

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



December 21, 2011

Advice Letters 3197-E/E-A/E-B

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

**Subject: Withdrawal – Standard Contract for Certain Qualifying Facilities
Pursuant to D.07-09-040**

Dear Mr. Cherry:

Advice Letters 3197-E/E-A/E-B are withdrawn per your letter dated December 2, 2011.

Sincerely,

A handwritten signature in cursive script that reads "Edward F. Randolph".

Edward F. Randolph, Director
Energy Division



January 14, 2008

Advice 3197-E

(Pacific Gas and Electric Company ID U 39 E)

Public Utilities Commission of the State of California

**Subject: Standard Contract For Certain Qualifying Facilities Pursuant To
Decision 07-09-040**

I. PURPOSE

Pacific Gas and Electric Company (PG&E) requests that the California Public Utilities Commission (Commission or CPUC) approve PG&E's proposed standard contract for Qualifying Facilities (QFs) mandated in Decision 07-09-040. PG&E further requests that the resolution addressing PG&E's proposed contract also address the three issues PG&E discusses in section IV below.

II. BACKGROUND

Ordering Paragraph 3 of Decision 07-09-040 provides that PG&E and other investor-owned utilities shall submit a Tier 3 advice letter with a proposed standard contract for QFs within 60 days of an Energy Division-sponsored workshop that concluded on November 15, 2007. In compliance with that requirement PG&E submits the proposed contract attached to this advice letter (Attachment 1).

On November 13 and again on December 18, 2007, PG&E sent to the service lists of Rulemakings 04-04-003 and 04-04-025 an initial and revised draft of its proposed QF contract. In its December 18 distribution, PG&E requested that parties submit comments or questions to PG&E by December 31, 2007, but remained receptive to such comments or questions after that date.

On January 3, 2008, PG&E received comments and suggestions from the Cogeneration Association of California and the Energy Producers and Users Coalition (CAC/EPUC). PG&E has considered CAC/EPUC's suggestions in finalizing the attached contract.

On January 9, 2008, PG&E received suggestions from the California Independent System Operator (CAISO). PG&E has incorporated the CAISO's suggestions, as appropriate.

III. PRINCIPAL TERMS

Decision 07-09-040 states the basis for the utilities' proposed contract should be the Edison Electric Institute (EEI) Master Agreement that contains, "at a minimum, the contract features presented in Table 1 of this decision."¹ As the comparison table attached as Attachment 2 demonstrates, all of the minimum contract features are contained in PG&E's proposed contract.

IV. STANDARD CONTRACT IMPLEMENTATION ISSUES

At the Energy Division-sponsored workshop, the parties discussed several issues related to the implementation of standard contracts that Decision 07-09-040 mandates. Discussed below are two of those issues of particular interest to PG&E and PG&E's proposals for addressing them. PG&E asks that the Resolution addressing PG&E's proposed contract also address these issues. PG&E further requests that the Resolution also contain the findings discussed in subsection C, below.

A. PG&E Proposes A Twenty-four Month Prior Notification Period For Existing QFs Whose Contracts Will Expire Within That Period And Who Desire To Execute A New Contract.

At the Energy Division-sponsored workshop, the parties discussed the amount of a time in advance of contract expiration a QF with an expiring contract should notify the utility of the QF's intention to sign a new standard contract. The parties discussed a 24 month advance notification period. PG&E therefore proposes a period not to exceed 24 months before contract expiration.

At any time within the 24 months before a QF's existing contract expires, the QF may submit to PG&E a complete and executed new standard contract. PG&E will then promptly determine whether the proffered contract is consistent with its needs as Decision 07-09-040 requires. If PG&E decides to sign the contract, it will do so, and the contract will become effective and enforceable on the date of execution, but deliveries and payments pursuant to the new contract will not begin until after the prior contract expires. This process should ensure a seamless transition from the expiring to the new contract, and provide contract certainty to both parties.

¹ D.07-09-040, mimeo p. 147, Finding of Fact No. 38.

B. PG&E's Proposed Method For Rejection Of Contracts That PG&E Does Not Need.

PG&E agrees with the consensus reached at the workshop that if PG&E determines that a proffered QF contract is inconsistent with its needs, it will explain why in a letter to the QF with a copy to the Energy Division.

PG&E intends to use the criteria set forth in Decision 07-09-040 to determine whether to countersign a proffered QF contract. Consistent with that decision, PG&E will decide whether execution of the proffered contract by a QF whose facility is larger than 20MW would be inconsistent with the existing need determination from the [relevant] Long-Term Procurement Plan (LTPP) proceedings.² PG&E will also consult with its Procurement Review Group before deciding finally to reject the proffered contract.

For those QFs whose facilities are sized 20 MW or smaller, the Decision requires PG&E to sign the proffered contract "unless that contract would cause [PG&E] to have more than a 10% growth in its overall QF portfolio. . . ."³ The decision states that this "cap" is intended "to provide certainty to the IOUs. . . ."⁴

PG&E understands the cap is intended to offer the utilities some ability to shape their portfolios to address the utilities' needs. Nevertheless, if a proffered contract would exceed to established cap, PG&E would still consider whether signing such a contract would be in the best interests of its ratepayers.

C. Fully Executed Standard Contracts Should Be Deemed Per Se Reasonable, and Their Costs Should Be Recoverable Consistent With Commission Precedent.

Given the requirement that PG&E enter into standard QF contracts if certain conditions are met, PG&E believes the Resolution authorizing such contracts should include the following findings:

² D.07-09-040, mimeo p. 123.

³ D.07-09-040, mimeo p. 124.

⁴ Id. at mimeo p. 123. On October 25, 2007, PG&E together with Southern California Edison Company, San Diego Gas and Electric Company, The Utility Reform Network and the Division of Ratepayer Advocates jointly filed an Application for Rehearing of Decision 07-09-040. Among the specifications of error, the Application asserts that the 10% "cap" violates the Public Utility Regulatory Policies Act because it fails to consider the affected utility's resource needs. (Application, pp. 13-14.) PG&E reserves all of its rights with respect to the Application and Decision 07-09-040, and PG&E's submission of this Advice Letter, as the decision requires, is not intended to be a waiver of any rights or legal positions advanced in the Application.

- The cost of power PG&E procures pursuant to the standard contract this Resolution authorizes is per se reasonable, in the public interest, and recoverable in rates over the life of the contract, subject to Commission review of PG&E's administration of the contracts.
- Any stranded costs that may arise from the standard contract this Resolution authorizes are subject to the provisions of Decision 04-12-048 that authorize recovery of stranded procurement costs over the life of the contract. The implementation of the Decision 04-12-048 stranded cost recovery mechanism is being addressed in Rulemaking 06-02-013.

PG&E requests that the Resolution adopting PG&E's proposed standard contract include the foregoing findings.

Protests

Anyone wishing to protest this filing may do so by sending a letter by February 4, 2008, which is **21** days from the date of this filing. (The twentieth day falls on a Sunday.) The protest must state the grounds upon which it is based, including such items as financial and service effect, and should be submitted expeditiously. Protests should be mailed to:

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

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

Copies should also be mailed to the attention of the Director, Energy Division, Room 4005 and Honesto Gatchalian, Energy Division, at the address shown above.

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

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

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

Tier Designation:

Pursuant to Decision 07-09-040, Ordering Paragraph 3, PG&E submits this filing as a Tier 3 advice letter.

Effective Date:

PG&E requests that this advice filing become effective on as soon as practicable.

Notice:

In accordance with General Order 96-B, Section IV, a copy of this advice letter is being sent electronically and via U.S. mail to parties shown on the attached list and the service lists for R.04-04-003 and R.04-04-025. Address changes should be directed to Rose De La Torre (415) 973-4716. Advice letter filings can also be accessed electronically at:

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



Brian K. Cherry
Vice President - Regulatory Relations

cc: Service List for R.04-04-003
Service List for R.04-04-025
Paul Douglas - Energy Division

Attachments

CALIFORNIA PUBLIC UTILITIES COMMISSION

ADVICE LETTER FILING SUMMARY ENERGY UTILITY

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

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

Utility type:

ELC GAS
 PLC HEAT WATER

Contact Person: David Poster

Phone #: (415) 973-1082

E-mail: DXPU@pge.com

EXPLANATION OF UTILITY TYPE

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

(Date Filed/ Received Stamp by CPUC)

Advice Letter (AL) #: 3197-E

Tier: [3]

Subject of AL: Standard Contract For Certain Qualifying Facilities Pursuant To Decision 07-09-040

Keywords (choose from CPUC listing): QF

AL filing type: Monthly Quarterly Annual One-Time Other _____

If AL filed in compliance with a Commission order, indicate relevant Decision/Resolution #: D.07-09-040

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

Summarize differences between the AL and the prior withdrawn or rejected AL:

Is AL requesting confidential treatment? If so, what information is the utility seeking confidential treatment for: No

Confidential information will be made available to those who have executed a nondisclosure agreement: N/A

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

Resolution Required? Yes No

Requested effective date: As soon as practicable.

No. of tariff sheets: N/A

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

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

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

Tariff schedules affected: Preliminary Statement ES - Demand Response Aggregator Incentives Memorandum Account

Service affected and changes proposed: N/A

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

**CPUC, Energy Division
Tariff Files, Room 4005
DMS Branch**

**505 Van Ness Ave., San Francisco, CA 94102
jn@cpuc.ca.gov and mas@cpuc.ca.gov**

**Pacific Gas and Electric Company
Attn: Brian K. Cherry, Vice President, Regulatory
Relations**

**77 Beale Street, Mail Code B10C
P.O. Box 770000
San Francisco, CA 94177
E-mail: PGETariffs@pge.com**

PG&E Advice 3197-E

Attachment 1

POWER PURCHASE AND SALE AGREEMENT

Between

PACIFIC GAS AND ELECTRIC COMPANY

(“Buyer”)

And

(“Seller”)

Standard-Form QF Contract

For Firm or As-Available Power (Unit Contingent)

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FORM OF POWER PURCHASE AND SALE AGREEMENT

This Power Purchase and Sale Agreement (“Agreement”) is made by and between Pacific Gas and Electric Company (“PG&E” or “Buyer”) and _____, (“Seller”) as of the Effective Date. Seller and Buyer are also referred to individually as a “Party” or collectively as the “Parties.”

RECITALS

On September 20, 2007, the CPUC issued Decision 07-09-040, which, among other things, directed PG&E to develop standard contracts and offer such contracts to QFs who meet the eligibility criteria set forth in the decision.

This Agreement, which the CPUC approved in Resolution _____, is offered in fulfillment of the obligations the CPUC imposed on PG&E in Decision 07-09-040.

ARTICLE I – ELIGIBILITY, APPLICABILITY OF CERTAIN CONTRACT PROVISIONS

To be eligible for this contract, Seller must check at least one box in each of Sections 1.1, 1.2, 1.3, and 1.4.

1.1 Seller qualifies to execute this Agreement, without modification, if the Unit is [check all boxes that apply]:

- An existing QF (has an existing contract that is expiring or has a contract extension ordered by the CPUC in Decisions 02-08-071, 02-12-062, 04-01-050, and 05-12-009).
- An Eligible Renewable Resource, or ERR (as defined in Public Utilities Code section 25741); if this box is checked, the provisions of Appendix V shall apply to this Agreement.
- A new QF (the Unit was not in existence as of September 20, 2007); if this box is checked, the provisions of Appendix VI shall apply to this Agreement.
- A “small QF” (either 20 MW or less or offers annual Energy deliveries of not more than 131,400 MWh, consumes internally at least 25% of the power generated by the Unit, and sells 100% of the surplus to PG&E).

1.2 This contract is for [check both boxes if this is a “hybrid” contract, *i.e.*, for both firm and as-available power]:

- Firm, Unit-contingent power (the provisions of Sections 3.1(a)(i), 3.1(c), 3.1(e), 3.8, 3.11, 5.1(a)(ii), 5.1(a)(iii), 5.1(a)(iv), and Article IV shall apply, and Section 3.1(a)(ii) shall not apply).

[] As-available, Unit-contingent power (Section 3.1(a)(ii) shall apply, and Sections 3.1(a)(i), 3.1(c), 3.1(e), 3.8, 3.11, 5.1(a)(ii), 5.1(a)(iii), 5.1(a)(iv), and Article IV shall not apply).

1.3 The SC for the Unit will be:

[] PG&E or PG&E's agent (the provisions of Appendix VIII shall apply to this Agreement).

[] Seller or Seller's agent (the provisions of Appendix VII shall apply to this Agreement).

1.4 Seller has entered into the following agreement with the CAISO (one of the following agreements must be fully executed as a condition precedent to the Initial Delivery Date):

[] QF Participating Generator Agreement.

[] Participating Generator Agreement.

ARTICLE II - TERM

2.1 Term. The "Term" will commence on the earlier of (a) _____, or (b) the date on which Seller has complied fully with Section 3.2 (the "Initial Delivery Date") and, unless earlier terminated pursuant to Section 2.3 or Article V (Events of Default; Termination; Remedies), will continue for a term of [] years from the Initial Delivery Date; provided that, the Term must be at least one year and may not be longer than ten years if this Agreement is for firm unit-contingent power, and must be at least one year and not greater than five years if this Agreement is for as-available unit contingent power.

2.2 Binding Nature. This Agreement shall be effective and binding as of the Effective Date.

2.3 Termination. This Agreement may be terminated early (a) by the Non-Defaulting Party if there is a default by either Party, as provided in section 5.1, or (b) by either Party if Seller and PG&E both execute a separate, different Power Purchase and Sale Agreement ("PPSA") for the Unit(s), or (c) by Buyer if Seller has failed to comply with Section 3.2 within six (6) months of the Effective Date.

ARTICLE III - OBLIGATIONS AND DELIVERIES

3.1 Transaction.

(a) Products Being Sold by Seller to Buyer.

(i) If This Agreement Is For Firm Unit-Contingent Power. Seller shall provide to Buyer: (i) Firm Capacity of ___ MW; (ii) Associated Energy; and (iii) all other attributes associated with the Firm Capacity, whether identified and defined as of the Effective Date or as may subsequently be identified and defined

by the CPUC or CAISO during the Term. These other attributes shall include, as applicable, all rights associated with Resource Adequacy Requirements (“RAR”), Green Attributes (“GA”) if the Unit qualifies as an ERR, and Green House Gas (“GHG”) emission credits (capped at net zero emissions), and all other products that may be identified, defined, or developed after the Effective Date and are associated with the operation of the Unit.

(ii) If This Agreement Is For As-Available Unit-Contingent Power. Seller commits to Buyer all the Energy from the Unit(s). Maximum permissible deliveries of Energy from the Unit shall be at the rate of _____ MWh/hr; provided that, this rate may not exceed the Pmax established in the Unit’s QF Participating Generator Agreement or Participating Generator Agreement with the CAISO (the Unit’s Pmax).

(iii) If This Is a “Hybrid” Agreement. If Seller so elects, it may deliver both Firm Capacity and Energy and as-available capacity and Energy to Buyer under this Agreement. To make this election, Seller must specify in part (i), above, the amount of capacity and Associated Energy that will be firm and also the maximum number of MWhs of Energy that will be delivered on an as-available basis; provided that, the total MWhs for both firm and as-available deliveries may not exceed the Unit’s Pmax.

(b) Purchase and Sale Obligation. Seller must obtain an interconnection agreement with PG&E and meet all CAISO interconnection requirements prior to the Initial Delivery Date. During the Term, Seller shall sell and make available to Buyer the Firm Capacity and Associated Energy (or Energy in the case of an as-available contract), and Buyer shall accept and pay for the same in accordance with Section 6.2.

(c) Resource Adequacy Requirement. During the Term, Seller shall commit the Unit to Buyer for, among other things, the purpose of contributing to Buyer’s ability to meet Buyer’s RAR, as described in CPUC Decisions 04-01-050 issued January 26, 2004, 04-10-035 issued November 4, 2004, and other subsequent decisions, and as may be amended from time to time in the Resource Adequacy phases of Rulemaking 05-12-013 or in any successor proceeding, and any other decisions specifying the nature of the requirement to maintain or have available, at prescribed times and in prescribed quantities, Capacity to serve retail customers. Included within Buyer’s exclusive rights to all Products available from the Unit, to the extent of the Firm Capacity, Buyer is entitled to all Products (defined as of the Effective Date and at any subsequent time during the Term), rights and entitlements that are related to the RAR, including capacity tags, capacity credits, and all Capacity-related Products, in each case to the extent of the Firm Capacity. Throughout the Term, Seller shall take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to ensure the availability and qualification of the Unit and its Firm Capacity to meet Buyer’s RAR and Buyer’s or CAISO’s right to the use of the Unit and associated Products to the extent of the Firm Capacity for the benefit of Buyer’s RAR. Subject to the preceding sentence, the commercially reasonable actions required of Seller pursuant to this Section 3.1(c) shall, as applicable and solely at Seller’s expense, include the following:

(i) Cooperating with Buyer, and cooperating with and encouraging all regional entities responsible for resource adequacy administration, to certify or qualify the Unit and no less than all of Firm Capacity for RAR purposes; meeting requirements the CPUC has established in its resource adequacy counting protocols, including demonstration of the ability to deliver no less than all of the Firm Capacity over all hours required for full RAR eligibility, and demonstrating that no less than all of the Firm Capacity can be delivered to the CAISO Grid pursuant to any deliverability standards the CPUC or other regional entity or entities responsible for RAR administration have established;

(ii) Negotiating in good faith to make necessary amendments, if any, to this Agreement to conform this Agreement to subsequent clarifications, revisions or decisions the CPUC or regional entity or entities responsible for RAR administration may render with respect to the Firm Capacity; and

(iii) Taking whatever measures may be or become necessary to comply with any CPUC or CAISO requirements for meeting RAR, including by way of example, submitting resource adequacy Supply Plans (defined term in the CAISO Tariff) to the CAISO, making the Unit available to the CAISO for dispatch upward and, only in cases of System Emergency (as defined in the CAISO Tariff), for dispatch downward; complying with all requirements applicable to a base-load type unit associated with the RAR that are imposed through either CAISO market design and tariffs, CPUC or FERC, including, for example and without limitation, requirements related to installing communication equipment, complying with communication protocols, and changing operations, in each case up to the Firm Capacity.

(d) Control. Seller shall at all times retain operational control of the Unit, be responsible for all operation and maintenance of the Unit, and bear all costs related to ownership, operation, and maintenance of the Unit.

(e) Buyer's Rights to Output and Payments. Seller commits the Firm Capacity to Buyer and will not dispatch the Firm Capacity, or any portion thereof, or sell any Product associated with the Firm Capacity to any Person other than Buyer, other than pursuant to an Instructed Operation as set forth in Section 3.4(c). Seller shall not cause the Unit to become subject to an RMR agreement or any other obligation to deliver a Product to any other Person other than pursuant to an Instructed Operation; provided that, nothing herein shall bar Seller from complying with Instructed Operations; and provided further that, if Seller receives an Instructed Operation other than through Buyer, Seller shall promptly report such event in accordance with Section 3.4(b) so Buyer may take whatever measures it elects to protest, challenge, eliminate, institute or modify any Instructed Operation. Subject only to the foregoing provisos, Seller shall sell and make available exclusively to Buyer all the Products of the Unit to the extent related to the Firm Capacity. If Seller receives any payment or non-monetary compensation associated with the Firm Capacity or related Products, including non-Energy or fixed payments received for or in connection with RAR, Instructed Operations, or any RMR agreement, from any Person (including the CAISO) other than Buyer, either (a) Seller shall remit

such payment, including the cash value of non-monetary consideration to Buyer, or (b) Buyer may elect to set off such amounts from any subsequent payment made to Seller.

