

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



March 4, 2010

Advice Letter 3559-E

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

Subject: Dynegy Settlement Agreement

Dear Mr. Cherry:

Advice Letter 3559-E is effective February 25, 2010 per Resolution E-4312.

Sincerely,

A handwritten signature in blue ink that reads "Julie A. Fitch".

Julie A. Fitch, Director
Energy Division

November 18, 2009

Advice 3559-E

(Pacific Gas and Electric Company ID U 39 E)

Public Utilities Commission of the State of California

Subject: Dynegy Settlement Agreement

Pacific Gas and Electric Company (PG&E) hereby submits this advice letter requesting review and approval of a settlement agreement between Dynegy, Inc. and PG&E (the parties) related to a 2007 Force Majeure claim with respect to the Moss Landing tolling agreement.

Purpose

PG&E submits the proposed Release and Settlement Agreement (Agreement) in Confidential Appendix A and requests that the California Public Utilities Commission (Commission) adopt a final resolution approving the Agreement and a finding that this Agreement and PG&E's entry into it are reasonable and prudent for all purposes, including, but not limited to, PG&E's recovery in rates of all payments made under this Agreement.

Background

On March 2, 2006, PG&E entered into a four year physical tolling agreement beginning in 2007 with Duke Energy Moss Landing, LLC (DEML) to purchase the full capacity, energy, and resource adequacy of Moss Landing Units 6 & 7 (the Facility). PG&E submitted the tolling agreement in Advice 2803-E on March 23, 2006. The Commission approved the agreement in Resolution E-4002 effective July 20, 2006.¹ The tolling agreement, also known as the Confirmation Letter or Confirmation, is governed by the Master Power Purchase and Sales Agreement (PPA) between Duke Energy Marketing America, LLC (DEMA) and PG&E, with DEMA having the full rights to market and sell the capacity and energy from DEML's Facility. The Confirmation and the PPA are included in Confidential Appendix D and Public Appendix E. The public version of Advice 2803-E and Resolution 4002-E are included in Public Appendix F.

¹ Advice 2803-E: http://www.pge.com/notes/rates/tariffs/tm2/pdf/ELEC_2803-E.pdf; Resolution E-4002: http://docs.cpuc.ca.gov/WORD_PDF/FINAL_RESOLUTION/58472.PDF

PG&E noted in Advice 2803-E that there was a pending sale of the Facility to LS Power Generation, LLC (LS Power). On March 31, 2006, LS Power purchased the Facility from DEML/DEMA, assuming all rights those parties had in the PPA and tolling agreement/Confirmation. In March 2007, Dynegy acquired the Facility from LS Power, which led to Dynegy's assumption of all LS Power's obligations, benefits and contractual rights under the PPA and tolling agreement/Confirmation.

On August 17, 2007, Dynegy reported to PG&E that Unit 7 of the Facility suffered a fan motor failure and outage on July 26, 2007, which continued through August 14 (Incident). Dynegy claims that the Incident constituted a Force Majeure Event under the tolling agreement/Confirmation, which prevented it from performing its contractual obligations. In September 2007, Dynegy sent an invoice to PG&E for power produced for the August 2007 Delivery Period.

On September 25, 2007, as stipulated in the PPA, PG&E paid only the invoiced amount that could be substantiated and therefore excluded the portion associated with the Force Majeure claim. The amount withheld, based on the initial invoice submitted, was \$2,668,544.

PG&E received Dynegy's Incident report and additional information, researched the issues further, and on January 25, 2008 denied the claim, finding that the Incident was not a Force Majeure Event. Although the parties continued to discuss issues, neither party changed its original position. PG&E believes that Dynegy caused the incident through its failure to conduct proper plant maintenance pursuant to industry standards and that the fan motor failure was not a "catastrophic equipment failure" under the terms of the tolling agreement/Confirmation. Dynegy contends that the specific maintenance procedures PG&E argued should have been performed were optimal maintenance and that as an independent power producer Dynegy is held to a lower standard of care than a regulated utility such as PG&E. Dynegy further contends that the tolling agreement's language regarding catastrophic equipment failure was plain in its meaning and that the Incident is a catastrophic event.

