

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

Tel. No. (415) 703-1691



June 14, 2005

Advice Letter 2563-E

Ms Rose de la Torre
Pacific Gas and Electric Company
77 Beale Street, Room 1088
Mail Code B10C
San Francisco, CA 94105

Subject: Advanced Metering and Demand Response Project – Demand Reserves
Partnership Program Implementation Plan

Dear Ms de la Torre:

Advice Letter 2563-E is effective June 13, 2005. A copy of the advice letter is sent herewith for your records.

Sincerely,

A handwritten signature in black ink, appearing to read "S. H. Gallagher".

Sean H. Gallagher
Director
Energy Division



**Pacific Gas and
Electric Company**

Brian K. Cherry
Director
Regulatory Relations

77 Beale Street, Room 1087
San Francisco, CA 94105

Mailing Address
Mail Code B10C
P.O. Box 770000
San Francisco, CA 94177

415.973.4977
Internal: 223.4977
Fax: 415.973.7226
Cellular: 415.517.5067
Internet: BKC7@pge.com

October 8, 2004

**Advice 2563-E
(Pacific Gas and Electric Company ID U39 E)**

Public Utilities Commission of the State of California (CPUC)

**Subject: Advanced Metering Project – Demand Response Programs
Demand Reserves Partnership (DRP) Program – Finalized
Agency Agreement in Compliance with Resolution E-3875**

Pacific Gas and Electric Company (PG&E), hereby submits this advice filing concerning the California Power Authority (CPA) Demand Reserves Partnership (DRP) Program. This filing provides a finalized agency agreement between PG&E and the California Department of Water Resources (DWR) in conformance with Operating Paragraph 3 of CPUC Resolution E-3875.

Purpose

The purpose of this filing is to comply with Ordering Paragraph 3 of CPUC Resolution E-3875. Specifically, this filing includes a finalized agency agreement between PG&E and DWR that complies with the findings of Resolution E-3875. The agency agreement is attached as Exhibit A.

Background

In Decision 03-06-032, the Utilities were ordered to develop Implementation Plans, detailing a phased approach for implementing the DRP Program, as well as a joint compliance filing containing a permanent proposal for allocating the DRP resources. PG&E made these filings, respectively, as Advice 2399-E on July 7, 2003, and as Advice 2428-E on October 6, 2003.

On January 26, 2004, Administrative Law Judge DeUlloa issued a ruling directing the utilities to each file a status report on the impediments to the then-unfinished agency agreements and to the implementation of the Implementation Plans. On February 17, 2004, PG&E filed its status report.

On April 1, 2004, Commissioner Peevey issued the April 1 Ruling directing the utilities to resume negotiations with DWR on the agency agreements and to file supplemental compliance advice letters. Under the terms of the April 1 Ruling, these advice letters should provide an updated Implementation Plan, include a description of a common meter data reporting format, and include a final version of the agency agreement. On April 26, 2004, DWR sent a memorandum to Commissioner Peevey and ALJ Cooke, seeking clarification of certain aspects of the April 1 Ruling. On May 3, 2004, Commissioner Peevey issued a Ruling providing additional information concerning the April 1 Ruling.

On May 10, 2004, PG&E filed Advice 2505-E in compliance with the April 1 Ruling and the May 3 Ruling. In Advice 2505-E, PG&E presented the CPUC with a draft of the agency agreement that PG&E supported. Similarly, on May 11, 2004, DWR presented the CPUC with a draft of the agency agreement that DWR supported and that differed from PG&E's draft in two substantive respects: (i) DWR's draft proposed to delete a phrase from Section 9.04 of PG&E's draft concerning DWR's revenue requirement and (ii) DWR proposed a longer term for the agreement.

On September 23, 2004, the CPUC issued Resolution E-3875 responding to PG&E's Advice 2505-E as well as similar advice filings made by Southern California Edison Company and San Diego Gas & Electric Company. Resolution E-3875 ordered, "The agency agreement as proposed by DWR on May 11, 2004 should be modified by DWR and the utilities to accommodate those provisions affected by a term ending on May 17, 2007" and further that "The utilities shall file supplemental advice letters with finalized agency agreements that comply with the findings of this resolution within 15 days of the effective date of this resolution." (Resolution E-3875, Ordering Paragraphs 2 and 3.)¹

The Proposed Agency Agreement

In accordance with Ordering Paragraph 3 of Resolution E-3875, PG&E has attached hereto (as Exhibit A) a final version of the proposed agency agreement between PG&E and DWR.

Although this document has been finalized, it has not yet been executed by either of the parties. Before this agency agreement will be executed, the parties expect that the amendment to the underlying DRP agreement between DWR and CPA will be signed and appended to the agency agreement as Exhibit A, as referenced in Section 1.02 of the agency agreement. Upon the execution of the underlying DRP amendment, PG&E understands that DWR is poised to execute the finalized agency agreement attached hereto without further substantive change. PG&E intends to execute the agency agreement once DWR has fully executed it and upon Commission approval of this Advice Filing.

¹ In accordance with Finding 13 of Resolution E-3875, PG&E will request funding for administration of the DRP Program for years 2005-2007 in an upcoming filing in the demand response rulemaking (R.02-06-001). PG&E will make this request on October 15, 2004.

The changes that have been made in the final version from the draft that was submitted by DWR to the CPUC on May 11, 2004, comply with the findings of Resolution E-3875. These changes are shown (via redlining) in Exhibit A.

Protests

Anyone wishing to protest this filing may do so by sending a letter by **October 28, 2004**, which is **20 days** from the date of this filing. The protest must state the grounds upon which it is based, including such items as financial and service impact, and should be submitted expeditiously. Protests should be mailed to:

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

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

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

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

Effective Date

PG&E respectfully requests that the Commission rule expeditiously on this advice filing so that PG&E and DWR may move forward to execute the agency agreement and commence implementation of its terms.

Notice

In accordance with General Order 96-A, Section III, Paragraph G, a copy of this advice letter is being sent electronically and via U.S. mail to parties shown on the attached list, and the service list parties for Rulemaking (R.) 02-06-001. Address

changes should be directed to Rose De La Torre at (415) 973-4716 or at RxDd@pge.com. Advice letter filings can also be accessed electronically at:

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


Director - Regulatory Relations

Attachments

cc: Service List R. 02-06-001

Deleted: DRAFT - FOR DISCUSSION PURPOSES ONLY - STILL UNDERGOING REVIEW

AGENCY AGREEMENT

between

PACIFIC GAS AND ELECTRIC COMPANY

Deleted: [UTILITY]

and

DEPARTMENT OF WATER RESOURCES

Deleted: [DWR 5/10/04 Draft]

The parties to this Agency Agreement ("Agency Agreement") are **PACIFIC GAS AND ELECTRIC COMPANY**, a California corporation ("Utility"), and the **STATE OF CALIFORNIA DEPARTMENT OF WATER RESOURCES**, acting solely under the authority and powers granted by ABIX, codified as Sections 80000 through 80270 of the California Water Code (the "Act"), and not under its power and responsibilities with respect to the State Water Resources Development System (in such capacity, the "Department" or "DWR"). Utility and the Department are sometimes referred to in this Agency Agreement individually as a "Party" and jointly as the "Parties."

Deleted: [UTILITY]

RECITALS

A. Under the Act, pursuant to the Demand Reserves Partnership program ("DRP"), the Department entered into a Demand Reserves Purchase Agreement (as amended from time to time, the "DR Agreement") dated as of May 17, 2002 with the California Consumer Power and Conservation Financing Authority (the "Authority"), whereby Department can purchase from Authority and schedule with the California Independent System Operator ("CAISO"), demand reserve resources, including the dispatch of capacity. Qualified End Users (as such term is defined in the DR Agreement) under contract with Authority provide the demand reserve resources that are scheduled and dispatched under the DR Agreement.

B. On June 5, 2003, the California Public Utilities Commission (the "Commission" or "CPUC") issued Decision 03-06-032 (the "Decision") in Rulemaking 02-06-001, setting demand response goals for each of California's three investor owned electric utilities, including Utility. The Decision also provides in pertinent part that the utilities, including Utility, may receive credit towards its respective demand response goals for any resources under the DR Agreement that each utility schedules. The Decision orders the utilities to submit a DRP implementation plan in coordination with the Authority. In accordance with the Decision, Utility filed such plan with the CPUC on July 7, 2003.

