STATE OF CALIFORNIA ARNOLD SCHWARZENEGGER, *Governor*

PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

Tel. No. (415) 703-1691

July 26, 2006

Advice Letter 2803-E

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

Subject: Duke Energy Metering America, LLC tolling agreement

Dear Ms de la Torre:

Advice Letter 2803-E is effective July 20, 2006 by Resolution E-4002. A copy of the advice letter and resolution are returned herewith for your records.

Sincerely,

Sean H. Gallagher, Director
Energy Division

jjr

Pacific Gas and Electric Company

Brian K. Cherry
Director
Regulatory Relations

77 Beale Street, Room 1087
San Francisco, CA 94105

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Mail Code B10C
Pacific Gas and Electric Company
P.O. Box 770000
San Francisco, CA 94177

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Internal: 223.4877
Fax: 415.973.9572
Internet: BKC7@pge.com

March 24, 2006

Advice 2803-E
(Pacific Gas and Electric Company ID U 39 E)

Public Utilities Commission of the State of California

Subject: **Duke Energy Marketing America, LLC Tolling Agreement**

Pacific Gas and Electric Company ("PG&E") hereby submits for California Public Utilities Commission ("Commission") review and approval a four year physical tolling agreement beginning in 2007[1] with Duke Energy Marketing America, LLC ("Duke" or "DEMA") for the capacity and associated energy from Duke Energy Moss Landing, LLC ("DEML"), Units 6 and 7 (collectively, the "Facility").

Appendix A to this advice letter comprises Confidential Protected Material, in accordance with the May 20, 2003, Modified Protective Order issued in Rulemaking (R.) 01-10-024, and pursuant to Public Utilities Code Section 583.

Purpose

PG&E submits the proposed contract in Confidential Appendix A and requests that the Commission adopt a final resolution approving the proposed contract in its entirety, and finding that this contract and PG&E's entry into it are reasonable and prudent for all purposes, including, but not limited to, PG&E's recovery in rates of all payments made under this contract, for the full term of the contract, subject only to Commission review with respect to the reasonableness of PG&E's administration of this contract.

[1] In order to ensure a delivery start date of May 1, 2006, PG&E has entered into a tolling agreement for May 1, 2006 through December 31, 2006 under its authority pursuant to D.04-12-048. The tolling agreement filed today for Commission approval is for the period January 1, 2007 through December 31, 2010. Together, the two agreements total 4 years, 8 months. Pricing of the transaction was based on the combined term of the two agreements.

Background

On August 30, 2005, DEMA issued a Request for Bids ("RFB") for the Facility. DEMA's RFB is included as Appendix B to this Advice Letter. The original RFB was subsequently updated on September 8, 2005 (See Appendix C). The RFB requested bids for 3 or 5 year terms beginning January 1, 2006 and consisted of four products:

- Product 1 – unit contingent toll with Resource Adequacy ("RA") attribute.
- Product 2 – 9,500 heat rate day-ahead physical call options, on-peak and off-peak call rights in 375 MW increments.
- Product 3 – 9,500 heat rate day-ahead physical call options, 8-hour block call rights up to 375 MW, but must maintain minimum 100 MW for 48 contiguous hours.
- Product 4 – RA-only, in increments of 125 MW up to a max of 1,500 MW.
- Products 1 and 4 are mutually exclusive.

On September 26, 2005, PG&E submitted indicative bids[2] on products 1 and 4. PG&E was notified on October 3, 2005, that it had been selected to DEMA's short-list and subsequently entered into contract negotiations.

On December 8, 2005, PG&E issued a Request for Offers ("RFO") to address its need for intermediate term shapeable energy and RA while continuing to conduct negotiations with DEMA on its RFB. PG&E's RFO is included as Appendix D to this Advice Letter. The response to the RFO was robust. On December 23, 2006, DEMA responded with an offer for the Facility. Altogether, eight companies submitted responses totaling 8,000 MW of offers. PG&E selected this contract because the rigorous evaluation process conducted by PG&E in both the Duke RFB and in PG&E's RFO demonstrates that the cost of the proposed tolling agreement is competitively priced relative to market and that its value to PG&E customers is superior to PG&E's other alternatives for shapeable energy and RA. In fact, the results from PG&E's most recent economic analysis indicates that at the negotiated contract price, there is a positive value to PG&E customers. PG&E asks the Commission to make a finding that PG&E's evaluation and process leading to the proposed contract are both reasonable and prudent.

Although PG&E has sufficient procurement authority pursuant to D. 04-12-048 to enter into the proposed tolling agreement, several factors influenced PG&E's decision to ask the Commission to adopt a final resolution approving the contract:

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[2] Decision (D.) 04-01-050, Ordering Paragraph (O.P.) 10, permits utilities to participate in RFPs and/or open seasons conducted by generators offering capacity and/or energy.

- **Unique nature of this complex, structured product:** A single contract for 1,509 MW of capacity and energy for 4 years represents a significant portion of PG&E's contracted resources. PG&E feels that this, along with the issues discussed below, makes it reasonable that the decision to enter into the proposed tolling agreement be subject to Commission review.

- **Multiple-year RA:** The RA rules are continuing to evolve, and full implementation, particularly with respect to counting and penalties, is not yet clear. PG&E does, however, have a need to meet its forward RA requirements, and PG&E anticipates that this contract will count toward meeting PG&E's future resource adequacy requirements. PG&E therefore seeks a Commission finding that PG&E's actions through this contract to procure RA on a greater than just a one year-ahead basis, absent a long-term RA ruling, is both reasonable and prudent.

- **Pending sale of the Facility to LS Power Equity Partners ("LS Power"):** On January 9, 2006, Duke Energy announced the sale of the Facility, as well as certain other Duke Energy assets, including Duke Energy Morro Bay and Duke Energy Oakland, to LS Power. Privately held LS Power is a new entrant to the California power market and is not rated by S&P, Moody's, or Fitch with respect to its creditworthiness. Including the tolling agreement that PG&E has in place for Duke Energy's Morro Bay Units 3 and 4, as well as other transactions with Duke, the addition of the tolling agreement for Moss Landing Units 6 and 7 (1,509 MW) will, upon the completion of the asset sale to LS Power, bring PG&E's contracts with LS Power to over 2,000 MW. The proposed Moss Landing Units 6 & 7 tolling agreement contains credit requirements that are consistent with PG&E's standards, including mark-to-market posting and other collateral requirements, to mitigate a potential risk of loss due to non-performance by the seller. The agreement also has rigid contract assignment language to protect PG&E from exposure created by the asset sale. However, the unique nature of this contract, given the little-known history of LS Power, creates an additional layer of performance risk in the proposed transaction. PG&E asks the Commission to make a finding that PG&E's decision to enter into this contract, in light of the uncertainties associated with the pending asset sale, is both reasonable and prudent.

PG&E initially presented its needs analysis and bid strategy to its Procurement Review Group (PRG) on September 30, 2005. An update was provided to the PRG on December 1, 2005. The responses to PG&E's RFO, including DEMA's offer, were presented to the PRG on January 12, 2006. On February 27, 2006, PG&E notified the PRG of its intent to move forward with a contract with DEMA. In response to PG&E's request for feedback, PRG members expressed no concerns with the agreement.

Protests

Anyone wishing to protest this filing may do so by sending a letter by **April 13, 2006**, 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 PG&E on the same date it is mailed or delivered to the Commission at the address shown below.

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

Request for Commission Approval

As discussed in this advice filing, PG&E requests that the Commission issue a final resolution approving this tolling agreement no later than **May 11, 2006.**

Notice

In accordance with General Order 96-A, Section III, Paragraph G, a copy of this advice letter excluding the confidential appendices is being sent electronically and via U.S. mail to parties shown on the attached list and the service list for Rulemaking (R.) 01-10-024 and R. 04-04-003. Non-market participants who are members of PG&E's Procurement Review Group and have signed appropriate Non-Disclosure Certificates will also receive the advice letter and accompanying confidential attachments by overnight mail. Address change requests should be directed to Rose De La Torre at (415) 973-4716 (RxDd@pge.com). Advice letter filings can also be accessed electronically at:

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

The portions of this advice letter so marked Confidential Protected Material are in accordance with the May 20, 2003, Modified Protective Order in R. 01-10-024 Regarding Confidentiality of Pacific Gas and Electric Company (PG&E) Power Procurement Information. As required by that Order, reviewing representatives of Market Participating Parties will not be granted access to Protected Material, but will instead be limited to reviewing redacted versions of documents that contain Protected Material.

Brian K. Cherry

Director – Regulatory Relations

Attachments

Confidential Appendix A	Procurement Contract for which PG&E Seeks Commission Approval
Appendix B	Duke Energy Marketing America, LLC Request For Bids Dated August 30, 2005
Appendix C	Update to Duke Energy Marketing America, Request For Bids Dated September 8, 2005
Appendix D	Pacific Gas and Electric Company Request For Offers Dated December 8, 2005

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 U39M

Utility type:	Contact Person: Shilpa Ramaiya
☒ ELC ☒ GAS	Phone #: (415) 973-3186
☐ PLC ☐ HEAT ☐ WATER	E-mail: srrd@pge.com

EXPLANATION OF UTILITY TYPE	(Date Filed/ Received Stamp by CPUC)
ELC = Electric GAS = Gas PLC = Pipeline HEAT = Heat WATER = Water	

Advice Letter (AL) #: **2803-E**
Subject of AL: Duke Energy Marketing America, LLC Tolling Agreement

Keywords (choose from CPUC listing): Procurement, Agreement

AL filing type: ☐ Monthly ☐ Quarterly ☐ Annual ☒ One-Time ☐ Other ________________

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

Does AL replace a withdrawn or rejected AL? If so, identify the prior AL ________________

Summarize differences between the AL and the prior withdrawn or rejected AL[1]: ________________

Resolution Required? ☒ Yes ☐ No

Requested effective date: **5-11-2006** No. of tariff sheets: 0

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

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

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

Tariff schedules affected: N/A

Service affected and changes proposed[1]:Tolling Agreement proposed

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

Protests 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
Attention: Tariff Unit
505 Van Ness Ave.,
San Francisco, CA 94102
jjr@cpuc.ca.gov and jnj@cpuc.ca.gov

Utility Info (including e-mail)
Attn: Brian K. Cherry
Director, Regulatory Relations
77 Beale Street, Mail Code B10C
P.O. Box 770000
San Francisco, CA 94177
E-mail: PGETariffs@pge.com

[1] Discuss in AL if more space is needed.

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

ABAG Power Pool
Accent Energy
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 Gas Acquisition Svcs
California ISO
Calpine
Calpine Corp
Calpine Gilroy Cogen
Cambridge Energy Research Assoc
Cameron McKenna
Cardinal Cogen
Cellnet Data Systems
Chevron Texaco
Chevron USA Production Co.
Childress, David A.
City of Glendale
City of Healdsburg
City of Palo Alto
City of Redding
CLECA Law Office
Commerce Energy
Constellation New Energy
CPUC
Cross Border Inc
Crossborder Inc
CSC Energy Services
Davis, Wright, Tremaine LLP
Defense Fuel Support Center
Department of the Army
Department of Water & Power City
DGS Natural Gas Services
Douglass & Liddell
Downey, Brand, Seymour & Rohwer
Duke Energy
Duke Energy North America
Duncan, Virgil E.
Dutcher, John
Dynegy Inc.
Ellison Schneider
Energy Law Group LLP
Energy Management Services, LLC
Enron Energy Services
Exelon Energy Ohio, Inc
Exeter Associates
Foster Farms
Foster, Wheeler, Martinez
Franciscan Mobilehome
Future Resources Associates, Inc
G. A. Krause & Assoc
Gas Transmission Northwest Corporation
GLJ Energy Publications
Goodin, MacBride, Squeri, Schlotz &
Hanna & Morton
Heeg, Peggy A.
Hitachi Global Storage Technologies
Hogan Manufacturing, Inc
House, Lon
Imperial Irrigation District
Integrated Utility Consulting Group
International Power Technology
Interstate Gas Services, Inc.
IUCG/Sunshine Design LLC
J. R. Wood, Inc
JTM, Inc
Kaiser Cement Corp
Luce, Forward, Hamilton & Scripps
Manatt, Phelps & Phillips
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.
Navigant Consulting
New United Motor Mfg, Inc
Norris & Wong Associates
North Coast Solar Resources
Northern California Power Agency
Office of Energy Assessments
Palo Alto Muni Utilities
PG&E National Energy Group
Pinnacle CNG Company
Plurimi, Inc.
PPL EnergyPlus, LLC
Praxair, Inc.
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
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
Transcanada
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

Confidential Appendix A

Fully Redacted

Appendix B

Duke Energy Marketing America Request For Bids Dated August 30, 2005

Duke Energy Marketing America, LLC

Capacity Auction for Moss Landing Units 6 & 7

Auction Description:	Duke Energy Marketing America, LLC ("DEMA") and certain of its affiliates (collectively "Duke") intend to auction the electric generating capacity and associated energy from certain electric generation facilities owned by Duke Energy Moss Landing LLC ("DEML"). Duke encourages all Qualified Bidders to participate in the auction process, which will follow the Schedule defined below.

Auction Schedule: Duke will conduct the auction process according to the following schedule:

August 30, 2005	Auction terms issued
September 7, 2005, 1600 CPT	Intent to Bid Forms due
September 8, 2005	Tolling Agreements provided to Qualified Bidders
September 26, 2005, 1200 CPT	Bids due
October, 2005	Contracts awarded

Auction Process: A Qualified Bidder may bid for any combination of the products specified in the auction terms and contracts will be awarded to the bidder(s) submitting the highest bid, subject to the following procedural constraints:

1. Duke reserves the right to make no capacity award if a bid is non-conforming, as defined within this solicitation, or if a bid is otherwise unacceptable to Duke, in Duke's sole discretion;
2. Contracts will be awarded to Bidders only in the volume increments specified by the Auction terms. Duke reserves the right to make no capacity award if the aggregate Contract Capacity of the conforming bids received is insufficient to satisfy Duke's economic requirements;
3. In consideration of Duke's operating costs shared by all Units at the Moss Landing facility, Duke reserves the right to make no capacity award in the event that it does not receive bids sufficient to satisfy Duke's economic requirements; and
4. Duke reserves the right, in its sole discretion, to alter or cancel the auction at any time.

Non-Conforming Bids: A bid will be deemed non-conforming if:

1. The bid's capacity price is not greater than or equal to the Minimum Capacity Price(s), where applicable, as detailed in this proposal or otherwise does not meet Duke's economic requirements;
2. The bidder does not accept the credit and contract terms set forth in Duke's Tolling Agreement;
3. In Duke's view the bid does not meet Duke's auction objectives.

Product Offerings: Duke is making four (4) product offerings available for Qualified Bidders. The products, which are detailed in the Term Sheets attached to this solicitation, are:

1. Unit-contingent tolling service provided by Moss Landing Units 6 & 7, in increments of approximately 750 MW
2. Firm, day-ahead heat rate call options for standard On-Peak and Off-Peak blocks, in increments of 375 MW
3. Firm, day-ahead heat rate call options with 8 hour flexibility and minimum load and run-time constraints, in increments of 375 MW
4. Resource Adequacy ("RA") Capacity

Duke Energy North America, LLC

Moss Landing Units 6 & 7 Capacity Auction

Notice of Intent to Bid Form

The company named below ("Bidder") hereby gives notice to Duke Energy Marketing America, LLC ("Seller") of its intent to submit one or more bids to Seller for capacity and/or energy products described in Seller's solicitation, issued August 30, 2005. Bidder acknowledges that this Notice of Intent to Bid is non-binding and does not form an obligation to submit a bid or enter into a contract for capacity and/or energy.

Bidder Information:

Company (full legal name):	
Company Mailing Address:	
Contact:	
Title:	
Phone:	
Fax:	
Email:	

Authorized Signature: ______________________

Name: ______________________

Title: ______________________

Date: ______________________

Please return forms to James Mackey or Vincent Davis by fax or email:

James Mackey
Fax: 713-386-3150
Email: jbmackey@duke-energy.com

Vincent Davis
Fax: 713-386-4209
Email: vmdavis@duke-energy.com

Duke Energy Marketing America, LLC

Term Sheet

Product 1
Unit Contingent Tolling Agreement

Seller:	Duke Energy Marketing America, LLC ("DEMA")
Buyer:	A Qualified Bidder, defined as (a) a California-based Load Serving Entity ("LSE"), which may include (i) an investor-owned utility; (ii) irrigation district; (iii) municipal utility; or (iv) public utility district; and (b) any other entity whose senior unsecured credit rating is rated at least investment grade (BBB- / Baa3) by Standard & Poor's or Moody's, or (c) a party which otherwise satisfies Duke's credit requirements.
Facilities:	Duke Energy Moss Landing Unit 6 & Unit 7 and certain equipment related to each, including interconnection facilities (each a "Facility" or "Unit" and collectively the "Facilities" or "Units"). Moss Landing Unit 6, located approximately 12 miles northwest of Salinas, Monterey County, California, is comprised of a natural gas-fired boiler and steam turbine and has a nominal Facility rating of 754 MW. Moss Landing Unit 7, located approximately 12 miles northwest of Salinas, Monterey County, California, is comprised of a natural gas-fired boiler and steam turbine and has a nominal Facility rating of 755 MW.
Form of Agreement:	Seller shall furnish a Tolling Agreement based upon the terms and conditions detailed in this Term Sheet. Buyers shall be required to accept the terms of Seller's Tolling Agreement and should price their bids accordingly. Duke will not be obligated to consider non-conforming bids.
Delivery Period:	Bidder may choose to bid on one or more of the following transaction terms, each defined individually as a Delivery Period: Three Year Term: January 1, 2006 through December 31, 2008 Five Year Term: January 1, 2006 through December 31, 2010 During the Delivery Period, Buyer shall have the right to dispatch the Unit(s) for Hour Ending ("HE") 0100 through HE 2400 Pacific Prevailing Time ("PPT"), Monday through Sunday, including NERC Holidays.
Service Level:	Unit-contingent capacity served by each facility and associated (a) unit-contingent energy (the "Product"); (b) Ancillary Services; and (c) Resource Adequacy Capacity ("RA"), in the event that regulatory authorities institute a Resource Adequacy Requirement ("RAR") during the Delivery Period. For the purpose of this solicitation and any resulting transaction, "Unit-contingent" shall mean that if a Unit's available capacity is reduced as the result of an Excusable Event, Buyer's rights to schedule energy and ancillary services shall be reduced to the level of capacity available from the Unit and Seller shall be under no obligation to provide compensation, in any form, to Buyer for the reduction, so long as the Unit's Actual Availability Factor is greater than or equal to the Guaranteed Availability Factor when

	calculated by averaging over the course of a Month.. If the Unit's available capacity is reduced as the result of an event other than an Excusable Event, Buyer shall be entitled to a rebate of Capacity Payments. The methodology for calculating such rebates is detailed in the Availability Factor section of this solicitation.
Dispatch Rights:	In consideration for Capacity Payments made to Seller, Buyer shall have full dispatch rights to the Facility, limited by (a) the rules of the California Independent System Operator ("CAISO"), as may be amended from time to time; (b) the operational and environmental limitations of the Facility; and (c) any contractual and/or physical limitations of the facility. All known Unit-specific limitations have been detailed by Seller in Attachment A to this solicitation, "Duke Energy Moss Landing Units 6 & 7 Capabilities." Attachment A and its associated Schedules are provided solely as indicative information to assist Qualified Bidders in their evaluation and should not be viewed as a guarantee of Unit performance.
Ancillary Services:	Consistent with the rules of the CAISO, Buyer may schedule, in amounts detailed in Attachment A, (a) Spinning Reserve; (b) Non-spinning Reserve; (c) Regulation Up; (d) Regulation Down; and (e) Replacement Reserve.
Contract Capacity:	The Contract Capacity for each Facility shall be equal to:

Moss Landing Unit 6:	754 MW
Moss Landing Unit 7:	755 MW

Minimum Capacity Price: The monthly Capacity Price, in $/kW-month, shall be greater than or equal to:

	Three Year Term	Five Year Term
Moss Landing Unit 6:	$4.25	$4.55
Moss Landing Unit 7:	$4.45	$4.75

Additional Fixed Cost: In the event that jurisdictional Federal, State and/or Local regulatory or governing entities, including but not limited to CAISO, impose additional operating, licensing, environmental, tax or other mandatory fees on the Facility during the Delivery Period, Buyer shall be responsible for reimbursing Seller for Buyer's pro-rata share of these expenses.