As a result of the parties' positions, on December 18, 2008, Dynegy submitted a Request for Mediation to the American Arbitration Association (AAA) per Section 10.14 (b) of the PPA, making this issue a formal contract dispute. Dynegy sought \$2,668,544 that it claimed PG&E improperly withheld from payments. On February 5, 2009, Dynegy notified PG&E that the claim amount should have been \$3,420,895 due to an error in its initial invoice calculation. The parties conducted informal settlement negotiations in an effort to avoid the time and cost associated with the arbitration process, including an all day session in San Ramon on March 12, 2009. However, no settlement was reached. On May 14, 2009, Dynegy filed a Demand for Arbitration (Arbitration) with the AAA. The Request for Mediation and the Demand for Arbitration are included in Confidential Appendix C.

As the parties began the arbitration process, informal settlement talks continued concurrent with the arbitration. On August 6, 2009, the parties reached an agreement, which is included as the proposed Release and Settlement Agreement in Confidential Appendix A.

The Agreement's significant terms are:

- PG&E shall make the full settlement payment to Dynegy within 30 days of a final and un-appealable approval of the settlement by the Commission;
- Dynegy shall notify the AAA of the settlement;
- Dynegy agrees to waive and forego its rights to commence and/or engage in further proceedings arising out of the Incident;
- The Agreement is a full and final release by both parties for all known, unknown, and unanticipated injuries, claims or damages arising from or in any way related to the Incident which gave rise to the Arbitration; and
- The Agreement is a compromise and is not an admission of liability for the Incident by either PG&E or Dynegy.

Request

PG&E submits the Agreement in Confidential Appendix A and requests that the Commission adopt a final resolution approving the Agreement and a finding that this Agreement and PG&E's entry into it are reasonable and prudent for all purposes, including, but not limited to, PG&E's recovery in rates of all payments made under this Agreement.

The Commission has traditionally evaluated proposed contract settlements under the same standards that it uses for other settlements.² Those standards are set forth in Rule 12.1(d) of the Rules of Practice and Procedure (Rules), which provides that a settlement should be approved if it "is reasonable in light of the whole record, consistent with law, and in the public interest."

In determining whether a settlement satisfies this standard, the Commission reviews a number of factors, including 1) whether the settlement reflects the relative risks and costs of continued litigation; 2) whether the settlement fairly and reasonably resolves the disputed issue and conserves public and private resources; 3) whether the agreed-upon settlement terms fall within the range of possible outcomes if the parties had continued to litigate their dispute; 4) whether

² Recent decisions in which settlements have been approved using these standards are D.08-12-011 at pages 4-5, PG&E Application for Expedited and *Ex Parte* Approval of Termination of Standard Offer No. 2 Power Purchase Agreement Between Pacific Gas and Electric Company and Sunnyside Cogeneration Partners, L.P.; and D.08-12-045, PG&E Application for Expedited and *Ex Parte* Approval Of Termination Of Standard Offer No. 2 Power Purchase Agreement Between Pacific Gas and Electric Company and Diamond Foods Inc.

the settlement negotiations were at arm's length and without collusion, whether parties were adequately represented, and how far the proceedings had progressed when the parties settled, and 5) whether the dispute between the counterparty and the utility presents a colorable claim that raises substantive issues of law or fact.³

As summarized below, the Rule 12.1(d) criteria are described and satisfied.

1. The Settlement Reflects the Relative Risks and Costs Of Litigation

Although PG&E believes it would probably prevail in arbitration, the Agreement eliminates anticipated litigation costs as well as the possibility of an adverse judgment for the full amount of the Dynegy claim. The Agreement benefits PG&E's ratepayers by eliminating litigation uncertainty and the attorneys' fees and costs associated with litigating the dispute through the entire arbitration process.

2. The Settlement Fairly and Reasonably Resolves the Disputed Issue and Conserves Public and Private Resource

Dynegy's lawsuit arose out of a dispute as to the meaning of the contract term "force majeure." The Agreement fairly and reasonably resolves Dynegy's claim and it provides certainty to both parties as to the outcome of the dispute without the associated time, expense and risk implicit with arbitration.