Deleted: AGENCY AGREEMENT - 10/7/2004

Deleted: DRAFT - FOR DISCUSSION PURPOSES ONLY - STILL UNDERGOING REVIEW

C. In order to implement the Decision, the Department, Utility and the Authority have engaged in discussions relating to the administration and implementation of the DRP. The Department and the Authority have agreed to amend the DR Agreement to disaggregate into three territories the scheduling and dispatch offered under the DR Agreement thereunder for each of the three Utilities (each a "Designated DR Territory") in a manner that will allow Utility to file an implementation plan that is consistent with the Decision. The Parties have agreed that Utility shall enter into an agency agreement with the Department, whereby Utility will act as the Department's limited agent for purposes of scheduling and dispatching energy and capacity (and later, if and when appropriate, Ancillary Services) for Utility's Designated DR Territory and the Department will retain legal and financial obligations, together with any other functions not explicitly provided for in this Agency Agreement, with respect to the DR Agreement, as amended. However, the Parties were not able to reach agreement on all terms of the proposed agency agreement. In spring 2004, pursuant to a ruling issued by Administrative Law Judge DeUlloa on January 26, 2004, and the Assigned Commissioner's Ruling dated April 1, 2004, Department and Utility resumed discussions regarding the proposed agency agreement but were still unable to resolve all issues. See, e.g., Utility's Advice Filing 2505-E dated May 10, 2004 and Department's Memoranda dated May 10, 2004 and May 20, 2004. In Resolution E-3875 issued on September 23, 2004, the Commission ordered Utility to enter into an agency agreement substantially similar to this Agency Agreement, with the open issues resolved pursuant to the Commission's direction in the Resolution and, in accordance with the Resolution, Utility hereby does so. By entering into this Agency Agreement, Department and Utility intend that it will not constitute an assignment of the DR Agreement or any right thereunder for any purpose.

Deleted: The Department and Utility intend that this Agency Agreement will not constitute an assignment of the DR Agreement or any right thereunder for any purpose.

NOW, THEREFORE, in consideration of the mutual obligations of the Parties, the Department and Utility agree as follows:

**ARTICLE I
DEFINITIONS**

Section 1.01. Definitions. The following terms are defined as set forth below:

The following terms, when used herein (and in the attachments hereto) with initial capitalization, shall have the meaning specified in this Section 1.01. Certain additional terms are defined in the attachments hereto. The singular shall include the plural and the masculine shall include the feminine and neuter, and *vice versa*. "Includes" or "including" shall mean "including without limitation." References to a section or attachment shall mean a section or attachment of this Agreement, as the case may be, unless the context requires otherwise, and reference to a given agreement or instrument shall be a reference to that agreement or instrument as modified, amended, supplemented or restated through the date as of which such reference is made (except as otherwise specifically provided herein). Unless the context otherwise requires, references to Applicable Laws or Applicable Tariffs shall be deemed references to such laws or tariffs as they may be amended, replaced or restated from time to time. References to the time of day shall be deemed references to such time as measured by prevailing Pacific time.

Deleted: AGENCY AGREEMENT - 10/7/2004

“Act” means Sections 80000 through 80270 of the California Water Code.

“Applicable CPUC Orders” means such rules, regulations, decisions, opinions or orders as the CPUC may lawfully issue or promulgate from time to time, which relate to the subject matter of this Agreement.

“Applicable Law” means the Act, Applicable CPUC Orders and any other applicable statute, constitutional provision, rule, regulation, ordinance, order, decision or code of a Governmental Authority.

Formatted: Indent: First line: 0"

“Applicable Tariffs” means Utility’s tariffs, including all rules, rates, schedules and preliminary statements, governing electric energy service to Utility’s customers in its service territory, as filed with and approved by the CPUC and, if applicable, the Federal Energy Regulatory Commission.

Formatted: Left

“Assign(s)” shall have the meaning set forth in Section 12.01 herein.

“Associated Resource” shall have the meaning set forth in Section 2.04 herein.

“Authority” shall mean the California Consumer Power and Conservation Financing Authority.

“CAISO” shall mean the California Independent System Operator, or any successor thereto.

“Commission” or “CPUC” shall mean the California Public Utilities Commission.

“Decision” shall have the meaning set forth in Recital B herein.

“Department” or “DWR” shall mean the California Department of Water Resources.

“Designated DR Territory” shall have the meaning set forth in Recital C herein.

“Direct Access” shall refer to any end-use customer electing to procure its electricity, any other CPUC-authorized energy services, directly from electric service providers.

“DR Agreement” shall have the meaning set forth in Recital A herein.

“DRP” means the Demand Reserves Partnership program, administered by the DWR and the Authority under the DR Agreement.

“DRP Call Option” means any and all Monthly Nominated Capacity, Additional Hourly Capacity, Contracted Energy, and any energy reductions associated with Capacity or any other Energy reductions offered by the Authority pursuant to the DR Agreement.

“DRP Power” means electric energy and capacity made available under the DR Agreement, including but not limited to capacity and output.

“DWR Revenues” means those amounts required to be remitted to DWR by Utility in accordance with this Agency Agreement and as further provided in the Servicing Arrangement.

Formatted: Left

“Good Utility Practice” means any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice does not require the optimum practice, method, or act to the exclusion of all others, but rather is intended to include acceptable practices, methods, or acts generally accepted in the Western Electric Coordinating Council region.

Formatted: Left

“Governmental Authority” means any nation or government, any state or other political subdivision thereof, and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to a government, including the CPUC.

Formatted: Left

“Operating Arrangement” means that certain Operating Agreement dated as of April 17, 2003 by and between DWR and Utility, approved by the Commission pursuant to Decision 03-04-029, as such agreement may be amended or supplemented from time to time.

Formatted: Left

“Priority Long Term Power Contract” shall have the meaning set forth in the Rate Agreement.

Formatted: Left

“Rate Agreement” means the Rate Agreement between DWR and the Commission adopted by the Commission on February 21, 2002 in Decision 02-02-051

“Reimbursable Cost” means (i) any costs or charges imposed on or associated with the Monthly Nominated Capacity and any Additional Hourly Capacity and Contracted Energy, including without limitation any CAISO charges and penalties for not making available Capacity as bid or Scheduled or Contracted Energy as Scheduled into the CAISO markets, or (ii) any imbalance energy charges arising as a result of any failure to reduce Energy as Scheduled by Utility or CAISO, and (iii) Replacement Energy Cost.

Formatted: Left

“Replacement Energy” shall have the meaning set forth under the definition of “Replacement Energy Cost” contained in Section 1.01 herein.

Formatted: Left

“Replacement Energy Cost” means, to the extent not covered by imbalance energy charges reimbursements, the positive difference, if any, between (i) the price at which the Utility, acting in a commercially reasonable manner, purchases Energy in the amount which the Authority fails to reduce Contracted Energy as Scheduled or dispatched by the Utility in accordance with the DR Agreement (“Replacement Energy”), plus costs reasonably incurred by the Utility in purchasing such Energy and additional transmission charges, if any, reasonably incurred by the Utility to deliver such Energy, and (ii) the Energy Price.

Formatted: Left

Deleted: DRAFT - FOR DISCUSSION PURPOSES ONLY - STILL UNDERGOING REVIEW

“Servicing Arrangement” means the Servicing Order as specified in the Commission Decision 02-05-048 dated May 16, 2002, as such order may be amended or supplemented from time to time.

“Utility” means Pacific Gas and Electric Company,

Deleted: [Utility]

Section 1.02. Undefined Terms. Capitalized terms not otherwise defined in Section 1.01 herein shall have the meanings set forth in the Amended and Restated Demand Reserves Purchase Agreement dated as of May 17, 2002, as further amended on [DATE] by and between DWR and the Authority, not as amended. A copy of this agreement is included as Exhibit A hereto.

Deleted: []

ARTICLE II
OPERATIONAL ALLOCATION AND MANAGEMENT OF AMENDED AND RESTATED DEMAND RESERVES PURCHASE AGREEMENT

Section 2.01. Operational Allocation of Amended and Restated Demand Reserves Purchase Agreement. On behalf of the Department, pursuant to the DRP, Utility shall schedule and dispatch Energy located in its Designated DR Territory and forward information to Department setting forth the amounts of Energy scheduled or dispatched by Utility and the dates of the scheduling, as set forth more fully in this Section below. The Parties understand that this Agency Agreement in its present form does not provide for scheduling or dispatch of Ancillary Services.

Utility shall follow CPUC dispatch guidelines that take into account many factors including availability and performance characteristics of the resource, contribution to system reliability and cost effectiveness. Utility shall schedule the DRP Call Option in accordance with CPUC dispatch guidelines and when it determines in its discretion it is prudent to do so for either reliability or economic reasons. Utility’s decision will consider the availability of the Call Option (i.e., it is energy limited) and when scheduling it would yield the most value.