Variable O&M Charge: The Variable O&M ("VOM") charge, in $/MWh, for each delivered MWh of energy shall be equal to:

	Three Year Term	Five Year Term
Moss Landing Unit 6:	$2.56	$2.72
Moss Landing Unit 7:	$2.56	$2.72

Start Charges: Buyer shall pay Seller a Start Charge, for each Unit start when a Facility has been off-line for at least the Minimum Downtime, equal to the following:

	Minimum Downtime	Start Charge 15 Starts/Year	Start Charge Each Start over 15
Moss Landing Unit 6:	24 hours	$12,000	$96,000
Moss Landing Unit 7:	24 hours	$12,000	$96,000

Start Fuel: In addition to the above Start Charges, Buyer shall supply the following amounts of fuel for each Unit start:

	Fuel per Start
Moss Landing Unit 6:	10,394 MMBtu
Moss Landing Unit 7:	10,394 MMBtu

Start Power: In addition, Buyer shall reimburse Seller for the cost of the following amounts of power for each Unit Start:

	Power per Start
Moss Landing Unit 6:	407 MWh
Moss Landing Unit 7:	407 MWh

Gas Transportation Charge: Buyer shall bear and be responsible for, or shall reimburse Seller for, the transportation cost of all natural gas under Seller's transportation contract on behalf of Buyer from PG&E City-gate to the Facility. The Gas Transportation Charge shall be based upon then applicable tariff rates under PG&E Tariff Schedules (PG&E Tariff G-EG, or its successor), plus any applicable surcharges under such tariff.

Capacity Payment: Buyer shall pay Seller, monthly in advance, a Capacity Payment, calculated as the product of (a) the Contract Capacity; (b) the Capacity Price; and (c) 1,000 kW per MW.

Variable Payment: Buyer shall pay Seller, monthly in arrears, a Variable Payment consisting of the following:

1. A VOM Payment, calculated as the product of (a) the Delivered Energy for the month of delivery, expressed in MWh; and (b) the Variable O&M Charge; and
2. A Start Charge Payment equal to the sum of the Start Charges incurred during the month of delivery; and
3. A Gas Transportation Payment equal to the product of (a) the amount of natural gas transported by Seller on behalf of Buyer from the Gas Delivery Point to the Facility; and (b) the Gas Transportation Charge.

Fuel Supply: Buyer shall be responsible for arranging delivery, to the Gas Delivery Point, of the quantity of natural gas required to produce Buyer's requested amount of the Product, including, as applicable, start fuel, for each hour in which Buyer has scheduled delivery of the product. In addition, Buyer shall be responsible for any additional amounts for losses, imbalance charges and any transportation fees, taxes or assessments associated with the delivery of natural gas to the Facility.

Gas Delivery Point: PG&E City-gate

Heat Rate: The quantity of natural gas required by each Unit to produce energy, varies by Unit load and is detailed in the heat rate formulae and table provided in Schedule 1.

Power Delivery Point: The interconnection point between the Facility and the CAISO (or successor organization) grid.

Transmission: Seller shall be responsible for all transmission costs and arrangements to the Power Delivery Point. Buyer shall be responsible for all transmission costs and arrangements at and from the Power Delivery Point, including any applicable Generator Meter Multiplier ("GMM") charges.

Delivered Energy:	The amount of Product, expressed in MWh, delivered by Seller to Buyer at the Power Delivery Point.
Scheduled Energy:	The amount of Product, expressed in MWh, requested by Buyer in accordance with the scheduling procedures, for delivery to the Power Delivery Point.
Available Energy:	The sum of the actual capacity available for dispatch for each hour of the Delivery Period.
Total Energy:	The product of the Contract Capacity and all hours of the Delivery Period.
Actual Availability Factor:	The quotient of (a) the sum of i) Available Energy and ii) Excused Energy, divided by (b) the Total Energy.
Guaranteed Availability Factor:	The Guaranteed Availability Factors for the Units shall be: Moss Landing Unit 6: 92% Moss Landing Unit 7: 92% For each percentage point amount the Actual Availability Factor during the Delivery Period is below the Guaranteed Availability Factor (the "Deficiency Amount"), Seller shall pay Buyer a rebate calculated as the product of (a) the Deficiency Amount; and (b) the Capacity Payment for the Delivery Period.
Excused Energy:	Contract Capacity that is not available for dispatch of the Product during the Delivery Period as the result of an Excused Event.
Excused Events:	Excused Events shall include (a) a Force Majeure event affecting the Facility; (b) Scheduled Maintenance and/or testing of a Unit; (c) Unplanned Maintenance or Repairs conducted by Seller during a period in which the Unit has not been dispatched by the Buyer or CAISO; (d) Buyer's failure to deliver natural gas to the Gas Delivery Point; (e) Buyer's failure to make transmission arrangements at and from the Power Delivery Point; (f) conditions on the electric transmission system, including a Force Majeure event, congestion, transmission constraints and the refusal of the transmission provider to accept and transmit energy; (g) conditions on the gas pipeline system, including a Force Majeure event and curtailment of firm natural gas transportation service; (h) Environmental and Operational Limitations; and (i) Contractual Limitations.
Force Majeure Event:	Force Majeure Event shall mean a cause or event that prevents a Party from performing any of its obligations under this Agreement that is not within the reasonable control of the Party, without the fault or negligence of the Party and that by the exercise of due diligence the Party is unable and could not reasonably been expected to avoid, cause to be avoided, or overcome. Events of Force Majeure may include, but are not restricted to, acts of God; acts of the public enemy, war, blockades, insurrections, sabotage, civil disturbances, riots, terrorism; strikes or other work stoppages, lock-outs, or other industrial disturbances or labor disputes, labor or materials shortage; epidemics, landslides, lightning, earthquakes, firestorms, hurricanes, tornadoes, floods, washouts; fire, explosion, or other unusually severe or extreme actions of the elements; catastrophic equipment failure; and actions or failures to act of any governmental agency preventing, delaying or otherwise adversely affecting performance by a Party hereto. Force Majeure shall not include (i) changes in market conditions that affect the cost or availability of supply of goods or services, (ii) the unavailability of equipment, except to the extent directly caused by an event of Force Majeure as defined above, which could reasonably have been avoided by compliance with Good Utility Practices, and (iii) changes in market conditions that affect the price of energy or capacity or fuel.

Credit:	Credit provisions satisfactory to Seller will be negotiated in the form of an EEI Master Agreement.
Scheduling Coordinator:	No later than thirty days prior to the first (1st) day of the Delivery Period, Buyer shall designate a Scheduling Coordinator for purposes of scheduling the Product.
Power Scheduling Procedure:	No later than 0615 PPT on the applicable pre-scheduling day, Buyer shall provide Seller with a schedule indicating the amount of the Product Buyer requests for delivery to the Power Delivery Point for every hour of the day of delivery. Pre-scheduling days are established by the ISAS Subcommittee of the Western Electric Coordinating Council ("WECC"). Buyer's Scheduling Coordinator shall be responsible for complying with any existing or future Must-Offer Obligation ("MOO") including, but not limited to, requesting waivers of any MOO and submitting bids for available, unscheduled Contract Capacity during waiver denial periods.
Gas Scheduling Procedure:	No later than 0730 PPT on the day prior to each day of delivery, Buyer shall provide Seller with a schedule indicating the amount of natural gas Seller intends to deliver to the Gas Delivery Point.
Scheduled Maintenance:	Consistent with Seller's adherence to Good Utility Practices, Seller expects to perform certain scheduled maintenance procedures ("Scheduled Maintenance") on the Facilities during the Delivery Period. Seller anticipates that Scheduled Maintenance will comprise approximately the following amount of time during the Delivery Period:

	Hours per <u>Year</u>
Moss Landing Unit 6:	360 Hours
Moss Landing Unit 7:	360 Hours

Operational and Environmental Limitations:	All applicable operational and environmental limitations are detailed in Attachment A.
Contractual Limitations:	Operational performance of the Units is not limited by any pre-existing contractual agreements.
Good Utility Practices:	<u>Good Utility Practices</u> means the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry operating in the WECC region 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 Practices are not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather includes all acceptable practices, method, or acts generally accepted in the region. Good Utility Practice shall include, but not be limited to, applicable law and regulatory requirements, and the criteria, rules and standards promulgated by NERC, the WECC, RTO, National Electric Safety Code, National Electrical Code and California Public Utilities Commission's General Order No. 167 as they may be amended from time to time, including the rules and guidelines and criteria of any successor organizations.
Exclusions:	Any and all environmental attributes, emission allowances, credits or rights to pollute shall be retained by Seller.

ATTACHMENT A

Duke Energy Moss Landing 6 & 7 Capabilities

Applicable Generating Units:

Unit(s)	Moss Landing #6	Moss Landing #7
Location	Moss Landing, Ca	Moss Landing, Ca
Name Plate	MOSSLD_7_UNIT 6	MOSSLD_7_UNIT 7
ISO Resource ID	MOSSLD_7_UNIT 6	MOSSLD_7_UNIT 7
ISO P. Max	754	755
Net Dependable Cap.	754	755
ISO P. Min	52	52
ISO Ancillary Service Certifications	Spin, Non-Spin, AGC and Repl.	Spin, Non-Spin, AGC and Repl.
Unit Description	Steam Generator	Steam Generator

Maximums are based on providing the product within the following time frames:
Regulation Up/Down = 30 minutes (product may also be limited by range restrictions)
Spin/Non-spin Reserve = 10 minutes (product may also be limited by range restrictions)
Replacement Reserve = 60 minutes (product may also be limited by range restrictions)

ISO UNIT DESIGNATION: MOSSLD_7_UNIT 6

Ancillary Service Capacity	LR 200-400 MW range Ramp Rate MW/min	HR 330-730 MW range Ramp Rate MW/min	Maximum Quantity (Per appropriate Product)
Regulation Up	15	15	LRAGC = 200 / HRAGC = 400
Regulation Down	15	15	LRAGC = 200 / HRAGC = 400
	52-160 MW range Ramp Rate MW/min	**190-754 MW range Ramp Rate MW/min**	
Spinning Reserve	5	15	LR = 50 / HR = 150
Non-Spinning Reserve	5	15	LR = 50 / HR = 150
Replacement Reserve	5	15	LR = 108 / HR = 564

ISO UNIT DESIGNATION: MOSSLD_7_UNIT 7

Ancillary Service Capacity	LR 200-400 MW range Ramp Rate MW/min	HR 330-730 MW range Ramp Rate MW/min	Maximum Quantity (MWh/hr)
Regulation Up	30	30	LRAGC = 200 / HRAGC = 400
Regulation Down	30	30	LRAGC = 200 / HRAGC = 400
	52-160 MW range Ramp Rate MW/min	**190-755 MW range Ramp Rate MW/min**	
Spinning Reserve	5	30	LR = 50 / HR = 300
Non-Spinning Reserve	5	30	LR = 50 / HR = 300
Replacement Reserve	5	30	LR = 108 / HR = 565

SCHEDULE 1

Variable Heat Rate Curve
Moss Landing Unit #6 and #7

Station Name:	Moss Landing
Unit Number:	Unit 6
Contract Capacity:	754 MW
Minimum Load:	52 MW
Minimum Load on AGC:	200 MW

Heat Rate Coefficients:

A = .00075
B = 8.0952
C = 400
Heat Input = (Ax^2 + Bx +C)/x (See Heat Rate Table below)

MW Ranges	Ramp Rates MW/Min
52-190	5
190-754	15

Station Name:	Moss Landing
Unit Number:	Unit 7
Contract Capacity:	755 MW
Minimum Load:	52 MW
Minimum Load on AGC:	200 MW

Heat Rate Coefficients:

A = .0011
B = 7.602
C = 490
Heat Input = (Ax^2 + Bx +C)/x (See Heat Rate Table below)

MW Ranges	Ramp Rates MW/Min
52-190	5
190-755	30

Expected Heat Rate and Ramp Rate Table
(Illustrative)

Scheduled Energy (MW)	Moss Landing Unit 6 Heat Rate (Btu/kWh)	Moss Landing Unit 6 Ramp Rate (MW/min)	Moss Landing Unit 7 Heat Rate (Btu/kWh)	Moss Landing Unit 7 Ramp Rate (MW/min)
52	15,827	5	17,082	5
60	14,807	5	15,835	5
70	13,862	5	14,679	5
80	13,155	5	13,815	5
90	12,607	5	13,145	5
100	12,170	5	12,612	5
110	11,814	5	12,178	5
120	11,519	5	11,817	5
130	11,270	5	11,514	5
140	11,057	5	11,256	5
150	10,874	5	11,034	5
160	10,715	5	10,841	5
170	10,576	5	10,671	5
180	10,452	5	10,522	5
190	10,343	5	10,390	5
200	10,245	15	10,272	30
210	10,157	15	10,166	30
220	10,078	15	10,071	30
230	10,007	15	9,985	30
240	9,942	15	9,908	30
250	9,883	15	9,837	30
260	9,829	15	9,773	30
270	9,779	15	9,714	30

280	9,734	15	9,660	30
290	9,692	15	9,611	30
300	9,654	15	9,565	30
310	9,618	15	9,524	30
320	9,585	15	9,485	30
330	9,555	15	9,450	30
340	9,527	15	9,417	30
350	9,501	15	9,387	30
360	9,476	15	9,359	30
370	9,454	15	9,333	30
380	9,433	15	9,309	30
390	9,413	15	9,287	30
400	9,395	15	9,267	30
410	9,378	15	9,248	30
420	9,363	15	9,231	30
430	9,348	15	9,215	30
440	9,334	15	9,200	30
450	9,322	15	9,186	30
460	9,310	15	9,173	30
470	9,299	15	9,162	30
480	9,289	15	9,151	30
490	9,279	15	9,141	30
500	9,270	15	9,132	30
510	9,262	15	9,124	30
520	9,254	15	9,116	30
530	9,247	15	9,110	30
540	9,241	15	9,103	30
550	9,235	15	9,098	30

560	9,229	15	9,093	30
570	9,224	15	9,089	30
580	9,220	15	9,085	30
590	9,216	15	9,082	30
600	9,212	15	9,079	30
610	9,208	15	9,076	30
620	9,205	15	9,074	30
630	9,203	15	9,073	30
640	9,200	15	9,072	30
650	9,198	15	9,071	30
660	9,196	15	9,070	30
670	9,195	15	9,070	30
680	9,193	15	9,071	30
690	9,192	15	9,071	30
700	9,192	15	9,072	30
710	9,191	15	9,073	30
720	9,191	15	9,075	30
730	9,191	15	9,076	30
740	9,191	15	9,078	30
750	9,191	15	9,080	30
750 and above	9,191	5	9,080	5

Schedule 2

Operating Restrictions
Moss Landing Unit #6 and #7

Type	Measurement Units For Limit	Period Of Applicability*	Limit
Start-Up Time Hot (unit down >24-<72 hrs)	[Hours]	Term of Contract	16
Start-Up Time Warm (unit down >24–<72 hrs)	[Hours]	Term of Contract	16
Start-Up Time Cold	[Hours]	Term of Contract	24
Number Of Start-Ups	[Number]	[Applicable period]	None
Minimum Run Time	[Hours]	Term of Contract	24
Minimum Down Time	[Hours]	Term of Contract	24
Ramp Rates	[MW/Min]	Term of Contract	Reference Schedule 1
Minimum Operating Level	[MW]	Term of Contract	52

Schedule 2 (continued)

Operating Restrictions
Moss Landing Unit #6 and #7

Other Operating Constraints	N/A	
	Limit	how limit is significant to operation and dispatch
Environmental		
Run limits for natural gas (hours per year)	N/A; However there are facility wide mass emission limits.	
NOx limits - Natural Gas	2054.4 lbs/day NOx is controlled by emission control equipment and normal operation results in no restrictions due to NOx	All units operation must be coordinated to stay under quarterly facility limits (Note: Units 6 & 7 would be used to manage facility limits. The maximum quarterly capacity factor, for Units 6 & 7 combined, would be as follows: Q1 60.8%; Q2 63.6%; Q3 100%; Q4 85.5%)
CO limits - Natural Gas	20704.8 lbs/day CO is controlled by maintaining proper boiler combustion and normal operation results in no restrictions due to CO	Same as NOx
Water volume discharge limits	1.226 billion gals / day Normal unit operation maintains volumes below this limit	Total station Limit

Water Outfall limits Δ T	1. U6&7 alone	24hr limit = 28degF; 1hr limit = 34deg F
	2. U12&67 comb	24hr limit = 26degF; 1hr limit = 32degF
	3. U1/2 alone Temperature is affected by Condenser cleanliness. Restrictions may result if condensers are not kept near optimum performance. Curtailments may be necessary for routine condenser cleaning	24 hr limit = 20degF; 1hr limit = 26degF

PM10, SO_2 and VOC are based on fuel burned and therefore emissions vary based on Unit heat rate. The following table illustrates the emissions of each constituent, based on lbs. per MW of production at minimum load (52 MW), 50% load (377 MW) and full load (755 MW).

		Moss Landing Unit 6			Moss Landing Unit 7		
	lb./MMBtu	52 MW	377 MW	754 MW	52 MW	377 MW	755 MW
Heat Rate (Btu/kWh)		15,827	9,439	9,191	17,082	9,318	9,080
PM10 (1b./MW)	0.007451	0.118	0.070	0.068	0.127	0.069	0.068
SO2 (lb./MW)	0.000697	0.011	0.007	0.006	0.012	0.006	0.006
VOC (lb./MW)	0.005392	0.085	0.051	0.050	0.092	0.050	0.049

Duke Energy Marketing America, LLC

Term Sheet

Product 2

Daily Heat Rate Call Option

This Term Sheet describes the terms and conditions of a potential transaction under consideration between Duke Energy Marketing America, LLC and Party A regarding the sale of the Product as follows:

Seller:	Duke Energy Marketing America, LLC ("DEMA")
Buyer:	Party A
Form of Base Agreement:	EEI Master Power Purchase and Sale Agreement
Delivery Period:	January 1, 2006 through December 31, 2008; or January 1, 2006 through December 31, 2010 On-Peak and Off-Peak periods may be exercised independently.
On-Peak:	Hour Ending ("HE") 0700 through HE 2200, Monday through Saturday, excluding NERC Holidays; Pacific Prevailing Time ("PPT").
Off-Peak Period:	HE 0100 through HE 0600 and HE 2300 through HE 2400, Monday through Saturday, and HE 0100 through HE 2400, Sundays and NERC Holidays, Pacific Prevailing Time ("PPT").
Type of Service:	Daily Call Option
Product:	CAISO Energy
Contract Quantity:	375 MW
Delivery Point:	NP15 Zone; provided, however, if the California Independent System Operator or its successor ("CAISO") implements trading hubs under a locational marginal pricing design during the Delivery Period, the Delivery Point shall be the Existing Zone Generation NP15 Trading Hub ("NP15 EZ Gen Hub"), as such trading hub is contemplated by the CAISO in its filing made to the FERC dated March 15, 2005 ("Comprehensive Design Proposal for Inter-Scheduling Coordinator Trades Under the California Independent System Operator Corporation's

	Market Redesign and Technology Upgrade, Docket No. ER02-1656-025"); provided further, if the NP15 EZ Gen Hub (under any name) is not established as part of a market redesign that is implemented during the Delivery Period, the parties agree to promptly work together in good faith to designate an alternate Delivery Point to reasonably approximate the characteristics of the NP-15 Zone.
Scheduling:	In consideration for payment of the Option Premium, Seller grants Buyer the right (subject to the terms below) for each day during the Delivery Period to require Seller, at Buyer's option, to sell and deliver to Buyer the Product, for the Contract Quantity. If Buyer chooses to exercise its option to receive the Product during the On-Peak Period for a given day within the Delivery Period, Buyer must schedule and receive the Product in an amount equal to the Contract Quantity each and every hour of the On-Peak hours for which this option was exercised. If Buyer chooses to exercise its option to receive the Product during the Off-Peak Period for a given day within the Delivery Period, Buyer must schedule and receive the Product in an amount equal to the Contract Quantity each and every hour of the Off-Peak hours for which this option was exercised. In order for the option exercise to be valid, Buyer shall give Seller prior telephonic notice of its intent to exercise its option no later than 0615 PPT on the Exercise Date before the delivery is to take place. If the option is exercised, both parties shall be obligated to schedule the Contract Quantity. Furthermore, Seller shall be obligated to deliver the Contract Quantity and Buyer shall be obligated to pay the Energy Price for the relevant Contract Quantity. "Exercise Date" shall mean the mutually recognized WECC Pre-Scheduling Day prior to the delivery day or day(s) of delivery as defined by the most recent WECC Pre-Schedule calendar. For example, if Buyer exercises an option on Thursday, the relevant delivery days for that Pre-Scheduling Day will be Friday and Saturday. Buyer shall have the obligation to buy and receive from Seller and Seller shall have the obligation to sell and deliver to Buyer the Contract Quantity of the Product for all Delivery hours for both Friday and Saturday (consistent with the customary practices regarding the trading of daily electricity).
Option Premium:	US $____ / kW-month for each calendar month during the Delivery Period, to be paid five (5) Business Days prior to the month of delivery.
Energy Price:	Calculated, on a $/MWh basis, as the Gas Price multiplied by the Contract Heat Rate plus the Variable O&M Fee
Contract Heat Rate:	9.50 MMBtu / MWh

Gas price:	Expressed in \$/MMBtu, the Midpoint price for delivery on the relevant Flow Date for "PG&E City-Gate" as reported in the Daily Price Survey in *Gas Daily*. The Gas Price for any calendar day for which prices are not published in *Gas Daily* shall be the Midpoint price as reported on the next day for which prices are published in *Gas Daily*. The "Flow Date" shall mean the date on which the Product is delivered by Seller to Buyer.
Variable O&M Fee:	\$4.75 / MWh
Transmission:	Seller is responsible for all transmission arrangements and costs for delivery of the Product to the Delivery Point. Buyer is responsible for all transmission arrangements and costs for receipt of the Product at and beyond the Delivery Point.