3. The Agreed-Upon Terms Fall Clearly within the Range of Possible Outcomes Had the Parties Fully Litigated the Dispute

The Agreement adopts a settlement amount that is materially lower than the original disputed amount, accounts for cost savings associated with avoiding further litigation and arbitration costs, and factors in the potential of PG&E prevailing with its original arguments had the case been fully litigated. PG&E's analysis of the case is presented in Confidential Appendix B.

4. The Settlement Negotiations Were at Arm's Length and Without Collusion and the Parties Were Adequately Represented

At the time of settlement both PG&E and Dynegy were represented by counsel. Each side relied upon in-house counsel and outside counsel to research the law and conduct settlement negotiations. The arbitration proceedings had only progressed to the earliest stage, namely the selection

³ Id.

and appointment of a three person arbitration panel. No substantive discovery had taken place.

5. The Dispute Presents a Colorable Claim that Raises Substantive Issues of Law or Fact

The dispute largely turned on the meaning of phrases contained in the parties' contractual agreements. California law and the law of other jurisdictions do not clearly address the issues contained in this dispute and therefore a colorable claim with substantive issues existed prior to settlement.

Request For Confidential Treatment Of Appendices

For purposes of this advice letter, PG&E is requesting the following Appendices be maintained as confidential pursuant to Decision 06-06-066, Appendix I, and Public Utilities (PU) Code §§ 454.5(g).

- Confidential Appendix A, Release and Settlement Agreement;
- Confidential Appendix B, Analysis;
- Confidential Appendix C, Dynegy's Request for Mediation and Demand for Arbitration;
- Confidential Appendix D, Master PPA Cover Letter, Master PPA Collateral Annex, and Confirmation (Advice 2803-E Confidential Appendix A).

A declaration requesting confidential treatment is attached.

Additionally, under General Order 66-C and PU Code § 583, the Commission may keep certain materials confidential so that they are not subject to public inspection. In particular, "information of a confidential nature" and information obtained in confidence from a third party "where disclosure would be against the public interest" is to be treated confidentiality. (See General Order 66-C, §§ 2.2, 2.8.) For these reasons, the Settlement Agreement at issue in this advice letter should also be treated as confidential under General Order 66-C and PU Code Section 583.

Public Appendices included in this Advice Letter are as follows:

- Public Appendix E: Master Power Purchase Agreement and Cover Letter
- Public Appendix F: Advice 2803-E and Resolution E-4002.

Conclusion

PG&E requests that the Commission approve the Agreement between PG&E and Dynegy, attached as Confidential Appendix A. The Agreement provides benefits to the ratepayers in that it avoids further costs associated with litigation and arbitration of the Incident and more likely than not, results in lower costs to ratepayers than going forward with arbitration.

The Agreement attached to this advice letter is a confidential document and PG&E requests that the Commission affirm in a resolution on this advice letter that Appendices A and B are to be maintained as confidential pursuant to the confidentiality protections provided for in D.06-06-066, Appendix I, and PU Code Section 454.5(g). Confidential Appendix C and D contain information obtained from a third party in confidence and a confidential appendix from Advice 2803-E which relied on the May 20, 2003, Modified Protective Order issued in Rulemaking (R.) 01-10-024, and pursuant to PU Code Section 583.

Protests

Anyone wishing to protest this filing may do so by letter sent via U.S. mail, by facsimile or electronically, any of which must be received no later than **December 9, 2009** which is 20 days after the date of this filing. Protests should be mailed to:

CPUC Energy Division
Tariff Files, Room 4005
DMS Branch
505 Van Ness Avenue
San Francisco, California 94102

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

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

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

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

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

Effective Date

As discussed in this advice filing, PG&E requests that the Commission issue a final resolution approving this Settlement Agreement no later than **January 30, 2010**, and PG&E requests that this advice filing become effective **December 31, 2009**. PG&E is filing this advice letter as a Tier 3 advice letter.

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.06-02-013 and R.08-02-007. Address changes to the General Order 96-B service list and all electronic approvals should be directed to email PGETariffs@pge.com. Advice letter filings can also be accessed electronically at: <http://www.pge.com/tariffs>.

Handwritten signature of Brian Cherry in cursive script.

Vice President, Regulatory Relations

cc: Service Lists for R.06-02-013 and R.08-02-007

Attachments: Public Appendix E: Master Power Purchase Agreement and Cover Letter

Public Appendix F: Advice 2803-E and Resolution E-4002.