In scheduling and dispatching the DRP resources, the Parties shall follow the protocols set forth in Schedule 2, Section B, as may be modified from time to time in writing by mutual agreement of the Parties. Utility shall accept and perform dispatch instructions from the Department for reliability and testing purposes; provided that such dispatch instructions are in writing, and include the purpose for the dispatch and the information set forth in Schedule 2, Section A. Utility’s obligation to accept and perform dispatch instructions for testing purposes from the Department shall be limited to four (4) hours per calendar month. The Department may independently dispatch and schedule DRP resources either on its own or through a third-party (whether or not in excess of the four-hour limitation), however, in the event that the Department independently dispatches and schedules such resources (whether or not in excess of the four-hour limitation), Utility shall have the right to terminate this Agreement as provided for in Section 2.05 (vii) herein. Provided further; to the extent that the Department independently dispatches or schedules the DRP resources either on its own or through a third-party and Utility has not terminated this Agreement as provided for above, Utility shall accept

Formatted: Left

Deleted: per provider

Deleted: AGENCY AGREEMENT - 10/7/2004

Deleted: DRAFT - FOR DISCUSSION PURPOSES ONLY - STILL UNDERGOING REVIEW

any inter-scheduling coordinator trades from Direct Access customers resulting from the dispatch of such resources by the Department.

Deleted: d

Deleted: a

Section 2.02. Standard of DR Agreement Management.

(a) Utility agrees to perform the functions specified in this Agency Agreement relating to the DR Agreement in a commercially reasonable manner, exercising Good Utility Practice, and in a fashion reasonably designed to serve the overall best interests of retail electric customers.

(b) To the extent requested by Utility, DWR shall provide evidence in CPUC proceedings describing Utility's and DWR's performance, rights and obligations under this Agency Agreement.

(c) DWR acknowledges the Commission's exclusive authority over whether the Utility has managed DRP Power available under the DR Agreement in a just and reasonable manner and DWR and Utility agrees that none of the provisions of this Agency Agreement shall be interpreted to reduce, diminish, or otherwise limit the scope of any CPUC authority or to give DWR any authority over such matters.

(d) Utility acknowledges DWR's separate and independent right to evaluate and enforce Utility's commercial performance under this Agency Agreement.

(e) Utility agrees to provide any information not otherwise required herein that is reasonably necessary to allow DWR to exercise its rights in subsection (d) above, provided that all such information shall be used solely for the purposes of exercising such rights.

Section 2.03. Good Faith. Each Party hereby covenants that it shall perform its actions, obligations and duties in connection with this Agency Agreement in good faith.

Section 2.04. Associated Resources. Any energy provided to Utility which arises from the reduction of load by a non-bundled Qualified End User pursuant to the DR Agreement and any Replacement Energy shall be collectively referred to herein as an "Associated Resource". Associated Resources shall constitute "DWR Power" for all purposes of the Servicing Arrangement, with such amendments to incorporate the Settlement Principles for Remittances and Surplus Revenues as provided in Exhibit C of the Operating Arrangement. The Parties agree that Utility shall have no obligation to remit to Department of any reduction of bundled customer load within Utility's service territory. Nothing in this Section is intended to change or expand any right, duties or obligations under, or add additional parties to, the Servicing Arrangement or the Operating Arrangement.

Section 2.05 Term. (a) This Agency Agreement shall commence on the Effective Date (as defined in Section 2.06, below) and terminate on the earliest of the following dates: (i) 11:59 p.m. on May 17, 2007; (ii) five (5) days after the CPUC Disapproval Date (as defined below); (iii) the date that the DR Agreement terminates; (iv) the date that the DR Agreement is modified in a manner that materially affects Utility's rights or obligations under this Agency Agreement and for which no notice was given pursuant to Section 5.01(g) below; or (v) upon

Deleted: AGENCY AGREEMENT - 10/7/2004

Deleted: DRAFT - FOR DISCUSSION PURPOSES ONLY - STILL UNDERGOING REVIEW

five (5) days' written notice from Department to Utility; or (vii) upon consultation with the Commission and no less than five (5) days' written notice from Utility to the Department; provided that Utility shall cooperate with Department during a period not to exceed five (5) days in order to facilitate Department's assumption of Utility's duties under this Agency Agreement; or (viii) notwithstanding any cure periods otherwise provided for in Section 6.01 of this Agency Agreement, upon five (5) days' written notice by either Party that the Authority has failed to remit payment to such Party for Reimbursable Costs as provided for in Section 5.01(e) of this Agency Agreement.

(b) After termination of this Agency Agreement for any of the reasons set forth in Section 2.05(a), above, the Department's obligations under Section 5.01(e) herein will continue with respect to any invoice or demand for payment for Reimbursable Costs incurred by Utility in connection with the performance of its duties prior to the termination of this Agreement.

Section 2.06 Effective Date. The Effective Date of this Agency Agreement shall mean the date that it is fully executed by both Parties.

Section 2.07 Condition Subsequent of CPUC Approval. This Agency Agreement is subject to a condition subsequent of "Final CPUC Approval" as defined below.

Formatted: Appendix Text, Indent: Left: 0", Space Before: 0 pt

(a) Final CPUC Approval shall mean the issuance of a decision by, or order or finding of, the CPUC or any of its constituent departments acting on behalf of the CPUC, approving in its entirety this Agency Agreement, without conditions or modifications unacceptable to any Party, that has become final and is no longer subject to appeal and with findings that are acceptable to Utility.

(b) Utility shall seek Final CPUC Approval of this Agency Agreement by submitting an advice letter or other appropriate filing (the "Filing") for a CPUC decision or order approving it and containing findings acceptable to Utility.

(c) "CPUC Disapproval Date" means (i) Final CPUC Approval is not obtained by December 1, 2004 or such other later date mutually agreed to by the Parties in writing or (ii) the date CPUC issues a decision or order or finding in response to the Filing that is final and no longer subject to appeal and which disapproves the Filing, that does not contain findings acceptable to Utility or imposes conditions upon or modifications to this Agency Agreement that are unacceptable to either Party in its sole discretion.

Deleted: July 30

Section 2.08 Ownership of Power. Notwithstanding any other provision herein, and in accordance with the Act and Section 80110 of the California Water Code, Utility and Department agree that Department shall retain title to all DRP Power, including Associated Resources. In accordance with the Act and Section 80104 of the California Water Code, upon the delivery of DRP Power to Utility's customers, these customers shall be deemed to have purchased that power from Department and payment for such sale shall be a direct obligation of such customer to Department.

ARTICLE III
LIMITED AGENCY/NO ASSIGNMENT

Deleted: AGENCY AGREEMENT - 10/7/2004

Section 3.01 Limited Agency. Utility is hereby appointed as the Department's agent for the limited purposes set forth in this Agency Agreement. Utility shall not be deemed to be acting, and shall not hold itself out, as agent for DWR for any purpose other than those described in this Agreement and the Operating Arrangement.

Section 3.02 No Assignment. The Department shall remain legally and financially responsible for performance under the DR Agreement and shall retain liability to the Authority for any failure of Utility to perform the functions referred to in this Agency Agreement on behalf of the Department as its limited agent under the DR Agreement in accordance with the terms thereof. Utility and the Department intend that the provisions of this Agency Agreement shall not constitute an "assignment" of the DR Agreement as such term is used, and as provided, therein.

ARTICLE IV
LIMITED DUTIES OF UTILITY

Section 4.01 Limited Duties of Utility as to the DR Agreement. Subject to Utility's receipt of scheduling and dispatch information for resources under the DR Agreement disaggregated for its Designated DR Territory, during the Term of this Agency Agreement, on behalf of the Department, and as limited agent therefor, Utility shall:

(a) Schedule and/or dispatch Energy in its Designated DR Territory pursuant to the terms of Article II of the DR Agreement, substantially in accordance with the guidelines set forth in Section 2.01 herein;

Formatted: Appendix Text, Indent: Left: 0", Space Before: 0 pt

(b) Transmit to the Department by close of business on the fifth Business Day of every month, a written statement (i) setting forth all Energy and Capacity that were Scheduled and/or dispatched by Utility during each hour of the immediately prior month, or (ii) stating that no Energy was scheduled or dispatched by Utility during the immediately prior month, in a format consistent with a data template to be developed by Utility and the Department;

(c) Promptly remit to the Department at the rate for DWR power delivered to bundled customers set by the Commission for any Associated Resource in accordance with Exhibit C of the Operating Arrangement and the Servicing Arrangement;

(d) Promptly transmit to the Department for reimbursement by Authority under the DR Agreement any invoice or other demand for payment of Reimbursable Costs incurred by Utility in connection with the performance of its duties hereunder, and provide any information requested by the Department or the Authority necessary for the Department or the Authority to validate such invoice or demand for payment;

Formatted: Font: Times New

(e) Provide the information and validation services described under Schedule 1 attached hereto;

Formatted: Font: Times New

Deleted: AGENCY AGREEMENT - 10/7/2004

(f) Appoint a primary and secondary contact person, as set forth in Schedule A hereto, to coordinate the responsibilities listed in this Article IV; and

(g) At all times in performing its obligations under this Agency Agreement, (i) comply with the provisions of the DR Agreement, (ii) follow Good Utility Practice, and (iii) comply with all Applicable Laws and Applicable Commission Orders.