Duke Energy Marketing America, LLC

Term Sheet

Product 3

Heat Rate Call Option with Peaking Flexibility

This Term Sheet describes the terms and conditions of a potential transaction under consideration between Duke Energy Marketing America, LLC and Party A regarding the sale of the Product as follows:

Seller:	Duke Energy Marketing America, LLC ("DEMA")
Buyer:	Party A
Form of Base Agreement:	EEI Master Power Purchase and Sale Agreement
Delivery Period:	January 1, 2006 through December 31, 2008; or January 1, 2006 through December 31, 2010
Exercise Protocol:	Buyer's exercise shall follow day-ahead scheduling protocols and will be subject to the following flexibility and limitations: • Buyer's schedule must maintain the Minimum Quantity for a minimum of 48 contiguous hours. • Buyer may schedule the Maximum Quantity in blocks of 8 or more contiguous hours.
Type of Service:	Daily Call Option
Product:	CAISO Energy
Minimum Quantity:	100 MW
Maximum Quantity:	375 MW
Delivery Point:	NP15 Zone; provided, however, if the California Independent System Operator or its successor ("CAISO") implements trading hubs under a locational marginal pricing design during the Delivery Period, the Delivery Point shall be the Existing Zone Generation NP15 Trading Hub ("NP15 EZ Gen Hub"), as such trading hub is contemplated by the CAISO in its filing made to the FERC dated March 15, 2005 ("Comprehensive Design Proposal for Inter-Scheduling Coordinator Trades Under the California Independent System Operator Corporation's

	Market Redesign and Technology Upgrade, Docket No. ER02-1656-025"); provided further, if the NP15 EZ Gen Hub (under any name) is not established as part of a market redesign that is implemented during the Delivery Period, the parties agree to promptly work together in good faith to designate an alternate Delivery Point to reasonably approximate the characteristics of the NP-15 Zone.
Scheduling:	In consideration for payment of the Option Premium, Seller grants Buyer the right (subject to the terms below) for each day during the Delivery Period to require Seller, at Buyer's option, to sell and deliver to Buyer the Product, for either the Minimum Quantity or the Maximum Quantity. If Buyer chooses to exercise its option to receive the Product, Buyer must schedule and receive the Product for a minimum of 48 contiguous hours. Furthermore, Seller grants Buyer the flexibility to schedule and receive the Maximum Quantity for a period of no less than 8 contiguous hours. In order for the option exercise to be valid, Buyer shall give Seller prior telephonic notice of its intent to exercise its option no later than 0615 PPT on the Exercise Date before the delivery is to take place. If the option is exercised, both parties shall be obligated to schedule the product for the Minimum and/or Maximum Quantity, at Buyer's discretion within the limitations described herein. Furthermore, Seller shall be obligated to deliver the Product and Buyer shall be obligated to pay the Energy Price for the relevant Product quantity. "Exercise Date" shall mean the mutually recognized WECC Pre-Scheduling Day prior to the delivery day or day(s) of delivery as defined by the most recent WECC Pre-Schedule calendar. For example, if Buyer exercises an option on Thursday, the relevant delivery days for that Pre-Scheduling Day will be Friday and Saturday. Buyer shall have the obligation to buy and receive from Seller and Seller shall have the obligation to sell and deliver to Buyer the Contract Quantity of the Product for all Delivery hours for both Friday and Saturday (consistent with the customary practices regarding the trading of daily electricity).
Option Premium:	US $____ / kW-month for each calendar month during the Delivery Period, to be paid five (5) Business Days prior to the month of delivery.
Energy Price:	Calculated, on a $/MWh basis, as the Gas Price multiplied by the Contract Heat Rate plus the Variable O&M Fee.
Contract Heat Rate:	9.50 MMBtu / MWh
Gas price:	Expressed in $/MMBtu, the Midpoint price for delivery on the relevant Flow Date for "PG&E City-Gate" as reported in the

Daily Price Survey in *Gas Daily*. The Gas Price for any calendar day for which prices are not published in *Gas Daily* shall be the Midpoint price as reported on the next day for which prices are published in *Gas Daily*. The "Flow Date" shall mean the date on which the Product is delivered by Seller to Buyer.

Variable O&M Fee:	$4.75 / MWh
Transmission:	Seller is responsible for all transmission arrangements and costs for delivery of the Product to the Delivery Point. Buyer is responsible for all transmission arrangements and costs for receipt of the Product at and beyond the Delivery Point.

Duke Energy Marketing America, LLC

Term Sheet

Product 4

Resource Adequacy Capacity

This Term Sheet describes the terms and conditions of a potential transaction under consideration between Duke Energy Marketing America, LLC and Party A regarding the sale of the Product as follows:

Seller:	Duke Energy Marketing America, LLC ("DEMA")
Buyer:	Party A
Form of Agreement:	A Purchase and Sale Agreement to be provided by Seller
Delivery Period:	January 1, 2006 through December 31, 2008; or January 1, 2006 through December 31, 2010
Product:	Resource Adequacy Capacity
Product Description:	"Resource Adequacy ("RA") Capacity" means the qualified and deliverable capacity from Unit(s) that can be counted toward Buyer's Resource Adequacy Requirements ("RAR") as described in D.04-10-035, and as may be amended from time to time by the California Public Utilities Commission ("CPUC") in the Resource Adequacy phases of Rulemaking 04-04-003 or by any successor proceeding, and all other resource adequacy requirements established by any other regional entity responsible for RAR. RA Capacity does not confer to Buyer any right to the Contract Quantity of Seller's Unit(s) other than the right to count such Contract Quantity toward Buyer's RAR during the Delivery Period. Specifically, no energy associated with Seller's Unit(s) is required to be made available to Buyer as part of this RA Capacity obligation. If, during the Delivery Period, a standard capacity product is developed as a replacement to the RA product, Buyer and Seller shall negotiate in good faith to convert the RA product contemplated in this Term Sheet to one that resembles the new capacity product.
Contract Quantity:	Increments of 125 MW, up to a maximum of 1,500 MW
Designated Unit(s):	Moss Landing Unit 6 or Unit 7

Delivery Point:	Moss Landing Substation; within the current NP-15 zone and within the CAISO controlled grid
Contract Price:	US $____ / kW-month for each calendar month during the Delivery Period, to be paid five (5) Business Days prior to the month of delivery.

Appendix C

Update to Duke Energy Marketing America Request For Bids Dated September 8, 2005

Duke Energy Marketing America, LLC
Information Sheet

Address & phone number:	5400 Westheimer Ct. Houston, TX 77056 713-627-5400
Website:	www.duke-energy.com
State of Incorporation:	Delaware
DUNS #:	11-393-2268
Federal Tax ID #:	76-0668086
Credit Support Provider:	Duke Capital LLC
Address:	526 S. Church St. Charlotte, NC 28242
State of Incorporation:	Delaware
Senior Unsecured Rating:	BBB- (S&P) Baa3 (Moody's)
DUNS#:	60-376-9753
Federal Tax ID#:	51-0282142

Duke Capital financial statements can be found at:
http://www.sec.gov/edgar/searchedgar/companysearch.html or http://www.duke-energy.com/investors/publications/sec.asp

Ultimate parent: Duke Energy Corp.

CONFIDENTIALITY AGREEMENT

This Confidentiality Agreement (the "Agreement") is made as of the ____ day __________2005 by and between DUKE ENERGY MARKETING AMERICA, LLC ("Seller") and ____ ("Buyer") (all of the foregoing referred to individually as "Party" or collectively as the "Parties").

WHEREAS, the Parties are currently exploring a possible transaction (the "Transaction") pursuant to which DEMA may sell generation capacity and/or energy to Buyer (the "Bidding Process").

WHEREAS, in order to evaluate the Transaction, the Parties may disclose to each other and request of each other that certain non-public, confidential or proprietary information be kept confidential (the "Information").

THEREFORE, in consideration of the receipt by the Parties from each other of such Information for their mutual benefit in connection with the Transaction, the Parties hereby agree:

1. The Parties will make best efforts to safeguard the Information against disclosure by employing the same means to protect the Information as that Party uses to protect its own non-public, confidential or proprietary information.

2. No receiving Party shall itself, or permit its employees, consultants and/or agents to, disclose to any person, corporation or other entity the Information without the prior written consent of the Party providing the Information, except a receiving Party may distribute the Information to its board members, officers, employees, agents and consultants and others who have a need for such Information for purposes of evaluating the Transaction.

3. In the event that any Party receiving the Information becomes legally compelled (by deposition, interrogatory, request for documents, subpoena, civil investigative demand or similar process) to disclose any of the Information, the legally compelled Party shall give the other Party providing the Information prompt prior written notice of such requirement so that the providing Party may seek a protective order or other appropriate remedy and/or waive compliance with the terms of this Agreement. In the event that such protective order or other remedy is not obtained, the providing Party waives compliance with the terms hereof.

4. The term "Information" does not include any information which (i) at the time of disclosure or thereafter is generally available to the public (other than as a result of a disclosure by any Party in violation of this Agreement), (ii) was available to any Party on a non-confidential basis from a source other than the Party hereto providing the Information, provided that such source is not and was not known by the receiving Party to be bound by a confidentiality agreement that protected the Information, or (iii) has been independently acquired or developed by any Party without violating any of its obligations under this Agreement.

5. This Agreement shall be interpreted, governed and construed under the laws of the State of Texas as if it were executed and to be performed wholly within the State of Texas without regard to its conflict of laws principles.

6. The Parties agree that in the event of a breach of this Agreement, the Party providing the Information shall be entitled to equitable relief, including injunction and specific performance, in addition to all other remedies available at law or equity. Under no circumnstances will DEMA's directors, management, employees, agents or consultants be individually liable for any damages resulting from the disclosure of Seller's Information provided during the Transaction review process.

7. The Parties' obligations under this Agreement will expire one (1) year from the date hereof.

8. This Agreement may be executed in counterparts, and each counterpart shall for all purposes be an original, and all such counterparts shall together constitute one and the same Agreement.

9. This Agreement shall in no way be construed to (i) preclude in any way either Party from pursuing any business opportunities; (ii) establish any relationship between the parties with respect to such business opportunities; or (iii) establish any relationship between the parties with respect to the Transaction that is the subject of this Agreement.

10. This Agreement (i) may only be amended by both Parties in writing, and (ii) represents the entire understanding of the Parties with respect to the matters that are the subject hereof.

IN WITNESS WHEREOF, the Parties have duly executed this Confidentiality Agreement as of the date first above written.

DUKE ENERGY MARKETING AMERICA, LLC

By: ____________________________

Title: ____________________________

Dated: ____________________________

____

By: ____________________________

Title: ____________________________

Dated: ____________________________

Duke Energy Marketing America, LLC
Capacity Auction Bid Sheet

Bidder: ______________________________

	Description	Volume (MW)	Bid Price 3 Year Term ($ / kW-month)	Bid Price 5 Year Term ($ / kW-month)
Product 1	**Unit Contingent Tolling**			
	Moss Landing Unit # 6	754		
	Moss Landing Unit # 7	755		
Product 2	**Heat Rate Call Option for standard On-Peak / Off-Peak**			
	Tier 1	375		
	Tier 2	375		
Product 3	**Heat Rate Call Option with Min. / Max. Quantity**			
	Tier 1	375		
	Tier 2	375		
Product 4	**Resource Adequacy Qualifying Capacity**			
	Tier 1	125		
	Tier 2	125		
	Tier 3	125		
	Tier 4	125		
	Tier 5	125		
	Tier 6	125		
	Tier 7	125		
	Tier 8	125		
	Tier 9	125		
	Tier 10	125		
	Tier 11	125		
	Tier 12	125		

Notes:

Product Parameters	Specific terms and conditions for each product are detailed in the Draft Contracts provided by Duke on 9/8/05.
Product 1	Bidder may bid on one or both units. Bids will be evaluated independently.
Product 2	Bidder may bid on up to two tiers for this product.
Product 3	Bidder may bid on up to two tiers for this product.
Product 4	Bidder may bid on up to twelve (12) tiers for this product.

MASTER POWER PURCHASE AND SALE AGREEMENT
CONFIRMATION LETTER
BETWEEN
Duke Energy Marketing America, LLC and ______________________________
October _____, 2005

This confirmation letter ("Confirmation") confirms the Transaction dated October ____, 2005 between Duke Energy Marketing America, LLC ("Seller" or "DEMA") and ________________________ ("_____" or "Buyer") regarding the sale and purchase of Unit Contingent Capacity, Associated Energy and Ancillary Service Capacity in accordance with and subject to the terms and provisions of the EEI Master Power Purchase & Sale Agreement (the "Master Agreement") dated ____________ ____, 2005 between the Parties under the following terms and conditions (capitalized terms used but not defined herein shall have the meanings ascribed to them in the Master Agreement). DEMA has full rights to market the capacity and Associated Energy (as hereinafter defined) from Duke Energy Moss Landing, LLC ("DEML"), Units 6 and 7 (collectively, the "Facility").

Seller: DEMA

Buyer: ______

Delivery Period: January 1, 2006 through December 31, 2008; or
January 1, 2006 through December 31, 2010

If the commencement of the Delivery Period is delayed beyond January 1, 2006 due to (a) failure to execute this Confirmation Letter by such date; (b) failure of Buyer to secure management approval by such date; (c) failure of securing any necessary approval of regulatory authorities by such date; or (d) any other factors beyond Seller's control, the Capacity Price for the remaining months of Calendar Year 2006 shall be increased in an amount that compensates Seller for the amount of Capacity Payments foregone due to the delayed commencement of the Delivery Period.

During the Delivery Period, Buyer shall have the right to schedule for dispatch the Applicable Generating Unit(s) for Hour Ending ("HE") 0100 through HE 2400 Pacific Prevailing Time ("PPT"), Monday through Sunday, including NERC Holidays.

Product: Unit Contingent Capacity served by the full amount of each Applicable Generating Unit, and Associated Energy (net of station power), Ancillary Services, and Capacity Certificates for Resource Adequacy ("RA"), if a Resource Adequacy Requirement is applicable to Buyer during the Delivery Period, from the Applicable Generating Unit.

Applicable Generating Units:

Unit	Moss Landing #6
Location	Moss Landing, CA
Name Plate	MOSSLD_7_UNIT 6
CAISO Resource ID	MOSSLD_7_UNIT 6
CAISO P. Max	754
Net Dependable Cap.	754
CAISO P. Min	52
CAISO Ancillary Service Certifications	Spin, Non-Spin, AGC and Replacement Reserve.
Unit Description	Steam Generator

Unit	Moss Landing #7
Location	Moss Landing, CA
Name Plate	MOSSLD_7_UNIT 7
CAISO Resource ID	MOSSLD_7_UNIT 7
CAISO P. Max	755
Net Dependable Cap.	755
CAISO P. Min	52
CAISO Ancillary Service Certifications	Spin, Non-Spin, AGC and Replacement Reserve.
Unit Description	Steam Generator

Service Level: "Unit-contingent" shall mean that if an Applicable Generating Unit's Available Capacity is reduced as the result of an Excused Event, Buyer's rights to schedule Associated Energy and Ancillary Services shall be reduced to the level of Available Capacity and Seller shall be under no obligation to provide compensation, in any form, to Buyer for the reduction, so long as the Unit's Actual Availability Factor is greater than or equal to the Guaranteed Monthly Availability Factor. If the Applicable Generating Unit's Available Capacity is reduced below the Guaranteed Monthly Availability Factor, Buyer shall be entitled to a reduction of Capacity Payments. The methodology for calculating such reductions is detailed in the Guaranteed Monthly Availability Factor section of this Confirmation.

Dispatch Scheduling Rights: In consideration for Capacity Payments made to Seller, Buyer shall have full dispatch rights to the Applicable Generating Unit(s), including but not limited to responsibility for all real-time bidding. Buyer's dispatch rights shall be limited by: (a) the rules of the California Independent System Operator ("CAISO"), as may be amended from time to time, (b) the Operating Restrictions and (c) the Contract Capacity of each Applicable Generating Unit. For all purposes hereunder, Buyer shall be the CAISO Scheduling Coordinator for the Facility.

Ancillary Services: Consistent with the rules of the CAISO, Buyer may schedule, in amounts detailed in Appendix A, (a) Spinning Reserve, (b) Non-spinning Reserve, (c) Regulation Up, (d) Regulation Down and (e) Replacement Reserve.

Contract Capacity: Moss Landing Unit 6: 754 MW
Moss Landing Unit 7: 755 MW

The Contract Capacity shall be dedicated to Buyer and no unit or market substitution will be permitted. To the extent Seller notifies Buyer that the Applicable Generating Unit(s) are capable of generating above the Contract Capacity for a period of time, Buyer shall have the exclusive right to schedule the Associated Energy.

Capacity Price: The monthly Capacity Price, in $/kW-month, shall be:

Moss Landing Unit 6: $ ____
Moss Landing Unit 7: $ ____

Variable O&M Charge: The Variable O&M ("VOM") Charge, in $/MWh, for Delivered Energy during the Delivery Period shall be equal to:

Moss Landing Unit 6:	\$2.56 (or \$2.72 for a 5 year Delivery Period)
Moss Landing Unit 7:	\$2.56 (or \$2.72 for a 5 year Delivery Period)

Seller may notify Buyer that the amount of Unit Contingent capacity available during a period of time is greater than the Contract Capacity ("Increased Capacity"), and Buyer may then schedule the Energy associated with such Increased Capacity. The total VOM Charge for Delivered Energy associated with the Increased Capacity shall be:

Moss Landing Unit 6:	\$5.56 (or \$5.72 for a 5 year Delivery Period)
Moss Landing Unit 7:	\$5.56 (or \$5.72 for a 5 year Delivery Period)

Start Charges: When a Unit is started after having been off-line for twenty-four (24) hours or longer ("Start"), Buyer shall pay Seller the following Start Charge ("Start Charge").

	Minimum Downtime	Start Charge 15 Starts/Year	Start Charge Each Start over 15
Moss Landing Unit 6:	24 hours	\$12,000	\$96,000
Moss Landing Unit 7:	24 hours	\$12,000	\$96,000

The Start Charge amount applicable for hot, warm and cold Starts is detailed in Schedule 3.

Start Fuel: For each Start, Buyer shall supply the following amounts of gas as fuel required to start-up each Unit:

	Fuel per Start
Moss Landing Unit 6:	10,394 MMBtu
Moss Landing Unit 7:	10,394 MMBtu

However, in the event the actual amount of fuel required to Start a Unit exceeds the amount of Start Fuel, Seller shall pay Buyer for the difference through the monthly fuel settlement process.

Start Power: Buyer will also be responsible for all power necessary to start the Applicable Generating Units. The applicable amounts of Start Power for hot, warm and cold Starts are as follows:

	Power per Start
Moss Landing Unit 6:	407 MWh
Moss Landing Unit 7:	407 MWh

Prior to commencement of the Delivery Period, Buyer will notify Seller in writing as to whether Buyer will provide its own start power or will reimburse Seller for the start power used by Seller at the actual billed rate to Seller.

Power Delivery Point: The Power Delivery Point shall be the point of interconnection at which the Unit delivers its power output to the CAISO (or successor organization) controlled grid ("GRID").

Buyer's Gas Delivery Obligations: No later than 0730 PPT on the day prior to each day of delivery, Buyer shall provide Seller with a schedule indicating the amount of natural gas Buyer intends to deliver to the Gas Delivery Point.

Seller's obligation to deliver Associated Energy dispatched by Buyer and any Ancillary Services where dispatch of the Applicable Generating Unit would be required shall be contingent upon Buyer providing the full gas requirements of the Applicable Generating Unit as allowed under the applicable pipeline and tariff rules, including any needed Start Fuel to the Gas Delivery Point (as defined below). Buyer shall be responsible for delivering the Contract Gas Quantity to the Gas Delivery Point. Buyer shall be responsible for costs associated with providing the Contract Gas Quantity to the Gas Delivery Point (net of Heat Rate deviations and Start Fuel adjustments), including costs of (a) gas, (b) transportation service and (c) imbalance charges and penalties.