Limited Access to Confidential Material:

The portions of this Advice Letter marked Confidential Protected Material are submitted under the confidentiality protections of Sections 583 and 454.5(g) of the Public Utilities Code and General Order 66-C. This material is protected from public disclosure because it consists of the contract itself, which is protected pursuant to D.06-06-066. A separate Declaration Seeking Confidential Treatment regarding the confidential information is filed concurrently herewith.

Confidential Attachments:

Confidential Appendix A: Release and Settlement Agreement;
Confidential Appendix B: Analysis;

Confidential Appendix C: Dynegey's Request for Mediation and Demand for Arbitration;

Confidential Appendix D: Master PPA Cover Letter, Master PPA Collateral Annex, and Confirmation (Advice 2803-E Confidential Appendix A)

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: Olivia Brown

Phone #: 415.973.9312

E-mail: oxb4@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) #: 3559-E

Tier: 3

Subject of AL: Dynegy Settlement Agreement

Keywords (choose from CPUC listing): Contracts; agreements

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

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

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

Summarize differences between the AL and the prior withdrawn or rejected AL: N/A

Is AL requesting confidential treatment? Yes If so, what information is the utility seeking confidential treatment for:
Yes, see the attached matrix, which identifies all of the confidential information.

Confidential information will be made available to those who have executed a nondisclosure agreement: All members of PG&E's Procurement Review Group who have signed the nondisclosure agreement will receive the confidential information.

Name(s) and contact information of the person(s) who will provide the nondisclosure agreement and access to the confidential information: Jeannette Woo, 415-973-5097

Resolution Required? Yes No

Requested effective date: December 31, 2009

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). N/A

Tariff schedules affected: N/A

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

**ADVICE LETTER FILING OF
PACIFIC GAS AND ELECTRIC COMPANY (U 39 E)**

**DECLARATION OF JEANNETTE WOO IN SUPPORT OF
OF ADVICE 3559-E, CONFIDENTIAL APPENDICES A THOROUGH D**

I, Jeannette Woo, declare:

1. I am presently employed by Pacific Gas and Electric Company (PG&E) and have been an employee since 1988. My current title is Manager, California Department of Water Resources (CDWR) & Bilateral Contract Management. In this position, my responsibilities include overall contract administration of CDWR contracts allocated to PG&E and conventionally fueled power contracts. In the past I have also had responsibility for overall contract administration of Qualifying Facility Power Purchase Agreements and Renewable contracts. In carrying out these responsibilities, I have acquired knowledge of the processes and procedures that PG&E uses to manage its CDWR-allocated and bilateral contracts.
2. Based on my knowledge and experience, and in accordance with the "Administrative Law Judge's Ruling Clarifying Interim Procedures For Complying With Decision 06-06-066," issued in Rulemaking 05-06-040 on August 22, 2006, I make this declaration seeking confidential treatment for Confidential Appendices A through D of Advice 3559-E.
3. Attached to this declaration is a matrix identifying the data and information for which PG&E is seeking confidential treatment. The matrix specifies that the material PG&E is seeking to protect constitutes the particular type of data and information listed in Appendix 1 (the "IOU Matrix") of Decision 06-06-066, if applicable or GO 66-C.
4. The matrix also specifies the category or categories in the IOU Matrix to which the data and information corresponds, and why confidential protection is justified. Finally, the matrix specifies that: (1) PG&E is complying with the limitations specified in the IOU Matrix for that type of data or information; (2) the information is not already public; and (3) the data cannot be aggregated, redacted, summarized or otherwise protected in a way

that allows partial disclosure. By this reference, I am incorporating into this declaration all of the explanatory text that is pertinent to my testimony in the attached matrix.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed on November 18, 2009, at San Francisco, California.