Provided, however, that Utility is expressly relieved of its above obligations to the extent Utility does not receive scheduling and dispatch information for resources under the DR Agreement disaggregated for its Designated DR Territory, and provided further, that in the event that the Department or the Authority fail to provide information or provides inaccurate information which results in Utility's non-compliance with its obligations under this Agency Agreement, the resulting non-compliance by Utility shall not constitute an Event of Default under Section VI.

Section 4.02. No Payment by Utility. Unless otherwise specifically provided in this Agency Agreement, Utility will not be required at any time to advance or pay any of its own funds in the fulfillment of its responsibilities under this Agency Agreement.

ARTICLE V DUTIES OF THE DEPARTMENT

Section 5.01 Duties of the Department. With respect to the Designated DR Territory, during the Term of this Agency Agreement, the Department shall:

(a) Provide Utility with written notice of any event in which the Department dispatches and schedules the DRP resources independently of Utility, as provided for in Section 2.01 herein. Such notice shall be provided to Utility as much in advance as practicable, but in no case later than concurrently with the Department's (or its agent's) notice to the Authority (or its agent) dispatching the DRP resources, and such notice shall contain the information set forth in Schedule 2, Section A;

(b) Remain fully responsible for and make all payments owed to Authority under the DR Agreement, including payment of or based upon the statements submitted to it by Utility as contemplated in Section 4.01(b) of this Agency Agreement;

(c) Promptly forward to Utility all information that Department receives from Authority pursuant to Article II of the DR Agreement that is related to and/or necessary for the performance of Utility's duties as Department's limited agent under this Agency Agreement;

(d) Remain fully responsible for resolving any dispute with the Authority about payments in accordance with Section 5.04 of the DR Agreement;

(e) Upon receipt of any invoice or demand for payment for any Reimbursable Cost incurred by Utility in connection with the performance of its duties hereunder as described in Section 4.01(d) hereof, promptly forward same to Authority for payment and, upon Department's receipt of a payment from Authority for such Reimbursable Cost, transmit same

Formatted: Appendix Text, Indent: Left: 0", Space Before: 0 pt

Deleted: AGENCY AGREEMENT - 10/7/2004

to Utility. Department shall use commercially reasonable efforts to pursue any amounts due to Utility for all validly incurred and properly verified Reimbursable Costs. Should Authority reasonably dispute the validity of some or all of a Utility invoice or demand for payment, DWR shall express such dispute in writing to Utility within thirty (30) days of the date of such invoice or demand for payment, after which the parties will resolve the matter in accordance with Article X of this Agency Agreement;

(f) Modify the DR Agreement in order to create a separate and independent right for Utility, as the Department's limited agent, to seek reimbursement directly from Authority for Reimbursable Costs that have not otherwise been paid by the Department under Section 5.01(e);

(g) Require that any amendment, change or modification to the DR Agreement that materially effects Utility's rights or obligations under this Agency Agreement shall only become effective after Utility has received thirty (30) days' written notice of the amendment, change or modification; and

(h) Appoint a primary and secondary contact person, as set forth in Schedule A hereto, to coordinate the responsibilities listed in this Article V.

Provided, however, that in the event that Utility fails to provide information or provides inaccurate information which results in the Department's non-compliance with its obligations under this Agency Agreement, the resulting non-compliance by the Department shall not constitute an Event of Default under Section VI.

Section 5.02. No Changes to DR Agreement. The Parties intend and understand that this Agency Agreement does not address, change or affect Department's rights and duties under the DR Agreement, other than as related to the Designated DR Territory.

**ARTICLE VI
EVENTS OF DEFAULT**

Section 6.01. Events of Default. The following events shall constitute "Events of Default" under this Agency Agreement:

(a) Except as provided in subsection (c) below, any failure by a Party to duly observe or perform in any material respect any term or condition of such Party as set forth in this Agency Agreement, which failure continues and/or is not remedied for a period of fifteen calendar days after written notice thereof to such Party by the other Party; provided, however, that if such default cannot be remedied by the defaulting Party within the fifteen calendar day period, it shall not constitute a Event of Default if corrective action is commenced by the defaulting Party within the fifteen calendar day period and diligently pursued until the default is remedied;

Formatted: Indent: Left: 0", First line: 0.5", Tabs: 1", Left

Formatted: Indent: Left: 0.5"

Deleted: AGENCY AGREEMENT - 10/7/2004

Deleted: DRAFT - FOR DISCUSSION PURPOSES ONLY - STILL UNDERGOING REVIEW

(b) Any representation or warranty made by a Party proves to be false, misleading or incorrect in any material respect as of the date made.

Formatted: Indent: Left: 0", First line: 0.5", Space Before: 12 pt, Tabs: 1", Left + 1.25", Left

Section 6.02. Consequences of Event of Default.

(a) Upon any Event of Default by Utility, DWR may, in addition to exercising any other remedies available under this Agency Agreement or under Applicable Law, terminate this Agency Agreement in whole or in part.

Formatted: Left, Indent: Left: 0", First line: 0.5", Tabs: Not at 1"

(b) Upon any Event of Default by DWR, Utility may, in addition to exercising any other remedies available under this Agency Agreement or under Applicable Law, exercise its rights under Section 2.05 to terminate this Agency Agreement in whole or in part.

Formatted: Left, Indent: Left: 0", First line: 0.5", Tabs: Not at 1"

Section 6.03. Remedies. Subject to Article IX of this Agency Agreement, upon any Event of Default, the non-defaulting Party may exercise any other legal or equitable right or remedy that may be available to it under applicable law or under this Agency Agreement.

Formatted: Left

Section 6.04. Remedies Cumulative. Except as otherwise provided in this Agency Agreement, all rights of termination, cancellation, or other remedies in this Agency Agreement are cumulative. Use of any remedy shall not preclude any other remedy available under this Agency Agreement.

Formatted: Left

Section 6.05. Waivers. None of the provisions of this Agency Agreement shall be considered waived by either Party unless the Party against whom such waiver is claimed gives such waiver in writing. The failure of either Party to insist in any one or more instances upon strict performance of any of the provisions of this Agency Agreement or to take advantage of any of its rights hereunder shall not be construed as a waiver of any such provisions or the relinquishment of any such rights for the future, but the same shall continue and remain in full force and effect. Waiver by either Party of any default by the other Party shall not be deemed a waiver of any other default.

Formatted: Left

**ARTICLE VII
REPRESENTATIONS AND WARRANTIES**

Section 7.01 Representations and Warranties.

(a) Each person executing this Agency Agreement on behalf of a Party expressly represents and warrants that he or she has authority to bind the Party for whom he or she signs.

Formatted: Appendix Text, Indent: Left: 0", Space Before: 0 pt

(b) Each Party represents and warrants that it has the full power and authority to execute and deliver this Agency Agreement and to perform its terms, that execution, delivery and performance of this Agency Agreement has been duly authorized by all necessary corporate or other action by such Party, and that this Agency Agreement constitutes such Party's legal, valid and binding obligation, enforceable against such Party in accordance with its terms.

Deleted: AGENCY AGREEMENT - 10/7/2004

Deleted: DRAFT - FOR DISCUSSION PURPOSES ONLY - STILL UNDERGOING REVIEW

(c) The Department represents and warrants that all necessary and appropriate notices, inducements, undertakings, approvals, and consents have been obtained from the Authority in order for Utility to undertake its duties set forth in this Agency Agreement in a timely and appropriate fashion.