Contract Gas Quantity: The Contract Gas Quantity for each hour shall be expressed in MMBtu and equal the sum of the following:

1. The quantity of natural gas calculated by multiplying the MW of Scheduled Energy in each hour multiplied by the applicable Heat Rate as identified in Schedule 1; plus
2. A natural gas quantity of any Start Fuel required during the relevant gas day; plus
3. The quantity of natural gas equal to the fuel retention, if any, required by a transporting gas pipeline to transport gas to the Facility.

Heat Rate Deviations: In the event that actual Heat Rate deviates from expected Heat Rate (as set forth in Schedule 1) by an amount greater than the Heat Rate Allowance, Buyer and Seller shall make necessary adjustments as follows:

If in any given hour the actual Heat Rate exceeds the expected Heat Rate by an amount greater than the Heat Rate Allowance, Seller shall reimburse Buyer in an amount equal to the product of (a) the amount of the deviation in excess of the Heat Rate Allowance and (b) the Gas Index, and such payment shall be reflected as an adjustment to the amount invoiced monthly pursuant to Article 6 of the Master Agreement.

If in any given hour the expected Heat Rate exceeds the actual Heat Rate by an amount greater than the Heat Rate Allowance, Buyer shall reimburse Seller in an amount equal to the product of (a) the amount of the deviation in excess of the Heat Rate Allowance and (b) the Gas Index, and such payment shall be reflected as an adjustment to the amount invoiced monthly pursuant to Article 6 of the Master Agreement.

Gas Delivery Point: The Gas Delivery Point shall be the PG&E City Gate

Gas Index: The natural gas index for PG&E City-gate ("Midpoint") Daily Price survey as published by Platt's *Gas Daily* for the flow day corresponding to the delivery day.

Gas Transportation Charge: Buyer shall reimburse Seller for the transportation cost of all natural gas under Seller's transportation contract on behalf of Buyer from the Gas Delivery Point to the Facility (the "Gas Transportation Charge"). The Gas Transportation Charge shall be based on then applicable tariff rates under PG&E Tariff Schedules (PG&E Tariff G-EG, or its successor), plus any applicable surcharges under such tariff.

Capacity Payment: Seller will provide Buyer with an invoice for the Contract Capacity Payment no later than ten (10) Business Days in advance of the calendar delivery month. No later than five (5) Business Days prior to each month of delivery, Buyer shall pay Seller a Capacity Payment, calculated as the product of (a) the Contract Capacity, (b) the Capacity Price and (c) 1,000 kW per MW.

Variable Payment: Buyer shall pay Seller, in accordance with Article 6 of the Master Agreement, a Variable Payment consisting of the following:

1. A VOM Payment, calculated as the product of (a) the Delivered Energy for the month of delivery, expressed in MWh and (b) the Variable O&M Charge ("VOM Payment"); and
2. A Start Charge Payment equal to the sum of the Start Charges incurred during the month of delivery ("Start Charge Payment"); and
3. A Gas Transportation Payment equal to the product of (a) the amount of natural gas transported by Buyer to the Facility and (b) the Gas Transportation Charge ("Gas Transportation Payment").

Fuel Supply: Buyer shall be responsible for arranging delivery to the Gas Delivery Point of the quantity of natural gas required to produce energy associated with Buyer's requested amount of the Product, including, as applicable, Start Fuel, for each hour in which Buyer has scheduled delivery of the Product. In addition, Buyer shall be responsible for any additional amounts for losses, imbalance charges and any transportation fees, taxes or assessments associated with the delivery of natural gas to the Facility specified under the applicable tariffs.

Transmission: Seller shall be responsible for all transmission costs and arrangements, including risk of transmission outage and curtailment, to the Power Delivery Point. Buyer shall be responsible for all transmission costs, including Generation Meter Multipliers ("GMMs") and arrangements, including risk of transmission outage or curtailment, at and from the Power Delivery Point.

Delivered Energy: The amount of Energy, expressed in MWh, delivered from a Unit by Seller to Buyer at the Power Delivery Point during an hour.

Scheduled Energy: The amount of Energy, expressed in MWh, requested by Buyer in accordance with the scheduling procedures, for delivery from a Unit to the Power Delivery Point during an hour.

Available Energy: The amount of Energy, expressed in MWh, available for dispatch from a Unit for each hour, calculated monthly.

Total Energy: The product of the Contract Capacity for a Unit times all hours during a given month during the Delivery Period, expressed in MWh.

Actual Availability Factor: The quotient of (a) the sum of Available Energy in a month divided by (b) Total Energy for the same month less Excused Energy for the same month.

Guaranteed Monthly Availability Factor: Seller guarantees that the Actual Availability Factor calculated on a monthly basis for the Units shall be:

Moss Landing Unit 6: 92%
Moss Landing Unit 7: 92%

Every month Capacity Payments due the Seller from the Buyer for that month will be subject to reduction for failing to meet the Guaranteed Monthly Availability Factor as follows: For each percentage point amount the Actual Availability

Factor during the Delivery Period is below the Guaranteed Availability Factor (the "Deficiency Amount"), Seller shall pay Buyer a rebate calculated as the product of (a) the Deficiency Amount; and (b) the Capacity Payment for the month.

Excused Energy: Contract Capacity that is not available for dispatch during each month of the Delivery Period as the result of an Excused Event.

Excused Events: Excused Events shall be: (a) a Force Majeure Event affecting the Facility; (b) Scheduled Maintenance and/or testing of the Unit; (c) Condenser Cleaning; (d) Unplanned Maintenance or Repairs conducted by Seller during a period in which the Unit has not been dispatched by the Buyer or CAISO; (e) Buyer's failure to deliver gas to the Gas Delivery Point; (f) Buyer's failure to accept Energy and/or make transmission arrangements at and from the Power Delivery Point; (g) failure by Seller to deliver Energy in response to a schedule from Buyer due to its inconsistency with Operational Restrictions, as specified in Schedule 2; (h) conditions on the electric transmission system, including a Force Majeure event, congestion, transmission constraints and the refusal of the transmission provider to accept and transmit energy; (i) conditions on the gas pipeline system, including a Force Majeure event and curtailment of firm natural gas transportation service; and (j) Environmental and Operational Limitations.

Force Majeure Event: Force Majeure Event shall mean a cause or event that prevents a Party from performing any of its obligations under this Confirmation that is not within the reasonable control of the Party, without the fault or negligence of the Party and that by the exercise of due diligence the Party is unable and could not reasonably have been expected to avoid, cause to be avoided or overcome. A Force Majeure Event shall excuse Seller from its performance obligations hereunder during the existence of such Force Majeure Event until such time as it is cured. A Force Majeure Event shall relieve Buyer of its obligations to make Capacity Payments for the time periods related to unavailability of a Unit due to such Force Majeure Event, until such time as the Force Majeure Event is cured, as set forth above under "Guaranteed Monthly Availability Factor". Force Majeure Events may include, but are not restricted to, acts of God; acts of the public enemy, war, blockades, insurrections, sabotage, civil disturbances, riots, terrorism; strikes or other work stoppages, lock-outs, or other industrial disturbances or labor disputes; labor or materials shortage; epidemics, landslides, lightning, earthquakes, firestorms, hurricanes, tornadoes, floods, washouts; fire, explosion, or other unusually severe or extreme actions of the elements; catastrophic equipment failure; and actions or failures to act of any federal, state, local, municipal or other governmental body or agency preventing, delaying or otherwise adversely affecting performance by a Party hereto.

Force Majeure Events shall not include (a) changes in market conditions that affect the cost or availability of supply of goods or services, (b) the unavailability of equipment except when such unavailability is directly caused by an event of Force Majeure as defined above, which could reasonably have been avoided by compliance with Good Utility Practices, and (c) changes in market conditions that affect the price of energy or capacity or fuel.

Power Scheduling: No later than 0615 PPT on the pre-Scheduling Day, Buyer shall provide Seller with a schedule indicating the amount of the Associated Energy and/or Ancillary Services Buyer requests for delivery to the Power Delivery Point for every hour of the day of delivery Buyer shall be responsible for its Scheduling Coordinator's compliance with any existing or future Must-offer Obligation ("MOO") or Flexible Offer Obligation ("FOO") including, but not limited to, requesting waivers of any MOO or FOO and submitting bids for available, unscheduled Contract Capacity during waiver denial periods. Buyer, or Buyer's representative, as Scheduling Coordinator, shall also be responsible for compliance with Residual Unit Commitment requirements under the CAISO Tariff. For intra-day scheduling, Buyer shall provide Seller with an hour-ahead schedule indicating the amount of Associated Energy and/or Ancillary Services Buyer requests for delivery to the Power Delivery Point consistent with the Unit delivery capabilities specified in Schedules 1 and 2. If no hour-ahead schedule is submitted and the CAISO (in the event of an emergency) does not instruct otherwise, the day-ahead schedule governs.

Non-Buyer Dispatches: If Seller or Seller's agent, designee or contractor starts-up or operates an Applicable Generating Unit for maintenance or testing purposes at a time or period when the Applicable Generating Unit has not previously been scheduled for dispatch by Buyer or the CAISO, such start-up or operation shall be for the account of Seller, and Seller shall hold Buyer harmless and indemnify Buyer against any and all costs or losses resulting from such start-up or operation, including, without limitation, all costs of natural gas consumed pursuant to such start-up or operation, transportation costs, any imbalance charges or penalties, and all CAISO charges. Without limiting any of the foregoing, Seller shall not start-up or operate any Applicable Generating Unit other than (a) as dispatched by Buyer or the CAISO (including in connection with an Ancillary Service dispatch pursuant to this Confirmation) or (b) as required by law or Good Utility Practices. Seller shall, to the extent commercially reasonably possible, notify Buyer at least twenty-four (24) hours in advance of any start-up or operation pursuant to the foregoing clause (b), and shall, except as required by law or Good Utility Practices, delay such start-up or operation if requested by Buyer. Buyer shall be responsible for start-up and operation costs of an Applicable Generating Unit that is dispatched by the CAISO pursuant to its emergency authority or pursuant to any must-offer requirement in the event that the CAISO has revoked a must-offer waiver and Buyer shall be entitled to entitlements under the CAISO Tariff for Start-up Costs and Minimum Load Costs applicable to CAISO dispatches pursuant to its emergency authority or pursuant to any must-offer requirement in the event that the CAISO has revoked a must-offer waiver.

Operating Restrictions: All Operating Restrictions associated with Contract Capacity, Ancillary Service Capacity and Scheduled Energy provided pursuant to this Transaction are specified in Schedule 2 attached to this Confirmation. In scheduling any Applicable Generating Unit for dispatch, Buyer shall comply with all applicable Operating Restrictions. The Operating Restrictions specified are those that exist at the time this transaction is entered into. Should any regulatory agency or governing body impose conditions or requirements of any nature that result in increased costs to operate the Units during the Term hereof, Buyer shall bear and be responsible for such costs.

CAISO Charges: Seller shall be responsible for all CAISO charges associated with operation of each Applicable Generating Unit and transmission up to the Power Delivery Point for Scheduled Energy. Buyer shall be responsible for all CAISO charges associated with receiving and transmitting Scheduled Energy at and from the Power Delivery Point, including without limitation all applicable charges associated with GMMs. Seller's reimbursement to Buyer of such charges, if any, shall be invoiced monthly in accordance with Article 6 of the Master Agreement.

Generation Deviation Charges: Should Seller fail to operate the Units in a manner to comply with Buyer's dispatch schedule (unless due to an Unscheduled Outage) and a deviation occurs between the Scheduled Energy and the Delivered Energy or between scheduled Ancillary Services and delivered Ancillary Services ("Seller's Deviation"), Seller shall be responsible to reimburse Buyer for any CAISO-imposed charges or additional gas costs and VOM Charge costs Buyer incurs as a result of Seller's Deviation (including but not limited to capacity and/or energy payments associated with Ancillary Services), ("Deviation Charges"). Deviation Charges shall be calculated in hourly increments and summed for the month (then invoiced in accordance with Article 6 of the Master Agreement) in the following manner:

1. For hours in which Scheduled Energy or scheduled Ancillary Services is greater than Delivered Energy or delivered Ancillary Services, Seller shall pay Buyer the difference, if any, of:

   (CAISO-imposed charges incurred by Buyer resulting from Seller's Deviation, less any CAISO revenues to Buyer resulting from Seller's Deviation) –
   (The gas costs and VOM Charge Buyer would have incurred to generate Seller's Deviation, using the expected Heat Rate, fuel retention, and any Start Fuel)

   If the sum of all differences for the month is 0 or negative, no payment shall be due Buyer from Seller for Seller's Deviation.

2. For hours in which Delivered Energy or delivered Ancillary Services is greater than Scheduled Energy or scheduled Ancillary Services, Seller shall pay Buyer the difference, if any, of:

   (The gas costs and VOM Charge Buyer incurred to generate Seller's Deviation, using the expected Heat Rate, fuel retention, and any Start Fuel) –
   (CAISO revenues to Buyer resulting from Seller's Deviation, less any CAISO-imposed charges incurred by Buyer resulting from Seller's Deviation)

   If the sum of all differences for the month is 0 or negative, no payment shall be due Buyer from Seller for Seller's Deviation.

Scheduled Maintenance:

Seller expects that DEML will perform certain scheduled maintenance procedures, ("Scheduled Maintenance") on the Applicable Generating Unit(s) during the Delivery Period, all subject to DEML's adherence to applicable CAISO rules and Good Utility Practices, and in an effort to maintain the Guaranteed Monthly Availability Factor. Seller anticipates that Scheduled Maintenance will comprise approximately the following amount of time during the Delivery Period:

	Hours per Year
Moss Landing Unit 6:	456 hours
Moss Landing Unit 7:	456 hours

The Parties agree that in the event that Scheduled Maintenance for the Applicable Generating Unit exceeds 456 hours in any calendar year, the number of hours in excess of 480 hours shall not be considered an Excused Event. The Parties further agree that any Scheduled Maintenance shall be deemed to be at least eight hours in duration.

Outages:

No later than January 1, May 1 and September 1 of each calendar year during the Delivery Period, Seller shall submit to Buyer for Buyer's approval a schedule of proposed Scheduled Outages for the following four (4) month period. Seller's submission to Buyer will include a detailed scope of all

Scheduled Maintenance activities. Seller shall also submit to Buyer, no later than September 1 of each calendar year during the Delivery Period its proposed Scheduled Outage plan for the following calendar year. Within twenty (20) Business Days after its receipt of a Scheduled Outage plan, Buyer shall notify Seller and DEML in writing of any reasonable request for changes to the Scheduled Outage plan, and Seller shall use commercially reasonable efforts, within Good Utility Practices, to accommodate Buyer's requests regarding the timing and duration of any Scheduled Outages. No Scheduled Outages shall be planned from each June 1 through September 30 during the Delivery Period. In the event that the Seller has a previously Scheduled Outage that becomes coincident with an emergency, Seller or DEML shall make all reasonable efforts to reschedule such Scheduled Outage. Seller and Buyer shall equally bear costs associated with rescheduling the Outage. Seller shall comply and Buyer shall cooperate with outage coordination provisions of the CAISO Tariff.

Seller shall work with DEML to arrange and coordinate all Scheduled Outages with CAISO. Without limiting the foregoing, Seller and DEML shall grant Buyer access to communications with CAISO with respect to the Applicable Generating Unit during the Delivery Period and Seller and DEML shall take all actions and execute any documents necessary to authorize CAISO to communicate directly with Buyer and Seller (together) with respect to any Scheduled Outage. Seller or DEML shall notify Buyer of an Unscheduled Outage or a change in a Scheduled Outage and estimated time of return of each Applicable Generating Unit as commercially reasonably practicable after the condition becomes known to Seller or DEML. Notwithstanding any of the foregoing, Buyer understands and agrees that Seller must respond to emergency situations and other unexpected occurrences that may require Unscheduled Outages. Seller will endeavor to maintain outages within its planned Scheduled Outages provided to Buyer, but Seller also maintains all rights to implement Unscheduled Outages in accordance with Good Utility Practices and commercially reasonable efforts as the need arises.

Condenser Cleaning: Seller shall be allowed the below temporary unit derates in capacity for the purpose of condenser cleanings in order to preserve both unit availability due to circulating water temperature rise limitations and unit fuel efficiency. During such periods the Applicable Generating Unit will be derated to 250 MW (net) for the duration of the Cleaning. Such Cleanings will be scheduled during off-peak hours (i.e. between 22:00 of one day and 06:00 of the following day). Seller shall make a best efforts attempt to work with Buyer to schedule such outages only when necessary and in a manner that minimizes market impacts.

Shell Basket Cleaning: 3 hours in duration, every other day of operation.
Tube Sheet Cleaning: 8 hours in duration once a week.

Resource Adequacy: Seller, upon Buyer's request, shall commit the full Contract Capacity during the Delivery Period in an effort to assist Buyer in meeting Buyer's resource adequacy requirements, as determined under the prevailing Resource Adequacy Requirement ("RAR") rules for determining the quantity and deliverability of qualifying RAR capacity ("Qualifying Capacity") that can be counted toward Buyer's RAR obligation, as described in D.04-10-035, and as may be amended from time to time by the California Public Utilities Commission ("CPUC") in the Resource Adequacy phases of Rulemaking 04-04-003 or by any successor proceeding, and all other resource adequacy requirements established by any other regional entity responsible for RAR implementation or enforcement. However, Seller does not represent or warrant in any way that the Units meet such requirements, as those requirements may change during the term of the transaction. The Parties shall take all reasonable actions (including, but not limited to, amending this Confirmation) and execute all documents or instruments necessary to use the Contract Capacity during the Delivery Period for the benefit of Buyer's RAR. During the Delivery Period, Seller and its affiliate, DEML, shall not use or otherwise commit any portion of the Applicable Generating Unit to in any way satisfy the RAR of any party other than Buyer.

Notice of Availability: Not later than two (2) Business Days before each schedule day for day-ahead Energy, in accordance with WECC scheduling practices for day-ahead Energy, and during the Delivery Period, Seller shall provide the Buyer with a non-binding hourly schedule of the amounts of Energy and/or Ancillary Services that the Applicable Generating Unit is expected to be available to produce each hour of such day (each, an "Availability Notice"). Availability Notices for Saturdays shall be provided on the preceding Wednesday. Availability Notices for Sundays and Mondays shall be provided on the preceding Thursday. Seller shall accommodate Buyer's reasonable requests for changes in the time of delivery of Availability Notices.

In addition, Seller shall submit to Buyer no later than (a) January 1, May 1 and September 1 of each calendar year during the Delivery Period, Buyer's estimate of the daily Available Capacity for the following four (4) months and (b) September 1 of each calendar year during the Delivery Period, Buyer's estimate of the daily Available Capacity for the following calendar year.

Notification Time: Buyer shall notify the Seller when establishing or changing an Energy schedule or Ancillary Services Capacity request in time for Seller to accommodate such change within the operating capabilities of the Unit. Seller will notify Buyer of any changes or anticipated changes in Applicable Generating Unit capability as soon as practicable but in no case later than thirty (30) minutes after the occurrence of such a change or the time at which Seller knows of such a change.

Access to Meter Data: Seller and DEML shall grant to Buyer readily available access to all power billing meters and telemetry data associated with the Applicable Generating Unit.

Credit: Credit provisions satisfactory to Buyer and Seller under the terms of the Master Agreement and special provisions mutually agreed between the parties in conjunction with this Transaction.

Contact Information:

	Seller Phone/Fax	Buyer Phone/Fax
Day Ahead Trading:		
Real-Time:		
Settlement:		

ACKNOWLEDGED AND AGREED TO AS OF __________________, 2005.