(f) Unit Modifications. As of and after the Initial Delivery Date, Seller shall not, without the prior written agreement of Buyer, increase, modify, or decrease the Capacity of the Unit as compared to its Design Capacity, or take any other action that would, or may reasonably be expected to, impair, change, or limit the ability of the Unit to supply the Products to Buyer.

(g) Agreement Limited to Electric Procurement. This Agreement is between Seller and PG&E's Electric Procurement function and does not provide any rights to Seller or obligations on the part of PG&E as to any electric transmission or interconnection or natural gas services of any kind. Seller is solely responsible for making all such arrangements with the appropriate division(s) of PG&E or a third party.

3.2 Interconnection Facilities. As a condition precedent to the Initial Delivery Date, Seller must comply fully with all applicable CAISO interconnection requirements and have an interconnection agreement with PG&E. To the extent required to achieve the Initial Delivery Date and at all times during the Term, Seller shall maintain or cause to be maintained, at Seller's expense, the Electrical Interconnection Facilities such that the Electrical Interconnection Facilities are capable of delivering the Products that can be generated or produced using the Maximum Contract Capacity in accordance with the terms of this Agreement to and at the Electrical Delivery Point during each month as applicable (in addition to such other output of the Unit as the Electrical Interconnection Facilities are required to transmit) in accordance with the terms of this Agreement.

3.3 Electric Transmission and Delivery.

(a) Title and Risk of Loss. Title to and risk of loss related to each Product shall transfer from Seller to Buyer at the Electrical Delivery Point.

(b) Seller's Responsibility. During the Term, Seller shall arrange, schedule and, subject to Force Majeure, be responsible for electric transmission service and any and all costs or charges imposed on or associated with the Products or its delivery of the Products, including electric transmission costs, transmission losses, congestion costs and all risks and costs associated with any transmission outages or curtailment up to the Electrical Delivery Point.

(c) Buyer's Responsibility. During the Term, Buyer shall arrange, schedule and, subject to Force Majeure, be responsible for electric transmission service and any and all costs or charges imposed on or associated with the Products or its receipt of the Products, including electric transmission costs, transmission losses, congestion costs and all risks and costs associated with any transmission outages or curtailment, at and after the Electrical Delivery Point. With respect to Associated Energy, Buyer shall also be responsible for (or receive the benefit of) the difference between metered Energy and the Energy deemed delivered to the CAISO at the Electrical Delivery Point after application of the Generation Meter Multiplier ("GMM"), for as long as GMM applies.

3.4 Scheduling and Balancing.

(a) Scheduling Coordinator. As specified in Article I, Seller shall make a one-time election to: (1) be the Scheduling Coordinator (“SC”) for the Unit; or (2) take all actions and pay all costs necessary for hiring a competent third party to act as Seller’s SC; or (3) request that PG&E act as SC and pay PG&E’s tariff rate for SC service. If Seller or its agent is the SC, the provisions of Appendix VII shall apply to this Agreement; if PG&E is the SC, the provisions of Appendix VIII shall apply to this Agreement. If PG&E is the SC, Seller shall pay a one-time charge of \$ _____ to set up Seller’s account and a monthly volumetric charge, based on MWhs of Energy delivered, of \$ _____.

(b) Imbalance Energy and Charges. If for any reason Seller fails to comply strictly with the scheduling obligations set forth in Appendix VII or Appendix VIII, as applicable, and the Notice provisions set forth in Appendix IX, Seller shall be solely responsible for all associated imbalance energy, charges and penalties. Where the absolute value of the difference between Scheduled Energy and metered Energy for a settlement interval (currently 10 minutes) exceeds the lesser of 3% of PMax (as defined in the CAISO Tariff) or 5 MW, Seller shall not benefit from the price differential between the Energy price, as set forth in Section 4.2(ii) and the Imbalance Price. For example, if Scheduled Energy is less than metered Energy, Seller shall be paid the lesser of the Energy price or the real time imbalance price (as implemented by the CAISO). Buyer shall have no obligation or liability whatsoever with respect to any uninstructed deviations from Seller’s schedules. Seller shall settle any charges related to such deviations with its SC or settle them directly with the CAISO. If PG&E pays such charges or penalties, PG&E may set off such paid amounts fully against any subsequent payment to Seller.

(c) Instructed Operations. Seller shall adjust its schedule(s) to the extent necessary to allow Seller to Start-Up, operate, curtail, or Shut-Down the Unit when required to permit Seller to comply with an Instructed Operation. Each such adjustment must be communicated to Buyer with sufficient lead time to enable Buyer to adjust its schedules accordingly.

(d) Buyer-Instructed Curtailments. Buyer shall have the right to curtail deliveries from the Unit for up to a total of 50 hours each year. To the extent this Agreement is for firm Unit-contingent power, the hours of Buyer-instructed curtailment shall not be factored into the calculation of Availability and shall not result in a reduction of the Available Capacity.

(e) CAISO or PTO Instructed Curtailments. Seller must comply with all curtailment instructions of the CAISO and Participating Transmission Owner (“PTO”). The hours of all such curtailments shall be subtracted from the hours used to determine the Unit’s Availability.

3.5 Standards of Care.

(a) General Operations. Seller shall comply with all applicable requirements of law, the CAISO, NERC and WECC relating to the Unit (including, as applicable, those related to construction, ownership and/or operation of the Unit). Seller shall be responsible for procuring and maintaining, at its expense, all Governmental Approvals and all emissions credits required for operation of the Unit in accordance with this Agreement throughout the Term.

(b) CAISO and WECC Standards. Each Party shall perform all generation, scheduling and transmission services in compliance with all applicable (i) operating policies, criteria, rules, guidelines, tariffs and protocols of the CAISO, (ii) WECC scheduling practices, and (iii) Prudent Electrical Practices.

(c) Reliability Standards. Seller shall abide by all (i) NERC, WECC and CAISO reliability requirements and (ii) all of PG&E's applicable requirements regarding interconnection of the Unit. Seller shall maintain its WECC Reliability Management System Agreement in full force and effect throughout the Term, unless WECC agrees to terminate that agreement.

3.6 Metering.

(a) Metering Requirement and Data. Seller shall comply with all applicable CAISO metering requirements. All Products from the Unit must be delivered through a single revenue meter. Unless otherwise determined by the CAISO, the Unit's revenue meter must be a CAISO revenue meter. All Energy must be measured by the Unit's CAISO revenue meter to be eligible for payment under this Agreement. To support invoice settlement purposes, Seller shall authorize Buyer to view the Unit's CAISO on-line meter data. Within Schedule 3 of Seller's Meter Service Agreement with the CAISO (and in any successor metering agreement), Seller shall identify Buyer as an authorized user with "read only" privileges. Seller consents to Buyer obtaining from the CAISO the CAISO meter data applicable to the Unit and all inspection, testing and calibration data and reports associated with those meters. If the CAISO makes any adjustment to any CAISO meter data for a given time period, the Parties shall incorporate such revisions in subsequent monthly invoices covering the entire applicable time period to conform fully such adjustments to metering data. If Seller receives the meter information, Seller shall promptly provide the same to Buyer. Buyer shall submit any such revised invoice on the next date on which Buyer is to render an invoice in accordance with Section 6.1 provided that Buyer shall not be required to render an invoice sooner than twenty (20) day(s) after the date on which Buyer receives such adjustment to metering data. Payment or credit resulting from the adjustment shall be due on the first Monthly Payment Date following the invoice.

(b) Meter Installation and Testing. Subject to Section 3.6(a), Seller shall install (or cause to be installed) maintain, operate and replace (as needed) a meter to be used as the CAISO revenue meter in accordance with the CAISO metering requirements at the Electrical Delivery Point to determine the amount of the Energy produced by the Unit and delivered to the Electrical Delivery Point, at its sole cost and expense. In addition, PG&E may install a check meter ("Check Meter") for back-up metering purposes. The CAISO revenue meter shall be locked or sealed only by, and the lock or seal shall be broken only by, a representative of CAISO. The Check Meter shall be locked or sealed by both Parties, which locks or seals will only be broken by both Parties, acting together, for inspection, testing or adjustment; provided that, if one Party declines to participate, the other Party may act alone. The CAISO revenue meter shall be tested in accordance with the CAISO metering requirements, which shall be provided by CAISO. The Check Meter shall be tested annually by the Party owning the meter, and the testing Party shall provide the other Party with not less than 14 days prior Notice of such tests. If the deviation between the CAISO meter and the Check Meter for any such test is less than 0.3% for deliveries covering an entire calendar month, an annual test will not be performed

unless Buyer so requests, in which case Buyer shall reimburse Seller for the costs of any such test. If the variance between the CAISO meter and the Check Meter exceeds 0.3%, Seller shall Notify Buyer of the discrepancy and arrange for a meter check or recertification. Testing procedures and standards for the Check Meter shall be the same as for a comparable PG&E-owned meter. Buyer shall have the right to have representatives present during all such tests.

(c) Meter Retesting. Either Party may from time to time request a retest of the CAISO revenue meter and/or the Check Meter. 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 shall have the right to have a representative present during such retest.

(d) Adjustments. If a test indicates that the tested meter is not accurate within the CAISO's tolerance limits, 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; provided that, if Seller does not make such arrangements within a reasonable time, Buyer may do so and set off the cost of the correction or replacement of the meter against a subsequent payment to Seller. If any tested or retested back-up meter is found not to be accurate within the CAISO's 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 meter or back-up meter, as applicable, or (b) 180 days. Any amounts due from 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 the Party owed such amount on the next date on which such Party is to render an invoice in accordance with Section 6.1 (Billing and Payment) following discovery of such inaccuracy.

(e) Real Time Data Information Systems. Buyer shall have access through a secure communication link or through the CAISO's meter data acquisition and processing system to the following data on a real-time and historical basis:

- Electrical output of the Unit;
- Net plant electrical output at CAISO meter; and

A minimum of 120 days historical data shall be available on either (i) a minimum time interval of one minute basis or (ii) an hourly average basis.

Further, Seller shall, at its expense, install, maintain, operate, and replace as necessary telemetry at the Electrical Delivery Point in accordance with CAISO requirements to allow for real-time visibility of Unit output and status. Buyer shall have access to all telemetry data.

3.7 Replacement Power. In no event shall Seller have the right to procure and substitute any Product from a source other than the Unit for sale or delivery to Buyer under this Agreement, including during an Outage, excepting only purchases of imbalance Energy.

3.8 Outages. The SC for the Unit shall have the responsibility to report to the CAISO any outage, in accordance with the CAISO Tariff.

(a) CAISO Approval of Scheduled Maintenance Outages. Seller, or its SC, shall secure CAISO approvals and comply with WECC and CAISO requirements, as applicable, for all Scheduled Maintenance Outages and CAISO Maintenance Outages, including securing changes in the proposed Scheduled Maintenance Outage and CAISO Maintenance Outage schedules when CAISO disapproves such schedules or cancels previously approved Scheduled Maintenance Outages or CAISO Maintenance Outages. Seller shall promptly Notify Buyer of all of Seller's requests for CAISO Maintenance Outages and all CAISO responses to such requests.

(b) Seller's Scheduled Maintenance Outage. Seller shall Notify Buyer of its proposed Scheduled Maintenance Outages for the Unit by submitting to Buyer a Notice that fully accords with the requirements of Section 3.8(e) as follows:

(i) for the next calendar year, by no later than September 1 of each year during the Term; and

(ii) for each quarter, updating to the extent required the annual schedule previously Noticed, by no later than thirty (30) days prior to the commencement of each quarter; provided that Scheduled Maintenance lasting longer than five consecutive days may be taken only after a minimum of 50 days advance Notice prior to the month in which the Scheduled Maintenance will occur.

(c) CAISO Approval of Scheduled Maintenance Outages. In accordance with Section 3.8(a), Seller, or its SC, shall submit the proposed Scheduled Maintenance Outages for the Unit to the CAISO, including any modifications thereto. Seller shall adhere to the Scheduled Maintenance Outage schedule approved by the CAISO.

(d) Buyer-Requested Changes to Maintenance Outage Schedule. Buyer may request that Seller change its Scheduled Maintenance Outage schedule after a minimum of 120 days advance Notice prior to the month in which the Scheduled Maintenance will occur and a minimum of 180 days Notice prior to the month in which the major maintenance outage will occur;. Seller shall Notify Buyer of any incremental costs associated with the schedule change and an alternative schedule change, if any, that would entail lower incremental costs. (For purposes of this provision, the term "incremental costs" shall mean the difference in Energy and capacity payments resulting from the change to the outage schedule, netted against any variable cost differences to Seller.) If Buyer's proposed change is feasible and imposes no incremental costs upon Seller (as compared to Seller's proposed schedule) or if Buyer agrees to pay the incremental costs, Seller shall use commercially reasonable efforts to accommodate Buyer's request and Seller's SC shall communicate the change to the CAISO and seek CAISO approval for the revised schedule. Unless it is transmitting a CAISO order to Seller, Buyer may not change Seller's Scheduled Maintenance Outage schedule unilaterally.

(e) Scheduled Maintenance Outage Restrictions.

(i) There shall be no Scheduled Maintenance during the on-peak months specified in Section 4.1(a);

(ii) Scheduled Maintenance Outages for the Unit, whether full or partial Scheduled Maintenance Outages, may not exceed 360 hours total in any Contract Year (the “Scheduled Maintenance Outage Allowance”); provided that, if the Term is longer than five (5) years, the Scheduled Maintenance Outage Allowance for the Unit shall be increased, one time only, not to exceed a total of 720 hours within one Contract Year to accommodate the major maintenance overhaul of the Unit, if such overhaul is required and actually performed; and provided further that, the Scheduled Maintenance Outage Allowance shall be reduced in accordance with clause (ii) of the definition of Excused Hours, if applicable; and

(iii) The Scheduled Maintenance Outage for the Unit due to the single allowable major maintenance overhaul shall not exceed 1,000 total Unit hours during the Term.

(f) Schedule Changes. If Seller reasonably concludes that any Scheduled Maintenance Outage must be extended in excess of the times initially scheduled for such Scheduled Maintenance Outage, Seller shall provide to Buyer its request for such an extension, including a statement of the reason such extension is required. If Seller reasonably concludes that the Unit must be shut down to conduct maintenance that cannot be delayed until the next Scheduled Maintenance Outage, Seller shall provide Buyer’s Authorized Representative with a written request to change the Scheduled Maintenance Outage schedule; provided that, such a request may not be made unless each of the following conditions are met: (i) Seller warrants that the maintenance cannot be delayed until the next Scheduled Maintenance Outage; (ii) the Outage will not violate any Law, or any rule, regulation or requirement of the CAISO (including the CAISO Tariff), NERC or the WECC; (iii) Seller delays the commencement of the Outage until the next Saturday and/or Sunday; (iv) Seller completes the maintenance and provides Buyer with Notice that the Unit is again available for scheduling within the earlier of 48 hours after the maintenance begins or 0500 hours on the immediately following Monday; and (v) the requested maintenance is consistent with Prudent Electrical Practices. Only with Buyer’s written consent shall such changes to the schedule or requested extensions be deemed to be a Scheduled Maintenance Outage; provided that, in no event shall any extensions of or additions to a Scheduled Maintenance Outage increase the allowed hours for Scheduled Maintenance Outages set forth in part (e) of this Section 3.8.

(g) CAISO Maintenance Outages. If Seller desires to take the Unit out of service in a manner that the CAISO would recognize as a CAISO Maintenance Outage but does not otherwise comport with the requirements to be deemed a Scheduled Maintenance Outage for purposes of this Agreement, Seller shall Notify Buyer of its proposed CAISO Maintenance Outages for the Unit as promptly as possible upon determining the need for such maintenance. Seller, or the Unit’s SC, shall submit the proposed CAISO Maintenance Outages for the Unit to the CAISO. Seller shall adhere to the CAISO Maintenance Outage schedule the CAISO has approved. Further, Seller may request the CAISO to approve a change in the dates of such Outages after Notifying Buyer of the reasons for such change. At any time, Buyer may request that Seller change its CAISO Maintenance Outage schedule (“CAISO Maintenance Schedule”). Seller shall Notify Buyer of any incremental costs associated with the schedule change and an alternative schedule change, if any, that would entail lower incremental costs. If Buyer’s

proposed change to Seller's CAISO Maintenance Schedule is feasible and imposes no incremental costs (as compared to Seller's proposed schedule) or if Buyer agrees to pay the incremental costs, Seller shall use commercially reasonable efforts to accommodate Buyer's request and Seller, as SC, shall communicate the change to the CAISO and seek CAISO approval for the revised CAISO Maintenance Outage schedule. Unless it is transmitting to Seller a CAISO order, Buyer may not change Seller's CAISO Maintenance Outage schedule unilaterally.

(h) Forced Outages. The hours in which the Unit experiences an Outage for reasons other than a permitted Scheduled Maintenance Outage or CAISO Maintenance Outage shall be deemed to be periods of unavailability of the Unit for purposes of determining Availability.

3.9 Force Majeure.

(a) Effect of Force Majeure. Except as provided in section 5.1, a Party shall not be considered to be in default to the extent that the failure or delay of its performance of its obligations is due to a Force Majeure Event, and the non-affected Party shall be excused from its corresponding performance obligations to the extent due to the affected Party's failure of or delay in performance. Notwithstanding the foregoing, (i) a failure to make payments accrued prior to the Force Majeure Event when due shall not be excused; and (ii) the unavailability of the Firm Capacity due to Force Majeure shall be deemed to be unavailability for purposes of determining Availability and the Availability Adjustment to the extent that the cumulative number of Outage hours due to Force Majeure exceeds the number of permitted Scheduled Maintenance Outage Hours available to Seller. The burden of proof for establishing the existence and consequences of a Force Majeure Event lies with the Party claiming Force Majeure as an excuse.

(b) Notice of Force Majeure. The Party experiencing a Force Majeure shall inform the other Party as soon as practicable of the Force Majeure Event. Within five (5) Business Days of the onset of the Force Majeure Event, the affected Party shall provide the other Party Notice in the form of a letter describing in detail the particulars of the Force Majeure Event, including its expected duration and impact on the affected Party's performance under this Agreement. An unexcused failure to provide timely Notice shall constitute a waiver of a claim of Force Majeure for all days up to and including the day on which the unaffected Party receives notice from the affected Party, and the failure to perform during those days shall constitute a default if the total number of hours of the outage either exceeds the total permitted Hours for Scheduled Maintenance Outages of the Unit or meets the terms of section 5.1.

(c) Mitigation of Force Majeure. The suspension of performance due to a claim of a Force Majeure Event must be of no greater scope and of no longer duration than is required by the Force Majeure Event; provided that, in any case, if the duration of a Force Majeure exceeds the limits set forth in Section 5.1, the affected Party shall be in default. Each Party suffering a Force Majeure Event shall take, or cause to be taken, such commercially reasonable action as may be necessary to void, or nullify, or otherwise to mitigate, in all material respects, the effects of such Force Majeure Event. The Parties shall take all commercially

reasonable steps to ensure resumption of normal performance under this Agreement after the Force Majeure has been remedied.

3.10 Operations Logs and Access Rights.

(a) Operations Logs. Seller shall maintain a complete and accurate log of all material operations on a daily basis. Such log shall include, but not be limited to, information on power production, availability, maintenance performed, Outages, SLIC, electrical characteristics of the generators and similar information relating to the availability, testing and operation of the Unit and availability and production of the Products which would have a material effect on Seller's Schedule. Buyer shall have access to these logs as part of its rights of access to information, as provided in Section 8.9.

(b) Access Rights. Buyer, its authorized agents, employees and inspectors shall, upon reasonable notice to Seller and provided Buyer follows Seller's safety policies and procedures and does not interfere with or hinder Seller's operations, have the right of access to the Unit at any time and for any purposes reasonably connected with this Agreement, including verification of the Unit's availability or unavailability.