Jeannette Woo

1	PACIFIC GAS AND ELECTRIC COMPANY							
2	Document: Appendices A through D of Advice 3559-E							
3	IDENTIFICATION OF CONFIDENTIAL INFORMATION PER DECISION 06-06-066							
4	Date: November 18, 2009							
5								
6	Redaction Reference	1) The material submitted constitutes a particular type of data listed in the Matrix, appended as Appendix 1 to D.06-06-066 (Y/N)	2) Which category or categories in the Matrix the data correspond to:	3) That it is complying with the limitations on confidentiality specified in the Matrix for that type of data (Y/N)	4) That the information is not already public (Y/N)	5) The data cannot be aggregated, redacted, summarized, masked or otherwise protected in a way that allows partial disclosure (Y/N)	PG&E's Justification for Confidential Treatment	Length of Time
7								
8	Confidential Appendix A - Dynegy Settlement Agreement	Y	Page 15, Section VII - Bilateral Contract Terms and Conditions - Electric, Section B	Y	N	N	Specific Settlement Agreement Terms and Conditions are market sensitive information	3-years from the date contract states deliveries to begin; or until one year following expiration whichever comes first
9	Confidential Appendix B - Analysis of Settlement Agreement	Y	Page 15, Section VII - Bilateral Contract Terms and Conditions - Electric, Section B	Y	N	N	Specific Settlement Agreement Terms and Conditions are market sensitive information	3-years from the date contract states deliveries to begin; or until one year following expiration whichever comes first
10	Confidential Appendix C - Dynegy Demand for Mediation and Dynegy Demand for Arbitration	N	Under Public Utilities Code Section 583 and General Order 66-C	N/A	N	N	Documents highlight specific contract terms and conditions in dispute which is market sensitive information	Confidential until no longer covered by GO 66-C
11	Confidential Appendix D - Advice 2803-E & Confidential Appendix A	Y	Page 15, Section VII - Bilateral Contract Terms and Conditions - Electric, Section B	Y	N	N	Original Master Agreement cover letter and subsequent Confirmation associated with Advice 2803-E. Agreements include market sensitive information related to the contract price, terms, and conditions.	3-years from the date contract states deliveries to begin; or until one year following expiration whichever comes first

PUBLIC APPENDIX E
ADVICE 3559-E

EEI MASTER AGREEMENT

Master Power Purchase & Sale Agreement



Version 2.1 (modified 4/25/00)
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INDUSTRY IS ENCOURAGED TO USE THIS MASTER POWER PURCHASE AND SALE AGREEMENT IN ITS TRANSACTIONS.
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MASTER POWER PURCHASE AND SALES AGREEMENT

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MASTER POWER PURCHASE AND SALE AGREEMENT

COVER SHEET

This *Master Power Purchase and Sale Agreement* (“*Master Agreement*”) is made as of the following date: _____ (“Effective Date”). The *Master Agreement*, together with the exhibits, schedules and any written supplements hereto, the Party A Tariff, if any, the Party B Tariff, if any, any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions (including any confirmations accepted in accordance with Section 2.3 hereto) shall be referred to as the “Agreement.” The Parties to this *Master Agreement* are the following:

Name (“_____” or “Party A”)

Name (“Counterparty” or “Party B”)

All Notices:

All Notices:

Street: _____

Street: _____

City: _____ Zip: _____

City: _____ Zip: _____

Attn: Contract Administration

Attn: Contract Administration

Phone: _____

Phone: _____

Facsimile: _____

Facsimile: _____

Duns: _____

Duns: _____

Federal Tax ID Number: _____

Federal Tax ID Number: _____

Invoices:

Invoices:

Attn: _____

Attn: _____

Phone: _____

Phone: _____

Facsimile: _____

Facsimile: _____

Scheduling:

Scheduling:

Attn: _____

Attn: _____

Phone: _____

Phone: _____

Facsimile: _____

Facsimile: _____

Payments:

Payments:

Attn: _____

Attn: _____

Phone: _____

Phone: _____

Facsimile: _____

Facsimile: _____

Wire Transfer:

Wire Transfer:

BNK: _____

BNK: _____

ABA: _____

ABA: _____

ACCT: _____

ACCT: _____

Credit and Collections:

Credit and Collections:

Attn: _____

Attn: _____

Phone: _____

Phone: _____

Facsimile: _____

Facsimile: _____

With additional Notices of an Event of Default or Potential Event of Default to:

With additional Notices of an Event of Default or Potential Event of Default to:

Attn: _____

Attn: _____

Phone: _____

Phone: _____

Facsimile: _____

Facsimile: _____

The Parties hereby agree that the General Terms and Conditions are incorporated herein, and to the following provisions as provided for in the General Terms and Conditions:

Party A Tariff Tariff _____ Dated _____ Docket Number _____

Party B Tariff Tariff _____ Dated _____ Docket Number _____

Article Two

Transaction Terms and Conditions Optional provision in Section 2.4. If not checked, inapplicable.