Duke Energy Marketing America, LLC ______________________________

By:	______________________	By:	______________________
Name:	______________________	Name:	______________________
Title:	______________________	Title:	______________________
Date:	______________________	Date:	______________________

APPENDIX A

Duke Energy Moss Landing 6 & 7 Capabilities

Applicable Generating Units:

Unit(s)	Moss Landing #6	Moss Landing #7
Location	Moss Landing, Ca	Moss Landing, Ca
Name Plate	MOSSLD_7_UNIT 6	MOSSLD_7_UNIT 7
ISO Resource ID	MOSSLD_7_UNIT 6	MOSSLD_7_UNIT 7
ISO P. Max	754	755
Net Dependable Cap.	754	755
ISO P. Min	52	52
ISO Ancillary Service Certifications	Spin, Non-Spin, AGC and Repl.	Spin, Non-Spin, AGC and Repl.
Unit Description	Steam Generator	Steam Generator

Maximums are based on providing the product within the following time frames:
Regulation Up/Down = 30 minutes (product may also be limited by range restrictions)
Spin/Non-spin Reserve = 10 minutes (product may also be limited by range restrictions)
Replacement Reserve = 60 minutes (product may also be limited by range restrictions)

ISO UNIT DESIGNATION: MOSSLD_7_UNIT 6

Ancillary Service Capacity	LR 200-400 MW range Ramp Rate MW/min	HR 330-730 MW range Ramp Rate MW/min	Maximum Quantity (Per appropriate Product)
Regulation Up	15	15	LRAGC = 200 / HRAGC = 400
Regulation Down	15	15	LRAGC = 200 / HRAGC = 400
	52-160 MW range Ramp Rate MW/min	**190-754 MW range Ramp Rate MW/min**	
Spinning Reserve	5	15	LR = 50 / HR = 150
Non-Spinning Reserve	5	15	LR = 50 / HR = 150
Replacement Reserve	5	15	LR = 108 / HR = 564

ISO UNIT DESIGNATION: MOSSLD_7_UNIT 7

Ancillary Service Capacity	LR 200-400 MW range Ramp Rate MW/min	HR 330-730 MW range Ramp Rate MW/min	Maximum Quantity (MWh/hr)
Regulation Up	30	30	LRAGC = 200 / HRAGC = 400
Regulation Down	30	30	LRAGC = 200 / HRAGC = 400
	52-160 MW range Ramp Rate MW/min	**190-755 MW range Ramp Rate MW/min**	
Spinning Reserve	5	30	LR = 50 / HR = 300
Non-Spinning Reserve	5	30	LR = 50 / HR = 300
Replacement Reserve	5	30	LR = 108 / HR = 565

SCHEDULE 1

Variable Heat Rate Curve
Moss Landing Unit #6 and #7

Station Name:	Moss Landing
Unit Number:	Unit 6
Contract Capacity:	754 MW
Minimum Load:	52 MW
Minimum Load on AGC:	200 MW

Heat Rate Coefficients:

A = .00075
B = 8.0952
C = 400
Heat Input = (Ax^2 + Bx +C)/x (See Heat Rate Table below)

MW Ranges	Ramp Rates MW/Min
52-190	5
190-754	15

Station Name:	Moss Landing
Unit Number:	Unit 7
Contract Capacity:	755 MW
Minimum Load:	52 MW
Minimum Load on AGC:	200 MW

Heat Rate Coefficients:

A = .0011
B = 7.602
C = 490
Heat Input = (Ax^2 + Bx +C)/x (See Heat Rate Table below)

MW Ranges	Ramp Rates MW/Min
52-190	5
190-755	30

Expected Heat Rate and Ramp Rate Table
(Illustrative)

Scheduled Energy (MW)	Moss Landing Unit 6 Heat Rate (Btu/kWh)	Moss Landing Unit 6 Ramp Rate (MW/min)	Moss Landing Unit 7 Heat Rate (Btu/kWh)	Moss Landing Unit 7 Ramp Rate (MW/min)
52	15,827	5	17,082	5
60	14,807	5	15,835	5
70	13,862	5	14,679	5
80	13,155	5	13,815	5
90	12,607	5	13,145	5
100	12,170	5	12,612	5
110	11,814	5	12,178	5
120	11,519	5	11,817	5
130	11,270	5	11,514	5
140	11,057	5	11,256	5
150	10,874	5	11,034	5
160	10,715	5	10,841	5
170	10,576	5	10,671	5
180	10,452	5	10,522	5
190	10,343	5	10,390	5
200	10,245	15	10,272	30
210	10,157	15	10,166	30
220	10,078	15	10,071	30
230	10,007	15	9,985	30
240	9,942	15	9,908	30
250	9,883	15	9,837	30
260	9,829	15	9,773	30
270	9,779	15	9,714	30

280	9,734	15	9,660	30
290	9,692	15	9,611	30
300	9,654	15	9,565	30
310	9,618	15	9,524	30
320	9,585	15	9,485	30
330	9,555	15	9,450	30
340	9,527	15	9,417	30
350	9,501	15	9,387	30
360	9,476	15	9,359	30
370	9,454	15	9,333	30
380	9,433	15	9,309	30
390	9,413	15	9,287	30
400	9,395	15	9,267	30
410	9,378	15	9,248	30
420	9,363	15	9,231	30
430	9,348	15	9,215	30
440	9,334	15	9,200	30
450	9,322	15	9,186	30
460	9,310	15	9,173	30
470	9,299	15	9,162	30
480	9,289	15	9,151	30
490	9,279	15	9,141	30
500	9,270	15	9,132	30
510	9,262	15	9,124	30
520	9,254	15	9,116	30
530	9,247	15	9,110	30
540	9,241	15	9,103	30
550	9,235	15	9,098	30

560	9,229	15	9,093	30
570	9,224	15	9,089	30
580	9,220	15	9,085	30
590	9,216	15	9,082	30
600	9,212	15	9,079	30
610	9,208	15	9,076	30
620	9,205	15	9,074	30
630	9,203	15	9,073	30
640	9,200	15	9,072	30
650	9,198	15	9,071	30
660	9,196	15	9,070	30
670	9,195	15	9,070	30
680	9,193	15	9,071	30
690	9,192	15	9,071	30
700	9,192	15	9,072	30
710	9,191	15	9,073	30
720	9,191	15	9,075	30
730	9,191	15	9,076	30
740	9,191	15	9,078	30
750	9,191	15	9,080	30
750 and above	9,191	5	9,080	5

Schedule 2

Operating Restrictions
Moss Landing Unit #6 and #7

Type	Measurement Units For Limit	Period Of Applicability*	Limit
Start-Up Time Hot (unit down >24-<72 hrs)	[Hours]	Term of Contract	16
Start-Up Time Warm (unit down >24–<72 hrs)	[Hours]	Term of Contract	16
Start-Up Time Cold	[Hours]	Term of Contract	24
Number Of Start-Ups	[Number]	[Applicable period]	None
Minimum Run Time	[Hours]	Term of Contract	24
Minimum Down Time	[Hours]	Term of Contract	24
Ramp Rates	[MW/Min]	Term of Contract	Reference Schedule 1
Minimum Operating Level	[MW]	Term of Contract	52

Schedule 2 (continued)

Operating Restrictions
Moss Landing Unit #6 and #7

Other Operating Constraints	N/A	
	Limit	how limit is significant to operation and dispatch
Environmental		
Run limits for natural gas (hours per year)	N/A; However there are facility wide mass emission limits.	
NOx limits - Natural Gas	2054.4 lbs/day NOx is controlled by emission control equipment and normal operation results in no restrictions due to NOx	All units operation must be coordinated to stay under quarterly facility limits (Note: Units 6 & 7 would be used to manage facility limits. The maximum quarterly capacity factor, for Units 6 & 7 combined, would be as follows: Q1 60.8%; Q2 63.6%; Q3 100%; Q4 85.5%)
CO limits - Natural Gas	20704.8 lbs/day CO is controlled by maintaining proper boiler combustion and normal operation results in no restrictions due to CO	Same as NOx
Water volume discharge limits	1.226 billion gals / day Normal unit operation maintains volumes below this limit	Total station Limit
Water Outfall limits Δ T	1. U6&7 alone 2. U12&67 comb 3. U1/2 alone Temperature is affected by Condenser cleanliness. Restrictions may result if condensers are not kept near optimum performance. Curtailments may be necessary for routine condenser cleaning	24hr limit = 28degF; 1hr limit = 34deg F 24hr limit = 26degF; 1hr limit = 32degF 24 hr limit = 20degF; 1hr limit = 26degF

PM10, SO_2 and VOC are based on fuel burned and therefore emissions vary based on Unit heat rate. The following table illustrates the emissions of each constituent, based on lbs. per MW of production at minimum load (52 MW), 50% load (377 MW) and full load (755 MW).

		Moss Landing Unit 6			Moss Landing Unit 7		
	lb./MMBtu	52 MW	377 MW	754 MW	52 MW	377 MW	755 MW
Heat Rate (Btu/kWh)		15,827	9,439	9,191	17,082	9,318	9,080
PM10 (1b./MW)	0.007451	0.118	0.070	0.068	0.127	0.069	0.068
SO2 (lb./MW)	0.000697	0.011	0.007	0.006	0.012	0.006	0.006
VOC (lb./MW)	0.005392	0.085	0.051	0.050	0.092	0.050	0.049

Appendix B

Operation, Maintenance Obligations and Environmental Limitations:
(for Unit Contingent Capacity)

A. Operation Obligations of Seller

1. The Applicable Generating Unit shall be operated in accordance with Good Utility Practices and CAISO Tariff.

2. A daily operations log shall be maintained for the Applicable Generating Unit which shall include but not be limited to information on power production, fuel consumption and efficiency (if applicable), availability, maintenance performed, outages, changes in operating status, inspections and any other significant events related to the operation of the Applicable Generating Unit. In addition, records shall be maintained for the electrical characteristics of the generators and settings or adjustments of the generator control equipment and protective devices in the Applicable Generating Unit. Information maintained pursuant to this Appendix B shall be provided at reasonable intervals to Buyer, within thirty (30) days of Buyer's written request.

3. Accurate records shall be maintained with respect to the Applicable Generating Unit's (a) operating capacity as defined in the Confirmation and in accordance with the procedures and parameters described in such Confirmation, (b) annual so-called "wide open valve heat rate test" and the outcomes of such tests, subject to the procedures, parameters and assumptions that are further described in the Confirmation, in place of the "wide open valve heat rate test", actual data may be used in the normal operation of the unit, where the unit has been requested (scheduled) to operate at full capacity for a minimum of one (1) hour and the required data is recorded, and (c) any major scheduled turbine overhaul and the results, if any, as part of DEML's customary overhaul procedure, of a so-called "wide open valve heat rate test" immediately prior to overhaul and immediately after such overhaul, subject to the procedures, parameters and assumptions that are further described in the Confirmation.

4. Seller shall obtain and maintain any governmental authorizations and permits required for the continued operation of the Applicable Generating Unit during the Delivery Period.

5. Within thirty (30) days of the date of the Transaction, Seller shall operate, or test, the Applicable Generating Units in order to demonstrate, to Buyer's reasonable satisfaction, the ability of the Applicable Generating Units to provide Buyer with the specified Contract Capacity. If the Applicable Generating Unit has operated at or above its specified Contract Capacity within the previous forty-five (45) days of the Effective Date of the Transaction, the preceding shall be deemed satisfied. Thereafter, once per year at Buyer's request, DEML shall cause to be re-performed such test or operation for a reasonable period of time. Seller's demonstration of Contract Capacity shall be at Seller's expense and conducted at a time and pursuant to procedures mutually agreed upon by the Parties. For these capacity test operations, Seller shall provide all gas necessary for start up, operation and shut-down and the electric output from the test operations shall be for the account of Seller. Furthermore, Seller shall have the right to perform any testing in accordance with Good Utility Practices during periods in which Buyer has dispatched the Applicable Generating Unit and will only be obligated to compensate Buyer for any Generation Deviation Charges that result directly from Sellers testing activities. Likewise, if Buyer wishes for the Applicable Generating Unit to continue operating at the conclusion of testing operations conducted under Seller's dispatch, Buyer shall provide the fuel required for the continued operations and shall not be obligated to compensate Seller for

Seller's Start Charges, Start Power or Start Fuel. If the Applicable Generating Unit fails to provide the Contract Capacity during any such test or operation, Seller shall, at Seller's adjusted expense, promptly make all necessary repairs and take all actions necessary to provide Contract Capacity to Buyer, and Seller shall promptly perform such test or operation for a reasonable period of time, as required by Buyer, in order to demonstrate the Applicable Generating Unit's ability to provide such Contract Capacity.

B. Seller's Maintenance and Repair Obligations

Seller shall maintain and repair the Applicable Generating Unit in accordance with Good Utility Practices; provided that no repair shall be required if there is no material impact on the Contract Capacity of the Applicable Generating Unit.

Seller shall obtain and maintain throughout the Delivery Period at its own expense, customary and reasonable insurance. Seller shall furnish Buyer with evidence of such insurance coverage prior to the Delivery Period.

Appendix C

Definitions

UNLESS OTHERWISE DEFINED IN THIS CONFIRMATION OR IN THE MASTER AGREEMENT AND ATTACHMENTS, CAPITALIZED TERMS SHALL BE USED WITH THE MEANINGS ASCRIBED TO THEM IN THE CAISO TARIFF.

Ancillary Service Capacity: Capacity associated with Spinning, Nonspinning, and Replacement Reserves, Regulation Up or Regulation Down, or any other Ancillary Service (as such terms are defined in the Tariff) AND available to Buyer within the scope of operations allowed Buyer under this Transaction.

Associated Energy: The Energy expressed in megawatt-hours ("MWh") or kilowatt-hours ("KWh"), expressly associated with Energy dispatched in accordance with the Transaction.

Applicable Generating Unit: The existing generating unit providing Unit Contingent Capacity, or any New Generating Unit in replacement thereof, as the case may be.

Available Capacity: For a Unit Contingent Sale, the amount of Contract Capacity that is available to Buyer hereunder from the Applicable Generating Unit on average during an hour.

Contract Capacity: The amount of Unit Contingent Capacity that Seller is committing to provide to Buyer pursuant to the Transaction.

CAISO: California Independent System Operator, or its successor control area operator.

Good Utility Practices: The practices, methods and acts engaged in or approved by a significant portion of the electric utility industry operating in the WECC region 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 is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather includes all acceptable practices, method or acts generally accepted in the region. Good Utility Practice shall include, but not be limited to, applicable law and regulatory requirements, and the criteria, rules and standards promulgated by NERC, the WECC, RTO, National Electric Safety Code, and National Electrical Code, as they may be amended from time to time, including the rules and guidelines and criteria of any successor organizations.

Heat Rate: The amount of gas in British Thermal Units required to produce one KWh of Associated Energy.

Heat Rate Allowance: A threshold of plus or minus 2% of the Heat Rate specified in Schedule 1, within which Buyer and Seller shall make no adjustments for deviations.

Operating Restrictions: The limitations on Buyer's ability to schedule and use Contract Capacity, Ancillary Services, and Associated Energy Described in Schedule 2.

Pacific Prevailing Time or PPT: Pacific Daylight Time when California observes Daylight Savings Time and Pacific Standard Time otherwise.

Scheduled Outages: A period during which any or all of the Applicable Generating Units is not capable of providing service due to Scheduled Maintenance.

Scheduling Coordinator or SC: An entity authorized to submit to the CAISO a balanced generation or demand schedule on behalf of one or more generators and one or more end-users customers.

Tariff: The tariff and protocol provisions of the CAISO, as amended from time to time.

Unit Contingent Capacity: Electrical capacity that is dependent upon the availability and operation of the Applicable Generating Unit.

Unscheduled Outage: A period during which the Applicable Generating Unit is not capable of providing service due to the need to maintain or repair a component thereof that is not Scheduled Maintenance.

MASTER POWER PURCHASE AND SALE AGREEMENT
CONFIRMATION LETTER

This confirmation letter shall confirm the Transaction agreed to on ________, 2005 between Duke Energy Marketing America, LLC and __________________ regarding the sale/purchase of the Product under the terms and conditions as follows:

Seller:	Duke Energy Marketing America, LLC ("DEMA").
Buyer:	________________________________ ("___").
Delivery Period:	January 1, 2006 through December 31, 2008; or January 1, 2006 through December 31, 2010 On-Peak and Off-Peak periods may be exercised independently.
On-Peak Period:	Hour Ending ("HE") 0700 through HE 2200, Monday through Saturday, excluding NERC Holidays; Pacific Prevailing Time ("PPT").
Off-Peak Period:	HE 0100 through HE 0600 and HE 2300 through HE 2400, Monday through Saturday, and HE 0100 through HE 2400, Sundays and NERC Holidays, Pacific Prevailing Time ("PPT").
Type of Service:	Daily Call Option
Product:	CAISO Energy
Contract Quantity:	375 MW
Delivery Point:	NP-15; provided, however, if the California Independent System Operator or its successor ("CAISO") implements trading hubs under a locational marginal pricing design during the Delivery Period, the Delivery Point shall be the Existing Zone Generation NP15 Trading Hub ("NP15 EZ Gen Hub"), as such trading hub is contemplated by the CAISO in its filing made to the FERC dated March 15, 2005 ("Comprehensive Design Proposal for Inter-Scheduling Coordinator Trades Under the California Independent System Operator Corporation's Market Redesign and Technology Upgrade, Docket No. ER02-1656-025"); provided further, if the NP15 EZ Gen Hub (under any name) is not established as part of a market redesign that is implemented during the Delivery Period, the parties agree to promptly work together in good faith to designate an alternate Delivery Point to reasonably approximate the characteristics of the NP-15 Zone.

Scheduling:	In consideration for payment of the Option Premium, Seller grants Buyer the right (subject to the terms below) for each day during the Delivery Period to require Seller, at Buyer's option, to sell and deliver to Buyer the Product, for the Contract Quantity. If Buyer chooses to exercise its option to receive the Product during the On-Peak Period for a given day within the Delivery Period, Buyer must schedule and receive the Product in an amount equal to the Contract Quantity each and every hour of the On-Peak hours for which this option was exercised. If Buyer chooses to exercise its option to receive the Product during the Off-Peak Period for a given day within the Delivery Period, Buyer must schedule and receive the Product in an amount equal to the Contract Quantity each and every hour of the Off-Peak hours for which this option was exercised. In order for the option exercise to be valid, Buyer shall give Seller prior telephonic notice of its intent to exercise its option no later than 0615 PPT on the Exercise Date before the delivery is to take place. If the option is exercised, both parties shall be obligated to schedule the Contract Quantity. Furthermore, Seller shall be obligated to deliver the Contract Quantity and Buyer shall be obligated to pay the Energy Price for the relevant Contract Quantity. "Exercise Date" shall mean the mutually recognized WECC Pre-Scheduling Day prior to the delivery day or day(s) of delivery as defined by the most recent WECC Pre-Schedule calendar. For example, if Buyer exercises an option on Thursday, the relevant delivery days for that Pre-Scheduling Day will be Friday and Saturday. Buyer shall have the obligation to buy and receive from Seller and Seller shall have the obligation to sell and deliver to Buyer the Contract Quantity of the Product for all Delivery hours for both Friday and Saturday (consistent with the customary practices regarding the trading of daily electricity).
Option Premium:	US $_______ / kW-month for each calendar month during the Delivery Period, to be paid five (5) Business Days prior to the month of delivery.
Energy Price:	Calculated, on a $/MWh basis, as the Gas Price multiplied by the Contract Heat Rate plus the Variable O&M Fee.
Variable O&M Fee:	$4.75 / MWh
Contract Heat Rate:	9.50 MMBtu/MWh
Gas price:	Expressed in $/MMBtu, the Midpoint price for delivery on the relevant Flow Date for "PG&E City-Gate" as reported in the Daily Price Survey in *Gas Daily*. The Gas Price for any calendar day for which prices are not published in *Gas Daily* shall be the Midpoint price as reported on the next day for which prices are

	published in *Gas Daily*. The "Flow Date" shall mean the date on which the Product is delivered by Seller to Buyer.
Transmission:	Seller is responsible for all transmission arrangements and costs for delivery of the Product to the Delivery Point. Buyer is responsible for all transmission arrangements and costs for receipt of the Product at and beyond the Delivery Point.

This confirmation letter is being provided pursuant to and in accordance with the Master Power Purchase and Sale Agreement dated ____________ (the "Master Agreement") between ____ and DEMA, and constitutes part of and is subject to the terms and provisions of such Master Agreement. Terms used but not defined herein shall have the meanings ascribed to them in the Master Agreement.