3.11 Capacity Testing and Adjustment of Firm Capacity.

(a) Testing Requirement. At Buyer's request made at any time within sixty (60) days before or after the Initial Delivery Date, and with at least thirty (30) days prior Notice, Seller shall, at Seller's expense, conduct an Initial Capacity Test of the Unit; provided that, for Units that have a history of deliveries to Buyer, an Initial Capacity Test can be waived and the Firm Capacity set at the Unit's demonstrated performance level. During each subsequent Contract Year of the Term, Buyer may request Seller to perform an Annual Capacity Test of the Unit ("Buyer's Capacity Test") at any time during the calendar year upon prior notice of no less than 30 days. Waiver of this right in any Contract Year does not preclude Buyer's exercise of such right in future Contract Years. Upon Buyer's request, Seller shall provide to Buyer copies of all testing documentation.

(b) Capacity Test Procedures. Each Capacity Test shall be conducted in accordance with the following procedures ("Test Procedures"):

(i) The Capacity Test shall consist of one 12-hour test period, to be agreed upon by the Parties. The Capacity of the Unit for purposes of this Agreement shall be the arithmetic average over the test period.

(ii) The Unit shall be operated at Base Load ("Peak Load"). The Unit shall be operating in steady state with all equipment in normal operating service.

(iii) The Energy output of the Unit during the Capacity Test shall be measured by the CAISO revenue meter at the Electrical Delivery Point and at the back-up meter.

(iv) The Capacity of the Unit as demonstrated by a Capacity Test ("Tested Capacity") shall be the metered Energy output per hour (measured in

megawatts). Seller shall make the determination of the Tested Capacity and shall deliver the result to Buyer no later than 48 hours after the completion of the Capacity Test.

(v) Buyer may have a representative present at the Unit at any time during the Capacity Test.

(c) Cost Responsibility.

(i) Unless explicitly provided otherwise, Seller shall bear all costs of each Capacity Test.

(ii) For all Capacity Tests, Buyer shall accept and pay for all Energy produced during such testing in accordance with Section 6.2.

(d) Capacity Adjustments.

(i) The Initial Capacity Test may be used to determine whether Seller has met the criteria to be declared Commercially Operable. Buyer, at its sole option, may waive the Initial Capacity Test. The Annual Capacity Test may be used, at Buyer's sole option, to determine whether the Unit performs at the Design Capacity, as applicable and to confirm and/or adjust (as appropriate) the Monthly Contract Capacities of the Unit as follows.

(ii) If the Tested Capacity of the Unit is less than 100% of the Design Capacity, the Firm Capacity shall be adjusted downward for all purposes under this Agreement to equal the Tested Capacity. A subsequent upward adjustment may not exceed the Firm Capacity as of the Effective Date.

(iii) Each adjustment to the Firm Capacity shall be effective as of the first day of the first month following the month in which the Initial Capacity Test or Annual Capacity Test (as applicable) occurred.

(iv) Seller may request that an additional Capacity Test ("Seller's Capacity Test") be performed. A Seller's Capacity Test must commence no later than fifteen (15) Business Days after completion of either an Initial or Annual Capacity Test or a Scheduled Maintenance Outage, as applicable, and shall be performed in accordance with the Test Procedures except that: (A) Seller shall provide Buyer with Notice of its request to test and the proposed starting and end times of Seller's Capacity Test no later than five (5) Business Day before it commences and (B) Buyer shall evaluate Seller's proposal and, in its sole discretion, either grant such request or identify an alternative Test Period from which Seller may elect, and to which Buyer will consent and (C) Buyer's representative may be present at any time during a Seller's Capacity Test. The results of the Seller's Capacity Test shall supersede the prior test results and be used to determine the Firm Capacity, effective as of the first day of the first month following the month in which the Seller's Capacity Test occurs.

(e) Disputes. A dispute concerning the results of any Capacity Test shall be resolved in accordance with the Dispute Resolution Procedures set forth in Article IX. Pending such resolution, the Firm Capacity shall be confirmed or adjusted based on the most recent Capacity Test results; provided that, the Capacity resulting from the dispute resolution process shall apply from the date the dispute was raised, and after-the-fact accounting adjustments and adjustments to payments shall be made accordingly.

3.12 Operating Procedures. Prior to the Initial Delivery Date, the Parties shall agree upon, and subsequently they shall review and (if necessary and from time-to-time thereafter) agree to revise written procedures governing operations. Such procedures shall not contravene or amend any right or obligation set forth elsewhere in this Agreement, including, without limitation: (a) procedures for scheduling; (b) methods of day-to-day communications; (c) key personnel lists; and (d) record keeping.

3.13 WREGIS. If the Unit is an ERR, Seller shall, prior to the Initial Delivery Date, register the Unit in the WREGIS, and take all other actions necessary to ensure that the Energy or Green Attributes produced from the Unit are issued and tracked for purposes of satisfying the requirements of the California Renewable Portfolio Standard and transferred to Buyer. In the event that WREGIS is not in operation as of the Effective Date, Seller shall perform its obligations, as required per this subsection, as soon as WREGIS is in operation. In the event that compliance with the foregoing costs Seller more than \$10,000 in any year, Buyer shall reimburse Seller for such excess costs.

3.14 CAISO Requirements. All references in this Article III to CAISO requirements (e.g., CAISO revenue meter, etc.) are intended to constitute Seller's contractual requirement only to comply with those CAISO requirements that are, in the CAISO's determination, applicable to QFs such as Seller, and Seller's compliance is required only to the extent that such requirements apply to QFs.

ARTICLE IV - FIRM CAPACITY AVAILABILITY, COMPENSATION

4.1 Firm Capacity Availability

(a) Firm Capacity Guaranteed Availability. The "Guaranteed Availability" of the Firm Capacity is 95% during on-peak months and 90% during off-peak months. For purposes of this Agreement, on-peak months are May through October; off-peak months are November through April.

(b) Calculation of "Availability". The Availability of the Firm Capacity shall be calculated by Seller, subject to audit by Buyer, on a monthly basis where the "Availability" of the Firm Capacity, measured as a percentage, is determined as follows:

$$\text{Availability}_m = \text{totpotenrgy}_m / [\text{MCC}_m * (\text{mnthhrs}_m - \text{mainthrs}_m)]$$

Where:

totpotenrgy_m is the total amount of Energy (measured in MWh) that the Seller could have produced for the month to which the calculation applies using the full

Firm Capacity (“MCC”) for such month (measured in MW) for every hour in which the full Firm Capacity was available to operate for Buyer less the Energy which is not produced due to mainthrs_m and unavailhrs_m (as defined below).

totpotenrgy_m can be expressed algebraically as follows:

$$\text{totpotenrgy}_m = \text{MCC}_m * (\text{mnthhrs}_m - \text{mainthrs}_m - \text{unavailhrs}_m)$$

To the extent the Firm Capacity was unavailable to Buyer due to Instructed Operations or Excused Events, the Firm Capacity shall be deemed to have been available for purposes of determining totpotenrgy_m and therefore no deduction is made for such hours.

MCC_m is the Firm Capacity, measured in MW.

mnthhrs_m is the total amount of hours for the month.

mainthrs_m is the total amount of hours that the Firm Capacity was unavailable due to Scheduled Maintenance Outages or Force Majeure during the month, provided that the number of hours of Outages due to Scheduled Maintenance Outages shall not exceed the maximum number of hours per year permitted for Scheduled Maintenance Outages pursuant to Section 3.10(e)(ii) and the number of hours of Outages due to Force Majeure shall not exceed the number of Excused Hours available to the Buyer at the end of the applicable month. A Scheduled Maintenance Outage or Force Majeure that results in partial Outage of the Firm Capacity will count as an equivalent percentage of the applicable hour(s) for this calculation. For example, if the Firm Capacity was reduced by 10% for twenty (20) hours due to Scheduled Maintenance Outage, then the Firm Capacity shall be deemed unavailable due to a Scheduled Maintenance Outage for two (2) full hours.

unavailhrs_m , consists of each hour or partial hour in which the Firm Capacity was unavailable to Buyer due to (i) Forced Outage; (ii) Scheduled Maintenance Outages, but only to the extent the number of hours of Scheduled Maintenance Outages exceed the number of hours per year of Scheduled Maintenance Outages permitted pursuant to Section 3.10(e)(ii); (iii) Force Majeure, but only to the extent the number of hours of Force Majeure exceed the cumulative number of Excused Hours available to Seller as of the end of the applicable month; (iv) failure of Seller to provide Notice to Buyer of the Firm Capacity’s availability and capability to operate (as required pursuant to Section 3.5); or (v) failure of the Firm Capacity to deliver Energy or Other Products in accordance with Scheduled Operations. Hours in which a portion of the Firm Capacity is deemed unavailable (as set forth in the prior sentence) shall be included in the determination of unavailhrs_m to the extent of the Firm Capacity’s unavailability (which may be less than 100%), such that totpotenrgy_m reflects a proportional downward adjustment from the Firm Capacity for deratings, partial Outages of the Firm Capacity and

partial hours of unavailability, as well as for full hours in which the Firm Capacity was entirely unavailable. For example, if the Firm Capacity was reduced by 10% for 20 hours due to Forced Outage, then the MCC shall be deemed unavailable for two (2) full hours.

If Seller identifies any portion of the Firm Capacity as unavailable (e.g., including in a Scheduled Availability Notice or pursuant to an Outage/Availability Notification Form), for any hour, such portion of the Firm Capacity shall be deemed unavailable for that hour for purposes of the Availability calculation to the extent of such unavailability, provided that if Seller provides a revised Notice indicating the portion of Firm Capacity is available for an hour in which it was previously deemed unavailable by 0500 hours PPT of the morning Buyer is required to schedule or bid the Firm Capacity in the Day-Ahead Market, all of the available Capacity will be deemed to be available for such hour for purposes of determining totpotenrgy_m ; and if Seller provides a revised Notice indicating the portion of Firm Capacity is available for an hour in which it was previously deemed unavailable at least 30 minutes prior to the time Buyer is required to schedule such portion of the Firm Capacity in the Hour-Ahead Market, all of the available Capacity will be deemed to be available for such hour for purposes of determining totpotenrgy_m .

(c) Non-Availability Discount.

During each month of the Term in which the Availability of the Firm Capacity is less than the applicable Guaranteed Availability, the Availability Adjustment (“AA”), measured as a percentage, shall be determined as follows:

For On-Peak Months:

If Availability is greater than or equal to 95%, then AA=100%;

If Availability is less than 95%, but not less than 70%, then

$$AA = 100\% - [(95\% - \text{Availability}) * 2]; \text{ and}$$

If Availability is less than 70% then AA = 0.

For Off-Peak Months:

If Availability is greater than or equal to 90%, then AA=100%;

If Availability is less than 90%, but not less than 60%, then

$$AA = 100\% - [(90\% - \text{Availability}) * 2]; \text{ and}$$

If Availability is less than 60%, then AA=0

(d) No Availability Bonus. Because the Unit is expected to be available on a Base-Load basis, there shall be no “bonus” if the Unit exceeds its minimum required performance.

4.2 Compensation for Firm Contract.

(a) Rates.

(i) The Firm Capacity Payment Rate (“MCCPR”) shall be fixed for the Term at \$91.97 per kW-year, payable only for available capacity.

(ii) The rate for Energy shall be [insert MIF formula]; provided that, unless the Assigned Commissioner determines otherwise pursuant to D.07-09-040, beginning six (6) months after the CAISO implements MRTU, the rate for Energy shall be the MRTU market price at the Pnode (as defined in the CAISO Tariff) associated with the delivery point.

(b) Payment Obligation.

(i) During each month of the Term, Buyer shall pay Seller, in arrears, a Firm Capacity (“MCC”) payment (“MCCP”) determined as follows.

$$\text{MCCP} = \text{MCCPR} * \text{MAF}_m * \text{MCC}_m * \text{AA}$$

where,

MCCPR is the Capacity Payment Rate;

MAF_m is the monthly allocation factor set forth in the table (“Firm Payment Allocations By Month”) in Appendix III for such month; provided that, ninety days prior to a start of a full Contract Year (or by no later than January 15 of each year in advance of the Contract Year), Buyer may Notify Seller of modifications to Appendix IV. Buyer may not modify Appendix IV such that any individual month has a percentage allocation of less than 4% or greater than 15%; or such that the sum of the twelve products of the MFP for each month multiplied by the applicable MCC for that month is less than it would have been prior to the modification. The total in any Contract Year must equal 100%;

MCC_m is the Firm Capacity for such month set forth in Section 3.1(a);

AA is the Availability Adjustment for such month, determined pursuant to Section 4.1.

(ii) For each month of the Term, Buyer shall pay Seller, in arrears, a monthly Energy payment. The monthly Energy payment shall equal the product of (A) the Applicable Energy Price multiplied by (B) the actual Energy deliveries received by Buyer in MWH, as measured by the CAISO revenue meter (for the period, if any, prior to the effectiveness of the CAISO’s MRTU Tariff, with each hourly quantity of Energy deliveries adjusted for Generator Meter Multipliers as specified in the CAISO Tariff for the location most applicable to Seller’s deliveries of Energy to Buyer).

4.3 Compensation for As-Available Contract.

(a) Capacity. Capacity payments will be allocated in accordance with the capacity allocation percentages (for seasons and time of day) set forth in CPUC Decision No. 97-03-017.

(b) Energy. For each month of the Term, Buyer shall pay Seller, in arrears, a monthly Energy payment. The monthly Energy payment which shall equal the product of (A) the Applicable Energy Price multiplied by (B) the actual Energy deliveries received by Buyer in MWH, as measured by the CAISO revenue meter (for the period, if any, prior to the effectiveness of the CAISO's MRTU Tariff, with each hourly quantity of Energy deliveries adjusted for Generator Meter Multipliers as specified in the CAISO Tariff for the location most applicable to Seller's deliveries of Energy to Buyer).

ARTICLE V - EVENTS OF DEFAULT; TERMINATION; REMEDIES

5.1 Events of Default

(a) Seller will be deemed a Defaulting Party upon the occurrence of any of the following (each a "Seller's Event of Default"):

(i) 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, to the extent, in any such case, such asset is material to Seller's performance of this Agreement.

(ii) Upon the occurrence of any material misrepresentation or omission in any metering or any report or Notice of availability and capability or Outage of the Firm Capacity Seller is required to make or deliver to Buyer, or undue delay or withholding of such data, report or Notice of availability and capability or Outage of the Firm Capacity, which misrepresentation, omission or undue delay or withholding is the result of the willful misconduct, gross negligence or bad faith of Seller's personnel at the level of Unit manager or above; provided that, Seller may cure such a default by complying with its obligation(s) within five (5) Business Days of delivery of Notice by Buyer.

(iii) During the Term, the Availability of the Firm Capacity averages less than 60% over a rolling 12-month period, including Force Majeure periods.

(iv) The Firm Capacity of the Unit falls below 80% of the Design Capacity for reasons other than Force Majeure, and the Tested Capacity for the Unit does not rise to at least 85% of the Design Capacity within 12 months of the date on which the Tested Capacity of less than 80% was established.

(v) The appointment of a trustee, receiver or custodian of Seller's assets, or the initiation of a bankruptcy, reorganization, debt arrangement, moratorium or any other proceeding under bankruptcy laws against Seller, which, in either case, is not dismissed within sixty (60) days.

(vi) If the Unit is a new QF, only, the failure of the Unit for whatever reason to be Commercially Operable and to provide the Firm Capacity and associated Energy within sixty (60) months of the Effective Date.

(vii) If this Agreement is for as-available power, only, the failure of the Unit to deliver at least 50% of the maximum annual delivery of Energy (as set forth in Section 3.1(a)(ii)) over a rolling 12-month period, including Force Majeure periods, as measured in MWhs through the revenue meter.

(b) Either Party will be deemed a Defaulting Party upon the occurrence of any of the following (each a “Party’s Event of Default”); provided that, none of these additional events of default supersedes or modifies in any way the events of default specified in section 5.1(a)(i)-(vi):

(i) A Party fails to pay an amount when due and such failure continues for ten (10) Business Days after Notice thereof is received.

(ii) A Party fails to perform any of its material obligations under this Agreement, and such default continues for fifteen (10) Business Days after Notice thereof is delivered.

(iii) Any Governmental Approval necessary for a Party to be able to perform all of the transactions contemplated by this Agreement is not received, 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.

(iv) Upon the occurrence of any material breach of any representation or warranty made by a Party in Section 8.1 of this Agreement, thirty (30) days after the written Notice from the other Party that any material representation or warranty made in this Agreement is false, misleading or erroneous in any material respect, if such misrepresentation is not remedied within thirty (30) days following receipt of such written Notice.

5.2 Declaration of Early Termination Date and Calculation of Termination Payment. If an Event of Default has occurred and is continuing, the Non-Defaulting Party shall have the right to: (a) send Notice, designating a day, no earlier than the day such Notice is delivered and no later than 20 days after such Notice is delivered, as an early termination date of this Agreement (“Early Termination Date”); (b) accelerate all amounts owing between the Parties; (c) terminate the Term effective as of the Early Termination Date; (d) calculate and collect the Termination Payment; (e) withhold any payments due to the Defaulting Party under this Agreement; (f) suspend its own performance; and (g) exercise any other right or remedy available at Law or in equity. On and after the Initial Delivery Date, the Termination Payment will be the aggregate of the Losses and Costs of the Non-Defaulting Party, including the costs of replacing the Products and the positive difference in the purchase price compared to the Contract Price hereunder (if Seller has defaulted) or reselling the Products (if Buyer has defaulted), offset by its Gains, if any, calculated as of the Early Termination Date; provided that, the Termination Payment amount shall not be less than

zero. The Defaulting Party shall make the Termination Payment, if any, to the Non-Defaulting Party. The Termination Payment shall be payable in accordance with Section 6.4.

5.3 Rights And Remedies Are Cumulative. The rights and remedies of a Non-Defaulting Party set forth in section 5.2 shall be cumulative and in addition to whatever rights of the Parties otherwise provided in this Agreement.

5.4 Waiver. The Non-Defaulting Party shall be deemed to have waived its rights to declare an Early Termination Date and to demand a Termination Payment under Section 5.2 if (a) the Non-Defaulting Party fails to provide Notice of an Early Termination Date within one hundred eighty (180) days of the date on which the Event of Default actually becomes known to the Non-Defaulting Party and (b) the cause of the Event of Default is no longer continuing as of the date on which the Non-Defaulting Party issues its Notice declaring an Early Termination Date; provided that, the time period for providing Notice of an Early Termination Date.

5.5 Duty to Mitigate. The Non-Defaulting Party suffering damage as a result of an Event of Default by the Defaulting Party shall take, or cause to be taken, such commercially reasonable action as may be necessary to avoid, nullify, or otherwise to mitigate its damages.

5.6 No Obligation to Enter Into a Subsequent Contract. If Seller is the Defaulting Party, Buyer is relieved of any regulatory obligation to enter into any successor contract with Seller for the Unit.

ARTICLE VI - PAYMENT AND NETTING

6.1 Billing and Payment. On or before the 10th calendar day of each month of the Term, Seller shall invoice Buyer, in arrears, for all amounts due from Buyer to Seller under this Agreement, less Third Party Payments. Each invoice shall include amounts accrued under this Agreement in the preceding month; provided that, to the extent the determination of amounts due under this Agreement is based on invoices the CAISO or Governmental Authorities have rendered in the preceding month, the Parties acknowledge and agree that such amounts may relate to prior calendar months, as adjusted from time to time. In the event that all data required for calculation of the payments due in any month is unavailable at the time the invoice is rendered, a Party may render an invoice based on reasonably estimated values for the missing data, which shall be identified as estimated, subject to adjustment when actual, final data is received.