**ARTICLE VIII
PAYMENT OF FEES AND CHARGES**

Section 8.01 Utility Fees and Charges. The Decision has established cost recovery mechanisms that apply to this phase of Utility's implementation of the DRP through 2004. The Parties agree that Utility's administrative costs for such time period will be recovered pursuant to the Decision and that Utility shall enter such costs in its Advanced Metering and Demand Response Account. With respect to cost recovery of Utility's administrative costs for the period after 2004, Utility shall seek cost recovery of its administrative costs under this Agency Agreement pursuant to such Commission proceeding.

Deleted: [
Deleted: Memorandum
Deleted:]

**ARTICLE IX
LIMITATIONS ON LIABILITY**

Section 9.01 Consequential Damages. Except as otherwise provided under this Agency Agreement, in no event will either Party be liable to the other Party for any indirect, special, exemplary, incidental, punitive, or consequential damages under any theory. Nothing in this Section 9.01 shall limit either Party's rights as provided in Article VII above.

Section 9.02 [Reserved]

Section 9.03. Limited Obligations of DWR. Any amounts payable by DWR under this Agreement shall be payable solely from moneys on deposit in the Department of Water Resources Electric Power Fund established pursuant to Section 80200 of the California Water Code (the "Fund").

Section 9.04. Sources of Payment; No Debt of State. DWR's obligation to make payments hereunder shall be limited solely to the Fund and shall be payable as an operating expense of the Fund solely from Power Charges subject and subordinate to each Priority Long Term Power Contract in accordance with the priorities and limitations established with respect to the Fund's operating expenses in any indenture providing for the issuance of Bonds and in the Rate Agreement and in the Priority Long Term Power Contracts. Any liability of DWR arising in connection with this Agency Agreement or any claim based thereon or with respect thereto, including, but not limited to, any payment arising as the result of any breach or Event of Default under this Agreement, and any other payment obligation or liability of or judgment against DWR hereunder, shall be satisfied solely from the Fund. **NEITHER THE FULL FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE OF CALIFORNIA ARE OR MAY BE PLEDGED FOR ANY PAYMENT UNDER THIS AGREEMENT.** Revenues and assets of the State Water Resources Development System, and Bond Charges under the Rate Agreement, shall not be liable for or available to make any payments or satisfy any obligation arising under this Agreement. To the extent DWR's obligations are "administrative costs," they will require annual appropriation by the legislature.

Deleted: AGENCY AGREEMENT - 10/7/2004

Deleted: DRAFT - FOR DISCUSSION PURPOSES ONLY - STILL UNDERGOING REVIEW

Section 9.05 Cap on Liability. In no event will Utility be liable to DWR for damages under this Agency Agreement, including indemnification obligations, whether in contract, warranty, tort (including negligence), strict liability or otherwise (referred to as "Damages" for purposes of this Section, in an amount in excess of \$1,000,000 in total aggregate liability over the term of the Department's DR Agreement. Furthermore, Utility shall in no case be liable to the Department in an amount greater than the limit specified in Section 10.04 of the Operating Arrangement when liabilities under the Operating Arrangement and this Agency Agreement are combined. The Department hereby releases and hold harmless Utility from any liability for Damages in excess of the limitations of liability set forth in this Section 9.05; provided, however, that this limitation of Utility liability shall not apply to the extent the liability is a result of Utility's gross negligence or willful misconduct.

**ARTICLE X
DISPUTE RESOLUTION**

Section 10.01 Dispute Resolution. Should any dispute arise between the Parties relating to this Agency Agreement, the Parties shall undertake good-faith negotiations to resolve such dispute. If the Parties are unable to resolve such dispute through good-faith negotiations, either Party may submit a detailed written summary of the dispute to the other Party. Upon such written presentation, each Party shall designate an executive with authority to resolve the matter in dispute. If the Parties are unable to resolve such dispute within 30 days from the date that a detailed summary of such dispute is presented in writing to the other Party, and the dispute relates solely to Utility's conduct, performance, acts and/or omissions (and not DWR's conduct, performance, acts and/or omissions), then DWR may, at its sole discretion, present the dispute to the Commission for resolution, in accordance with Applicable Law. All other disputes shall be brought in a court of competent jurisdiction or a forum mutually acceptable to the parties in accordance with Applicable Law. Nothing herein shall preclude either Party from challenging the decision or action with such Party deems may adversely affect its interests in any appropriate forum of the Party's choosing.

Deleted: then either Party may, at its sole discretion, submit the dispute to binding arbitration for final resolution.

Formatted: Font: (Default) Times New Roman, 12 pt

**ARTICLE XI
RECORDS AND AUDIT RIGHTS**

Section 11.01. Records. Utility shall maintain accurate records and accounts relating to the DR Agreement in sufficient detail to permit DWR to audit and monitor the functions to be performed by Utility on behalf of DWR, as its limited agent, under this Agency Agreement. In addition, Utility shall maintain accurate records and accounts relating to DWR Revenues to be remitted by Utility to DWR, consistent with the Settlement Principles for Remittances and Surplus Revenues set forth in Exhibit C of the Operating Arrangement. Utility shall provide to DWR and its Assign(s) access to such records. Access shall be afforded without charge, upon reasonable request made pursuant to Section 11.02. Access shall be afforded only during Business Hours and in such a manner so as not to interfere unreasonably with Utility's normal operations. Utility shall not treat DWR Revenues as income or assets of Utility or any affiliate for any tax, financial reporting or regulatory purposes, and the financial books or records of Utility and affiliates shall be maintained in a manner consistent with the absolute ownership of

Deleted: AGENCY AGREEMENT - 10/7/2004

Deleted: DRAFT - FOR DISCUSSION PURPOSES ONLY - STILL UNDERGOING REVIEW

DWR Revenues by DWR and Utility's holding of DWR Revenues in trust for DWR (whether or not held together with other monies).

Section 11.02. Audit Rights.

(a) Upon 30 calendar days' prior written notice, DWR may request an audit, conducted by DWR or its agents (at DWR's expense), of Utility's records and procedures, which shall be limited to records and procedures containing information bearing upon Utility's performance of its obligations under this Agency Agreement. The audit shall be conducted during Business Hours without interference with Utility's normal operations, and in compliance with Utility's security procedures.

Formatted: Indent: Left: 0", First line: 0.5", Tabs: Not at 1"

(b) Utility agrees that, DWR or the State of California Department of General Services, the Bureau of State Audits, or their designated representative ("DWR's Agent") shall have the right to review and to copy (at DWR's expense) any non-confidential records and supporting documentation pertaining to the performance of this Agency Agreement and to conduct an on-site review of any confidential information. Utility agrees to maintain such records for such possible audit for three years after final remittance to DWR. Utility agrees to allow such auditor(s) access to such records during business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Utility agrees to include a similar right for DWR or DWR's Agent to audit records and interview staff in any contract between Utility and a subcontractor directly related to performance of this Agency Agreement.

Formatted: Normal, Indent: Left: 0", First line: 0.5", Space Before: 12 pt, Tabs: Not at 1"

Section 11.03. Other Information. Upon the reasonable request of DWR or its Assign(s), Utility shall provide to DWR or its Assign(s) any public financial information in respect of Utility applicable to services provided by Utility under this Agency Agreement, to the extent such information is reasonably available to Utility, which (i) is reasonably necessary and permitted by Applicable Law to monitor the performance by Utility hereunder, or (ii) otherwise relates to the exercise of DWR's rights or the discharge of DWR's duties under this Agency Agreement or any Applicable Law. In particular, but without limiting the foregoing, Utility shall provide to DWR any such information that is necessary or useful to calculate DWR's revenue requirements (as described in Sections 80110 and 80134 of the California Water Code)

Upon the reasonable request of DWR, Utility shall provide to DWR any information in respect of Utility that is applicable to the rights and obligations of the Parties under this Agency Agreement or any material information that is reasonably necessary for DWR to monitor and manage its risks and perform its fiduciary duties.

Upon the reasonable request of Utility, DWR will provide to Utility any information in respect of DWR that is applicable to the rights and obligations of the Parties under this Agency Agreement or any material information that is reasonably necessary for Utility to operationally administer the DR Agreement under this Agency Agreement.

Section 11.04. Data and Information Retention. All data and information associated with the provision and receipt of services pursuant to this Agency Agreement shall be

Deleted: AGENCY AGREEMENT - 10/7/2004

**Deleted: DRAFT - FOR
DISCUSSION PURPOSES ONLY -
STILL UNDERGOING REVIEW**

maintained for the greater of (a) the retention time required by Applicable Law or Applicable Tariffs for maintaining such information, or (b) three (3) years.

