against the enforcement of any of CalPeak's obligations under the Lease, that the Company is not in default under the Lease by reason of its failure to perform any obligations thereunder, and that there is no circumstance, event, condition or state of facts which, by the passage of time or the giving of notice, or both, could entitle CalPeak to any such defenses or constitute or result in such a default. Further, CalPeak hereby acknowledges and agrees that CalPeak has no claim against the Company by reason of any term or provision of the Lease, or any matter, fact, event or occurrence related to the Lease or the Premises.

12. Execution of Amendment. The submission of this Amendment to CalPeak for examination or execution does not create an option or constitute an offer to CalPeak to amend the Lease, on the terms and conditions contained herein, and this Amendment shall not become effective as an amendment to the Lease unless and until it has been executed and delivered by both the Company and CalPeak. By executing and delivering this Amendment, the person or persons signing on behalf of CalPeak represent and warrant that they have requisite authority to bind CalPeak.

13. Entire Agreement. The Lease, as amended hereby, contains the entire agreement of the Company and CalPeak with respect to the subject matter hereof, and there are no oral agreements between the Company and CalPeak affecting the Lease as hereby amended. This Amendment cancels and supersedes any and all previous negotiations, representations, agreements and understandings, if any, between the Company and CalPeak and their respective agents with respect to the subject matter thereof, and none shall be used to interpret or construe the Lease as amended hereby.

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IN WITNESS WHEREOF, the parties have executed this Amendment as of the date first written above.

COMPANY:

PACIFIC GAS AND ELECTRIC COMPANY,
a California corporation

By: _____

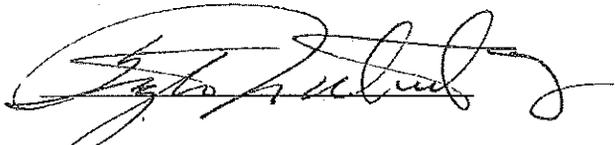
type or print name

Its: _____

Date: _____

CALPEAK:

CALPEAK POWER – VACA DIXON LLC, a
Delaware limited liability company

By: 

type or print name **Stephen T. Wertz**
Vice President

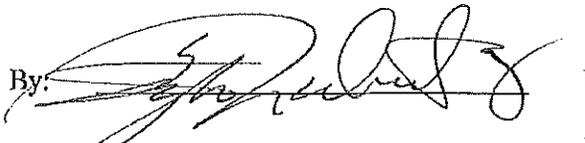
Its: _____

Date: _____

GUARANTOR:

The undersigned, CP Power, LLC, as the guarantor of the obligations of CalPeak under the Lease pursuant to that certain Guaranty executed by the undersigned in favor of the Company, hereby approves of, and agrees to, the within amendments, and acknowledges that it remains liable, to the extent specified in such Guaranty, for performance under the Lease, as so amended.

CP POWER, LLC, a Delaware limited liability company

By: 

type or print name **Stephen T. Wertz**
Vice President

Its: _____

Date: _____

The undersigned, CalPeak Power LLC, as the original tenant named in the Lease being amended hereby, approves and agrees to the within amendments, and acknowledges that it remains liable for performance under the Lease, as so amended.

CALPEAK POWER LLC, a Delaware limited liability company

By: 

type or print name **Stephen T. Wertz**
Vice President

Its: _____

Date: _____

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

Aglet	Day Carter Murphy	North Coast SolarResources
Alcantar & Kahl	Defense Energy Support Center	Northern California Power Association
Ameresco	Department of Water Resources	Occidental Energy Marketing, Inc.
Anderson & Poole	Department of the Army	OnGrid Solar
Arizona Public Service Company	Dept of General Services	Praxair
BART	Division of Business Advisory Services	R. W. Beck & Associates
BP Energy Company	Douglas & Liddell	RCS, Inc.
Barkovich & Yap, Inc.	Douglass & Liddell	Recon Research
Bartle Wells Associates	Downey & Brand	SCD Energy Solutions
C & H Sugar Co.	Duke Energy	SCE
CA Bldg Industry Association	Dutcher, John	SMUD
CAISO	Ellison Schneider & Harris LLP	SPURR
CLECA Law Office	FPL Energy Project Management, Inc.	Santa Fe Jets
CSC Energy Services	Foster Farms	Seattle City Light
California Cotton Ginners & Growers Assn	G. A. Krause & Assoc.	Sempra Utilities
California Energy Commission	GLJ Publications	Sierra Pacific Power Company
California League of Food Processors	Goodin, MacBride, Squeri, Schlotz & Ritchie	Silicon Valley Power
California Public Utilities Commission	Green Power Institute	Southern California Edison Company
Calpine	Hanna & Morton	Sunshine Design
Cameron McKenna	Hitachi	Sutherland, Asbill & Brennan
Cardinal Cogen	International Power Technology	Tabors Caramanis & Associates
Casner, Steve	Intestate Gas Services, Inc.	Tecogen, Inc.
Chamberlain, Eric	Los Angeles Dept of Water & Power	Tiger Natural Gas, Inc.
Chevron Company	Luce, Forward, Hamilton & Scripps LLP	Tioga Energy
Chris, King	MBMC, Inc.	TransCanada
City of Glendale	MRW & Associates	Turlock Irrigation District
City of Palo Alto	Manatt Phelps Phillips	U S Borax, Inc.
City of San Jose	Matthew V. Brady & Associates	United Cogen
Clean Energy Fuels	McKenzie & Associates	Utility Cost Management
Coast Economic Consulting	Merced Irrigation District	Utility Specialists
Commerce Energy	Mirant	Verizon
Commercial Energy	Modesto Irrigation District	Wellhead Electric Company
Consumer Federation of California	Morgan Stanley	Western Manufactured Housing Communities Association (WMA)
Crossborder Energy	Morrison & Foerster	eMeter Corporation
Davis Wright Tremaine LLP	New United Motor Mfg., Inc.	
	Norris & Wong Associates	