6.2 Netting. Buyer may reduce the amount of its payment to Seller in any month (setoff) by an amount equal to the amount Seller owes Buyer in accordance with this Agreement. In addition, Buyer is required to pay only the undisputed amount of any invoice. Payment of all undisputed amounts owed, less applicable setoffs, shall be due by the later of fifteen (15) days after delivery of the owed Party's invoice or the twenty-fifth day of the month ("Monthly Payment Date"). If either the invoice due date or Monthly Payment Date is not a Business Day, then such invoice or payment shall be provided on the next following Business Day. Buyer will make payments by electronic funds transfer, or by other mutually agreeable method(s). Any undisputed amounts not paid by the Monthly Payment Date will be deemed delinquent and will accrue interest at the Interest Rate, such interest to be calculated from and including the Monthly Payment Date to but excluding the date the delinquent amount is paid in full.

6.3 Disputes and Adjustments of Invoices. If an invoice or portion thereof or any other claim or adjustment arising hereunder is disputed, payment of the undisputed portion of the invoice must be paid when due, with Notice of the dispute given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. The Parties agree to use good faith efforts to resolve the dispute or identify the adjustment as soon as possible in accordance with this Agreement's dispute resolution procedures. Any required payment shall be made within fifteen (15) calendar days of resolution of the dispute, along with interest accrued at the Interest Rate from and including the due date to but excluding the date on which the payment is made. Inadvertent overpayments may be deducted by Buyer as setoffs. Any dispute with respect to an invoice or setoff is waived unless the other Party is Notified of the dispute within twelve (12) months after the invoice is rendered or any specific adjustment to the invoice is made. If any amount is not invoiced or setoff within twelve (12) months after the close of the month during which performance giving rise to the payment obligation occurred (or in the case of amounts based on CAISO invoices, within twelve (12) months after the close of the month during which such invoice or revised invoice giving rise to the payment obligation was rendered), the right to payment of that amount is waived.

6.4 Termination Payment. A Termination Payment shall be due no later than 20 Business Days after the Early Termination Date.

ARTICLE VII - LIMITATION OF LIABILITY, DAMAGES

NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, OR INDIRECT DAMAGES, LOST PROFITS, OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT, OR IN CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE; PROVIDED THAT, THE FOREGOING EXCLUSION SHALL NOT PRECLUDE RECOVERY BY A PARTY OF THE TERMINATION PAYMENT OR ANY LIQUIDATED DAMAGES EXPRESSLY HEREIN PROVIDED, NOR SHALL IT BE CONSTRUED TO LIMIT RECOVERY BY AN INDEMNITEE UNDER ANY INDEMNITY PROVISION IN RESPECT OF A THIRD PARTY CLAIM. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, INCLUDING PAYMENT OF THE TERMINATION PAYMENT, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND SUCH LIQUIDATED DAMAGES AS PROVIDED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

ARTICLE VIII - MISCELLANEOUS

8.1 Representations, Warranties and Covenants.

(a) Representations and Warranties of Seller. Seller represents and warrants that, for the entire Term:

(i) The Unit (described in Appendix B) is a Qualifying Unit ("QF") as defined in the Public Utility Regulatory Policies Act ("PURPA") and in the

regulations of the Federal Energy Regulatory Commission (“FERC”) at 18 C.F.R. sections 292.201 through 292.207;

(ii) Seller will, at Seller’s own expense, comply with all applicable Greenhouse Gas (“GHG”) regulations;

(iii) Seller will deliver the Products to Buyer free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any person;

(iv) Seller will take no action or permit any person (other than Buyer) to take any action that would impair in any way Buyer’s ability to rely on the Unit in order to satisfy its Resource Adequacy Requirements up to the Firm Capacity;

(v) Seller will be and remain registered with the California Climate Action Registry (“CCAR”), or its successor, and/or report greenhouse gas emissions output from the Unit if and when the CPUC requires that Buyer’s power purchase agreements contain a provision requiring sellers to register and/or report greenhouse gas emissions with the CCAR. (Seller’s failure to comply with this provision shall authorize Buyer to estimate greenhouse gas emissions and report these emissions at Seller’s expense);

(vi) Seller shall at all times operate and maintain the Unit in accordance with Prudent Electrical Practices; and

(vii) Seller has executed either a QF Participating Generator Agreement or Participating Generator Agreement, and, throughout the Term, Seller will comply fully with all applicable terms of the CAISO Tariff as a Participating Generator and shall comply with all applicable CAISO requirements.

(b) Representations and Warranties of Both Parties. Each Party represents and warrants to the other Party that, as of the Execution Date:

(i) it is duly organized, validly existing and in good standing under the Laws of the jurisdiction of its formation and is qualified to transact business in the State of California and in all jurisdictions where the ownership of its properties or its operations require such qualification, except where the failure to so qualify would not have a material adverse effect on its financial condition, its ability to own its properties or transact its business, or to carry out the transactions contemplated hereby;

(ii) except for receipt of the Governmental Approvals necessary to operate and maintain the Unit in the case of Seller, it has all Governmental Approvals necessary for it to perform its obligations under this Agreement;

(iii) it has full power and authority to carry on its business as now conducted and to enter into, and carry out its obligations under this Agreement, and the execution, delivery and performance of this Agreement are within its

powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any Law, rule, regulation, order or the like applicable to it;

(iv) execution and delivery of this Agreement and performance or compliance with any provision hereof will not result in the creation or imposition of any lien upon its properties, or a breach of, or constitute a default under, or give to any other Persons any rights of termination, amendment, acceleration or cancellation of any agreement to which it is a party or by which any of its respective properties is bound or affected;

(v) this Agreement and each other document executed and delivered in accordance with this Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, subject to any Equitable Defenses;

(vi) it is not bankrupt or insolvent and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming bankrupt;

(vii) there is not pending or, to its knowledge, threatened against it or any of its Affiliates any legal proceedings that could materially adversely affect its ability to perform its obligations under this Agreement;

(viii) no Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement; and

(ix) it is acting for its own account, has had the benefit of legal representation, has made its own independent decision to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Agreement.

8.2 Indemnity. Each Party as indemnitor shall indemnify and save harmless the other Party, the indemnitee, including indemnitee's directors, officers, and employees, against and from any and all loss and liability for injury to persons, including the employees of either Party, and damage to property, including the property of either Party, resulting from or arising out of actions taken or negligently not taken in performing its duties under this Agreement. This indemnity and save harmless provision shall apply notwithstanding the negligence of the indemnitee; provided that, neither Party shall be indemnified for liability or loss resulting from its sole negligence or willful misconduct. The indemnitor shall, at the indemnitee's request, defend any suit asserting a claim covered by this indemnity and shall pay all costs, including reasonable attorney's fees, that may be incurred by the indemnitee in enforcing this indemnity.

8.3 No Dedication. Nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to any Person not a Party to this Agreement. No undertaking by one Party to the other under any provision of this Agreement shall constitute the dedication of that Party's system or any portion thereof to the other Party or the public, nor affect the status of Buyer as an independent public utility corporation or Seller as an independent individual or entity.

8.4 Assignment. Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld; provided that, either Party may, without the consent of the other Party, transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof to its parent, Affiliates or financing provider(s); and provided further that, such financing provider(s) or any other such assignee shall first agree in writing that upon exercising its rights to assume the Agreement, it shall be bound by the terms and conditions hereof.

8.5 Choice of Law. THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. TO THE EXTENT PERMITTED BY LAW, EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.

8.6 General.

(a) This Agreement constitutes the entire agreement between the Parties relating to its subject matter.

(b) No amendment or modification to this Agreement shall be enforceable unless reduced to a writing signed by all Parties.

(c) There are no intended third-party beneficiaries of this Agreement, and this Agreement shall not be deemed to impart any rights enforceable by any third party.

(d) Waiver by a Party of any default by or obligation owed by the other Party shall not be construed as a waiver of any other default and may not be deemed to constitute such a waiver.

(e) The headings used herein are for convenience and reference purposes only.

(f) All indemnity rights shall survive the termination or expiration of this Agreement for twelve (12) months. All provisions relating to limitations of liability shall survive without limit.

(g) All provisions relating to invoicing, payment, settlement of other liabilities incurred pursuant to this Agreement and dispute resolution shall survive for the period necessary

to effectuate the rights of the Party benefited by such provision except as otherwise specified herein.

8.7 Appendices Incorporated. Appendices I through IV and IX are incorporated into and made a part of this Agreement. If the Unit is an ERR, Appendix V is incorporated into and made part of this Agreement, and the provisions of Appendix V shall govern if there is any inconsistency between the provisions set forth therein and those set forth elsewhere in this Agreement. If the Unit is a new QF, Appendix VI is incorporated into and made part of this Agreement, and the provisions of Appendix VI shall govern if there is any inconsistency between the provisions contained therein and those set forth elsewhere in this Agreement. If Seller or its agent is the SC for the Unit, Appendix VII is incorporated into and made part of this Agreement, and the provisions of Appendix VII shall govern if there is any inconsistency between the provisions of Appendix VII and those set forth elsewhere in this Agreement. If PG&E is the SC for the Unit, Appendix VIII is incorporated into and made part of this Agreement, and the provisions of Appendix VIII shall govern if there is any inconsistency between the provisions of Appendix VIII and those set forth elsewhere in this Agreement.

8.8 Insurance. Throughout the Term of this Agreement, Seller shall, at its sole cost and expense, procure and maintain insurance coverage as specified in Appendix IV; provided that, if the Unit is a new QF that must be constructed, the provisions of part III of Appendix VI, “Insurance Required During Construction,” shall apply until the Unit begins commercial operation.

8.9 Access to Information. Seller shall create and maintain accurate and detailed records relating to the Unit’s hourly deliveries of Energy and Other Products, all notices and information provided to Seller by the CAISO related to the Unit and its operation, and such other information as required to support invoiced amounts pursuant to this Agreement. Such records shall be made available to Buyer for inspection and photocopying during normal business hours upon reasonable Notice.

8.10 Severability. If any provision in this Agreement is determined to be invalid, void or unenforceable by the CPUC or any court having jurisdiction, such determination shall not invalidate, void, or make unenforceable any other provision, agreement or covenant of this Agreement and the Parties shall use their best efforts to modify this Agreement to give effect to the original intention of the Parties.

8.11 Counterparts. This Agreement may be executed in one or more counterparts each of which shall be deemed an original and all of which shall be deemed one and the same Agreement. Delivery of an executed counterpart of this Agreement by fax will be deemed as effective as delivery of an originally executed counterpart. Any Party delivering an executed counterpart of this Agreement by fax will also deliver an originally executed counterpart, but the failure of any Party to deliver an originally executed counterpart of this Agreement will not affect the validity or effectiveness of this Agreement.

8.12 Recordings. Unless a Party expressly objects to a Recording at the beginning of a telephone conversation, each Party consents to the creation of a tape or electronic recording (“Recording”) of all telephone conversations between the Parties pertaining to only the operational

aspects of the Unit pursuant to this Agreement, and that any such Recordings will be retained in confidence, secured from improper access, and may be submitted in evidence in any proceeding or action relating to this Agreement, subject to the confidentiality provisions of Section 10.7. Each Party waives any further notice of such monitoring or recording and agrees to notify its officers and employees of such monitoring or recording and to obtain any necessary consent of such officers and employees. Failure of a Party either to provide such notification or obtain such consent shall not in any way limit the use of the Recordings pursuant to this Agreement.

8.13 EEI Precedent. This Agreement is fashioned after the Edison Electric Institute (“EEI”) “Master Power Purchase & Sale Agreement” (“EEI Master”) in the form it existed as of December 31, 2007. For all purposes hereunder, including, without limitation, the resolution of disputes, relevant case law drawn from all jurisdictions interpreting and applying the EEI Master shall be applicable to the interpretation of the Parties’ rights and obligations under this Agreement.

ARTICLE IX - DISPUTE RESOLUTION

9.1 Intent of the Parties. Except as provided in the next sentence, the sole procedure to resolve any claim arising out of or relating to this Agreement is the dispute resolution procedure set forth in this Article IX. Either Party may seek a preliminary injunction or other provisional judicial remedy if such action is necessary to prevent irreparable harm or preserve the status quo, in which case both Parties nonetheless will continue to pursue resolution of the dispute by means of this procedure.

9.2 Management Negotiations.

(a) The Parties will attempt in good faith to resolve any controversy or claim arising out of or relating to this Agreement by prompt negotiations between each Party’s Authorized Representative, or such other person designated in writing as a representative of the Party (each a “Manager”). Either Manager may request, in writing, a meeting (in person or telephonically) to initiate negotiations to be held within ten (10) Business Days of the other Party’s receipt of such request, at a mutually agreed time and place. If the matter is not resolved within fifteen (15) Business Days of their first meeting (“Initial Negotiation End Date”), the Managers shall refer the matter to the designated senior officers of their respective companies (“Executive(s)”), who shall have authority to settle the dispute. Within five (5) Business Days of the Initial Negotiation End Date (“Referral Date”), each Party shall provide one another written notice confirming the referral and identifying the name and title of the Executive who will represent the Party.

(b) Within five (5) Business Days of the Referral Date the Executives shall establish a mutually acceptable location and date, which date shall not be greater than thirty (30) calendar days from the Referral Date, to meet. After the initial meeting date, the Executives shall meet, as often as they reasonably deem necessary to exchange relevant information and to attempt to resolve the dispute.

(c) All communications and writing exchanged between the Parties in connection with these negotiations shall be confidential and shall not be used or referred to in any subsequent binding adjudicatory process between the Parties.

(d) If the matter is not resolved within forty-five (45) calendar days of the Referral Date, or if the Party receiving the written request to meet, pursuant to Section 9.2(a) above, refuses or does not meet within the ten (10) Business Day period specified in Section 9.2(a) above, either Party may initiate mediation of the controversy or claim according to the terms of the following Section 9.3.

9.3 Mediation and Arbitration. If the dispute cannot be so resolved by negotiation as set forth in Section 9.2 above, it shall be resolved at the request of any Party through a two-step dispute resolution process administered by the American Arbitration Association (“AAA”). As the first step the Parties agree to mediate any controversy before a mediator from the AAA panel, pursuant to AAA’s commercial mediation rules, in San Francisco, California. Either Party may begin mediation by serving a written demand for mediation. The mediator shall not have the authority to require, and neither party may be compelled to engage in, any form of discovery prior to or in connection with the mediation. If within sixty (60) days after service of a written demand for mediation, the mediation does not result in resolution of the dispute, then the controversy shall be settled by arbitration conducted by a retired judge or justice from the AAA panel conducted in San Francisco, California, administered by and in accordance with AAA’s Commercial Arbitration Rules (“Arbitration”). The period commencing from the date of the written demand for mediation until the appointment of a mediator shall be included within the sixty (60) day mediation period. Any mediator(s) and arbitrator(s) shall have no affiliation with, or financial or other interest in, either Party. Either Party may initiate arbitration by filing with the AAA a notice of intent to arbitrate within sixty (60) days of service of the written demand for mediation.

9.4 Arbitration Procedures. At the request of a Party, the arbitrator shall have the discretion to order depositions of witnesses to the extent the arbitrator deems such discovery relevant and appropriate. Depositions shall be limited to a maximum of three per Party and shall be held within thirty (30) days of the arbitrator’s order. Additional depositions may be scheduled only with the permission of the arbitrator, and for good cause shown. Each deposition shall be limited to a maximum of six hours duration unless otherwise permitted by the arbitrator for good cause shown. All objections are reserved for the arbitration hearing except for objections based on privilege and proprietary and confidential information. The arbitrator shall also have discretion to order the Parties to exchange relevant documents.

(a) Each of the Parties shall exchange and submit to the arbitrator, an offer in the form of the award it considers the arbitrator should make. If the arbitrator requires the Parties to submit more than one such offer, the arbitrator shall designate a deadline by which time the Parties shall submit their last and best offer, but in no event may the last and best offers be exchanged any later than thirty (30) days before the arbitration hearing commences. In such proceedings the arbitrator shall be limited to awarding only one of the two “last and best” offers submitted, and shall not determine an alternative or compromise remedy.

(b) The arbitrator shall have no authority to award punitive or exemplary damages or any other damages other than direct and actual damages and the other damages contemplated by this Agreement.

(c) The arbitrator’s award shall be made within nine months of the filing of the notice of intention to arbitrate (demand) and the arbitrator shall agree to comply with this

schedule before accepting appointment. However, this time limit may be extended by agreement of the Parties or by the arbitrator, if necessary. The California Superior Court of the City and County of San Francisco may enter judgment upon any award rendered by the arbitrator. The Parties are aware of the decision in *Advanced Micro Devices, Inc. v. Intel Corp.*, 9 Cal. 4th 362 (1994), and, except as modified by this Agreement, intend to limit the power of the arbitrator to that of a Superior Court judge enforcing California law.

(d) The prevailing Party in this dispute resolution process is entitled to recover its costs and reasonable attorneys' fees, in addition to any award.

(e) The arbitrator shall have the authority to grant dispositive motions prior to the commencement of or following the completion of discovery if the arbitrator concludes that there is no material issue of fact pending before him.

(f) Except as may be required by law, neither a Party nor an arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both Parties.

ARTICLE X - NOTICES

Whenever this Agreement requires or permits delivery of a "Notice" (or requires a Party to "Notify"), the Party with such right or obligation shall provide a written communication to the address and in the manner specified in Appendix __; provided that, notwithstanding any other provision in this Agreement, a Party may change the designations of addressee or notice recipient unilaterally by giving notice of the change to the other Party at least two weeks prior to the effective date of the change.

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be duly executed by its authorized representative as of the date first written above.

For Seller:

For Buyer:

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Appendix I - General Definitions

“Annual Capacity Test” means a test of the Unit’s capability to deliver Energy conducted during the Term in accordance with the Test Procedures.

“Associated Energy” means the MWhs of electric Energy generated by the Unit using the Firm Capacity, as specified in Section 3.1(a).

“Availability” has the meaning set forth in Section 4.1(b).

“Availability Adjustment” has the meaning set forth in Section 4.1(c).

“Base Load” means, when used in relation to the Unit, the MW of Capacity and MWhs of Energy that the Unit produces 24 hours a day, seven days a week.

“Business Day” means any day except Saturday, Sunday, or a Federal Reserve member bank holiday.

“CAISO” means the California Independent System Operator Corporation or any successor entity performing similar functions.

“CAISO Maintenance Outage” means a “Maintenance Outage” or an “Approved Maintenance Outage,” as those terms are defined in the CAISO Tariff. A CAISO Maintenance Outage that also meets the requirements of a Scheduled Maintenance Outage shall be deemed to be a Scheduled Maintenance Outage, but shall otherwise be a Forced Outage.

“CAISO Tariff” means the CAISO FERC Electric Tariff, Third Replacement Volume Nos. I and II, as it may be amended, supplemented or replaced (in whole or in part) from time to time.

“Capacity” means the maximum capability of the Unit to generate electric energy measured in megawatts, after deduction for auxiliary loads and station electrical uses, including any variation in the form of capacity including installed capacity, locational capacity or similar products.

“Capacity Test” means an Initial Capacity Test, a Seasonal Capacity Test, a Seller’s Capacity Test or a Buyer’s Capacity Test.

“CEC” means the California Energy Commission or its successor agency.

“Contract Year” means a period of twelve (12) consecutive months; the first Contract Year shall commence on the Initial Delivery Date, and each subsequent Contract Year shall commence on the anniversary of the Initial Delivery Date.