**Deleted: AGENCY AGREEMENT -
10/7/2004**

**ARTICLE XII
MISCELLANEOUS**

Section 12.01. Assignment

(a) Except as provided in paragraphs (b) and (c) below, neither Party shall assign or otherwise dispose of this Agency Agreement, its right, title or interest herein or any part hereof to any part hereof to any entity, without the prior written consent of the other Party. No assignment of this Agency Agreement shall relieve the assigning Party of any of its obligations under this Agreement until such obligations have been assumed by the assignee. When duly assigned in accordance with this Section 12.01(a) and when accepted by the assignee, this Agency Agreement shall be binding upon and shall inure to the benefit of the assignee. Any assignment in violation of this Section 12.01 shall be void.

Formatted: Indent: Left: 0", First line: 0.5", Right: 0"

(b) Utility acknowledges and agrees that DWR may assign or pledge its rights to receive performance hereunder to a trustee or another party ("Assign(s)") in order to secure DWR's obligations under its bonds (as that term is defined in the Act), and any such Assign shall be a third party beneficiary of this Agreement; provided, however, that this authority to assign or pledge rights to receive performance hereunder shall in no event extend to any person or entity that sells power or other goods or services to DWR.

Formatted: Indent: Left: 0", First line: 0.5", Right: 0"

(c) Any person (i) into which Utility may be merged or consolidated, (ii) which may result from any merger or consolidation to which Utility shall be a party or (iii) which may succeed to the properties and assets of Utility substantially as a whole, which person in any of the foregoing cases executes an agreement of assumption to perform every obligation of Utility hereunder, shall be the successor to Utility under this Agreement without further act on the part of any of the Parties to this Agreement; provided, however, that Utility shall have delivered to DWR and DWR its Assign(s) an opinion of counsel reasonably acceptable to DWR stating that such consolidation, merger or succession and such agreement of assumption complies with this Section 13.01(c) and that all of Utility's obligations hereunder have been validly assumed and are binding on any such successor or assign.

Formatted: Indent: Left: 0", First line: 0.5", Right: 0", Widow/Orphan control, Keep with next, Keep lines together

(d) Notwithstanding anything to the contrary herein, DWR's rights and obligations hereunder shall be transferred, without any action or consent of either Party hereto, to any entity created by the State legislature which is required under Applicable Law to assume the rights and obligations of DWR under Division 27 of the California Water Code.

Formatted: Indent: Left: 0", First line: 0.5", Right: 0"

Section 12.02 Force Majeure. Neither Party shall be liable for any delay or failure in performance of any part of this Agency Agreement (including the obligation to remit money at the times specified herein) from any cause beyond its reasonable control, including but not limited to, unusually severe weather, flood, fire, lightning, epidemic, quarantine restriction, war, sabotage, act of a public enemy, earthquake, insurrection, riot, civil disturbance, strike, restraint by court order or Government Authority, or any combination of these causes, which

Deleted: (e) . [For PG&E only] Notwithstanding anything to the contrary herein, Utility's rights and obligations under this Agreement may be assigned to the reorganized debtor under a plan of reorganization approved by the Bankruptcy Court for Utility without any action or consent of either Party hereto.}]

Deleted: AGENCY AGREEMENT - 10/7/2004

by the exercise of due diligence and foresight such Party could not reasonably have been expected to avoid and which by the exercise of due diligence is unable to overcome.

Section 12.03 Severability. In the event that any one or more of the provisions of this Agency Agreement shall for any reason be held to be unenforceable in any respect under applicable law, such unenforceability shall not affect any other provision of this Agency Agreement, but the Agency Agreement shall be construed as if such unenforceable provision or provisions had never been contained herein.

Section 12.04 Third Party Beneficiaries. The provisions of this Agency Agreement are exclusively for the benefit of the Parties and any permitted assignee of either Party and there are no third party beneficiaries under this Agency Agreement.

Section 12.05 Governing Law. This Agency Agreement shall be interpreted, governed and construed under the laws of the State of California, without giving effect to choice of law provisions.

Section 12.06 Section Headings. Section and Article headings appearing in this Agency Agreement are inserted for convenience only and shall not be construed as interpretations of text.

Section 12.07 Amendments. No amendment, modification, or supplement to this Agency Agreement shall be effective unless it is in writing and signed by the authorized representatives of both Parties and approved as required, and by reference incorporates this Agency Agreement and identifies the specific portions that are amended, modified, or supplemented or indicates that the material is new. No oral understanding or agreement not incorporated in this Agency Agreement is binding on either of the Parties.

Section 12.08 Amendment Upon Changed Circumstances. The Parties acknowledge that compliance with any Commission decision, legislative action or other governmental action (whether issued before or after the Effective Date of this Agency Agreement), including, but not limited to, the modification of the DR Agreement, affecting the operation of this Agency Agreement may require that amendment(s) be made to this Agency Agreement. The Parties therefore agree that if either Party reasonably determines that such a decision, action or modification would materially affect the services to be provided hereunder or the reasonable costs thereof, then upon the issuance of such decision or the approval of such action (unless and until it is stayed) or modification, the Parties will negotiate the amendment(s) to this Agency Agreement that is (or are) appropriate in order to effectuate the required changes in services to be provided or the reimbursement thereof. If the Parties are unable to reach agreement on such amendments within 60 days after the issuance of such decision or approval of such action or modification, either Party may, in the exercise of its sole discretion, submit the disagreement to binding arbitration for final resolution. Nothing herein shall preclude either Party from exercising its rights to terminate this Agency Agreement or from challenging the decision, action or modification which such Party deems may adversely affect its interests in any appropriate forum of the Party's choosing.

The Parties agree that, if the rating agencies request changes to this Agency Agreement which the Parties reasonably determine are necessary and appropriate, the Parties will negotiate in good faith, but will be under no obligation to reach agreement or to ask the Commission to amend this Agreement to accommodate the rating agency requests and will cooperate in obtaining any required approvals of the Commission or other entities for such amendments.

Section 12.09 Indemnification.

(a) Indemnification of DWR. Utility (the "Indemnitor") shall at all times protect, indemnify, defend and hold harmless DWR, and its elected officials, appointed officers, employees, representatives, agents and contractors (each, an "Indemnified Party" or an "Indemnitee") from and against (and pay the full amount of) any and all claims (whether in tort, contract or otherwise), demands, expenses (including, without limitation, in-house and retained attorneys' fees) and liabilities for losses, damage, injury and liability of every kind and nature and however caused, and taxes (of any kind and by whomsoever imposed), of third parties arising from or in connection with (or alleged to arise from in connection with): (1) any failure by Utility to perform its material obligations under this Agency Agreement; (2) any material representation or warranty made by Utility shall prove to be false, misleading or incorrect in any material respect as of the date made; (3) the gross negligence or willful misconduct of Utility or any of its officers, directors, employees, agents, representatives, subcontractors or assignees in connection with this Agency Agreement; and (4) any violation of or failure by Utility or Indemnitor to comply with any Applicable Commission Orders or Applicable Law; provided, however, that the foregoing indemnifications and protections shall not extend to any losses arising from gross negligence or willful misconduct of any Indemnified Party.

Formatted: Heading 6, Indent: First line: 0.5"

Deleted: ¶

(b) Obligation of Utility. Utility shall not, in acting as Department's limited agent hereunder, be required to perform any obligations under the DR Agreement or to make any payments on behalf of Authority or the Department or as a result of the failure of (i) DRP participants to fulfill their obligations under the DRP Program, (ii) the Authority or Department to perform under the DR Agreement, or (iii) third-party Scheduling Coordinators to perform any requisite inter-scheduling coordinator trade pursuant to the DRP.

Formatted: Indent: Left: 0", First line: 0.5"

(c) Indemnification of Utility. To the extent permitted by law, DWR ("Indemnitor") shall at all times protect, indemnify, defend and hold harmless Utility, and its officers, employees, representatives, agents and contractors (each, an "Indemnified Party" or "Indemnitee"), from and against (and pay the full amount of) any and all claims (whether in tort, contract or otherwise), demands, expenses (including, without limitation, in-house and retained attorneys' fees) and liabilities for losses, damage, injury and liability of every kind and nature and however caused, and taxes (of any kind and by whomsoever imposed), of third parties arising from or in connection with (or alleged to arise from on in connection with): (1) any failure by DWR to perform its material obligations under this Agency Agreement or the DR Agreement; (2) any material representation or warranty made by DWR shall prove to be false, misleading or incorrect in any material respect as of the date made; (3) the gross negligence or willful misconduct of the DWR or any of its officers, directors or employees, agents, representatives, subcontractors or assignees in connection with this Agreement; (4) any

Formatted: Indent: Left: 0", First line: 0.5"

Deleted: AGENCY AGREEMENT - 10/7/2004

Deleted: DRAFT - FOR DISCUSSION PURPOSES ONLY - STILL UNDERGOING REVIEW

violation of or failure by DWR or Indemnitor to comply with any Applicable Law; and (5) any action claiming that as DWR's limited agent under this Agreement, Utility failed to perform the obligations of the Authority or an aggregator for the Authority, such as APX under the DR Agreement, provided, however, that the foregoing indemnifications and protections shall not extend to any losses arising from the gross negligence or willful misconduct of any Indemnified Party, and provided further that the foregoing indemnifications and protections shall not extend to any losses arising from penalties imposed by the Commission.