Article Four

Remedies for Failure to Deliver or Receive Accelerated Payment of Damages. If not checked, inapplicable.

Article Five

Events of Default; Remedies Cross Default for Party A:
 Party A: _____ Cross Default Amount \$ _____
 Other Entity: _____ Cross Default Amount \$ _____
 Cross Default for Party B:
 Party B: _____ Cross Default Amount \$ _____
 Other Entity: _____ Cross Default Amount \$ _____

5.6 Closeout Setoff

- Option A (Applicable if no other selection is made.)
 - Option B - Affiliates shall have the meaning set forth in the Agreement unless otherwise specified as follows: _____

 - Option C (No Setoff)
-

Article 8

Credit and Collateral Requirements

8.1 Party A Credit Protection:

- (a) Financial Information:
 - Option A
 - Option B Specify: _____
 - Option C Specify: _____
- (b) Credit Assurances:
 - Not Applicable
 - Applicable
- (c) Collateral Threshold:
 - Not Applicable
 - Applicable

If applicable, complete the following:

Party B Collateral Threshold: \$ _____; provided, however, that Party B's Collateral Threshold shall be zero if an Event of Default or Potential Event of Default with respect to Party B has occurred and is continuing.

Party B Independent Amount: \$ _____

Party B Rounding Amount: \$ _____

(d) Downgrade Event:

- Not Applicable
- Applicable

If applicable, complete the following:

- It shall be a Downgrade Event for Party B if Party B's Credit Rating falls below _____ from S&P or _____ from Moody's or if Party B is not rated by either S&P or Moody's
- Other:
Specify: _____

(e) Guarantor for Party B: _____

Guarantee Amount: _____

8.2 Party B Credit Protection:

(a) Financial Information:

- Option A
- Option B Specify: _____
- Option C Specify: _____

(b) Credit Assurances:

- Not Applicable
- Applicable

(c) Collateral Threshold:

- Not Applicable
- Applicable

If applicable, complete the following:

Party A Collateral Threshold: \$ _____; provided, however, that Party A's Collateral Threshold shall be zero if an Event of Default or Potential Event of Default with respect to Party A has occurred and is continuing.

Party A Independent Amount: \$ _____

Party A Rounding Amount: \$ _____

(d) Downgrade Event:

- Not Applicable
- Applicable

If applicable, complete the following:

- It shall be a Downgrade Event for Party A if Party A's Credit Rating falls below _____ from S&P or _____ from Moody's or if Party A is not rated by either S&P or Moody's
- Other:
Specify: _____

(e) Guarantor for Party A: _____
Guarantee Amount: _____

Article 10

Confidentiality Confidentiality Applicable If not checked, inapplicable.

Schedule M

- Party A is a Governmental Entity or Public Power System
- Party B is a Governmental Entity or Public Power System
- Add Section 3.6. If not checked, inapplicable
- Add Section 8.6. If not checked, inapplicable

Other Changes

Specify, if any: _____

IN WITNESS WHEREOF, the Parties have caused this Master Agreement to be duly executed as of the date first above written.

Party A Name

Party B Name

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

DISCLAIMER: This Master Power Purchase and Sale Agreement was prepared by a committee of representatives of Edison Electric Institute (“EEI”) and National Energy Marketers Association (“NEM”) member companies to facilitate orderly trading in and development of wholesale power markets. Neither EEI nor NEM nor any member company nor any of their agents, representatives or attorneys shall be responsible for its use, or any damages resulting therefrom. By providing this Agreement EEI and NEM do not offer legal advice and all users are urged to consult their own legal counsel to ensure that their commercial objectives will be achieved and their legal interests are adequately protected.

GENERAL TERMS AND CONDITIONS

ARTICLE ONE: GENERAL DEFINITIONS

1.1 “Affiliate” means, with respect to any person, any other person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such person. For this purpose, “control” means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.

1.2 “Agreement” has the meaning set forth in the Cover Sheet.