“Costs” means, with respect to the Non-Defaulting Party: (a) the difference, if any, between the price it pays or receives under this Agreement and the market price for the Products as of the Early Termination Date; (b) brokerage fees, commissions and other similar third party transaction costs; (c) expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements

which replace this Agreement; and (d) all reasonable attorneys' fees and expenses incurred by the Non-Defaulting Party in connection with the termination of this Agreement, all of which result from the early Termination of this Agreement and all of which are determined in a commercially reasonable manner.

"CPUC" or "Commission" means the California Public Utilities Commission.

"Day Ahead Schedule" has the meaning set forth in the CAISO Tariff.

"Design Capacity" means, for the Unit, the maximum rate of electrical energy production, net of auxiliary loads and station electrical uses, that the Unit can be expected to reliably and safely deliver on a sustained basis, as measured at the Electrical Delivery Point, at ISO Conditions, which is set forth as of the Execution Date in Appendix II.

"Deviation Charges" has the meaning set forth in Section 3.5(d).

"Early Termination Date" has the meaning set forth in Section 5.2.

"Effective Date" is the date on which this Agreement has been executed by both Parties.

"Electrical Delivery Point" means the Unit's point of interconnection with the CAISO control grid.

"Energy" means the MWhs of electricity delivered by Seller to Buyer through the revenue meter.

"ERR" or "Eligible Renewable Resource" has the meaning set forth in Section 25741 of the California Public Utilities Code.

"FERC" means the Federal Energy Regulatory Commission, or any successor organization.

"Firm Capacity" means the maximum amount of Capacity from the Unit that Seller has committed to sell to Buyer in each month of the Term, as set forth in Section 2.1.

"Force Majeure" or "Force Majeure Event" shall mean any event or circumstance which wholly or partly prevents or delays the performance of any material obligation arising under this Agreement, but only if and to the extent (i) such event is not within the reasonable control, directly or indirectly, of the Party seeking to have its performance obligation(s) excused thereby, (ii) the Party seeking to have its performance obligation(s) excused thereby has taken all reasonable precautions and measures in order to prevent or avoid such event or mitigate the effect of such event on such Party's ability to perform its obligations under this Agreement and which by the exercise of due diligence such Party could not reasonably have been expected to avoid and which by the exercise of due diligence it has been unable to overcome, and (iii) such event is not the direct or indirect result of the negligence or the failure of, or caused by, the Party seeking to have its performance obligations excused thereby. Events that, subject to the foregoing, could qualify as Force Majeure Events include unusual flooding, lightning, landslide, earthquake, fire, drought, explosion, epidemic, quarantine, storm, hurricane, tornado, other natural disaster or unusual or extreme adverse weather-related events; war (declared or undeclared), strikes other than those with regard to work by a subcontractor on the Site or

involving Seller, riot or similar civil disturbance, acts of the public enemy (including acts of terrorism), epidemic, sabotage, blockade, insurrection, revolution, and restraint by a court order or other Governmental Authority. Force Majeure Events shall not include (i) strikes and other labor disputes (including collective bargaining disputes and lockouts) with regard to work by a subcontractors on the Site or involving Seller's Site employees, (ii) late delivery or breakage of equipment or materials (except to the extent due to a Force Majeure Event otherwise excusable hereunder), (iii) lack of funds or change in economic circumstance, (iv) shortage or unavailability of labor, or (v) climatic conditions (including severe or extreme weather that would not otherwise qualify as a Force Majeure Event) that are reasonably to be expected for the geographic area where the Site is located, (vi) failure to timely apply for or obtain Governmental Approvals (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 (vii) 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).

“Forced Outage” means any unplanned reduction or suspension of the electrical output from the Unit or unavailability of a Product in whole or in part from the Unit in response to a mechanical, electrical, or hydraulic control system trip or operator-initiated trip in response to an alarm or equipment malfunction and any other unavailability of the Unit for operation, in whole or in part, for maintenance or repair that is not a Scheduled Maintenance Outage and not the result of Force Majeure; provided that a CAISO Maintenance Outage that is not also a Scheduled Maintenance Outage shall be a Forced Outage.

“Gains” means, with respect to the Non-Defaulting Party, an amount equal to the present value of the economic benefit to it, if any, netted against that Party's Costs, resulting from the early Termination of this Agreement, all of which are determined in a commercially reasonable manner.

“Generation Meter Multiplier” or “GMM” has the meaning set forth in the CAISO Tariff.

“Governmental Approval” means all authorizations, consents, approvals, waivers, exceptions, variances, filings, Permits, orders, licenses, exemptions, notices to and declarations of or with any Governmental Authority and shall include those siting and operating Permits and licenses, and any of the foregoing under any applicable environmental Law, that are required for the use and operation of the Unit or related project.

“Governmental Authority” means any federal, state, local, or municipal government, government department, commission, board, bureau, agency, or instrumentality, or any judicial, regulatory, or administrative body having jurisdiction as to the matter in question.

“Green Attributes” or “GA” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Unit, and its displacement of conventional Energy generation. Green Attributes include but are not limited to, Renewable Energy Credits, as well as: (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO2), methane (CH4), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs)

that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; and (3) the reporting rights to these avoided emissions, such as Green Tag Reporting Rights. Green Tag Reporting Rights are the right of a Green Tag Purchaser to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party at the Green Tag Purchaser's discretion, and include without limitation those Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Green Tags are accumulated on a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of Energy. Green Attributes do not include (i) any Energy, capacity, reliability or other power attributes from the Unit, (ii) production tax credits associated with the construction or operation of the Unit and other financial incentives in the form of credits, reductions, or allowances associated with the Unit that are applicable to a state or federal income taxation obligation, (iii) fuel-related subsidies or "tipping fees" that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or (iv) emission reduction credits encumbered or used by the Unit for compliance with local, state, or federal operating and/or air quality permits. If the Unit is a biomass or landfill gas Unit and Seller receives any tradable Green Attributes based on the greenhouse gas reduction benefits or other emission offsets attributed to its fuel usage, it shall provide Buyer with sufficient Green Attributes to ensure that there are zero net emissions associated with the production of electricity from the Project.

"Guaranteed Availability" has the meaning set forth in Section 4.1(a).

"Hour Ahead Schedule" has the meaning set forth in the CAISO Tariff.

"Initial Capacity Test" is a test of the Unit's capability to deliver Energy conducted prior to the Initial Delivery Date in accordance with the Test Procedures.

"Initial Delivery Date" is the date on which the Buyer's right to receive the Products and the Seller's obligation to deliver the Products to Buyer commence, as set forth in Section 2.1.

"Instructed Operations" means (i) an Operational Order, (ii) a mandatory direction of the CAISO or (iii) as required pursuant to its QF Participating Generator Agreement or Participating Generator Agreement to meet Emergencies and reliability needs including voltage support.

"Monthly Payment Date" has the meaning set forth in Section 6.2.

"MRTU" means the Market Redesign and Technology Upgrade proposed by the CAISO in FERC Docket No. ER06-615-000.

"MW" means megawatts.

"MWh" means megawatt-hour.

“NERC” means the North American Electric Reliability Council or a successor organization that is responsible for establishing reliability criteria and protocols.

“Notice” and “Notify” have the meanings set forth in Article X.

“Off-Peak” means the months or period specified in Section 4.1(a).

“Operational Order” means a mandate issued by a Governmental Authority which the Seller has no discretion to ignore or avoid to offer or provide a Product or to Start-Up, Shut-Down, curtail or operate the Unit. An Operational Order would include, for example, a mandate issued by the U.S. Secretary of Energy to offer Capacity or Energy or to operate the Unit during an Emergency. In contrast, by way of further example, a legal obligation to test the Unit for the purpose of maintaining its Governmental Approvals is not considered an Operational Order.

“Other Products” shall mean, for the Unit, (1) rights associated with Resource Adequacy Requirements; and (2) all products or services similar to the foregoing, in each case which can be produced by or are associated with the Firm Capacity of the Unit, as set forth in Section 3.1(a).

“Outage” means the partial or full unavailability or inability of the Unit to operate at 100% of its Firm Capacity due to a Forced Outage, Scheduled Maintenance Outage, Force Majeure, or an instructed curtailment, including any derating or inability to produce a Product.

“Participating Generator” means an entity as defined in the CAISO Tariff, subject to the applicable provisions of the CAISO Tariff.

“Participating Generator Agreement” means the agreement entered into between the CAISO and a Participating Generator, a *pro forma* version of which is set forth in Appendix B.2 of the CAISO Tariff.

“Participating Transmission Owner” or “Participating TO” means an entity that (i) owns, operates and maintains transmission lines and associated facilities and/or has entitlements to use certain transmission lines and associated facilities and (ii) has transferred to the CAISO operational control of such facilities and/or entitlements to be made part of the CAISO control area.

“Peak” means the months or period specified in Section 4.1(a).

“Permit” means any waiver, exemption, variance, franchise, permit, authorization, consent, ruling, certification, license or similar order of or from, or filing or registration with, or notice to, any Governmental Authority that authorizes, approves, limits or imposes conditions upon a specified activity.

“Person” means an individual, partnership, joint venture, corporation, limited liability company, trust, association or unincorporated organization, or any Governmental Authority.

“Product” has the meaning set forth in Section 3.1(a).

“Prudent Electrical Practices” means those practices, methods, applicable codes and acts engaged in or approved by a significant portion of the electric power industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time a decision is made, that could have been expected to accomplish a desired result at reasonable cost consistent with good business practices, reliability, safety and expedition. Prudent Electrical Practices are not intended to be limited to the optimum practices, methods, or acts to the exclusion of others, but rather to those practices, methods and acts generally accepted or approved by a significant portion of the electric power industry in the relevant region, during the relevant time period, as described in the immediately preceding sentence.

“QF” or “Qualifying Facility” means a Qualifying Unit as defined in the Public Utility Regulatory Policies Act (“PURPA”) and in the regulations of the Federal Energy Regulatory Commission at 18 C.F.R. sections 292.201 through 292.207.

“Resource Adequacy Requirement” or “RAR” means a standard established and administered by the CPUC and/or the CAISO or a successor control area operator, whereby Capacity is identified and the physical Unit is made available to the CAISO for eligibility to count Capacity toward the Resource Adequacy Requirement may be determined by identifying the full Resource Adequacy capability of the Unit or an amount of Resource Adequacy capability from the Unit.

“RMR” means Reliability Must Run, as defined in the CAISO Tariff.

“Scheduled Energy” means Energy generated in response to Scheduled Operations and delivered to Buyer at the Electrical Delivery Point for its account.

“Scheduled Maintenance” means removing the equipment, or any portion thereof, from service availability, in whole or in part, for inspection and/or general overhaul of one or more major equipment groups of the type that is (i) necessary to reliably maintain the Unit, (ii) cannot be reasonably conducted during Unit operations, (iii) causes the available Capacity to be reduced to less than 100% of the Firm Capacity (as applicable for such month) and (iv) has been scheduled and Noticed in accordance with the requirements of Section 3.8.

“Scheduled Maintenance Outage” is the period in which Scheduled Maintenance is performed provided that only a period which has been Noticed and is otherwise in accordance with Section 3.8 shall be considered a Scheduled Maintenance Outage. A Scheduled Maintenance Outage may be a CAISO Maintenance Outage, but not all CAISO Maintenance Outages shall be deemed to be Scheduled Maintenance Outages. A CAISO Maintenance Outage that is not also a Scheduled Maintenance Outage shall be a Forced Outage.

“Scheduling Coordinator” or “SC” means an entity certified by the CAISO as qualifying as a Scheduling Coordinator pursuant to the CAISO Tariff.

“Shut-Down” means the action of causing the Unit to cease producing Energy and/or Ancillary Services.

“Start-Up” means the action of bringing the Unit from non-operation to operation at the minimum load specified in the Agreement.

“Third Party” means any Person other than Buyer or Seller.

“Third Party Payments” has the meaning set forth in Section 3.1(e).

“Unit(s)” means the specific generator or generators from which Seller has committed to provide capacity and energy under the terms of this Agreement, as described in Appendix II.

“WECC” means the Western Electricity Coordinating Council.

"WREGIS" means the Western Renewable Energy Generating Information System or any successor renewable energy tracking program.

Appendix II - Description of Unit, and Operational Limitations

UNIT DESCRIPTION

Unit name: _____

Unit physical address: _____

Total number of units at that address: ____

Number of units at that address that are committed to Buyer (the “Unit(s)”): ____

UNIT(S) DESCRIPTION

Technology type: _____

Specific Unit description: The Unit is a _____

Design capacity of the Unit: ____ MW

Firm Capacity: ____ MW

CAISO resource ID: _____

Interconnection. The Electrical Delivery Point for the Unit(s) is described as follows:

Distribution Area: NP15

CAISO: _____

Delivery node: _____

Delivery Point: CAISO meter at PG&E’s Substation

Delivery Point Address:

The Gas Delivery Point for the Unit(s) is described as follows:

Delivery Point:

Delivery Point Address:

Operating Parameters and Operational Limitations of the Unit(s):

The Unit must be scheduled to run at 100% of Firm Capacity during all hours of All months except during Scheduled Maintenance Outages.

Appendix III – Illustrative Calculations

Sample Calculation of Availability

Assumptions: Generating Facility consisting of two units (Unit A: 78MW, Unit B: 74 MW) with total firm contract capacity of 152 MW, 744 hour month, 100 hours of Scheduled Maintenance Outages on both units, followed by 340 hours of Forced Outage on Unit A (100% outage of 78 MW), Buyer receives 74 MW from Unit B.

$$\text{Availability}_m = \frac{\text{MCC}_m * (\text{mnthhrs}_m - \text{mainthrs}_m - \text{unavailhrs}_m)}{[\text{MCC}_m * (\text{mnthhrs}_m - \text{mainthrs}_m)]}$$

$$\text{Availability}_m = \frac{152 * (744 - 100 - (340 * 78/152))}{152 * (744 - 100)} = \frac{152 * (744 - 100 - (340 * .513))}{152 * (744 - 100)}$$

$$\frac{152 * (744 - 100 - 174.4)}{152 * (744 - 100)} = \frac{152 * (469.6)}{152 * (644)} = \frac{71,379}{97,888} = 72.92\%$$

Non-Availability Discount for off peak month (May), AA:

$$\text{AA} = 100\% - [(90\% - \text{Availability}) * 2] = 100\% - [(90\% - 72.92\%) * 2]$$

$$= 100\% - [(17.08\%) * 2] = 100\% - 34.16 = \underline{\underline{65.84\%}}$$

Sample Calculation of Firm Capacity Payment

Firm Payment Allocations by Month

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

Monthly Firm Capacity Payment for May: $\text{MCCP} = \text{MCCPR} * \text{MAF}_m * \text{MCC}_m * \text{AA}$

$$\text{MCCP} = \$91.97/\text{kW-yr} * 1\text{yr} * 0.04 * 152,000\text{kW} * 0.6584 = \underline{\underline{\$368,163}}$$

Appendix IV - Required Insurance Coverage For QFs That Are In Commercial Operation

(a) Workers' Compensation and Employers' Liability.

(i) Workers' Compensation insurance indicating compliance with any applicable labor codes, acts, Laws or statutes, state or federal, where Seller performs Work.

(ii) Employers' Liability insurance shall not be less than \$1,000,000 for injury or death occurring as a result of each accident.

(b) Commercial General Liability.

(i) Coverage shall be at least as broad as the Insurance Services Office (ISO) Commercial General Liability Coverage "claims made" form, with no alterations to the coverage form.

(ii) The limit shall not be less than \$10,000,000 each occurrence for bodily injury, property damage, personal injury and products/completed operations. Defense costs shall be provided as an additional benefit and not included within the limits of liability. Coverage limits may be satisfied using an umbrella or excess liability policy. Limits shall be on a per project basis.

(iii) If a claims made form is provided, it shall contain no retroactive date, or a retroactive date that precedes the policy inception date, and upon cancellation, Seller will agree to provide a "basic extended reporting" coverage, good for five years after the end of the policy period. The retroactive date shall remain prior to or coincide with the contract inception date.

(iv) Coverage shall: a) by "Additional Insured" endorsement add as insureds Buyer, its directors, officers, agents and employees with respect to liability arising out of the Work performed by or for the Seller (Insurance Services Office (ISO) Form CG2010 1185, or equivalent form). In the event the Commercial General Liability policy includes a "blanket endorsement by contract," the following language added to the certificate of insurance will satisfy Buyer's requirement: "PG&E, its directors, officers, agents and employees with respect to liability arising out of the Work performed by or for the Seller has been endorsed by blanket endorsement;" b) be endorsed to specify that the Seller's insurance is primary and that any insurance or self-insurance maintained by Buyer shall not contribute with it; and c) include a severability of interest clause.

(c) Additional Insurance Provisions.

(i) Before interconnecting with Buyer, Seller shall furnish Buyer with certificates of insurance and endorsements of all required insurance for Seller.

(ii) Seller shall give Buyer thirty (30) days advance written Notice of any cancellation, material change or reduction in coverage or limits under Seller's policies.

(iii) Insurance certificates and endorsements must be signed by a person authorized by Seller's insurer to bind coverage on its behalf and shall be submitted to:

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

(iv) Reviews of such insurance may be conducted by Buyer on an annual basis and upon Buyer's reasonable request, Seller shall provide complete certified copies of Seller's insurance policies.

(v) Upon request, Seller shall furnish Buyer evidence of insurance for its subcontractors, if any.

(vi) Buyer acknowledges that Seller may elect to self-insure with respect to one or more lines of coverage upon Buyer's approval, and that Seller may vary its deductible amounts under its policies from time to time.

Appendix V – Non-Modifiable Terms and Conditions Applicable to ERRs

Definitions

“CPUC Approval” means a final and non-appealable order of the CPUC, without conditions or modifications unacceptable to the Parties, or either of them, which contains the following terms:

(a) approves this Agreement in its entirety, including payments to be made by the Buyer, subject to CPUC review of the Buyer’s administration of the Agreement;

(b) finds that any procurement pursuant to this Agreement is procurement from an eligible renewable energy resource for purposes of determining Buyer’s compliance with any obligation that it may have to procure eligible renewable energy resources pursuant to the California Renewables Portfolio Standard (Public Utilities Code Section 399.11 et seq.), Decision 03-06-071, or other applicable law.

CPUC Approval will be deemed to have occurred on the date that a CPUC decision containing such findings becomes final and non-appealable.

“Eligible Renewable Energy Resource” or “ERR” has the meaning set forth in California Public Utilities Code Section 399.12 and California Public Resources Code Section 25741, as either code provision is amended or supplemented from time to time.

“Green Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Project, and its displacement of conventional Energy generation. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SO_x), nitrogen oxides (NO_x), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO₂), methane (CH₄), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere; and (3) the reporting rights to these avoided emissions, such as Green Tag Reporting Rights. Green Tag Reporting Rights are the right of a Green Tag Purchaser to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party at the Green Tag Purchaser’s discretion, and include without limitation those Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Green Tags are accumulated on a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of Energy. Green Attributes do not include (i) any Energy, capacity, reliability or other power attributes from the Project, (ii) production tax credits associated with the construction or operation of the Project and other financial incentives in the form of credits, reductions, or allowances associated with the Project that are applicable to a state or federal income taxation obligation, (iii) fuel-related subsidies or “tipping fees” that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or (iv) emission reduction credits encumbered or used by the Project for compliance with local,

state, or federal operating and/or air quality permits. If the Project is a biomass or landfill gas facility and Seller receives any tradable Green Attributes based on the greenhouse gas reduction benefits or other emission offsets attributed to its fuel usage, it shall provide Buyer with sufficient Green Attributes to ensure that there are zero net emissions associated with the production of electricity from the Project.

“Renewable Energy Credit” has the meaning set forth in the California Public Utilities Code Section 399.12(g), as may be amended from time to time or as further defined or supplemented by Law.