DUKE ENERGY MARKETING AMERICA, LLC	______________________________
Name: _________________________	Name: _________________________
Title: _________________________	Title: _________________________
Date: _________________________	Date: _________________________

MASTER POWER PURCHASE AND SALE AGREEMENT
CONFIRMATION LETTER

This confirmation letter shall confirm the Transaction agreed to on ________, 2005 between Duke Energy Marketing America, LLC and _________________ regarding the sale/purchase of the Product under the terms and conditions as follows:

Seller:	Duke Energy Marketing America, LLC ("DEMA")
Buyer:	________________________________
Delivery Period:	January 1, 2006 through December 31, 2008; or January 1, 2006 through December 31, 2010
Exercise Protocol:	Buyer's exercise shall follow day-ahead scheduling protocols and will be subject to the following flexibility and limitations: • Buyer's schedule must maintain the Minimum Quantity for a minimum of 48 contiguous hours. • Buyer may schedule the Maximum Quantity in blocks of 8 or more contiguous hours.
Type of Service:	Daily Call Option
Product:	CAISO Energy
Minimum Quantity:	100 MW
Maximum Quantity:	375 MW
Delivery Point:	NP15 Zone; provided, however, if the California Independent System Operator or its successor ("CAISO") implements trading hubs under a locational marginal pricing design during the Delivery Period, the Delivery Point shall be the Existing Zone Generation NP15 Trading Hub ("NP15 EZ Gen Hub"), as such trading hub is contemplated by the CAISO in its filing made to the FERC dated March 15, 2005 ("Comprehensive Design Proposal for Inter-Scheduling Coordinator Trades Under the California Independent System Operator Corporation's Market Redesign and Technology Upgrade, Docket No. ER02-1656-025"); provided further, if the NP15 EZ Gen Hub (under any name) is not established as part of a market redesign that is implemented during the Delivery Period, the parties agree to promptly work together in good faith to designate an alternate Delivery Point to reasonably approximate the characteristics of the NP-15 Zone.
Scheduling:	In consideration for payment of the Option Premium, Seller grants Buyer the right (subject to the terms below) for each day during the Delivery Period to require Seller, at Buyer's option, to

	sell and deliver to Buyer the Product, for either the Minimum Quantity or the Maximum Quantity. If Buyer chooses to exercise its option to receive the Product, Buyer must schedule and receive the Product for a minimum of 48 contiguous hours. Furthermore, Seller grants Buyer the flexibility to schedule and receive the Maximum Quantity for a period of no less than 8 contiguous hours. In order for the option exercise to be valid, Buyer shall give Seller prior telephonic notice of its intent to exercise its option no later than 0615 PPT on the Exercise Date before the delivery is to take place. If the option is exercised, both parties shall be obligated to schedule the product for the Minimum and/or Maximum Quantity, at Buyer's discretion within the limitations described herein. Furthermore, Seller shall be obligated to deliver the Product and Buyer shall be obligated to pay the Energy Price for the relevant Product quantity. "Exercise Date" shall mean the mutually recognized WECC Pre-Scheduling Day prior to the delivery day or day(s) of delivery as defined by the most recent WECC Pre-Schedule calendar. For example, if Buyer exercises an option on Thursday, the relevant delivery days for that Pre-Scheduling Day will be Friday and Saturday. Buyer shall have the obligation to buy and receive from Seller and Seller shall have the obligation to sell and deliver to Buyer the Contract Quantity of the Product for all Delivery hours for both Friday and Saturday (consistent with the customary practices regarding the trading of daily electricity).
Option Premium:	US $____ / kW-month for each calendar month during the Delivery Period, to be paid five (5) Business Days prior to the month of delivery.
Energy Price:	Calculated, on a $/MWh basis, as the Gas Price multiplied by the Contract Heat Rate plus the Variable O&M Fee.
Contract Heat Rate:	9.50 MMBtu / MWh
Gas price:	Expressed in $/MMBtu, the Midpoint price for delivery on the relevant Flow Date for "PG&E City-Gate" as reported in the Daily Price Survey in *Gas Daily*. The Gas Price for any calendar day for which prices are not published in *Gas Daily* shall be the Midpoint price as reported on the next day for which prices are published in *Gas Daily*. The "Flow Date" shall mean the date on which the Product is delivered by Seller to Buyer.
Variable O&M Fee:	$4.75 / MWh
Transmission:	Seller is responsible for all transmission arrangements and costs for delivery of the Product to the Delivery Point. Buyer is responsible for all transmission arrangements and costs for receipt of the Product at and beyond the Delivery Point.

This confirmation letter is being provided pursuant to and in accordance with the Master Power Purchase and Sale Agreement dated ____________ (the "Master Agreement") between ____ and DEMA, and constitutes part of and is subject to the terms and provisions of such Master Agreement. Terms used but not defined herein shall have the meanings ascribed to them in the Master Agreement.

DUKE ENERGY MARKETING AMERICA, LLC	______________________________
Name: ________________________	Name: ________________________
Title: ________________________	Title: ________________________
Date: ________________________	Date: ________________________

MASTER POWER PURCHASE AND SALE AGREEMENT
CONFIRMATION LETTER

This confirmation letter shall confirm the Transaction agreed to on ________, 2005 between Duke Energy Marketing America, LLC and _________________ regarding the sale/purchase of the Product under the terms and conditions as follows:

Seller:	Duke Energy Marketing America, LLC ("DEMA")
Buyer:	_________________________________
Delivery Period:	January 1, 2006 through December 31, 2008; or January 1, 2006 through December 31, 2010
Product:	Resource Adequacy Qualifying Capacity
Product Description:	"Resource Adequacy ("RA") Qualifying Capacity" means the qualified and deliverable capacity from the Unit(s), as determined under the prevailing Resource Adequacy Requirement ("RAR") rules for determining the quantity and deliverability of qualifying RAR capacity ("Qualifying Capacity") that can be counted toward Buyer's RAR obligation, as described in D.04-10-035, and as may be amended from time to time by the California Public Utilities Commission ("CPUC") in the Resource Adequacy phases of Rulemaking 04-04-003 or by any successor proceeding, and all other resource adequacy requirements established by any other regional entity responsible for RAR implementation or enforcement. RA Qualifying Capacity does not confer to Buyer any right to the Contract Quantity of Seller's Unit(s) other than the right to count such Contract Quantity toward Buyer's RAR obligation during the Delivery Period. Specifically, no energy associated with Seller's Unit(s) is required to be made available to Buyer as part of this RA Qualifying Capacity obligation. If, during the Delivery Period, a standard capacity product is developed as a replacement to the RA product, and Buyer is authorized, if necessary, by an appropriate regulatory body to procure the product, Buyer and Seller shall negotiate in good faith to convert the RA product contemplated in this Term Sheet to one that resembles the new capacity product. If Buyer and Seller cannot agree on such new product, either party may have the right to terminate this agreement as of the first day of the month following their failure to reach agreement.
Contract Quantity:	___ MW (Increments of 125 MW, up to a maximum of 1,500 MW)
Designated Unit(s):	Moss Landing Unit 6 or Unit 7

Delivery Point:	Moss Landing Substation; within the current NP-15 zone and within the CAISO controlled grid
Contract Price:	US $____ / kW-month for each calendar month during the Delivery Period, to be paid five (5) Business Days prior to the month of delivery.
Capacity Tagging:	Should the CPUC or CAISO, during the term of this Confirmation Agreement, create an RAR implementation methodology utilizing capacity tagging [such as, but not limited to, distinct Installed Capacity ("ICAP") products], Seller shall provide Buyer with the capacity tags for the remaining term of the Confirmation Agreement, for the Contract Quantity. Seller shall take reasonable actions and execute all reasonable documents necessary to ensure that the capacity tags are used for the sole benefit of the Buyer.

This confirmation letter is being provided pursuant to and in accordance with the Master Power Purchase and Sale Agreement dated _________, ____ (the "Master Agreement") between ____ and DEMA, and constitutes part of and is subject to the terms and provisions of such Master Agreement. Terms used but not defined herein shall have the meanings ascribed to them in the Master Agreement.

DUKE ENERGY MARKETING AMERICA, LLC	____________________________
Name: ________________________	Name: ________________________
Title: ________________________	Title: ________________________
Date: ________________________	Date: ________________________

Appendix D

Pacific Gas and Electric Company Request For Offers Dated December 8, 2005 (RFO9)

REQUEST FOR OFFERS

December 8, 2005

Subject: **PG&E's Request for Offers ("RFO") for Intermediate Term Shapeable Energy and Resource Adequacy ("RA"): 2006-2010**

Dear Prospective Bidder:

Pacific Gas and Electric Company ("PG&E" or "Buyer") is seeking offers from sellers ("Bidders" or "Sellers") pursuant to which PG&E would enter into agreements to purchase shapeable Energy and RA ("Products") to meet a portion of its needs for the 2006 through 2010 period of time. The terms and conditions creating and defining the Products sought by PG&E are set forth the accompanying term sheet ("Term Sheet"). The Term Sheet will form the basis for a resulting Confirmation Agreement with any selected Bidders. Any Confirmation Agreement will be governed by a Master Power Purchase Agreement (either Edison Electric Institute ("EEI") or Western Systems Power Pool ("WSPP") between PG&E and Bidder. (Note: Some definitions of some terms contained in this RFO letter are as found in the Term Sheet.)

Bidders should submit the applicable bid table(s) (Term Sheet Attachment 4) containing the offer information, including indicative prices, as well as the Term Sheet and any changes thereto by December 22, 2005, 3 p.m. PPT ("Offer"). Bidders should specify additional criteria for volume, price and operational limitations if such criteria cannot be explicitly specified in Attachment 4 of the Term Sheet. For example, if a Bidder wishes to specify Energy prices based on heat rates that are seasonal, or provide a heat rate curve that does not fit the format in Attachment 4, PG&E requests that the Bidder provide such information in its indicative response.

Description of Products Solicited

Through this RFO, PG&E is seeking Energy and RA products to satisfy a portion of its resource needs through 2010. Bidders may submit one or multiple Offers meeting the terms and conditions contained in the Term Sheet. Bidders may submit multiple Product and pricing structures.

One of PG&E's objectives in this solicitation is to procure more operating flexibility than is typically acquired through standard forward and daily option contracts. The minimum flexibility requirement for products described in this RFO is an hour-ahead call on Energy, callable for a varying number of hours and a constant delivery rate. However, PG&E will strongly favor Offers that provide additional operating flexibility.

Pricing Structure for Energy (Variable Component)

Bidders may offer a strike price that is either: (1) a fixed \$/MWh, or (2) a heat rate in MMBtu/MWh plus variable O&M costs on a per MWh basis. For heat rate Offers, PG&E will also accept a heat rate curve with varying output levels. Please see the Compensation Section of the Term Sheet for more exact details.

In this RFO, the following fixed price and heat rate ranges are strongly encouraged:

For fixed price Offers:
\$75 to \$100/MWh;

For heat rate Offers:
7.5 to 10.0 MMBtu/MWh

For heat rate based Offers, the Gas Index is Platt's Gas Daily, PG&E City-gate, Midpoint.

Operating Flexibility

Bidder options are defined in the "Energy Call and Scheduling Rights, Minimum Operating Flexibility" section of the Term Sheet. This RFO allows Bidders to provide Hour Ahead (Option A) or full flexibility (Option B).

Ancillary Services ("A/S")

This RFO allows Bidders (under Option B for operating flexibility) to provide the following A/S product: spinning reserves, non-spinning reserves, and regulating reserves. If offered, the MWs of A/S plus any deliverable Energy MWs must not exceed the total MWs offered.

Resource Adequacy ("RA")

The description of RA requirements reflects PG&E's best assessment of the terms that are likely to be in place during the term of a resulting Confirmation Agreement. Sellers are requested to identify unit(s) for RA purposes. The identified units should be within the control area of the California Independent System Operator ("CAISO"). PG&E will strongly favor Offers that provide RA in the greater Bay Area. Finally, unless Intertie MW allocations are finalized prior to the execution of a related Confirmation Agreement, imports for RA will not be considered in this RFO.

Delivery Point

For Energy products, PG&E strongly prefers delivery within NP15. In the event that LMP or nodal pricing takes effect in California during the term of a Confirmation Agreement, PG&E proposes that non-unit specific power settle at an NP15 "hub" price. If Seller defines a specific NP15 substation, then the settled price is based on the node that best represents that substation.

Term

PG&E is seeking Offers for deliveries between May 1, 2006 and December 31, 2010. Offers may be for the entire period or portions thereof and may be annual or seasonal. If seasonal, the months must include May through September for all years offered. The minimum total term is 3 years. The latest start date is May 1, 2007. Each Offer must begin on the first and end on the last day of a calendar month. Bidders are encouraged to submit multiple Offers.

Energy and RA Quantities

PG&E will consider Offers of 25 MW or more. Please explain clearly, which, if any, Offers are mutually exclusive. For example, a Bidder may state that PG&E may select any combination of Offers up to a specified quantity. Energy and RA quantities should be the same.

Scheduling Provisions

Energy deliveries will be scheduled pursuant to protocols and tariffs of the CAISO and Western Electric Coordinating Council ("WECC"). Alternate scheduling methods may include inter-scheduling coordinator ("SC") trades between SCs or any other agreed-upon method.

Requirement for CPUC Review/Confidentiality

An external review group of non-market participants (the "Procurement Review Group", or "PRG") will review the Offers under consideration. Offers will be treated as confidential by PG&E and by the PRG pursuant to non-disclosure agreements executed between the PRG and PG&E, and by the California Public Utility Commission ("CPUC") in accordance with Section 583 of the California Public Utilities Code. Successful Bidders will be required to maintain the confidentiality of their transactions with PG&E in accordance with the terms of the applicable Master Agreement.

Credit Requirements

Credit requirements shall be in accordance with the Master Agreement and Confirmation Agreement. An Independent Amount shall apply to Seller if at any time Seller does not maintain a senior unsecured debt rating at of at least BBB- from S&P and at least Baa3 from Moody's. Such Independent Amount will be comprised of two component calculations as follows: (1) Energy: an amount adequate to cover 10 days of VAR per MW (expected to be in the range of $20,000/MW to $40,000/MW depending on the Energy strike price and subject to change based on market conditions); and (2) RA: an amount equal to the greater of (i) 25% of the sum of the notional value of the RA for each year of the Contract Term, and (ii) $5000/MW-yr multiplied by the number of years of the Contract Term. The Independent Amount will be adjusted on an annual basis (on the first business day of each year) to reflect the appropriate amount for the remaining Contract Term. Bidders shall be notified by PG&E regarding the total dollar amount of the Independent Amount for the applicable Offer at least 5 business days prior to executing a Confirmation Agreement.

Schedule and Procedure for RFO

The table below provides the current schedule and procedure for this RFO, which is subject to change. The times are in Pacific Prevailing Time (PPT).

Date/Time	Event
December 8, 2005	PG&E issues RFO
December 22, 2005 3 PM	Deadline for Bidders to submit Offer (Term Sheet Attachment 4 and mark-up to Term Sheet)
December 23, 2005 through January 12, 2006	PG&E evaluates Offers and consults with PRG
Prior to May 1, 2006	Negotiation with short listed bidders, execution of Confirmation Agreement and regulatory approval sought

Contact Information

All completed bid packages should be delivered, faxed, or emailed to:

Jim Shandalov
Manager – Power Contracts
Pacific Gas and Electric Company
Mail Code N12G
P.O. Box 770000
San Francisco, CA 94177-0001
Phone: 415.973.7114
Fax: 415.973.0585, or 415.973.9176
e-mail: j6sw@pge.com

All Offers must be received by PG&E, at this address, prior to the date and time specified in the table above. Bidders are to specify all relevant information that will allow PG&E to fully evaluate its bid. PG&E will not be responsible for any unsuccessful transmittal by email. Offers must include:

(1) the bid table attached to the accompanying Term Sheet (Term Sheet Attachment 4), with any explanatory notes; and

(2) a mark-up of the Term Sheet, if changes are proposed.

Prospective Bidders may contact Mr. Shandalov by email or phone with questions. PG&E reserves the sole and discretionary right to reject any Offer received in response to this RFO for any reason. Additionally, PG&E reserves the right, at its election, (a) not to enter into any binding Confirmation Agreements at the culmination of the RFO process, and (b) to accept or reject any Offers received after December 22, 2005. PG&E reserves the right to modify the RFO terms and conditions based on changing need and market feedback. PG&E also reserves the right to rescind the RFO process at any time prior to PG&E's execution of binding Confirmation Agreements.

During the RFO process, should global revisions to the Term Sheet be required, PG&E will provide all prospective Bidders with such necessary changes. PG&E will not be liable for any costs the Bidder incurs in preparing or submitting its Offer(s).

Thank you for your consideration of this solicitation.

Attachments

Power Purchase Agreement Term Sheet

[SERVICE PROVIDER]

PACIFIC GAS AND ELECTRIC COMPANY

POWER PURCHASE AGREEMENT

CONFIDENTIAL NON-BINDING SUMMARY OF PRINCIPAL COMMERCIAL TERMS

This Confidential, Non-Binding Summary of Principal Commercial Terms ("**Term Sheet**") is preliminary and is intended to set forth certain basic terms of, and to serve as a basis for further discussions and negotiations between the Parties with respect to the potential Transaction described herein ("**Transaction**") to be set forth in a Confirmation Agreement and pursuant to a Master Power Purchase and Sale Agreement (either Edison Electric Institute ("**EEI**") or Western System Power Pool ("**WSPP**")) (as may collectively be referred to as the "**Definitive Agreement**"). To that end, the Parties recognize that some defined terms used and contained in this Term Sheet may be modified as necessary to comply with the applicable EEI or WSPP prior to execution of the Definitive Agreement.

Parties

[SERVICE PROVIDER], a _ ("**Seller**") and Pacific Gas and Electric Company, ("**Buyer**"), referred to individually as "**Party**" or collectively as "**Parties**".

Transaction

Seller will provide and make available to Buyer and Buyer will purchase and pay for all Product provided by the Unit(s). For purposes of this Term Sheet, the term Unit or Unit(s) shall mean the unit(s) identified by Seller on Attachment 4.

Contract Term

The "**Contract Term**" will commence upon execution and delivery of the Definitive Agreement ("**Execution Date**") and continue until final settlement (after the end of the Contract Term, defined below). The Definitive Agreement may include conditions relating to regulatory approvals of the Definitive Agreement which must be satisfied prior to the time the remainder of the Parties' obligations become effective. Only upon satisfaction of such conditions will terms of the Definitive Agreement be deemed to have been met.

Delivery Term

Represents the period of the Contract Term starting with the first day Energy is available for delivery to the Buyer, and ending with the last day Energy is available for delivery to the Buyer. The Delivery Term must begin on the first, and end of the last day of a calendar month. The first day of available Energy deliveries can be no earlier than May 1, 2006, and can be no later than May 1, 2007. The last day of available Energy deliveries can be no later than December 31, 2010. The length of the Delivery Term is a minimum of 3 years. The Delivery Term may also be seasonal, but must include at least the months of May through September.

Product

"**Product**" shall mean collectively Resource Adequacy bundled with an Energy Call Option.

"**Resource Adequacy** ("**RA**" or "**RA Capacity**")" means the qualified and deliverable capacity from Unit(s) that can be counted toward Buyer's Resource Adequacy Requirements ("**RAR**") as described in California Public Utilities Commission Decisions 04-10-035 and 05-10-042, and as may be amended from time to time by the CPUC in the RA phases of Rulemaking 04-04-003 or by any successor proceeding, and all other RA requirements established by any other regional entity responsible for RAR. RA Capacity does not confer to Buyer any right to the Contract Quantity of Seller's Unit(s) other than the right to count such Contract Quantity toward Buyer's RAR during the Delivery Period.

"**Energy Call Option**" means a call option on CAISO Energy.

"**CAISO Energy**" (or "**Energy**") means with respect to a Transaction, a product under which the Seller shall sell and the Buyer shall purchase a quantity of Energy equal to the hourly quantity without Ancillary Services (as defined in the Tariff) that is or will be scheduled as a Scheduling Coordinator ("**SC**") to SC transaction pursuant to the applicable tariff and protocol provisions of the CAISO (as amended from time to time, the "**Tariff**") for which the only excuse for failure to deliver or receive is an "**Uncontrollable Force**" (as defined in the Tariff). The Energy may be unit contingent, or it may not be associated with any particular Unit(s). However, if the Energy is not unit contingent, then the Energy behind the call option must be firm.

Resource Adequacy or RA Capacity

Eligibility to count MW toward the RA or RA Capacity requirement is determined by identifying specific Unit(s). This RA requires that unit specific capacity be identified and the physical Unit be made available to the CAISO for dispatch. Seller agrees that the Unit(s) offered to Buyer here will meet all requirements necessary to qualify as a resource capable of contributing to Buyer's RA or RA Capacity requirement and will consent in the Definitive Agreement to take such measures as necessary to qualify as a resource that counts toward Buyer's RA Requirement. In addition, Seller agrees to comply with all associated bidding/dispatch requirements imposed through either CAISO market design and tariffs, CPUC or FERC. Such bidding requirements may be imposed in the day ahead, hour ahead or real time timeframe. Buyer will also have exclusive rights to all RA or RA Capacity related products such as capacity tags, capacity credits, or installed capacity ("**ICAP**") products, as applicable. Seller shall comply with any CPUC or CAISO requirements for meeting RA.

For the best description of RA requirements available to date, see Attachment 3.

Capacity Testing Related to Energy Payments

If the Energy being provided under this Transaction is for unit contingent Energy, each Unit may be subject to testing, as determined necessary by Buyer, within the 30 days preceding the Delivery Term and seasonally thereafter during the Contract Term, as established in the Definitive Agreement, to determine the maximum capacity of the Unit(s) at 100% Base Load ("**Maximum Capacity**") to confirm the ability of the Unit(s) to achieve the Monthly Contract fixed payment.

This section is relevant only for unit contingent Energy products.

Gas Delivery Point

PG&E Citygate or Socal Gas, depending on the location of the Unit supporting the Energy portion of the Product. This section is relevant only for unit contingent Energy products (and under Option B in the section below) if Buyer supplies the fuel.