1.3 “Bankrupt” means with respect to any entity, such entity (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is generally unable to pay its debts as they fall due.

1.4 “Business Day” means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday. A Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time for the relevant Party’s principal place of business. The relevant Party, in each instance unless otherwise specified, shall be the Party from whom the notice, payment or delivery is being sent and by whom the notice or payment or delivery is to be received.

1.5 “Buyer” means the Party to a Transaction that is obligated to purchase and receive, or cause to be received, the Product, as specified in the Transaction.

1.6 “Call Option” means an Option entitling, but not obligating, the Option Buyer to purchase and receive the Product from the Option Seller at a price equal to the Strike Price for the Delivery Period for which the Option may be exercised, all as specified in the Transaction. Upon proper exercise of the Option by the Option Buyer, the Option Seller will be obligated to sell and deliver the Product for the Delivery Period for which the Option has been exercised.

1.7 “Claiming Party” has the meaning set forth in Section 3.3.

1.8 “Claims” means all third party claims or actions, threatened or filed and, whether groundless, false, fraudulent or otherwise, that directly or indirectly relate to the subject matter of an indemnity, and the resulting losses, damages, expenses, attorneys’ fees and court costs, whether incurred by settlement or otherwise, and whether such claims or actions are threatened or filed prior to or after the termination of this Agreement.

1.9 “Confirmation” has the meaning set forth in Section 2.3.

1.10 “Contract Price” means the price in \$U.S. (unless otherwise provided for) to be paid by Buyer to Seller for the purchase of the Product, as specified in the Transaction.

1.11 “Costs” means, with respect to the Non-Defaulting Party, brokerage fees, commissions and other similar third party transaction costs and 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 a Terminated Transaction; and all reasonable attorneys’ fees and expenses incurred by the Non-Defaulting Party in connection with the termination of a Transaction.

1.12 “Credit Rating” means, with respect to any entity, the rating then assigned to such entity’s unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issues rating by S&P, Moody’s or any other rating agency agreed by the Parties as set forth in the Cover Sheet.

1.13 “Cross Default Amount” means the cross default amount, if any, set forth in the Cover Sheet for a Party.

1.14 “Defaulting Party” has the meaning set forth in Section 5.1.

1.15 “Delivery Period” means the period of delivery for a Transaction, as specified in the Transaction.

1.16 “Delivery Point” means the point at which the Product will be delivered and received, as specified in the Transaction.

1.17 “Downgrade Event” has the meaning set forth on the Cover Sheet.

1.18 “Early Termination Date” has the meaning set forth in Section 5.2.

1.19 “Effective Date” has the meaning set forth on the Cover Sheet.

1.20 “Equitable Defenses” means any bankruptcy, insolvency, reorganization and other laws affecting creditors’ rights generally, and with regard to equitable remedies, the discretion of the court before which proceedings to obtain same may be pending.

1.21 “Event of Default” has the meaning set forth in Section 5.1.

1.22 “FERC” means the Federal Energy Regulatory Commission or any successor government agency.

1.23 “Force Majeure” means an event or circumstance which prevents one Party from performing its obligations under one or more Transactions, which event or circumstance was not anticipated as of the date the Transaction was agreed to, which is not within the reasonable control of, or the result of the negligence of, the Claiming Party, and which, by the exercise of due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided. Force Majeure shall not be based on (i) the loss of Buyer’s markets; (ii) Buyer’s inability economically

to use or resell the Product purchased hereunder; (iii) the loss or failure of Seller's supply; or (iv) Seller's ability to sell the Product at a price greater than the Contract Price. Neither Party may raise a claim of Force Majeure based in whole or in part on curtailment by a Transmission Provider unless (i) such Party has contracted for firm transmission with a Transmission Provider for the Product to be delivered to or received at the Delivery Point and (ii) such curtailment is due to "force majeure" or "uncontrollable force" or a similar term as defined under the Transmission Provider's tariff; provided, however, that existence of the foregoing factors shall not be sufficient to conclusively or presumptively prove the existence of a Force Majeure absent a showing of other facts and circumstances which in the aggregate with such factors establish that a Force Majeure as defined in the first sentence hereof has occurred. The applicability of Force Majeure to the Transaction is governed by the terms of the Products and Related Definitions contained in Schedule P.