(d) Indemnification Procedures. Indemnatee shall promptly give notice to Indemnitor of any claim or action to which it seeks indemnification from Indemnitor. Indemnitor shall defend any such claim or action brought against it, and may also defend such claim or action on behalf of the Indemnatee (with counsel reasonably satisfactory to Indemnitor) unless there is any actual or potential conflict between Indemnitor and Indemnatee with respect to such claim or action. If there is any actual or potential conflict between Indemnitor and Indemnatee with respect to such claim or action, Indemnatee shall have the opportunity to assume (at Indemnitor's expense) defense of any claim or action brought against Indemnatee by a third party; however, failure by Indemnatee to request defense of such claim or action by the Indemnitor shall not affect Indemnatee's right to indemnity under this Section 12.09. In any action or claim involving Indemnatee, Indemnitor shall not settle or compromise any claim without the prior written consent of Indemnatee.

Formatted: Indent: Left: 0", First line: 0.5"

Section 12.10 Notices. Any notice, demand or request under this Agency Agreement shall be in writing and shall be deemed to have been given (i) on the date delivered in person, (ii) on the date sent when transmitted by facsimile or by electronic mail, or (iii) 72 hours after delivery to a United States post office when sent by certified or registered United States mails postage prepaid, and addressed as set forth below:

Utility: _____

 Telephone: _____
 Facsimile: _____
 E-mail: _____

Department: _____

 Telephone: _____
 Facsimile: _____
 E-mail: _____

Deleted: AGENCY AGREEMENT - 10/7/2004

Either Party may change its address as set forth above by providing the other Party with notice of the change under this Section 12.10.

Section 12.11 Entire Agreement. This Agency Agreement contains the entire agreement and understanding between the Parties as to the subject matter of this Agency Agreement and supercedes all prior agreements, representation and discussions between the Parties concerning its subject matter. Each Party further represents that, in entering into this Agency Agreement, it has not relied on any promise, inducement, representation, warranty, agreement or other statement not set forth herein.

Section 12.12. Successors and Assigns. This Agency Agreement shall be binding upon and inure to the benefit of the Parties' respective heirs, administrators, representatives, executors, successors and assigns permitted under Section 12.01 hereto.

Section 12.13. Further Assurances. The Parties agree to cooperate promptly and fully in taking such other actions as may later be determined to be reasonably necessary to effectuate the provisions of this Agency Agreement, including but not limited to, petitioning the Commission for modification of the Operating Arrangement or Servicing Arrangement, if necessary and appropriate.

Section 12.14 Government Code and Public Contract Code Inapplicable. The Department has determined, pursuant to Section 80014(b) of the California Water Code that application of certain provisions of the Government Code and Public Contract Code applicable to State contracts, including but not limited to advertising and competitive bidding requirements and prompt payment requirements, would be detrimental to accomplishing the purposes of Division 27 (commencing with Section 80000) of the California Water Code and that such provisions and requirements are therefore not applicable to or incorporated in this Agency Agreement.

Section 12.15. Survival of Payment Obligations. Upon termination of this Agency Agreement, each Party shall remain liable to the other Party for all amounts owing under this Agency Agreement. Utility shall continue to collect and remit, pursuant to the terms of the Servicing Arrangement and the principles provided in the Settlement Principles for Remittances and Surplus Revenues provided in Exhibit C of the Operating Arrangement and any DWR Charges (as defined in the Servicing Arrangement) billed to customers attributable to Associated Resources delivered to Utility's customers before the effective date of termination of the Servicing Arrangement.

Section 12.16 Multiple Originals. This Agency Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which taken together shall constitute a single document.

Section 12.17. Other Agency Agreement. It is DWR's intent to have a consistent agency agreement with respect to the subject matter of this Agency Agreement with all three of California's investor-owned electric utilities. Should DWR reach an agency agreement with another utility relating to the subject matter of this Agency Agreement, that in Utility's judgment is more favorable on the whole than this Agency Agreement, Utility shall have the

Deleted: DRAFT - FOR DISCUSSION PURPOSES ONLY - STILL UNDERGOING REVIEW

right to receive the same terms and conditions as such other utility. This provision specifically does not allow Utility to select particular portions or provisions of such other utility's agency agreement. In addition, if Utility elects to be subject to such other utility's agency agreement's terms and conditions, Utility shall be subject to such other utility's agency agreement with only such modifications agreed to by DWR as necessary to address operating differences between that other utility and Utility. Utility shall exercise the foregoing right within 30 days following Commission approval of such other agency agreement or within 30 days of the Department's written notification to Utility that the Department has amended such other agency agreement if Commission approval of such other agency agreement is not anticipated by Utility.

Section 12.18. Enforcement of Agency Agreement. The Department acknowledges that Utility has a right to evaluate and enforce DWR's commercial performance under this Agency Agreement.

Deleted: ¶

ARTICLE XIII
CONFIDENTIALITY

Section 13.01. Proprietary Information.

(a) Nothing in this Agreement shall affect Utility's obligations to observe any Applicable Law prohibiting the disclosure of Confidential Information regarding its customers.

Formatted: Indent: Left: 0", First line: 0.5"

(b) Nothing in this Agreement, and in particular nothing in Sections 13.01(e)(x) through 13.01(e)(z) of this Agreement, shall affect the rights of the Commission to obtain from Utility, pursuant to Applicable Law, information requested by the Commission, including Confidential Information provided by DWR to Utility. Applicable Law, and not this Agreement, will govern what information the Commission may disclose to third parties, subject to any confidentiality agreement between DWR and the Commission.

(c) The Parties acknowledge that each Party may acquire information and material that is the other Party's confidential, proprietary or trade secret information. As used herein, "Confidential Information" means any and all technical, commercial, financial and customer information disclosed by one Party to the other (or obtained from one Party's inspection of the other Party's records or documents), including any patents, patent applications, copyrights, trade secrets and proprietary information, techniques, sketches, drawings, maps, reports, specifications, designs, records, data, models, inventions, know-how, processes, apparatus, equipment, algorithms, software programs, software source documents, object code, source code, and information related to the current, future and proposed products and services of each of the Parties, and includes, without limitation, the Parties' respective information concerning research, experimental work, development, design details and specifications, engineering, financial information, procurement requirements, purchasing, manufacturing, business forecasts, sales and merchandising, and marketing plans and information. In all cases, Confidential Information includes proprietary or confidential information of any third party disclosing such information to either Party in the course of such third party's business or relationship with such Party. Utility's Confidential Information also includes any and all lists

Deleted: AGENCY AGREEMENT - 10/7/2004

of customers, and any and all information about customers, both individually and aggregated, including but not limited to customers' names, street addresses of customer residences and/or facilities, email addresses, identification numbers, Utility account numbers and passwords, payment histories, energy usage, rate schedule history, allocation of energy uses among customer residences and/or facilities, and usage of DWR Power. All Confidential Information disclosed by the disclosing Party ("Discloser") will be considered Confidential Information by the receiving Party ("Recipient") if identified as confidential and received from Discloser.

Deleted:

(d) Each Party agrees to take all steps reasonably necessary to hold in trust and confidence the other Party's Confidential Information. Without limiting the generality of the immediately preceding sentence, each Party agrees (i) to hold the other Party's Confidential Information in strict confidence, not to disclose it to third parties or to use it in any way, commercially or otherwise, other than as permitted under this Agreement; and (ii) to limit the disclosure of the Confidential Information to those of its employees, agents or directly related subcontractors with a need to know who have been advised of the confidential nature thereof and who have acknowledged their express obligation to maintain such confidentiality. DWR shall not disclose Confidential Information to employees, agents or subcontractors that are in any respect responsible for power marketing or trading activities associated with the State Water Resources Development System.