Energy Call and Scheduling Rights, Minimum Operating Flexibility

As a minimum threshold for shapeable Energy, Buyer shall have at least hour-ahead call rights. Seller shall select from one of the following:

A) Hour-ahead call rights, Buyer's call on Energy must be for continuous hours and at constant rate of delivery each hour. Adjustments to the initial hour-ahead calls are allowed so long as continuous hour and constant rate of delivery criteria continue to be satisfied. First delivery hour scheduling must be consistent with prevailing CAISO protocol. Minimum number of hours may be specified by Seller ("**Option A**"); or

B) Full dispatch rights, including hour-ahead call rights and real-time scheduling rights, as permitted by CAISO protocol. Seller may also offer Ancillary Services ("**Option B**").

Options A or B are applicable for unit contingent Energy. Only Option A is applicable for non-unit contingent Energy.

If Options A or B are offered and under the CAISO's market redesign ("**MRTU**") day-of or hour-ahead call rights are not deemed as beneficial by the Buyer, the operating flexibility will revert to day-ahead call rights at the discretion of the Buyer, with Buyer being able to call on Energy for any number of hours subject only to a minimum number of hours and operational constraints specified by the Seller in Attachment 4 for Options A or B.

Scheduling Protocols

For unit contingent Energy, Seller shall provide a complete notice of each Unit's availability on a month-ahead, week-ahead and day-ahead basis, to the best of the Seller's ability. In addition, Seller shall notify Buyer of any event that would constrain or reduce the output of the Unit as soon as practicable but at least within 10 minutes of the event, and shall provide an estimate of the expected duration of such event within 1 hour thereafter. If the event duration is greater than 24 hours, the Seller will update Buyer daily with any revised estimates regarding each Unit's return to full output capability. Seller must notify Buyer of any event constraining or reducing output whether or not the Unit is scheduled for operation. Seller shall notify Buyer promptly at the time the availability of capacity previously unavailable is restored, whether or not the Unit is scheduled for operation.

Notwithstanding anything to the contrary contained herein, for unit specific Energy under Option B, Buyer will be the SC for the Unit(s). Scheduling shall be in full compliance with CAISO Tariffs protocols and Western Electricity Coordinating Council ("WECC") scheduling practices for day-ahead, hour-ahead and real-time Energy and/or Ancillary Services.

For Energy provided under Option A, regardless of whether the Energy is unit contingent, the Energy will be scheduled as an SC-to-SC trade between Buyer and Seller. Hour-ahead calls for Energy are exercised at least 30 minutes before the closure of the CAISO Hour Ahead market for a given hour.

To the extent Buyer chooses to schedule energy on a day ahead basis, daily calls for Energy shall be exercised by 6:30 a.m. PPT on the industry standard trading day for day-ahead Energy. For example, the WECC practice of trading two days (Friday and Saturday) on Thursday dictates that the daily call for Friday shall be exercised on Thursday and the daily call for Saturday shall also be exercised on Thursday, but the call for each day, if any, shall be independent of the call for the other day. Likewise, the daily call for Sunday and the daily call for Monday shall be independently exercised on Friday. If Buyer schedules energy on a day-ahead basis, Buyer reserves the right to rescind or modify the Day Ahead schedule at least 30 minutes before the closure of the CAISO Hour Ahead market for the applicable hour(s).

Seller shall adhere to Buyer's schedule (provided that Buyer's schedule may be superseded by instruction of the CAISO and by law).

Uninstructed Deviations

Buyer shall have no obligation or liability of any kind with respect to any uninstructed deviations. Should Seller fail to delivery Energy and/or Ancillary Services in a manner to comply with Buyer's dispatch schedule (unless due to an Unscheduled Outage or CAISO instructed operations) and a deviation occurs between the scheduled Energy and the delivered Energy or between scheduled Ancillary Services and delivered Ancillary Services ("**Seller's Deviation**"), Seller shall reimburse Buyer for any charges Buyer incurs as a result of Seller's Deviation, including charges imposed on Buyer as the SC (if applicable), by the CAISO for Seller's Deviation, including but not limited to the costs of real-time or replacement Energy and/or Ancillary Services and penalties; Buyer's additional gas costs if any (if Buyer is fuel supplier); and any amounts paid by Buyer to Seller for Energy and/or Ancillary Services not delivered; net of the revenues Buyer as SC receives from CAISO due to Seller's Deviation ("**Deviation Charges**"). However, all CAISO-instructed deviations from Buyer's Schedule shall be for the account of Buyer.

Operational Constraints

As applicable, the operational constraints of the Unit(s) for Energy shall be those set forth in response to the RFO on Attachment 4.

Delivery Point

For unit contingent Energy Options A or B, the "**Delivery Point**" is a specified interconnection point on PG&E's transmission system (to be specified by Seller in Attachment 4) within what is presently defined as NP15. The point of interconnection of the substation must be within the CAISO-controlled grid.

For non-unit contingent Energy under Option A, the Delivery Point is what is presently defined as NP15. If at any time during the Delivery Term the CAISO or a successor organization replaces the current NP-15 zone with a nodal system, then the new delivery point for this Transaction shall be the Existing Zone Generation NP15 Trading Hub ("**NP15 EZ Gen Hub**"), as such trading hub is contemplated by the CAISO in its market design whitepaper entitled "CAISO Status Update on the Development of Trading Hubs Under LMP", dated October 26, 2004, as updated by a presentation made at the CAISO Stakeholder Meeting made on January 11, 2005 ("**CAISO Materials**"), subject to reasonable modification by the CAISO and regardless of whether (i) the NP15 EZ Gen Hub is referred to by another name, (ii) the weighting factors used to calculate the NP15 EZ Gen Hub change and/or (iii) there is physical validation at the NP15 EZ Gen Hub, if such Generation Hub is designated for Energy delivery. However, if the NP 15 Gen Hub is not so designated, the Parties shall in good faith negotiate a new delivery point that most accurately reflects the characteristics of the NP-15 zone and maintains the balance of benefits and burdens of the Parties as they exist on the date of the Definitive Agreement.

If at any time during the Delivery Term the CAISO or a successor organization replaces the current NP-15 zone with one or more new zones, then the Parties shall negotiate in good faith to select a new zone as the new delivery point and shall mutually agree in writing as to the new delivery point within 60 days of issuance by the CAISO or a successor organization of the official resolution creating such new zone or zones. However, should the Parties not so agree in writing within 60 days, the new delivery point shall be composed of a point or points that most accurately reflect the characteristics of the previous NP15 zone and which maintain the balance of benefits and burdens of the Parties as they exist on the date of the Definitive Agreement.

Electric Interconnection and Transmission Service

Seller shall be responsible for all costs related to facilities required to maintain interconnection of any specified Unit (if applicable) to the Delivery Point and enable Energy to be delivered to the grid at the Delivery Point, consistent with all standards and provisions set forth by the FERC, CAISO or any other applicable governing agency and the interconnecting transmission owner.

Seller shall be responsible for the costs of delivering its Energy to the Delivery Point consistent with all standards and provisions set forth by the FERC, CAISO or any other applicable governing agency or tariff.

This section is relevant only for unit contingent Energy products.

Fuel Supply and Transportation

Seller shall specify whether Buyer or Seller is responsible for all arrangements for and costs of fuel supply and delivery, including all ancillary services such as balancing or storage.

This section is relevant only for unit contingent Energy products and only for Energy provided under Option B, should the Seller require Buyer to provide fuel to the Unit(s).

Guaranteed

Seller shall meet the following "**Guaranteed Availability**" requirements:

Availability for Unit Contingent Energy Products	Summer Months: 96.0% Availability Non Summer Months: 92.0% Availability

The calculation for "**Availability**" is:
$totpotenrgy_m/[cap_m*(mnthhrs_m-mainthrs_m)]$

Where:
$totpotenrgy_m$ is the total amount of Energy (measured in MWh) that the Unit(s) could have produced for the month to which the calculation applies if it had been scheduled at its full Monthly Contract Capacity ("**MCC**") for such month (measured in MW) for every hour in which the Unit(s) was available to operate for Buyer, exclusive of hours in which the Unit(s) was unavailable due to Planned Maintenance. Hours in which the Units were unavailable to Buyer (in whole or in part) due to outages other than Planned Maintenance, including forced outages and Force Majeure, or due to failure of Seller to provide notice to Buyer of the Unit's(s') availability and capability to operate or due to a failure of the Unit(s) to deliver Energy or Ancillary Services in accordance with the schedules established by Buyer (or CAISO instruction), unless attributable to ambient conditions, shall be excluded from the determination of $totpotenrgy_m$ to the extent of such unavailability (which may be less than 100%). Accordingly, $totpotenrgy_m$ will reflect a proportional downward adjustment from the MCC for deratings, partial outages of Unit(s) and partial hours of unavailability, as well as for full hours in which the Unit(s) were entirely unavailable. To the extent the Unit(s) were unavailable to Buyer due to instruction of the CAISO, the Unit(s) shall be deemed to have been available for purposes of determining $totpotenrgy_m$. If Seller's availability notice is not timely enough to permit Buyer to schedule the Unit in the Day-Ahead Market (or such other period as the Parties agree), the Unit will be deemed to be unavailable for purposes of determining $totpotEnergy_m$.

cap_m is the Monthly Contract Capacity of the Unit(s) committed to Buyer for the applicable month, as defined in the Definitive Agreement

$mnthhrs_m$ is the total amount of hours for the month

$mainthrs_m$ is the total amount of hours that the plant was unavailable due to Planned Maintenance, taken in accordance with the Maintenance Outage protocol.

This section is relevant only for unit contingent Energy products.

Non-Availability	Every month the Fixed Payment for Energy Call Rights (see definition

Discount (also known as Non-Performance Penalties) for Unit Contingent Energy Products	below) due Seller from Buyer for that month will be subject to reduction for shortfalls in Guaranteed Availability for that month. The applicable **"Non-Availability Discount"** will be equal to: Summer Months: If Availability is between 70% and 96%, then 2% reduction in Fixed Payment for Energy Call Rights for every 1% reduction in Availability below 96%; and Non-Summer Months: If Availability is between 60% and 92%, then 2% reduction in Fixed Payment for Energy Call Rights for every 1% reduction in Availability below 92%. In the event that the availability drops below 70% in any Summer Month or 60% in any Non-Summer Month, Buyer shall have no obligation to make Fixed Payment for Energy Call Rights for the month when Availability dropped below the 70% or 60% thresholds. In addition to the above, in the event that the Unit(s) are under contract to provide Ancillary Services under Option B, and fails to meet the standards established by the CAISO for the provision of Ancillary Services (e.g., Section 2.5.25 of the CAISO, or such additional or substitute standards as may be applicable from time to time), the Fixed Payment for Energy Call Rights shall be reduced by an amount equal to the charges assessed on Buyer due to such failure. This section is relevant only for unit contingent Energy products.
Availability Bonus Structure for Unit Contingent Energy Products	Every Summer Month that Seller exceeds Guaranteed Availability for such month the Capacity Payment for such month shall be determined in accordance with the following: Summer Month at 97% or above = 102.0% of Capacity Payment This section is relevant only for unit contingent Energy products.
Maintenance Outages for Unit Contingent Energy Products	Seller will be responsible for all operation and maintenance of the Unit(s) and will bear all costs related thereto. The Parties shall agree to, and include in the Definitive Agreement, detailed **"Maintenance Protocol"** for the Unit(s), subject to inclusion of the following: • Seller shall provide a schedule of its expected annual planned partial or full maintenance outages (**"Planned Maintenance"**) for the next calendar year by September 1 of each year of the Contract Term; and shall update such schedule for each calendar quarter no later than 30 days before the commencement of such quarter.

- Planned Maintenance lasting longer than five consecutive days may be taken only after a minimum of 50 business days advance notice prior to the month in which the Planned Maintenance will occur. Planned Maintenance lasting longer than two consecutive days but shorter than five may be taken only after a minimum of 30 business days advance notice prior to the month in which the Planned Maintenance will occur. Planned Maintenance lasting less than two days may be taken only after a minimum of 15 business days advance notice prior to the month in which the Planned Maintenance will occur.
- There shall be no Planned Maintenance during Hours Ending ("**HE**") 7-22, Monday through Sunday, of the Summer Months and December and January, absent written pre-approval of Buyer;
- Planned Maintenance outages, be they full or partial Planned Maintenance Outages, may not exceed 1,000 hours total in any consecutive 12 month period when major maintenance overhauls are required or 250 hours total in any consecutive 12 month period without major maintenance overhauls, without the written consent of Buyer;
- Seller may schedule only one major maintenance overhaul during the Contract Term without the written consent of Buyer;
- Any Planned Maintenance outage shall be scheduled and coordinated with Buyer and the CAISO (and if Buyer is the SC, Buyer shall schedule Planned Maintenance with the CAISO); and
- Outages taken outside of the times permitted for Planned Maintenance or not otherwise in accordance with the Maintenance Protocol shall be treated as forced outages and the Unit(s) will be deemed to be unavailable during such periods for purposes of determining Availability; Capacity Payment and Fixed O&M Payment reductions due to reduced Availability may apply.

This section is relevant only for unit contingent Energy products.

Compensation:

(A). "**Fixed Payment for Energy Call Rights**"— specify the annual values in Attachment 4 as $ per kW-year (price to include right for all Energy related Products, including Ancillary Services, if applicable;

(B). "**Fixed Payment for RA**" — specify the annual values in Attachment 4 as $ per kW-year for the Resource Adequacy attribute. This fixed payment may be separate, or bundled with the fixed payment rate in (A) above;

(C). "**Variable O&M Price**"— specify the Price or prices in Attachment 4 as $ per MWh;

(D). "**Energy Price**" (if applicable)—specify the price or prices in Attachment 4 as either: (1) $ per MWh; or (2) MMBtu/MWh multiplied by Platt's Gas Daily Index, PG&E City-gate, Midpoint (the "**Spot Gas Price**").

The Fixed Payment for Energy Call Rights and Fixed Payment for RA are allocated monthly per the schedule in Attachment 1 and multiplied by the Monthly Contract Capacity of the Unit(s) committed to Buyer for the specific month to determine the applicable total monthly fixed payment ("**Capacity Payment**"). Fixed Payment for Energy Call Rights and Fixed Payment for RA will be paid monthly, in arrears, for each month of the Contract Term. The Fixed Payment for Energy Call Rights is subject to the Non-Availability Discount, as applicable for that month. If the Contract Term includes partial years, the Fixed Payment for Energy Call Rights and Fixed Payment for RA shall only reflect the cost for such partial year, and the payment price shall be allocated monthly based on the relative value of the partial year's monthly allocation factors. That is, the specified fixed prices are what are due to the Seller for the partial year, shaped by the applicable monthly allocation factors. Ninety days prior to a start of a full calendar year, Buyer may notify Seller of modifications to Attachment 1. Buyer may not modify Attachment 1 such that any individual month has a percentage allocation of less than 4% or greater than 15%; and the total in any calendar year must equal 100%. Buyer may not modify Attachment 1 in a manner that if Seller has one or more partial years defined in its Delivery Period, that the total fixed payment to the Seller is impacted by modification of the monthly allocation factors.

"**Variable O&M Payment**": For each month of the Delivery Term, the Variable O&M Payment will equal the Variable O&M Price multiplied by the amount of Energy scheduled by Buyer in the applicable month.

Start-Up Costs

A "**Start-Up**" is any schedule adjustment by Buyer that will require that the Unit(s) begin producing Energy at no less than minimum dispatch level output from a state of no or zero production. Start-Ups can be classified in the following manner:

- Hot start: "x"number of hours or less since shutdown;
- Warm start: Greater than "x," up to and including "y," number of hours since shutdown; and
- Cold start: greater than "y" hours since shutdown.

Where the "x" and "y" are defined in Attachment 4.

For each Hot, Warm, or Cold start, Buyer will (1) provide or compensate Seller the quantities of gas per start for Unit(s) Start-Ups ("**Start Up Fuel Amounts**") (i) necessary to meet Buyer's schedule and (ii) following a shutdown of the Unit(s) at the end of a Buyer requested scheduling period, and (2) pay Seller the associated costs for each Start-Up ("**Start-Up Charge**"), each as specified by Seller in Attachment 4. Seller shall also specify in Attachment 4 the amount of time, in minutes, required for Start-Up (from zero schedule to Minimum Schedule)and the maximum number of starts allowed per year for each year of the Contract Term

Buyer will not provide fuel, or pay for a Start-Up (and such Start-Up will not be counted toward the maximum number of Start-Ups allowed) if the preceding shutdown was caused by a unit trip or an outage that was not scheduled by Seller.

This section is relevant only for unit contingent Energy products.

Billing and Payment

Each month during the Contract Term, Seller shall invoice Buyer, in arrears, for all Compensation amounts, including all fixed payment components (with Non-Availability Discounts or Availability Bonuses), the Start-Up Charges, Energy and Variable O&M Payments. Each month during the Contract Term, Buyer shall invoice Seller, in arrears, for the Deviation Charges, including those CAISO charges which have been charged to Buyer and not previously invoiced to Seller for which Seller is responsible for paying to Buyer pursuant to the Definitive Agreement (which due to delays in CAISO billing, may relate to months prior to that most recently ended); and in addition, any fuel related expenses (including without limitation the gas imbalance charges) for which Seller is responsible, and the Non-Availability Discount as it applies to Ancillary Services, if applicable, for such month. If each Party is required to pay the other an amount in the same month pursuant to the Definitive Agreement, then the Party owing the greater aggregate amount will pay to the other Party the difference between the amounts owed. Payment of all undisputed amounts owed shall be due by the later of ten days after delivery of the owed Party's invoice or the twentieth day of the month (or, in each case, if the due date is not a business day, on the next following business day). The Parties shall resolve disputed amounts pursuant to a dispute resolution process to be included in the Definitive Agreement. In the event of termination, Buyer, as calculation agent, shall determine the amount of the Termination Payment, and either (a) if Seller is the owing Party, provide Seller an invoice within ten business days of the termination date, which shall be due within 10 business days after receipt; or (b) if Buyer is the owing Party, pay Seller the Termination Payment within 20 business days of the termination date.

Events of Default

In addition to the applicable Master Agreement, a Party will be in Default under the Definitive Agreement upon the occurrence of, including but not limited to any of the following:

Applicable only to Seller:

- Any material asset of Seller is taken upon execution or by other process of law directed against Seller or if taken upon or subject to any attachment by any creditor of or claimant against Seller and the attachment is not disposed of within twenty-one (21) days after its levy.
- Upon the occurrence of any material misrepresentation or omission in any metering or any report or notice of availability required to be made or delivered by Seller to Buyer by the provisions of the Definitive Agreement, which misrepresentation or omission is caused by Seller's willful misconduct, gross negligence or bad faith.
- Seller fails to comply with Resource Adequacy requirement of the Definitive Agreement.
- During the Contract Term, the Unit(s) are below 70% Availability for a period of 6 consecutive months, and such reduction in Availability is not due to Force Majeure events. This applies only to unit contingent Energy products;
- During the Contract Term, Force Majeure events prevent the Unit from achieving at least 70% Availability for a period of 12 months over the Contract Term. This applies only to unit contingent Energy products.

Applicable to both Parties:

- A Party fails to pay an amount when due and such failure continues for ten business days after notice thereof is received.
- A Party fails to perform any of its material obligations under the Definitive Agreement and such default continues for thirty (30) Days after notice thereof is received, specifying the Event of Default; provided, however, that such period shall be extended for an additional reasonable period if cure cannot be effected in thirty (30) days and if corrective action is instituted by the defaulting Party within the thirty (30) day period and so long as such action is diligently pursued until such default is corrected.
- A Party applies for, consents to, or acquiesces in the appointment of a trustee, receiver, or custodian of its assets (including, in the case of Seller for a substantial part of the Unit(s)), or the initiation of a bankruptcy, reorganization, debt arrangement, moratorium or any other proceeding under bankruptcy laws.
- Absent the consent or acquiescence of a Party, appointment of a trustee, receiver, or custodian of its assets (including in the case of a Seller, for a substantial part of the Unit(s)), or the initiation of a bankruptcy, reorganization, debt arrangement, moratorium or any other proceeding under bankruptcy laws, which in either case, is not dismissed within sixty (60) days.
- A Party fails to comply with Credit Requirement provisions of the

Definitive Agreement including without limitation failure to post the initial Collateral Requirement when due.

- Any governmental approval necessary for a Party to be able to perform all of the transactions contemplated by the Definitive Agreement expires, or is revoked or suspended and is not renewed or reinstated within a reasonable period of time following the expiration, revocation, or suspension thereof, by reason of the action or inaction of such Party and such expiration, revocation or suspension creates a material adverse impact on the other Party.
- Upon the occurrence of any material breach of any representation, covenant, or warranty made by a Party made in the Definitive Agreement, thirty (30) days after the written notice from the other Party that any material representation, covenant or warranty made in the Definitive Agreement is false, misleading or erroneous in any material respect.