Green Attributes

Seller hereby provides and conveys all Green Attributes associated with all electricity generation from the Project to Buyer as part of the Product being delivered. Seller represents and warrants that Seller holds the rights to all Green Attributes from the Project, and Seller agrees to convey and hereby conveys all such Green Attributes to Buyer as included in the delivery of the Product from the Project.

Eligibility

Seller and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Project qualifies and is certified by the CEC as an Eligible Renewable Energy Resource (“ERR”) as such term is defined by the Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Project’s output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law.

Governing Law

THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. TO THE EXTENT ENFORCEABLE AT SUCH TIME, EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.

Appendix VI – Credit Provisions, Construction Milestones, and Insurance Coverage Requirements Applicable to New QFs

I. CREDIT AND COLLATERAL REQUIREMENTS

A. Buyer Financial Information. If requested by Seller, Buyer shall deliver to Seller (a) within one hundred twenty days after the end of each fiscal year with respect to PG&E Corporation, a copy of PG&E Corporation's annual report containing audited consolidated financial statements for such fiscal year and (b) within sixty days after the end of each of PG&E Corporation's first three fiscal quarters of each fiscal year, a copy of PG&E Corporation's quarterly report containing unaudited consolidated financial statements for each accounting period prepared in accordance with generally accepted accounting principles. Buyer shall be deemed to have satisfied such delivery requirement if the applicable report is publicly available on www.pge-corp.com or on the SEC EDGAR information retrieval system; provided however, that should such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default, so long as such statements are provided to Seller upon their completion and filing with the SEC.

B. Seller Financial Information. The applicable financial information shall be provided as specified on the Cover Sheet:

1. Option A: If requested by Buyer, Seller shall deliver (i) within one hundred twenty days following the end of each fiscal year, a copy of Seller's annual report containing audited consolidated financial statements for such fiscal year and (ii) within sixty days after the end of each of its first three fiscal quarters of each fiscal year, a copy of such Party's quarterly report containing unaudited consolidated financial statements for such fiscal quarter. In all cases the statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as such Party diligently pursues the preparation, certification and delivery of the statements.

2. Option B: If requested by Buyer, Seller shall deliver to Buyer (i) within one hundred twenty days following the end of each fiscal year, a copy of the annual report containing audited consolidated financial statements for such fiscal year for the party(s) specified on the Cover Sheet and (ii) within sixty days after the end of each of its first three fiscal quarters of each fiscal year, a copy of quarterly report containing unaudited consolidated financial statements for such fiscal quarter for the party(s) specified on the Cover Sheet. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the relevant entity diligently pursues the preparation, certification and delivery of the statements.

C. Grant of Security Interest/Remedies. To secure its obligations under this Agreement and to the extent Seller delivers the Project Development Security or Term Security, as applicable, hereunder, Seller hereby grants to Buyer, as the secured party, a present and continuing security interest in, and lien on (and right of setoff against), and assignment of, all such Performance Assurance posted with Buyer in the form of cash collateral and cash equivalent collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, Buyer. Seller agrees to take such action as Buyer reasonably requires in order to perfect a first-priority security interest in, and lien on (and right of setoff against), such Performance Assurance and any and all proceeds resulting therefrom or from the liquidation thereof. Upon or any time after the occurrence or deemed occurrence and during the continuation of an Event of Default or an Early Termination Date, Buyer, as the Non-Defaulting Party, may do any one or more of the following: (a) exercise any of the rights and remedies of a secured party with respect to all Project Development Security or Term Security, as applicable, including any such rights and remedies under law then in effect; (b) exercise its rights of setoff against any and all property of Seller, as the Defaulting Party, in the possession of the Buyer or Buyer's agent; (c) draw on any outstanding Letter of Credit issued for its benefit; and (d) liquidate all Project Development Security or Term Security, as applicable, then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever Seller, including any equity or right of purchase or redemption by the Seller. The Buyer shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce the Seller's obligations under the Agreement (Seller remaining liable for any amounts owing to Buyer after such application), subject to the Buyer's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

D. Performance Assurance.

1. Project Development Security; Term Security. To secure its obligations under this Agreement Seller agrees to deliver to Buyer collateral, which Seller shall maintain in full force and effect for the period posted with Buyer, as follows:

(i) Project Development Security (must be posted within two (2) business days from the Effective Date of this Agreement and remain in effect until Seller posts Project Development Security pursuant to subpart (ii) below) in the following amount and form: Amount = \$ _____; Form = [] cash, [] letter of credit (in a form and issued by a bank satisfactory to Buyer), [] guaranty (in a form and provided by a guarantor acceptable to Buyer);

(ii) Project Development Security (must be posted before subpart (i) above is superseded and remain in effect until Seller posts Term Security pursuant to subpart (iii) below) in the in the following amount and form: Amount = \$ _____; Form = [] cash, [] letter of credit (in a form and issued by a bank satisfactory to Buyer), [] guaranty (in a form and provided by a guarantor acceptable to Buyer); and

(iii) Term Security (must remain in effect from the Unit's commercial operation date until the end of the Term) in the following amount and form: Amount = \$ _____; Form = [] cash, [] letter of credit (in a

form and issued by a bank satisfactory to Buyer), [] guaranty (in a form and provided by a guarantor acceptable to Buyer).

Any such Performance Assurance shall not be deemed a limitation of damages, unless otherwise specifically provided by the terms set forth in this Agreement.

2. Use of Project Development Security. Buyer shall be entitled to draw upon the Project Development Security posted by Seller for damages and costs until such time as the Project Development Security is exhausted. Buyer shall also be entitled to draw upon the Project Development Security for any damages arising upon Buyer's declaration of an Early Termination Date.

3. Termination of Project Development Security. If after the Unit's commercial operation date no damages are owed to Buyer under this Agreement, then Seller shall no longer be required to maintain the Project Development Security, and any such amounts held by Buyer shall be returned to Seller within five (5) Business Days of Seller's provision of the Term Security.

4. Return of Term Security. Buyer shall return the unused portion of Term Security to Seller promptly after the following has occurred: (a) either the Term of the Agreement has ended, or, subject to Section 2.3, an this Agreement is terminated earlier; and (b) all payment obligations of the Seller arising under this Agreement, including the payment of damages or a termination payment, are paid in full (whether directly or indirectly such as through set-off or netting).

E. Letter of Credit.

1. If Seller has provided a Letter of Credit pursuant to any of the applicable provisions in this Article Eight, then Seller shall renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit and in accordance with this Agreement. In the event the issuer of such Letter of Credit (x) fails to maintain a Credit Rating of at least an A2 by Moody's and at least an A by S&P, (y) indicates its intent not to renew such Letter of Credit, or (z) fails to honor Buyer's properly documented request to draw on an outstanding Letter of Credit by such issuer, Seller shall (A) provide a substitute Letter of Credit that is issued by a qualified bank acceptable to Buyer, other than the bank failing to honor the outstanding Letter of Credit, or (B) post cash in each case in an amount equal to the outstanding Letter of Credit within five (5) Business Days after Buyer receives Notice of such refusal ("Cure"), as applicable. If Seller fails to Cure or if such Letter of Credit expires or terminates without a full draw thereon by Buyer, or fails or ceases to be in full force and effect at any time that such Letter of Credit is required pursuant to the terms of this Agreement, then Seller shall have failed to meet the creditworthiness/collateral requirements of Article Eight.

2. In all cases, the reasonable costs and expenses of establishing, renewing, substituting, canceling, increasing reducing, or otherwise administering the Letter of Credit shall be borne by Seller.

II. MILESTONES SCHEDULE

A. Construction Milestones.

1. Time is of the essence in regards to the Transaction. As such, certain milestones for the construction of the Project as set forth in this Appendix III (below) (“Milestones”) must be achieved in a timely fashion or Seller will have defaulted under this Agreement. Seller shall provide Buyer with any requested documentation to support the achievement of Milestones within ten (10) Business Days of receipt of such request by Seller.

2. If Seller misses three (3) or more Milestones, other than a Guaranteed Project Milestone, or misses any one (1) by more than ninety (90) days, except as the result of Force Majeure, Seller shall submit to Buyer, within ten (10) Business Days of such missed Milestone completion date, a remedial action plan (“Remedial Action Plan”), which shall provide a detailed description of Seller’s course of action and plan to achieve the missed Milestones and all subsequent Milestones by the Guaranteed Commercial Operation Date (which shall be set forth in part 3(A) below); provided, that delivery of any Remedial Action Plan shall not relieve Seller of its obligation to meet any subsequent Milestones and the Guaranteed Commercial Operation Date. If the missed Milestone(s) is a Guaranteed Project Milestone, then subsection (iv) below shall apply.

3. “Guaranteed Project Milestones” are as follows:

(A) The Construction Start Date shall occur no later than _____ (the “Guaranteed Construction Start Date”); and

(B) Seller shall have demonstrated Commercial Operation per the terms of this Appendix VI no later than _____, (the “Guaranteed Commercial Operation Date”).

4. Seller shall cause the Project to achieve the Commercial Operation Date by the Guaranteed Commercial Operation Date; provided, however, that the Commercial Operation Date shall not occur more than one hundred eighty (180) days prior to the Guaranteed Commercial Operation Date. If the Commercial Operation Date occurs after the Guaranteed Commercial Operation Date or the Construction Start Date occurs after the Guaranteed Construction Start Date, as applicable (as may be delayed on a day by day basis by Force Majeure up to ninety (90) days for either Guaranteed Project Milestone), Buyer shall be entitled to draw upon the Project Development Security for liquidated damages equal to Daily Delay Damages for each day or portion of a day that (A) the Commercial Operation Date occurs after the Guaranteed Commercial Operation Date for up to a total of sixty (60) days (“Project Cure Period”); or (B) the Construction Start Date occurs after the Guaranteed Construction Start Date, as applicable, up to a total of sixty (60) days (“Construction Cure Period”). Each Party agrees and acknowledges that (I) the damages that Buyer would incur due to delay in achieving either Guaranteed Project Milestone, would be difficult or impossible to predict with certainty, and (II) the Daily Delay Damages are an appropriate approximation of such damages. Seller shall be entitled to the return of all Daily Delay Damages collected by Buyer as a result of Seller’s failure to meet the Guaranteed Construction Start Date, only if Seller meets the Guaranteed Commercial Operation Date (as may be extended by Force Majeure as described above), as provided further in Section 8.4(c) of this Agreement. For sake of certainty, Buyer shall retain all Daily Delay

Damages drawn as a result of Seller’s failure to meet the Guaranteed Commercial Operation Date (as may be extended by Force Majeure, as described above) and the Guaranteed Construction Start Date, if Seller fails to meet the Guaranteed Commercial Operation Date.

Identify Milestone	Date for Completion

[Table to be completed by Buyer and Seller]

III. INSURANCE COVERAGE REQUIRED DURING CONSTRUCTION (once the Unit is in commercial operation, the provisions of Appendix IV shall apply).

A. Workers’ Compensation and Employers’ Liability.

1. Workers’ Compensation insurance indicating compliance with any applicable labor codes, acts, Laws or statutes, state or federal, where Seller performs Work.
2. Employers’ Liability insurance shall not be less than \$10,000,000 for injury or death occurring as a result of each accident.

B. Commercial General Liability.

1. Coverage shall be at least as broad as the Insurance Services Office (ISO) Commercial General Liability Coverage “claims made” form, with no alterations to the coverage form.
2. The limit shall not be less than \$10,000,000 each occurrence for bodily injury, property damage, personal injury and products/completed operations. Defense costs shall be provided as an additional benefit and not included within the limits of liability. Coverage limits may be satisfied using an umbrella or excess liability policy. Limits shall be on a per project basis.
3. If a claims made form is provided, it shall contain no retroactive date, or a retroactive date that precedes the policy inception date, and upon cancellation, Seller will agree to provide a “basic extended reporting” coverage, good for five years after the end of the policy period. The retroactive date shall remain prior to or coincide with the contract inception date.
4. Coverage shall:
 - by “Additional Insured” endorsement add as insureds Buyer, its directors, officers, agents and employees with respect to liability arising out of the Work performed by or for the Seller (Insurance Services Office (ISO) Form CG2010 1185, or equivalent form). In the event the Commercial General

Liability policy includes a “blanket endorsement by contract,” the following language added to the certificate of insurance will satisfy Buyer’s requirement: “PG&E, its directors, officers, agents and employees with respect to liability arising out of the Work performed by or for the Seller has been endorsed by blanket endorsement;”

- be endorsed to specify that the Seller’s insurance is primary and that any insurance or self-insurance maintained by Buyer shall not contribute with it; and
- include a severability of interest clause.

C. Business Auto.

1. Coverage shall be at least as broad as the Insurance Services Office (ISO) Business Auto Coverage form covering Automobile Liability, code 1 “any auto.”

2. The limit shall not be less than \$2,000,000 each accident for bodily injury and property damage.

3. If the scope of Work involves hauling hazardous materials, coverage shall be endorsed in accordance with Section 30 of the Motor Carrier Act of 1980 (Category 2) and the CA 99 48 endorsement. This coverage may be provided by Seller’s contractors or subcontractors that haul hazardous materials.

D. Seller’s Pollution Liability. Buyer acknowledges that Seller self-insures for bodily injury, property damage, including clean up costs and defense costs resulting from sudden, accidental and gradual pollution conditions including the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, hydrocarbons, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any water course or body of water.

E. All Risk Property Insurance. If Seller elects to obtain an All Risk Property insurance policy, including earthquake, coverage shall be written to cover the full replacement cost of the property.

F. Additional Insurance Provisions.

1. Before commencing performance of the Work, Seller shall furnish Buyer with certificates of insurance and endorsements of all required insurance for Seller.

2. Seller shall give Buyer thirty (30) days advance written Notice of any cancellation, material change or reduction in coverage or limits under Seller’s policies.

3. Insurance certificates and documentation must be signed by a person authorized by Seller’s insurer to bind coverage on its behalf and shall be submitted to:

Pacific Gas and Electric Company

Insurance Department, Suite 2400
One Market, Spear Tower
San Francisco, CA 94105

4. Reviews of such insurance may be conducted by Buyer on an annual basis and upon Buyer's reasonable request, Seller shall provide complete certified copies of Seller's insurance policies.

5. Upon request, Seller shall furnish Buyer evidence of insurance for its subcontractors, if any.

6. Buyer acknowledges that Seller may elect to self-insure with respect to one or more of the foregoing policies provided for in this Section 10.8, and that Seller may vary its deductible amounts under its policies from time to time.

G. Form And Content.

1. The insurance policies or binders required to be maintained by Seller under this Agreement shall waive any right of subrogation of the insurers hereunder against PG&E, its officers, directors, employees, agents and representatives of each of them, but only with respect to Seller and the Unit.

Appendix VII – If Seller or Its Agent Is the Scheduling Coordinator

(a) Scheduling Coordinator. During the Term, each of Seller and Buyer shall be its own Scheduling Coordinator with respect to this Transaction or designate a qualified third party to fulfill such role. Throughout the Term, Seller shall designate a SC trade for delivery of Energy generated from the Unit, up to the Contract Capacity, solely to Buyer's SC, based on a final Schedule ("Scheduled Energy"). During the Delivery Term, each Party or each Party's SC shall conduct all scheduling in full compliance with the applicable CAISO Tariff, protocols and scheduling practices for Energy on a Day-Ahead or Hour-Ahead basis, as such terms are defined in the CAISO Tariff. Conduct of deliveries through SC-to-SC trades shall be in compliance with the CAISO Tariff.

(b) Buyer's Dispatch and Curtailment Rights. During the Term, Buyer shall have the exclusive right to schedule any or all Units for the delivery of any of the Products at any time, including on a day-ahead, hour-ahead and real-time basis within the defined Operational Limitations of the Unit. Buyer shall have the exclusive right to designate the specific Units(s) to be operated and the Products to be provided by each Unit.

(c) Availability Schedules.

(i) Annual Forecast of Delivery Schedules. No later than forty-five (45) days before (A) the first day of the first Contract Year of the Delivery Term and (B) the beginning of each calendar year for every subsequent Contract Year during the Delivery Term, Seller shall provide a non-binding forecast of each month's average-day Scheduled Energy, by hour, for the following calendar year.

(ii) Monthly Forecast of Delivery Schedules. Ten (10) Business Days before the beginning of each month during the Term, Seller shall provide a non-binding forecast of each day's average Scheduled Energy, by hour, for the following month ("Monthly Delivery Forecast").

(iii) Weekly Schedule. No later than 10:00 a.m. PPT each Thursday during the Term, Seller shall provide to Buyer a binding weekly schedule of forecasted Firm Capacity and associated Energy from the Facility for each hour of each day, the following Saturday through Friday. PG&E will prepare and provide to Seller the format for this weekly schedule. PG&E must receive the weekly schedule by e-mail at qfschedules@pge.com by the required time.

(iv) Daily Delivery Schedules. During the Term, Seller shall provide the Day-Ahead "Binding" Schedule to Buyer via Buyer's internet site no later than fourteen (14) hours before the beginning of the "Preschedule Day" as defined by the WECC. The current industry standard Preschedule Day timetable in the WECC is as follows:

- a. (A) Monday – Preschedule Day for Tuesday
- b. (B) Tuesday – Preschedule Day for Wednesday
- c. (C) Wednesday – Preschedule Day for Thursday
- d. (D) Thursday – Preschedule Day for Friday and Saturday
- e. (E) Friday – Preschedule Day for Sunday and Monday

Exceptions to this standard Monday through Friday Preschedule Day timetable are presently set forth by the WECC in order to accommodate holidays, monthly transitions and other events. Exceptions are posted on the WECC website (www.wecc.biz) under the document title, “Prescheduling Calendar.” Each Day-Ahead Binding Schedule shall clearly identify, for each hour, all amounts of Energy to be delivered and sold to Buyer pursuant to this Agreement. Seller shall deliver Energy in accordance with its Day-Ahead Binding Schedule, which shall accurately reflect the expected generation of the Project, subject to the applicable CAISO Tariff, and may not change such schedule past the deadlines provided in this section except in the event of a Forced Outage or Schedule change imposed by Buyer or the CAISO. Seller shall promptly provide Buyer with a copy of any and all updates to such Binding Schedule indicating a change in Scheduled Energy from the then-current Binding Schedule which is provided to the CAISO. These notices and changes to the Binding Schedules shall be sent to both Buyer's internet site and Day-Ahead Trading Desk email notification address:

Day-Ahead Trading Desk
Phone: 415-973-6222
Fax: 415-973-0400
Email: daenergy@pge.com

If Seller fails to provide Buyer with a Day-Ahead Binding Schedule as required herein, then for such unscheduled delivery period only Buyer shall rely on the delivery schedule provided in the Monthly Delivery Forecast and Seller shall be liable for such delivery based on the Monthly Delivery Forecast.

(v) Hourly and Real Time Delivery Schedules. In the event of a Forced Outage or a scheduling change imposed by Buyer or CAISO, which results in a change to the Unit's deliveries (whether in part or in whole), Seller shall notify Buyer immediately by calling Buyer's on-duty Scheduling Coordinator to provide any and all changes to the Day-Ahead Binding Schedule and to provide a revised schedule as soon as possible, but in no event later than (1) hour before Buyer's Scheduling Coordinator

is required to submit Hour-Ahead schedules to the CAISO. With respect to any Forced Outage, Seller shall (a) use commercially reasonable efforts to notify Buyer, orally, of such outage within ten (10) minutes of the occurrence of such outage, (b) provide a written estimate of the expected duration of such outage within one (1) hour after submittal of the initial notification pursuant to clause (a) of this Section, and (c) submit an Outage Notification Form to Buyer in accordance with the instructions shown on the form. Seller shall keep Buyer informed of any developments that will affect either the duration of such outage or the availability of the Unit during or after the end of such outage. These notices and changes to the Schedule shall be sent to both Buyer's internet site and Hour-Ahead Trading Desk email notification address:

Hour-Ahead Trading Desk
Phone: 415-973-7900
Fax: 415-972-5340
Email: realtime@pge.com

(vi) Seller's Obligations To Provide Notice of Availability.