(e) The foregoing two paragraphs will not apply to any item of Confidential Information if: (i) it has been published or is otherwise readily available to the public other than by a breach of this Agreement; (ii) it has been rightfully received by Recipient from a third party without breach of confidentiality obligations of such third party and outside the context of the provision of services under this Agreement; (iii) it has been independently developed by Recipient personnel having no access to the Confidential Information; (iv) it was known to Recipient prior to its first receipt from Discloser, or (v) it has been summarized, processed and incorporated for incorporation into reports, discussions, statements or any other further work product. In addition, Recipient may disclose Confidential Information if and to the extent required by law or a Governmental Authority, provided that (x) Recipient shall give Discloser a reasonable opportunity to review and object to the disclosure of such Confidential Information, (y) Discloser may seek a protective order or confidential treatment of such Confidential Information, and (z) Recipient shall make commercially reasonable efforts to cooperate with Discloser in seeking such protective order or confidential treatment. Discloser shall pay Recipient its reasonable costs of cooperating.

Section 13.02. No License. Nothing contained in this Agreement shall be construed as granting to a Party a license, either express or implied, under any patent, copyright, trademark, service mark, trade dress or other intellectual property right, or to any Confidential Information now or hereafter owned, obtained, controlled by, or which is or may be licensable by, the other Party.

Section 13.03. Survival of Provisions. The provisions of this Article XIII shall survive the termination of this Agreement.

Deleted: DRAFT - FOR DISCUSSION PURPOSES ONLY - STILL UNDERGOING REVIEW

IN WITNESS WHEREOF, IT IS SO AGREED BY THE PARTIES:

PACIFIC GAS AND ELECTRIC COMPANY,

Deleted: [UTILITY]

By: _____
Name: _____
Title: _____
Date: _____

STATE OF CALIFORNIA DEPARTMENT OF WATER RESOURCES, acting solely under the authority and powers granted by ABIX, codified in Section 80000 through 80270 of the Water Code, as amended from time to time, and not under its powers and responsibilities with respect to the State Water Resources Development System

By: _____
Name: _____
Title: _____
Date: _____

Deleted: AGENCY AGREEMENT - 10/7/2004

Deleted: DRAFT - FOR DISCUSSION PURPOSES ONLY - STILL UNDERGOING REVIEW

Schedule 1

Information and Validation Under Section 4.01(e)

UTILITY SCHEDULE/BILATERAL INVOICE - SCHEDULE 1			
REQUIREMENT	DESCRIPTION	FREQUENCY	DELIVERY METHOD
MWh Schedule	Provide the amount of demand reduction scheduled through the APX by hour.	Monthly - 5 days after the end of the Invoice Month	Electronic Format / Standard Form TBD
Validate MWh Meter Reads	Validate Qualified End Users meter reads used by APX to determine Contracted Energy under DR Agreement, Attachment B and notify DWR of any discrepancies, provided, however, that such data is available to Utility to make such validation.	Monthly - 30 days after the end of the Invoice Month or 30 days after the receipt of the requisite data from APX, whichever is later.	Electronic Format / Standard Form TBD
Validate Calculations	Validate the accuracy of APX's calculation of payments and charges for Contracted Energy under DR Agreement, Attachment B and notify DWR of accuracy of the calculations.	Monthly - 30 days after the end of the Invoice Month or 30 days after the receipt of the requisite data from APX, whichever is later.	Electronic Format / Standard Form TBD

Deleted: APX calculated

Deleted: AGENCY AGREEMENT - 10/7/2004

<u>UNBUNDLED SCHEDULE/BILATERAL INVOICE – SCHEDULE 1</u>			
<u>REQUIREMENT</u>	<u>DESCRIPTION</u>	<u>FREQUENC</u>	<u>DELIVERY METHOD</u>
<u>MWh Scheduled</u>	Provide the amount of demand reduction scheduled by Utility through the APX and SC Trades scheduled with the CAISO by hour.	Y Monthly - 5 days after the end of the Month	Electronic Format / Standard Format TBD

Deleted: DRAFT - FOR DISCUSSION PURPOSES ONLY - STILL UNDERGOING REVIEW

SCHEDULE 2

INFORMATION AND PROTOCOLS REQUIRED TO SCHEDULE AND DISPATCH CPA'S CALL OPTION

1. Information Needed by Utility

The Department shall provide Utility with the following information in conjunction with all requests to schedule and dispatch DRP Program resources:

- 1. MW for each Product type;
- 2. Product type separated into Load Zones;
- 3. Items 1 and 2 shall be further disaggregated into Utility and "unbundled" customers; and
- 4. Sub-division of each product when the offering of any type exceeds 100 MW.

2. Operational Protocols

The Parties shall follow the protocols set forth below in scheduling and dispatching the DRP Program resources. New or modified products may require modifications to this schedule prior to such new product implementation or testing. If a Party reasonably determines that a new or modified product requires modifications to this Schedule, then the Parties shall work together as provided for in Section 12.08 herein to develop mutually agreed upon modifications to this Schedule.

The CPA SC and the Utility shall agree upon the format and systems for the exchange of data as provided in this Schedule.

Formatted: Font: 12 pt
 Formatted: Indent: Left: 0", First line: 0.5", Tabs: Not at 0.25"
 Deleted:
 Deleted: p
 Deleted: demand zones

Deleted: AGENCY AGREEMENT - 10/7/2004

Deleted: DRAFT - FOR DISCUSSION PURPOSES ONLY - STILL UNDERGOING REVIEW

Product *	Requirements
Day Ahead **	<p>1. Two Business Days prior to the beginning of each calendar month, the CPA shall provide Utility with the amount of Monthly Nominated Capacity available for scheduling by Utility. By no later than 0600 hours, one Business Day prior to delivery, the CPA Scheduling Coordinator ("CPA SC") shall provide any Additional Hourly Capacity available for scheduling by Utility in the detail specified in this Schedule.</p> <p>2. By the end of the Business Day prior to delivery, Utility shall notify the CPA SC of its hourly reservation of capacity for each daily product type by <u>Load Zone</u>.</p> <p>3. Three and one-half hours prior to the initiation of demand reduction, Utility shall notify the CPA SC of the dispatch of its hourly reserved capacity for each "Daily Product" type by <u>Load Zone</u>.</p> <p>4. Demand reductions provided by "unbundled" customers shall be accomplished by an inter-SC trade of the dispatched demand reduction between the CPA SC (sending SC) and Utility (receiving SC) following standard CAISO hour-head protocols.</p>

* All terms not herein defined have the same meaning ascribed to them in the DR Agreement.
 ** "Day Ahead" product capacity must be reserved before it can be dispatched, but reservation does not require dispatch and does not count against allowed hours for participating customers.

Deleted: Reservation
 Deleted: Prior
 Deleted: start of the delivery
 Deleted: or the Scheduling Coordinator for the CPA Call Option ("CPA SC") will
 Deleted: b
 Deleted: d
 Deleted: total capacity (i.e. Monthly Nominated Capacity plus
 Deleted:)
 Deleted: b
 Deleted: d
 Deleted: demand zone.
 Deleted: demand zone.
 Deleted: Same Day Dispatch]]
 Deleted: <#>By the beginning of the business day, one business day prior to delivery, CPA SC shall provide Utility the amount of "Same Day Products" available for scheduling by Utility in the detail specified in this Schedule. ¶
 ¶ <#>Three and one-half hours prior to the initiation of demand reduction, Utility shall notify the CPA SC of the dispatch of its hourly, available capacity for each "Same Day Product" type by demand zone. ¶
 ¶ Demand reductions provided by "unbundled" customers shall be | ... [1]
 Formatted: Bullets and Numbering
 Deleted: "Daily" and "Same Day Products" are as described in Kellan... [2]
 Deleted: Reservation
 Deleted: AGENCY AGREEMENT - 10/7/2004

By the beginning of the business day, one business day prior to delivery, CPA SC shall provide Utility the amount of "Same Day Products" available for scheduling by Utility in the detail specified in this Schedule.

Three and one-half hours prior to the initiation of demand reduction, Utility shall notify the CPA SC of the dispatch of its hourly, available capacity for each "Same Day Product" type" by demand zone.

Demand reductions provided by "unbundled" customers shall be accomplished by an inter-SC trade of the dispatched demand reduction between the CPA SC (sending SC) and the Utility (receiving SC) following standard CAISO hour-ahead protocols.

"Daily" and "Same Day Products" are as described in Kellan Fluckiger's April 8, 2004, "DRP New Product Sheet.

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

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

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

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