Force Majeure

"**Force Majeure**" shall mean any event or circumstance to the extent beyond the control of, and not the result of the negligence of, or caused by, the Party seeking to have its performance obligation excused thereby, which by the exercise of due diligence such Party could not reasonably have been expected to avoid and which by exercise of due diligence it has been unable to overcome, including but not limited to: (1) acts of God, including but not limited to landslide, lightning, earthquake, storm, hurricane, flood, drought, tornado, or other natural disasters and weather related events affecting an entire region which caused failure of the Unit(s); (2) fire or explosions; (3) sabotage, riot, acts of terrorism, war and acts of public enemy; or (4) restraint by court order or other governmental authority. Force Majeure shall not include (i) a failure of performance of any Third Party, including any party providing electric transmission service or natural gas transportation, except to the extent that such failure was caused by an event that would otherwise satisfy the definition of a Force Majeure event as defined above, (ii) failure to timely apply for or obtain Permits, (iii) breakage or malfunction of equipment, (except to the extent that such failure was caused by an event that would otherwise satisfy the definition of a Force Majeure event as defined above), or (iv) a labor strike associated with the Seller.

Except as provided above in Events of Default by Seller due to extended reduced unit Availability, a Party shall not be considered to be in default in the performance of its obligations under the Definitive Agreement to the extent that the failure or delay of its performance is due to an event of Force Majeure; and the non-affected Party shall be excused from its corresponding performance obligations to the extent due to the affected Party's failure or delay of performance. Notwithstanding the forgoing, (i) a failure to make payments accrued prior to the event of Force Majeure when due shall not be excused; and (ii) the unavailability of the capacity of the Units due to Force Majeure shall be deemed to be unavailability for purposes of determining Availability and the Non-Availability Discount.

If the Unit is available but Buyer is unable to take Energy due to Force Majeure, Buyer will continue to make Fixed Payments for Energy Call Rights and Fixed Payments for RA, but the Fixed Payments for RA shall continue only if Buyer is still able to count the RA Capacity.

Metering

The electric meters shall meet all specifications of the CAISO, and shall be checked annually by Seller, who shall provide Buyer with not less than 14 days prior notice of such tests. Similarly, gas meters must meet applicable specification of the service provider and shall be checked annually by the Seller or the service provider; and Seller shall provide Buyer with not less than 14 days prior notice of such tests. Buyer will have the right to have a representative(s) present during such tests.

Either Party may from time to time request a retest of the meters if it reasonably believes that the meters are not accurate within the tolerance limits established by the CAISO or the applicable service provider. The requesting Party shall pay for any such retest and shall provide the other Party with not less than 14 days prior notice of such retest. Such other Party will have the right to have a representative present during such retest. If any tested or retested meter is found to be not accurate within the tolerance limits established by the CAISO or the applicable service provider, Seller shall promptly arrange for the correction or replacement of the meter, at its expense, and the Parties shall use the measurements from the back-up meters to determine the amount of the inaccuracy. If the back-up meters are found to be not accurate within the tolerance limits and the Parties cannot otherwise agree as to the amount of the inaccuracy, the inaccuracy will be deemed to have occurred during the period from the date of discovery of the inaccuracy to the earlier of (a) one-half of the period from such discovery to the date of the last testing or retesting of the meters or (b) 180 days. Any amounts due by Buyer or to be refunded by Seller as a result of any meter that is not accurate within the tolerance limits will be invoiced by such Party within 15 days of the discovery of such inaccuracy, with payment due within 30 days.

To support invoice settlement purposes, Seller shall provide Buyer with access to all real-time meters, billing meters and back-up meters (i.e., all metering). Seller shall authorize Buyer to view the Project's CAISO on-line meter data and any gas real-time metering. Within Schedule 3 of Seller's Meter Service Agreement with the CAISO, Seller shall identify Buyer as an authorized user with "read only" privileges.

This section is relevant only for unit contingent Energy products;

Compliance with Law, Environmental Risk and Indemnity

Seller, as owner and operator of the Unit(s), will be responsible for complying with all applicable requirements of law, the CAISO, NERC and the WECC, whether imposed pursuant to existing law or pursuant to changes enacted or implemented during the Contract Term, including all risks of environmental matters relating to the Unit(s) or the site. Seller will indemnify Buyer against any and all claims arising out of or related to such environmental matters and against any costs imposed on Buyer as a result of Seller's violation of any applicable law, or CAISO, NERC or WECC requirements. For the avoidance of doubt, Seller will be responsible for procuring, at its expense, all permits and all emissions credits required for operation of the Unit(s) in compliance with law.

Credit Requirements

"**Credit Requirements**" The Credit Requirements for this Transaction shall be in accordance with the Master Agreement and with either the EEI Master Agreement or WSPP Master Agreement language below as applicable:

EEI Master Agreement

Notwithstanding anything to contrary contained in the Master Agreement, during the full term of Transaction the Parties agree that should Seller not maintain at least a senior unsecured debt rating or issuer rating of at least BBB- by Standard & Poor's ("**S&P**") and Baa3 by Moody's an Independent Amount shall apply to the Seller. The Independent Amount shall be equal to $_____ multiplied by the Contract Quantity. Such Independent Amount will be comprised of two component calculations as follows: (1) Energy: an amount adequate to cover 10 days of VAR per MW; and (2) RA: an amount equal to the greater of (i) 25% of the sum of the notional value of the RA for each year of the Contract Term, and (ii) $5/kw-year multiplied by the number of years of the Contract Term. The Independent Amount will be adjusted on an annual basis (on the first business day of each year) to reflect the appropriate amount for the remaining Contract Term.

The Parties also agree that during the full term of this Transaction Gains and Losses shall equal the difference between the initial monthly intrinsic value ("**Initial MIV**") and the current monthly intrinsic value ("**Current MIV**") as set forth in Attachment 2. Initial MIVs and Current MIVs shall represent full calendar months only, and shall never represent a mixing of two partial calendar months. Following Execution Date, the Initial MIVs shall be calculated for each individual calendar month of the Contract Term and the resulting Initial MIVs shall remain fixed throughout the Contract Term. The Current MIV shall be calculated weekly throughout the Contract Term and shall apply only to the remaining calendar months of the Delivery Term.

WSPP Master Agreement:

Notwithstanding anything to the contrary in the Master Agreement, the Parties agree that the following shall apply for the full Contract Term:

The "**Collateral Requirement**" is the amount calculated which is equal to (x) less (y), but no less than zero, where:

(x) is

the Termination Payment, if any, that would be owed to the Beneficiary Party (where "**Beneficiary Party**" means the Party entitled to receive, or that has received and is the beneficiary of, Performance Assurance provided by, or on behalf of, the Posting Party) if the Posting Party (where "**Posting Party**" means the Party required to post, or that has posted, Performance Assurance to, or for the benefit of, the Beneficiary Party) were the Defaulting Party under Section 22.1 of the WSPP Agreement. The Parties also agree that during the full Contract Term of Gains and Losses shall equal the difference between the initial monthly intrinsic value ("**Initial MIV**") and the current monthly intrinsic value ("**Current MIV**") as set forth in Attachment 2. Initial MIVs and Current MIVs shall represent full calendar months only, and shall never represent a mixing of two partial calendar months. Following the Execution Date, the Initial MIVs shall be calculated for each individual calendar month of the Contract Term and the resulting Initial MIVs shall remain fixed throughout the Contract Term. The Current MIV shall be calculated weekly throughout the Contract Term.
<u>plus</u>

the damages, if any, solely under Section 21.3 of the WSPP Agreement that would be owed to the Beneficiary Party if the Posting Party were the Non-Performing Party,
<u>plus</u>

any further and additional amounts due for rendered performance by the Beneficiary Party to the Posting Party under any WSPP Agreement transactions, whether or not invoiced or due,
<u>plus</u>

when the Beneficiary Party is the Buyer and the Posting Party is the Seller (the Independent Amount shall not be used in the Collateral Requirement calculation as it applies to Buyer as the Posting Party), the Parties agree that should Seller not maintain at least a senior unsecured debt rating or issuer rating of at least BBB- by Standard & Poor's ("**S&P**") and Baa3 by Moody's an Independent Amount shall apply to the Seller. Such Independent Amount shall be equal to $_____ multiplied by the Contract Quantity. ("**Independent Amount**"). Such Independent Amount will be comprised of two component calculations as follows: (1) Energy: an amount adequate to cover 10 days of VAR per MW; and (2) RA: an amount equal to the greater of (i) 25% of the sum of the notional value of the RA for each year of the Contract Term, and (ii) $5/kw-year multiplied by the number of years of the Contract Term, The Independent Amount will be adjusted on an annual basis (on the first business day of each year) to reflect the appropriate amount for the remaining Contract Term.

(y) is

the amount of Performance Assurance previously provided by or otherwise credited to the Posting Party for the benefit of the Beneficiary Party and not released as of the time the Beneficiary Party made the demand
plus

the Collateral Threshold applicable to the Posting Party.

Non-Inclusive; Non-Binding; Definitive Agreement	This Term Sheet does not contain all matters upon which agreement must be reached in order for the Transaction to be completed. This Term Sheet does not create and is not intended to create a binding and enforceable contract between the Parties with respect to the Transaction. A binding commitment with respect to the Transaction can only result from the execution and delivery of a mutually satisfactory Definitive Agreement and the satisfaction of the conditions set forth therein, including the approval of such Definitive Agreement by all applicable governing and/or regulatory body(ies) and the management of PG&E, which approval shall be in the sole subjective discretion of the respective governing and/or regulatory body(ies) and management.

Attachment 1 – Fixed Payment Allocations by Month

January	8%
February	5%
March	4%
April	4%
May	4%
June	8%
July	14%
August	15%
September	11%
October	9%
November	9%
December	9%

Attachment 2 -- Valuation Formulae for Credit Requirements

Formula Definitions:

t0 – date Definitive Agreement approved by the appropriate regulatory bodies
t - ongoing Transaction date after Execution Date
Ppeak(i, t) - price of monthly forward NP-15 defined peak Energy for month *i* as observed at the moment of time *t* measured in $/MWh
Poff-peak(i, t) - price of monthly forward NP-15 defined off-peak Energy for month *i* as observed at the moment of time *t* measured in $/MWh
Pgas(i, t) - price of monthly forward gas for month *i* as observed at the moment of time *i* measured in $/MMBtu
VOM, - Variable O&M (measured in $/MWh) for year of current month set forth in Definitive Agreement for month *i*
HR – the Heat Rate at Maximum Capacity set forth in the Definitive Agreement at ISO Conditions
HourlyVolume – Maximum MW size set forth the Definitive Agreement for the specific month
NumberofPeakHours(i) - number of WECC defined peak hours in month *i*
NumberofOff-PeakHours(i) - number of WECC defined off-peak hours in month *I*

Calculation of "Mark-to-Market Value":

Mark-to-Market Value = Sum Over Remaining Calendar Months [Gains or Losses(i)]

Gains or Losses(i) = MIV(i,t) - MIV(i,t0)

Initial MIV calculation formula:

MIV(i,t0) = [NumberOfPeakHours(i) * max[(Ppeak(i,t0) - HR*Pgas(i,t0) - VOM,), 0] * HourlyVolume] + [NumberOfOff-PeakHours(i) * max[(Poff-peak(i,t0) - HR * Pgas(i,t0) - VOM,), 0] *HourlyVolume]

Initial MIV will be calculated once at *t0* for the expected delivery life of the Transaction.

Current MIV calculation formula:

MIV(i,t) = [NumberOfPeakHours(i) * max[(Ppeak(i,t) - HR*Pgas(i,t) - VOM(i)), 0] * HourlyVolume] + [NumberOfOff-PeakHours(i) * max[(Poff-peak(i,t) - HR * Pgas(i,t) - VOM(i)), 0] *HourlyVolume]

Attachment 3— Resource Adequacy Requirements

1. Definitions for purposes of Attachment 3 to this Term Sheet:

1.1 "Resource Adequacy ("RA") Capacity Product, or RA Capacity" means the qualified and deliverable capacity from Unit(s) that can be counted toward Buyer's Resource Adequacy Requirements ("RAR") as described in D.04-10-035 and D.05-10-042, and as may be amended from time to time by the California Public Utilities Commission ("CPUC") in the Resource Adequacy phases of Rulemaking 04-04-003 or by any successor proceeding, and all other resource adequacy requirements established by any other regional entity responsible for RAR. RA Capacity does not confer to Buyer any right to the Contract Quantity of Seller's Unit(s) other than the right to count such Contract Quantity toward Buyer's RAR during the Delivery Period. Specifically, no Energy associated with Seller's Unit(s) is required to be made available to Buyer as part of this RA Capacity obligation, and Buyer shall in no way be responsible to compensate Seller for any commitments to CAISO as set forth in this Transaction.

1.2 "Contract Quantity" means the amount of RA Capacity as set forth in this Transaction.

1.3 "Unit" or "Units" shall mean the generation assets described as follows [Note: to be repeated for each Unit if more than one.]:

Name (not applicable for imports): ______________________________

Location (not applicable for imports):______________________________

Substation Name (point of interconnection with the CAISO Controlled Grid) ("Substation") or point of import (COB or other point specified by Seller) at which Energy will be scheduled ("Import Point"):

____

Current CAISO Zone (NP15, ZP26, or SP15) in which Substation resides (not applicable for imports): ______________________________

2. Representation and Warranties:

2.1 Seller and Buyer represent and warrant that throughout the Delivery Term they shall take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to ensure Buyer's right to the use of the Contract Quantity for the sole benefit of Buyer's RAR. Such commercially reasonable actions may include but are not be limited to the following:

A. Cooperating with and encouraging the regional entity responsible for resource adequacy administration to certify or qualify the Contract Quantity for RAR purposes. This includes meeting requirements established by the CPUC in its resource adequacy counting protocols, including demonstration of the ability to deliver the Contract Quantity over all hours required for full RAR eligibility, and demonstrating that the Contract Quantity can be delivered to the CAISO Controlled

Grid, pursuant to "deliverability" standards established by the CPUC or other regional entity or entities responsible for RA administration;

B. Negotiating in good faith to make necessary amendments, if any, to this Transaction to conform this Transaction to subsequent clarifications, revisions or decisions rendered by the CPUC or regional entity or entities responsible for RA administration, so as to maintain the benefits of the bargain struck by the Parties; and

C. Using "Good Utility Practice," as defined in the CAISO Tariff, with respect to maintenance of Unit(s); however, such commercially reasonable actions shall not include any obligation that the Seller undertake capital improvements, facility enhancements, or the construction of new facilities.

2.2 Seller represents and warrants that throughout the Delivery Term:

A. Seller has ownership of, or a demonstrable exclusive right[1] to control the Unit(s) located within the CAISO Control Area or connected to the CAISO Controlled Grid;

B. Buyer has the exclusive right to count the Contract Quantity from Unit(s) toward Buyer's RAR;

C. No portion of the Contract Quantity has been committed by Seller to any third party in order to satisfy RAR, or analogous obligations in other markets, unless through a Reliability Must Run ("RMR") contract between Seller and CAISO;

D. Should Seller schedule Contract Quantity as Energy outside the CAISO, or commit Energy to a third party in a manner that would result in scheduling up to the Contract Quantity as Energy outside the CAISO, it shall do so only as allowed by, and in accordance with, the CAISO Tariff and final RA rules approved by the CPUC; and

E. Seller shall abide by all applicable CAISO rules and procedures approved by the FERC, and RA rules approved by the CPUC.

3. CAISO Dispatch Requirements:

3.1 Unless Unit(s) are forced out of service, are undergoing planned maintenance or are affected by an event of force majeure that results in a partial or full outage, Seller shall commit the full remaining Contract Quantity to the CAISO in compliance with one or more of the following. In addition, imports shall be subject to the CPUC and CAISO subsequent rules and conditions that may be developed in order for imports to meet RA requirements:

A. Seller shall Self-Schedule the Contract Quantity for Energy delivery within the CAISO control area; if Seller schedules less than the full Contract Quantity, the remaining Contract Quantity will be subject to provisions of 3.1B, C or D below;

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[1] Such rights could be acquired through bilateral contracting.

B. Seller shall bid the Contract Quantity[2] into the CAISO Day-Ahead integrated forward market ("DA IFM") for all hours of the operating day when such a market is established, and to the extent such bids are cleared in such CAISO DA IFM, Seller shall provide that portion of the Contract Quantity cleared in the DA IFM to the CAISO in accordance with the CAISO Tariff. To the extent the Contract Quantity is not cleared in such DA IFM, Seller shall schedule, or submit supplemental Energy or Ancillary Services bids regarding the remaining Contract Quantity volumes into the CAISO Hour-Ahead Scheduling Process ("HASP") (if such a market is established); however, any Unit(s) not committed through the DA IFM or Day-Ahead Residual Unit Commitment ("RUC")[3] and whose start-up time do not permit such Unit(s) to be committed in HASP will be relieved of its obligations for that operating day. Seller's Unit(s) will remain available to CAISO through its RUC process after each market closes, if such a process is developed.

C. If FERC's Must Offer Obligation ("MOO") is operative, Seller shall make all Unit(s) subject to MOO. In the event of a Must Offer Waiver Denial ("MOWD") by the CAISO, Seller shall submit supplemental Energy or Ancillary Service bids[2] to the CAISO from the Unit(s); and/or

D. If FERC's MOO is no longer operative and the CAISO has not implemented its Market Redesign Technical Update ("MRTU"), Seller shall make Unit(s) subject to the same obligations to the CAISO and timelines that exist under the current MOO process. Seller shall submit Hour-Ahead (if it exists) schedules and/or supplemental Energy or Ancillary Services bids[2] for the Contract Quantity for all hours for which the Unit(s) has been committed by the CAISO pursuant to the following rights granted by the Parties to the CAISO through this Transaction: (1) the CAISO shall have the right to commit any type of Unit(s) on a Day-Ahead basis; and (2) the CAISO shall have the right, on an intra-hour or Hour-Ahead basis, to call on supplemental Energy and/or Ancillary Services from only those Unit(s) whose start-up time permits such a call. The CAISO and appropriate stakeholders will work together to consider what, if any, successor tariff language is needed after the MOO obligation expires.

4. RA Capacity Delivery Point.

The Delivery Point for each Unit shall be the Substation Name or Import Point for each Unit as set forth in Section 1.3.

5. Other Payments if Seller is Scheduling Coordinator: Seller may keep any revenues received from CAISO in relation to (i) start-up and minimum load costs, (ii) capacity revenue for Ancillary Services, and (iii) Energy sales. If the CAISO compensates Seller with any non-Energy payments, excluding (i) and (ii) above, Buyer's payment obligation to the Seller shall be reduced by the amount of such non-Energy payments excluding (i)

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[2] The intent of referencing the CAISO Tariff is that Seller is not constrained on bidding Energy or Ancillary Services prices other than what is contained in the CAISO Tariff, unless otherwise agreed by Buyer and Seller.

[3] Seller's bid for capacity availability in the RUC process shall be priced at zero. Units contracted for RA purposes are intended to be price takers for capacity since that element has already been compensated for through this RA contract.

and (ii). However, Seller shall not be obligated to pay Buyer if non-Energy payments exceed Buyer's payment to Seller under the Definitive Agreement.

6. Indemnity Against Penalties: Seller agrees to indemnify Buyer for: 1) any monetary penalties assessed by the CPUC and/or the CAISO against the Buyer for Buyer's failure to meet the requirements of the CPUC and/or the CAISO related to the Buyer's obligation to submit an approved RA demonstration to the extent any such penalties were the result of Seller not fulfilling any of its obligations under this Confirmation Agreement and to the extent Seller has not provided Buyer sufficient notice to take action necessary to avoid such monetary penalties being assessed; and 2) costs incurred by Buyer to replace, if required, any RA Capacity to bring the total volume back to Contract Quantity specified in Section 1 for the applicable period. Notwithstanding the foregoing, Seller may replace any Product necessary for Buyer to make its equivalent RA demonstration.

Attachment 4
Intermediate Term Request For Offers Data Sheet
Fixed and Variable Pricing

		Pricing (fixed components)		Pricing (variable components)	
	Calendar year	Fixed Payment for Energy Call Rights ($/KW - year)	Fixed Payment for RA ($/KW - year)	Energy Price [**$/MWh** or (**specified HR**) * (Platt's Gas Daily, PG&E City-gate, Midpoint)]	Variable O&M Price ($/MWh)
1	2006				
2	2007				
3	2008				
4	2009				
5	2010				

<u>Note:</u>
For a variable energy price that is indexed to gas, enter HR in MMBtu/MWh

If the term includes partial years, the specified fixed charges for the applicable months of any partial year will be multiplied by the monthly allocation factors in Attachment 1 (Bidder does not receive the full specified fixed payment in that year)
To specify more detailed HR pricing, go to the worksheet labeled "Heat Rate"