During the Term, to the extent not reported in a Scheduled Availability Notice or pursuant to Section 3.8, Seller shall (A) notify Buyer's on-duty Scheduling Coordinator, orally or through an automated notification system, of every Outage of a Unit or imposition of an Instructed Operation as soon as possible (and in any event, using commercially reasonable efforts to do so within 10 minutes after the occurrence of such Outage), whether or not the Unit is scheduled for operation, (B) provide a written estimate of the expected duration of such Outage and/or nature of the Instructed Operation within one hour after submittal of the initial notification pursuant to clause (A) of this sentence, and (C) submit an Outage/Availability Notification Form to Buyer in accordance with the instructions shown on the form. Seller shall update Buyer periodically through the day as information becomes available as well as through Scheduled Availability Notices, with any revised estimates regarding the Units' return to full output capability and shall promptly provide Buyer Notice of any further change in the availability of a Unit or Products for dispatch from that set forth in the last Notice provided, whether or not a Unit is scheduled for operation, including any developments that will affect the severity or duration of each Outage, availability and capability of the Unit to return to service after an Outage or scope and duration of the Instructed Operation.

(d) Other Reporting Obligations. Each Notice provided pursuant to this Appendix that includes notice of an Outage or Instructed Operations shall include all such information concerning such Outage, change or limitation as the CAISO may require to be reported by Seller or by Buyer, in its capacity as Buyer or as the Unit's SC. Each such Notice from Seller to Buyer shall be made by providing Notice in accordance with the Outage/Availability Notification Procedures to the Hour-Ahead Trading Desk.

During the Term, Buyer is responsible for providing to the CAISO notice of each Outage to the extent required by Law, CAISO Tariff or contract. During the Term, each of Seller and Buyer shall promptly communicate to the other all information received by it from the CAISO or other Governmental Authority regarding planned or in-progress Outages or Instructed Operations. Seller is responsible for providing regulatory bodies such as FERC and the CPUC with Outage information (for example but not limited to, NERC outage reporting requirements) as required by Law, tariff or regulation.

(e) Seller's Operation. During the Term, Seller shall dispatch and operate each Unit designated by Buyer as required to meet Buyer's Schedule except when and to the extent (A) a Unit designated to operate is incapable of operation due to an Outage (subject to the provisions for declaring and remedying Outages as set forth herein), (B) Buyer's Schedule is adjusted in accordance with Section 3.4, in which event Seller shall adhere to Buyer's Schedule as so adjusted, or (C) operation or dispatch is prevented by an Excused Event.

(f) Other Scheduled Operations. Notwithstanding Buyer's exclusive rights to schedule and require delivery of the Products from the Unit(s) during the Term, Buyer shall adjust Buyer's Schedule to the extent necessary to allow Seller to Start-Up, operate, curtail or Shut-Down the Units when required to permit Seller to comply with an Instructed Operation. Either party shall provide Notice of an Instructed Operation to the other party promptly after it is received by, or becomes known to, such party.

(g) Deviation Charges. Buyer shall have no obligation or liability of any kind with respect to any uninstructed deviations from Buyer's Schedule, except to the extent any such obligations or liabilities arise as a result of any act or omission of Buyer in its role as Scheduling Coordinator. Should Seller fail to operate the Units in a manner to comply with Buyer's Schedule (unless due to an Instructed Operations) and a deviation occurs between the quantity, time or location of Scheduled Energy and the Energy delivered ("Seller's Deviation"), Seller shall reimburse Buyer for any and all charges Buyer incurs as a result of Seller's Deviation. Each month, Seller shall owe Buyer the sum (if positive) or Buyer shall owe Seller the sum (if negative) of (i) any and all charges assessed on Buyer by the CAISO for real-time or replacement Products that are incurred due to Seller's Deviation (i.e., under-generation) plus (ii) any and all charges, penalties or surcharges assessed on Buyer for Seller's Deviations, including any charges assessed on Buyer for over or under generation (other than payments or charges covered by the preceding clause and charges assessed due to Buyer's Scheduling Error), plus (iii) any and all amounts paid by Buyer to Seller for Products not delivered to Buyer (by Seller or by the CAISO) less (iv) any and all payments made to Buyer by the CAISO for supplying Products in excess of the those delivered pursuant to Scheduled Operations (cumulatively, "Deviation Charges"). Buyer shall be responsible for disputing any incorrect CAISO settlement charges incurred by a Unit and providing a complete detailed accounting of all calculations and amounts to be paid by Seller. Invoicing and payment for all amounts due from one Party to the other Party as necessary to implement this provision shall be done pursuant to Article VI.

(h) Post MRTU Provisions. “To the extent that Seller, at nominal cost to Seller, is exempt from, reimbursed for or receives any refunds, credits or benefits from CAISO for congestion charges or losses (known as Congestion Revenue Rights, or “CRRs”), whether due to CRRs or Locational Marginal Price (“LMP”) adjustments, market adjustments, invoice adjustments or any other hedging instruments associated with the delivery of Product in accordance with the terms of this Agreement (collectively, any such refunds, credits or benefits are referred to as “Reductions”), then, at Buyer’s option, either (i) Seller shall transfer any such Reductions and their related rights to Buyer; or (ii) Buyer shall reduce payments due to Seller under this Agreement in amounts equal to the Reductions, which Seller retains.

To the extent the Seller is assessed charges in the CAISO Hour Ahead Scheduling Process (“HASP”) or Real-Time energy market due to Buyer requested IST changes in the Hour Ahead process that modify Day Ahead ISTs, the Buyer will compensate to make Seller whole.”

Throughout the Term, Seller shall designate Inter-SC Trades (“IST”) for delivery of Energy and associated Integrated Forward Market (“IFM”) Load Uplift Obligation credit generated from the Product, up to the Contract Capacity, solely to Buyer’s SC, based on a Day-Ahead schedule (“Scheduled Energy”) communicated by the Buyer. Buyer shall also have the right to request that Seller self schedule or bid up to Contract Capacity and/or Energy into applicable CAISO Markets on Buyer’s behalf. During the Term, each Party or each Party’s SC shall conduct all Scheduling in full compliance with the applicable CAISO Tariff, protocols, and scheduling practices for Energy on a Day-Ahead or Hour-Ahead basis, as defined in the CAISO Tariff. Conduct of deliveries through IST or bidding into applicable CAISO Markets shall be in compliance with the CAISO Tariff.

Appendix VIII – If PG&E or its Agent Is the Scheduling Coordinator

(a) Scheduling Coordinator. During the Term and during initial start-up and performance testing, Buyer will be the Scheduling Coordinator (“SC”) for the Unit. Accordingly, Buyer shall be entitled to (and shall be obligated to) exercise all rights and obligations on behalf of Seller that are customarily included in the responsibilities of the Scheduling Coordinator, including reviewing CAISO accounts related to the Units and Products delivered from the Units and discussing and/or resolving disputes related thereto with the CAISO. In its capacity as Seller’s representative to CAISO, the Scheduling Coordinator shall (i) be responsible for exercising due diligence in processing and validating all settlements for the Units and ensuring all settlements are valid, (ii) dispute any settlements that cannot be verified as valid and correct in a timely process, (iii) authorize Seller to have direct access to all unredacted preliminary and final settlement data and related information as soon as it is made available from the CAISO and (iv) provide to Seller all Product transactions in a format that is uploadable, without modification by Seller, into the FERC’s Electric Quarterly Report (EQR) software, on a quarterly basis no later than fifteen (15) days prior to FERC’s EQR reporting deadline.

(b) Buyer’s Dispatch and Curtailment Rights. During the Term, Buyer shall have the exclusive right to schedule any or all Units for the delivery of any of the Products at any time, including on a day-ahead, hour-ahead and real-time basis within the defined Operational Limitations of the Unit and Section 3.4 (d). Buyer shall have the exclusive right to designate the specific Units(s) to be operated and the Products to be provided by each Unit.

(c) Availability Schedules.

(i) Annual Forecast of Delivery Schedules. No later than forty-five (45) days before (A) the first day of the first Contract Year of the Delivery Term and (B) the beginning of each calendar year for every subsequent Contract Year during the Delivery Term, Seller shall provide a non-binding forecast of each month’s average-day Scheduled Energy, by hour, for the following calendar year.

(ii) Monthly Forecast of Delivery Schedules. Ten (10) Business Days before the beginning of each month during the Delivery Term, Seller shall provide a non-binding forecast of each day’s average Scheduled Energy, by hour, for the following month (“Monthly Delivery Forecast”).

(iii) Weekly Schedule. No later than 10:00 a.m. PPT each Thursday during the Term, Seller shall provide to Buyer a binding weekly schedule of forecasted Firm Capacity and associated Energy from the Unit for each hour of each day, the following Saturday through Friday. PG&E will prepare and provide to Seller the format for this weekly schedule. PG&E must receive the weekly schedule by e-mail at qfschedules@pge.com by the required time.

(iv) Daily Delivery Forecasts. During the Term, Seller shall provide the Day-Ahead “Binding” Forecast to Buyer via Buyer's internet site, as provided in Appendix VII, no later than fourteen (14) hours before the beginning of the “Preschedule Day” as defined by the WECC. The current industry standard Preschedule Day timetable in the WECC is as follows:

- (A) Monday – Preschedule Day for Tuesday
- (B) Tuesday – Preschedule Day for Wednesday
- (C) Wednesday – Preschedule Day for Thursday
- (D) Thursday – Preschedule Day for Friday and Saturday
- (E) Friday – Preschedule Day for Sunday and Monday

Exceptions to this standard Monday through Friday Preschedule Day timetable are presently set forth by the WECC in order to accommodate holidays, monthly transitions and other events. Exceptions are posted on the WECC website (www.wecc.biz) under the document title, “Prescheduling Calendar.” Each Day-Ahead Binding Forecast shall clearly identify, for each hour, all amounts of Energy to be delivered and sold to Buyer pursuant to this Agreement. Seller shall deliver Energy in accordance with this Day-Ahead Binding Forecast, which shall accurately reflect the expected generation of the Project, subject to the applicable CAISO Tariff, and may not change such Forecast past the deadlines provided in this section except in the event of a Forced Outage or Schedule change imposed by Buyer or the CAISO. Seller shall promptly provide Buyer with a copy of any and all updates to such Day-Ahead Binding Forecast indicating any changes. These notices and changes to the Day-Ahead Binding Forecast shall be sent to both Buyer's internet site and Day-Ahead Trading Desk email notification address:

Day-Ahead Trading Desk
Phone: 415-973-6222
Fax: 415-973-0400
Email: daenergy@pge.com

If Seller fails to provide Buyer with a Day-Ahead Binding Forecast as required herein, then for such unscheduled delivery period only Buyer shall rely on the delivery schedule provided in the Monthly Delivery Forecast and Seller shall be liable for such delivery based on the Monthly Delivery Forecast.

(v) Hourly and Real Time Delivery Schedules. In the event of a Forced Outage or a scheduling change imposed by Buyer or CAISO, which results in a change to the Project’s deliveries (whether in part or in

whole), Seller shall notify Buyer immediately by calling Buyer's on-duty Scheduling Coordinator to provide any and all changes to the Day-Ahead Binding Forecast and to provide a revised schedule as soon as possible, but in no event later than (1) hour before Buyer's Scheduling Coordinator is required to submit Hour-Ahead schedules to the CAISO. With respect to any Forced Outage, Seller shall (a) use commercially reasonable efforts to notify Buyer, orally, of such outage within ten (10) minutes of the occurrence of such outage, (b) provide a written estimate of the expected duration of such outage within one (1) hour after submittal of the initial notification pursuant to clause (a) of this Section, and (c) submit an Outage Notification Form, as provided in Appendix VII of this Agreement, to Buyer in accordance with the instructions shown on the form. Seller shall keep Buyer informed of any developments that will affect either the duration of such outage or the availability of the Unit during or after the end of such outage. These notices and changes to the Schedule shall be sent to both Buyer's internet site and Hour-Ahead Trading Desk email notification address:

Hour-Ahead Trading Desk
Phone: 415-973-7900
Fax: 415-972-5340
Email: realtime@pge.com

(vi) Seller's Continuing Obligations To Provide Notice of Availability. During the Term, to the extent not reported in a Scheduled Availability Notice or pursuant to Section 3.8, Seller shall (A) notify Buyer's on-duty Scheduling Coordinator, orally or through an automated notification system, of every Outage of a Unit or imposition of an Instructed Operation as soon as possible (and in any event, using commercially reasonable efforts to do so within 10 minutes after the occurrence of such Outage), whether or not the Unit is scheduled for operation, (B) provide a written estimate of the expected duration of such Outage and/or nature of the Instructed Operation within one hour after submittal of the initial notification pursuant to clause (A) of this sentence, and (C) submit an Outage/Availability Notification Form, in the form attached to Appendix VII, to Buyer in accordance with the instructions shown on the form. Seller shall update Buyer periodically through the day as information becomes available as well as through Scheduled Availability Notices, with any revised estimates regarding the Units' return to full output capability and shall promptly provide Buyer Notice of any further change in the availability of a Unit or Products for dispatch from that set forth in the last Notice provided, whether or not a Unit is scheduled for operation, including any developments that will affect the severity or duration of each Outage, availability and capability of the Unit to return to service after an Outage or scope and duration of the Instructed Operation.

(vii) Other Reporting Obligations. Each Notice provided pursuant to (b)(i) and (b)(ii) of this Appendix that includes notice of an Outage or Instructed Operations shall include all such information concerning such Outage, change or limitation as the CAISO may require to be reported by Seller or by Buyer, in its capacity as Buyer or as the Unit's SC. Each such Notice from Seller to Buyer shall be made by providing Notice in accordance with the Outage/Availability Notification Procedures set forth in Appendix VII to the Hour-Ahead Trading Desk. During the Term, Buyer is responsible for providing to the CAISO notice of each Outage to the extent required by Law, CAISO Tariff or contract. During the Term, each of Seller and Buyer shall promptly communicate to the other all information received by it from the CAISO or other Governmental Authority regarding planned or in-progress Outages or Instructed Operations. Seller is responsible for providing regulatory bodies such as FERC and the CPUC with Outage information (for example but not limited to, NERC outage reporting requirements) as required by law, tariff or regulation.

(viii) Buyer's Schedule. Commencing in the week prior to the Expected Initial Delivery Date as necessary for operations that commence no earlier than the Initial Delivery Date and thereafter throughout the Term, Buyer shall provide Seller once per week, a non-binding Notice of expected Unit commitment over the course of the next week. Buyer shall schedule the delivery of Products in accordance with the Operational Limitations and CAISO operational protocols and provide Notice of such schedule to Seller ("Buyer's Schedule"). Buyer shall revise such schedule with the CAISO upon receipt of any revision or update made by Seller to the Scheduled Availability Notice.

(ix) Seller's Operation. During the Term, Seller shall dispatch and operate each Unit designated by Buyer as required to meet Buyer's Schedule except when and to the extent (A) a Unit designated to operate is incapable of operation due to an Outage (subject to the provisions for declaring and remedying Outages as set forth herein), (B) Buyer's Schedule is adjusted in accordance with Section 3.5(c), in which event Seller shall adhere to Buyer's Schedule as so adjusted, or (C) operation or dispatch is prevented by an Excused Event. During the Term, Seller shall not dispatch and operate Units other than pursuant to Buyer's direction except as specifically contemplated herein.

(d) Other Reporting Obligations. Each Notice provided pursuant to (c) (i) and (b) (ii) of this Appendix that includes notice of an Outage or Instructed Operations shall include all such information concerning such Outage, change or limitation as the CAISO may require to be reported by Seller or by Buyer, in its capacity as Buyer or as the Unit's SC. Each such Notice from Seller to Buyer shall be made by providing Notice in accordance with the Outage/Availability Notification Procedures set forth in Appendix VII to the Hour-Ahead Trading Desk. During the Term, Buyer is responsible for

providing to the CAISO notice of each Outage to the extent required by Law, CAISO Tariff or contract. During the Term, each of Seller and Buyer shall promptly communicate to the other all information received by it from the CAISO or other Governmental Authority regarding planned or in-progress Outages or Instructed Operations. Seller is responsible for providing regulatory bodies such as FERC and the CPUC with Outage information (for example but not limited to, NERC outage reporting requirements) as required by Law, tariff or regulation.

(e) Seller's Operation. During the Term, Seller shall dispatch and operate each Unit designated by Buyer as required to meet Buyer's Schedule except when and to the extent (A) a Unit designated to operate is incapable of operation due to an Outage (subject to the provisions for declaring and remedying Outages as set forth herein), (B) Buyer's Schedule is adjusted in accordance with Section 3.4 (c), in which event Seller shall adhere to Buyer's Schedule as so adjusted, or (C) operation or dispatch is prevented by an Excused Event.

(f) Other Scheduled Operations. Notwithstanding Buyer's exclusive rights to schedule and require delivery of the Products from the Units during the Term as set forth in Section 3.8, Buyer shall adjust Buyer's Schedule to the extent necessary to allow Seller to Start-Up, operate, curtail or Shut-Down the Units when required to permit Seller to comply with an Instructed Operation. Either Party shall provide Notice of an Instructed Operation to the other Party promptly after it is received by, or becomes known to, such Party.

(g) Deviation Charges. Buyer shall have no obligation or liability of any kind with respect to any uninstructed deviations from Buyer's Schedule, except to the extent any such obligations or liabilities arise as a result of any act or omission of Buyer in its role as Scheduling Coordinator. Should Seller fail to operate the Units in a manner to comply with Buyer's Schedule (unless due to an Instructed Operations) and a deviation occurs between the quantity, time or location of Scheduled Energy and the Energy delivered or between the quantity, time or location of Ancillary Services scheduled and the Ancillary Services delivered ("Seller's Deviation"), Seller shall reimburse Buyer for any and all charges Buyer incurs as a result of Seller's Deviation, including charges imposed on Buyer as the SC, by the CAISO for Seller's uninstructed deviations as follows: Each month, Seller shall owe Buyer the sum (if positive) or Buyer shall owe Seller the sum (if negative) of (i) any and all charges assessed on Buyer by the CAISO for real-time or replacement Products that are incurred due to Seller's Deviation (i.e., under-generation) plus (ii) any and all charges, penalties or surcharges assessed on Buyer for Seller's Deviations, including any charges assessed on Buyer for over or under generation (other than payments or charges covered by the preceding clause and charges assessed due to Buyer's Scheduling Error) and amounts assessed by the CAISO in the event that a Unit fails to meet the standards established by the CAISO for the provision of Ancillary Services, plus (iii) any and all amounts paid by Buyer to Seller for Products not delivered to Buyer (by Seller or by the CAISO) less (iv) any and all payments made to Buyer by the CAISO for supplying Products in excess of the those delivered pursuant to Scheduled Operations (cumulatively, "Deviation Charges"). Buyer shall be responsible for disputing any incorrect CAISO settlement charges incurred by a Unit and providing a

complete detailed accounting of all calculations and amounts to be paid by Seller. Invoicing and payment for all amounts due from one Party to the other Party as necessary to implement this provision shall be done pursuant to Article VI, but in any event shall be subject to Section (a) of this Appendix.

(h) Post MRTU Provisions.

In the event Seller fails to follow Buyer instructions for submitting schedules, bids or IST into applicable CAISO Markets, Buyer shall be entitled to reimbursement from Seller of lost CAISO market revenues or additional CAISO costs incurred as a result of Seller's failure to follow Buyers bidding or scheduling instructions. "To the extent that Seller, at nominal cost to Seller, is exempt from, reimbursed for or receives any refunds, credits or benefits from CAISO for congestion charges or losses (known as Congestion Revenue Rights, or "CRRs"), whether due to CRRs or Locational Marginal Price ("LMP") adjustments, market adjustments, invoice adjustments or any other hedging instruments associated with the delivery of Product in accordance with the terms of this Agreement (collectively, any such refunds, credits or benefits are referred to as "Reductions"), then, at Buyer's option, either (i) Seller shall transfer any such Reductions and their related rights to Buyer; or (ii) Buyer shall reduce payments due to Seller under this Agreement in amounts equal to the Reductions, which Seller retains.

To the extent the Seller is assessed charges in the CAISO Hour Ahead Scheduling Process ("HASP") or Real-Time energy market due to Buyer requested IST changes in the Hour Ahead process that modify Day Ahead ISTs, the Buyer will compensate to make Seller whole.

Appendix IX – Counterparty Notification Requirements for Outages, Availability and Generation Schedules

A. AREA CONTROL CENTERS NOTIFICATION REQUIREMENTS

ALWAYS notify your designated Area Control Center of shutdowns and startups as follows:

- Call for permission to parallel before any start-up at the appropriate Area Control Centers
- Call your Area Control Center again after start-up with parallel time.
- Call your Area Control Center after any separation and report separation time as well as date and time estimate for return to service.

B. ELECTRIC SETTLEMENTS NOTIFICATION REQUIREMENTS

This part of Appendix III covers (I) the instructions for submitting generation and/or availability schedules, and outage information to PG&E's Electric Settlements for each unit and (II) the cut off times that determine when certain of these notifications need to be communicated directly (i.e., called in) to PG&E's Short-Term Electric Supply.

I. Submission of Outages, Generation and/or Availability Schedules

1. Submit weekly or daily Generation and/or Availability Schedules by posting to the following secure internet site:
http://www.pge.com/suppliers_purchasing/qualifying_facilities/index.html. Contact PG&E's Electric Settlements' group to get permission and your password to access this web site. Once logged into the registered web site, select either the "Post Generation Schedules" or "Post Availability Schedules". This is the recommended method as it will allow your unit's schedules to be automatically uploaded if they meet contractual terms and conditions and to be viewable for further corrections if necessary. Note that this web site is also used for unit Changes in Availability and Outage Notifications.
2. If internet is unavailable, use either of the following methods:
 - a. Email to ElectricSchedules@pge.com. Using this method, data is to be submitted using an Excel spreadsheet in the following format: assigned log # of unit in first column; date and time (i.e., Hour Ending) in second column; and, generation or availability level in kW in third column. Contact your designated PG&E Settlement Analyst or the Manager of Electric Settlements if you encounter any issue. *(This method should only be used if submission of data via web site is not working properly.)*
 - b. Via Facsimile to (415) 973-2151, Attention: Manager of Electric Settlements. Using the same format as in (b), submit your unit schedules and be sure to include the name and phone number of the individual that is providing this information. *(This method is discouraged as it involves additional steps, one of which may be manual data entry if the document cannot be scanned and read properly.)*

3. Whenever your unit experiences an outage, plans to schedule maintenance, changes its availability commitment, or is derated, use the "Post Outages" option in PG&E's registered web site (or fax the attached hard copy form) to comply with the notification requirements under the contract. The Availability/Outage Notification Form on this site must be completely filled out, including date and start time of event, cause of the event, expected duration, expected date and time of return to service and/or full output. Based on the cut off times, expected return to service, and contractual terms and conditions, this information may also need to be called in to PG&E's Short-Term Electric Supply group (see Section II and part C of this appendix below).
4. Testing a Unit During an Outage: Seller must notify in advance its designated Area Control Center, Outage Coordinator, and Electric Settlements Analyst before testing its unit during an outage. Seller should indicate on the Availability/Outage Notification Form if and when testing is to be conducted during an outage.
5. Logs of Communication Records with PG&E's Area Control Center and Electric Settlements personnel: Seller shall maintain written records of all communications with PG&E which will be available for audit at PG&E's request. These records shall include, but not be limited to, system parallel operation or separation, scheduled and unscheduled outages, equipment clearances, protective relay operations, levels of operating voltage and reactive power, and daily capacity and generation reports.

II. Cut Off Times for Notifications to Electric Settlements Versus Having to Contact Short-Term Electric Supply Directly

1. Even though Electric Settlements requires that all Day-ahead and Hour-Ahead schedules and outages be submitted via the Internet web site, (or in the event it is not available email, or facsimile) in cases where information has changed (i.e., exceptions) Seller must call:
 - (i) the Day-Ahead Trading Desk with updated Day-Ahead information at least 5 hours prior to the ISO Day-Ahead scheduling deadline for that delivery day;
 - (ii) the Hour-Ahead Trading Desk with any Hour-Ahead or Realtime changes or notifications at least 30 minutes prior to the ISO scheduling deadline for that delivery hour; and,
 - (iii) the Outage Coordinator with any outage information that was not submitted to Electric Settlements at least 38 hours prior to the delivery day.
2. Notifications and schedules submitted at least 38 hours prior to the delivery day will automatically be disseminated throughout PG&E and consequently need not be called in to Short-Term Electric Supply.

C. SHORT-TERM ELECTRIC SUPPLY NOTIFICATION REQUIREMENTS

1. ALWAYS notify appropriate PG&E Day-Ahead or Hour-Ahead schedulers of outages and schedule changes if options in part B above are not available (i.e., past the cut off time to submit Day-Ahead data or changes).

- a. Day-Ahead Schedule (see table below) for the next day must be sent to Day-Ahead Trading Desk on a daily basis between the hours of 12:01 a.m. and 5 a.m.
- b. Realtime curtailments, trips and any other schedule changes must be immediately conveyed to the PG&E Hour-Ahead Trading Desk via phone call.
- c. In addition to sending any Outage/Availability Notification Form to Electric Settlements, that form should also be faxed to PG&E's Outage Coordinator:

Day-Ahead Trading Desk
 Tel: 415-973-6222
 Fax: 415-973-0400
daenergy@pge.com

Hour-Ahead Trading Desk
 Tel: 415-973-7900
 Fax: 415-972-5340
rtenergy@pge.com

Outage Coordinator
 Tel: 415-973-2038
 Fax: 415-973-5333
res9@pge.com

DAY-AHEAD SCHEDULE

Unit/Facility Name: _____ **PG&E Log #:** _____

Name of Person Submitting Data: _____ **Phone #:** _____

Reduction of Fully Available Capacity? Y / N			
Date Submitted:	-	Pre-schedule Day:	-
Hour Ending	MW's Available	Hour Ending	MW's Available
1		13	
2		14	
3		15	
4		16	
5		17	
6		18	
7		19	
8		20	
9		21	
10		22	
11		23	
12		24	
		25*	

OUTAGE/AVAILABILITY NOTIFICATION FORM
(To be faxed to two groups at PG&E)

SEND VIA FAX
To Pacific Gas & Electric Company

DATE: _____

Attention: Manager Electric Settlements
Attention: Outage Coordinator

FAX NUMBER: (415) 973-2151
FAX NUMBER: (415) 973-5333

PG&E LOG NUMBER: _____

Unit/Facility Name: _____

NOTIFICATION OF:

SCHEDULED OUTAGE / FORCED OUTAGE / DERATE / PROLONGED OUTAGE

The Unit will shut down for SCHEDULED OUTAGE from:

_____ to _____

(Date and Time)

(Date and Time)

The Unit experienced a FORCED OUTAGE/DERATE/PROLONGED OUTAGE (circle applicable outage) from: _____ to _____

(Date and Time)

(Date and Time)

The FORCED OUTAGE/DERATE/CHANGE IN AVAILABILITY was confirmed via telephone on _____ with _____

(Date and Time)

(Name of PG&E Individual)

COMMENTS: Description and Cause of Forced Outage/Derate/Planned Outage (circle applicable outage)

Outage Notification Form submitted by: _____ Phone #: _____

(Print Name)

PG&E Advice 3197-E

Attachment 2

Attachment 2

CONTRACT COMPARISON TABLE

PG&E Version Of QF Contract	EEI Section Analogue	Substance Of Provision And/Or Reason(s) For Difference
Article I: Eligibility	No analogue.	Required by the Decision. (See pp. 120-122.)
Article II: Term	10.1	Term is mandated by the Decision. (See pp. 120, 121.)
Article III: Obligations and Deliveries	2.1	The QF contract includes RA and, if applicable, ERR requirements, plus compliance with CAISO Tariffs. (Decision p. 120.) The EEI is intended for use in over-the-counter energy sales and does not contemplate California-specific issues.
Definitions: “Electrical Delivery Point”	No analogue.	Point of interconnection with the CAISO grid. This detail normally would appear, if at all, in a transaction confirmation under the EEI Master Agreement.
Section 3.1(a): Product(s) defined	No analogue.	Seller may elect a hybrid contract, part firm and part as-available. The EEI does not address unit-contingent transactions, so this hybrid concept is not part of the EEI.
Section 3.1(c): Resource Adequacy Requirement	No analogue.	This is a California-specific detail that is not part of the EEI. (See Decision p. 120.)
Section 3.1(f): Unit modifications	No analogue.	The EEI is not intended for unit-contingent transactions. The QF contract includes limitations on unit modification, including consent of Buyer, to protect deliveries under the agreement.
Section 3.2: CAISO Tariff Compliance	No analogue.	Compliance with applicable CAISO Tariff requirements is mandated by the Decision. (Decision p. 120.)
Section 3.3: Interconnection Facilities [compliance with CAISO]	No analogue.	The QF contract requires compliance with applicable CAISO requirements. (Decision p. 120.) If interconnection is addressed at all by parties to an EEI contract, it is addressed in a transaction confirmation.
Section 3.3(a): Title/Risk of Loss	10.3	These are standard provisions for products in today's energy market. Title and risk pass at the delivery point.
Section 3.3(b): Transmission	3.2	These are standard provisions for products in today's energy market. Responsibility for transmission arrangements transfers at the Delivery Point.
Section 3.4: Scheduling [Required by the	No analogue.	The QF contract requires adherence to scheduling protocols that enable the unit to meet CAISO

PG&E Version Of QF Contract	EEI Section Analogue	Substance Of Provision And/Or Reason(s) For Difference
Decision.]		standards and requirements, as mandated by the Decision (p. 120).
Section 3.4(b) Scheduling Coordinator	No analogue.	Decision requires utility to provide SC service if requested by Seller. (Decision p. 135.)
Section 3.5: Standards of Care [CAISO, NERC, WECC]	No analogue.	The EEI is not intended for unit-specific transactions and therefore does not address standards of care for O&M of units.
Section 3.5(b): Imbalance charges	No analogue.	The QF contract includes an allowable scheduling deviation limit (schedule v. actual) of the lesser of 3% PMax or 5% of schedule in any settlement interval; Seller pays if no remediation and/or no communication with Buyer. The EEI is intended only for over the counter bulk power transactions. Scheduling provisions would appear in a transaction confirmation.
Section 3.6: Metering	No analogue.	Per the Decision, Seller must meet applicable CAISO requirements (p. 120). Such provisions would appear in a transaction confirmation under the EEI.
Section 3.7: Replacement Power	Section 4.1	QF contract is unit-specific and therefore does not permit Seller to provide replacement power except as required by imbalances. The EEI contemplates cover damages for under-deliveries.
Section 3.10: Outages	No analogue. Not unit-specific.	Seller must report all outages to the CAISO and adhere to CAISO requirements.
Section 3.10(f) Outage Restrictions []	No analogue. Not unit-specific.	No scheduled outages during peak periods to ensure the generation is available when most needed; limits on allowable outage hours per year.
Section 3.9: Force Majeure	3.3	QF contract excuses performance, subject to a minimum 50% requirement for a 12-month rolling period, but is calculated in the capacity availability determination in Section 4.1(b) and affects compensation. EEI is not unit-specific, so provisions differ somewhat.
Section 3.10: Access Rights	No analogue. Not unit-specific.	Provides Buyer access rights to inspect QF facilities.
Section 3.11: Capacity Testing	No analogue. Not unit-specific.	May be called for by Buyer annually to confirm or adjust firm capacity rating.
Article IV: Firm Capacity	No analogue. Not unit-specific.	Required by the Decision (p. 121). Seller chooses the amount of firm capacity for applicability of contract performance standards.
Article IV: Performance standards for firm contracts	No analogue. Not unit-specific.	Decision requires 95% in peak periods/90% in off-peak periods; outages exceeding allowable limits affect compensation. (See p. 97.)

PG&E Version Of QF Contract	EEI Section Analogue	Substance Of Provision And/Or Reason(s) For Difference
Section 4.1(c): Compensation discount for non-availability	No analogue.	Per Decision (p. 97).
Article V: Default	5.1-5.7	The unit-specific nature of the QF contract calls for some different provisions, such as violation of a rep or warranty; or failure to meet minimum delivery threshold of 50% for a rolling 12-month period.
Article VI: Payment and Netting	6.1-6.5	The QF contract permits Buyer to use setoff to be compensated for amounts owed by Seller; Buyer prepares statement of account and sends to Seller with payment; payment of disputed amounts is subject to dispute resolution and possible refund; Buyer receives third-party payments. These provisions are not fundamentally inconsistent with the EEI.
Section 6.4: Termination payment	Article Five, Sections 5.2-5.4	Similar provisions.
Article VII: Limitation of Liability [no consequential damages]	7.1	Similar provisions.
Section 8.1: Reps and Warranties [includes QF eligibility requirement for entire contract term]	10.2	Standard provisions. QF eligibility is California-specific.
Section 8.2: Indemnity	10.4	This is a bilateral provision. The QF version is less onerous than the EEI version.
Section 8.3: No Dedication	No analogue.	The EEI is focused on market power transactions, in which there is no question of utility obligation or dedication of facilities.
Section 8.4: Assignment	10.5	Consent required; no unreasonable denial.
Section 8.5: Choice of Law	10.6	The QF contract adopts the EEI language, except that it specifies the laws of California rather than New York as the applicable law. Also, it adds "to the extent permitted by law" to comply with California's rule against pre-dispute jury trial waivers. (See, <u>Grafton Partners v. Superior Court</u> (2005) 36 Cal.4 th 944.)
Section 8.6: General Terms	10.8	No material differences.
Section 8.7: Appendices [incorporated by reference]	No analogue.	EEI has no Appendices.
Section 8.8 and Appendix IV: Insurance {requirements}	No analogue.	The standard offer PPAs the Commission adopted in the 1980s had insurance provisions.

PG&E Version Of QF Contract	EEl Section Analogue	Substance Of Provision And/Or Reason(s) For Difference
Section 8.9: Access to Information	No analogue.	EEl is not unit specific. Utility needs to verify billing and other information.
Section 8.12: Recordings	2.5	The QF contract adopts the EEl language on this issue.
Section 8.13: EEl Precedent	No analogue.	New QF contract is based on the EEl.
Article IX: Dispute Resolution	No analogue.	This is desirable to reduce the cost of potential disputes.
Article X: Notices	10.7	
Appendix I: Definitions	Article One	
Appendix II: Description of Unit	No analogue.	EEl is not unit-specific.
Appendix III: Illustrative Calculations	No analogue.	Included to clarify.
Appendix V: Non-modifiable Terms Applicable to ERRs	No analogue.	These are California-specific terms to ensure compliance with the Commission's RPS decisions.
Appendix VI: Credit Provisions	Article Eight.	Applicable only to new QFs, as specified in the Decision (p. 120). Credit and collateral provisions are common in commercial power transactions, and every market participant is generally required to provide collateral or other security.
Appendix VII: Scheduling Coordinator Provisions	No analogue.	Included to comply with the Decision (p. 135).
Appendix IV: Outage Coordination [CAISO requirements]	No analogue.	Included to comply with the Decision by conforming to CAISO requirements (p. 135).

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

ABAG Power Pool	Douglass & Liddell	PG&E National Energy Group
Accent Energy	Downey, Brand, Seymour & Rohwer	Pinnacle CNG Company
Aglet Consumer Alliance	Duke Energy	PITCO
Agnews Developmental Center	Duke Energy North America	Plurimi, Inc.
Ahmed, Ali	Duncan, Virgil E.	PPL EnergyPlus, LLC
Alcantar & Kahl	Dutcher, John	Praxair, Inc.
Ancillary Services Coalition	Dynergy Inc.	Price, Roy
Anderson Donovan & Poole P.C.	Ellison Schneider	Product Development Dept
Applied Power Technologies	Energy Law Group LLP	R. M. Hairston & Company
APS Energy Services Co Inc	Energy Management Services, LLC	R. W. Beck & Associates
Arter & Hadden LLP	Exelon Energy Ohio, Inc	Recon Research
Avista Corp	Exeter Associates	Regional Cogeneration Service
Barkovich & Yap, Inc.	Foster Farms	RMC Lonestar
BART	Foster, Wheeler, Martinez	Sacramento Municipal Utility District
Bartle Wells Associates	Franciscan Mobilehome	SCD Energy Solutions
Blue Ridge Gas	Future Resources Associates, Inc	Seattle City Light
Bohannon Development Co	G. A. Krause & Assoc	Sempra
BP Energy Company	Gas Transmission Northwest Corporation	Sempra Energy
Braun & Associates	GLJ Energy Publications	Sequoia Union HS Dist
C & H Sugar Co.	Goodin, MacBride, Squeri, Schlotz &	SESCO
CA Bldg Industry Association	Hanna & Morton	Sierra Pacific Power Company
CA Cotton Ginners & Growers Assoc.	Heeg, Peggy A.	Silicon Valley Power
CA League of Food Processors	Hitachi Global Storage Technologies	Smurfit Stone Container Corp
CA Water Service Group	Hogan Manufacturing, Inc	Southern California Edison
California Energy Commission	House, Lon	SPURR
California Farm Bureau Federation	Imperial Irrigation District	St. Paul Assoc
California Gas Acquisition Svcs	Integrated Utility Consulting Group	Sutherland, Asbill & Brennan
California ISO	International Power Technology	Tabors Caramanis & Associates
Calpine	Interstate Gas Services, Inc.	Tecogen, Inc
Calpine Corp	IUCG/Sunshine Design LLC	TFS Energy
Calpine Gilroy Cogen	J. R. Wood, Inc	Transcanada
Cambridge Energy Research Assoc	JTM, Inc	Turlock Irrigation District
Cameron McKenna	Luce, Forward, Hamilton & Scripps	U S Borax, Inc
Cardinal Cogen	Manatt, Phelps & Phillips	United Cogen Inc.
Cellnet Data Systems	Marcus, David	URM Groups
Chevron Texaco	Matthew V. Brady & Associates	Utility Resource Network
Chevron USA Production Co.	Maynor, Donald H.	Wellhead Electric Company
City of Glendale	MBMC, Inc.	White & Case
City of Healdsburg	McKenzie & Assoc	WMA
City of Palo Alto	McKenzie & Associates	
City of Redding	Meek, Daniel W.	
CLECA Law Office	Mirant California, LLC	
Commerce Energy	Modesto Irrigation Dist	
Constellation New Energy	Morrison & Foerster	
CPUC	Morse Richard Weisenmiller & Assoc.	
Cross Border Inc	Navigant Consulting	
Crossborder Inc	New United Motor Mfg, Inc	
CSC Energy Services	Norris & Wong Associates	
Davis, Wright, Tremaine LLP	North Coast Solar Resources	
Defense Fuel Support Center	Northern California Power Agency	
Department of the Army	Office of Energy Assessments	
Department of Water & Power City	OnGrid Solar	
DGS Natural Gas Services	Palo Alto Muni Utilities	