1.24 "Gains" means, with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of a Terminated Transaction, determined in a commercially reasonable manner.

1.25 "Guarantor" means, with respect to a Party, the guarantor, if any, specified for such Party on the Cover Sheet.

1.26 "Interest Rate" means, for any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in *The Wall Street Journal* under "Money Rates" on such day (or if not published on such day on the most recent preceding day on which published), plus two percent (2%) and (b) the maximum rate permitted by applicable law.

1.27 "Letter(s) of Credit" means one or more irrevocable, transferable standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank having a credit rating of at least A- from S&P or A3 from Moody's, in a form acceptable to the Party in whose favor the letter of credit is issued. Costs of a Letter of Credit shall be borne by the applicant for such Letter of Credit.

1.28 "Losses" means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of a Terminated Transaction, determined in a commercially reasonable manner.

1.29 "Master Agreement" has the meaning set forth on the Cover Sheet.

1.30 "Moody's" means Moody's Investor Services, Inc. or its successor.

1.31 "NERC Business Day" means any day except a Saturday, Sunday or a holiday as defined by the North American Electric Reliability Council or any successor organization thereto. A NERC Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time for the relevant Party's principal place of business. The relevant Party, in each instance unless otherwise specified, shall be the Party from whom the notice, payment or delivery is being sent and by whom the notice or payment or delivery is to be received.

1.32 “Non-Defaulting Party” has the meaning set forth in Section 5.2.

1.33 “Offsetting Transactions” mean any two or more outstanding Transactions, having the same or overlapping Delivery Period(s), Delivery Point and payment date, where under one or more of such Transactions, one Party is the Seller, and under the other such Transaction(s), the same Party is the Buyer.

1.34 “Option” means the right but not the obligation to purchase or sell a Product as specified in a Transaction.

1.35 “Option Buyer” means the Party specified in a Transaction as the purchaser of an option, as defined in Schedule P.

1.36 “Option Seller” means the Party specified in a Transaction as the seller of an option , as defined in Schedule P.

1.37 “Party A Collateral Threshold” means the collateral threshold, if any, set forth in the Cover Sheet for Party A.

1.38 “Party B Collateral Threshold” means the collateral threshold, if any, set forth in the Cover Sheet for Party B.

1.39 “Party A Independent Amount” means the amount , if any, set forth in the Cover Sheet for Party A.

1.40 “Party B Independent Amount” means the amount , if any, set forth in the Cover Sheet for Party B.

1.41 “Party A Rounding Amount” means the amount, if any, set forth in the Cover Sheet for Party A.

1.42 “Party B Rounding Amount” means the amount, if any, set forth in the Cover Sheet for Party B.

1.43 “Party A Tariff” means the tariff, if any, specified in the Cover Sheet for Party A.

1.44 “Party B Tariff” means the tariff, if any, specified in the Cover Sheet for Party B.

1.45 “Performance Assurance” means collateral in the form of either cash, Letter(s) of Credit, or other security acceptable to the Requesting Party.

1.46 “Potential Event of Default” means an event which, with notice or passage of time or both, would constitute an Event of Default.

1.47 “Product” means electric capacity, energy or other product(s) related thereto as specified in a Transaction by reference to a Product listed in Schedule P hereto or as otherwise specified by the Parties in the Transaction.

1.48 “Put Option” means an Option entitling, but not obligating, the Option Buyer to sell and deliver the Product to the Option Seller at a price equal to the Strike Price for the Delivery Period for which the option may be exercised, all as specified in a Transaction. Upon proper exercise of the Option by the Option Buyer, the Option Seller will be obligated to purchase and receive the Product.

1.49 “Quantity” means that quantity of the Product that Seller agrees to make available or sell and deliver, or cause to be delivered, to Buyer, and that Buyer agrees to purchase and receive, or cause to be received, from Seller as specified in the Transaction.

1.50 “Recording” has the meaning set forth in Section 2.4.

1.51 “Replacement Price” means the price at which Buyer, acting in a commercially reasonable manner, purchases at the Delivery Point a replacement for any Product specified in a Transaction but not delivered by Seller, plus (i) costs reasonably incurred by Buyer in purchasing such substitute Product and (ii) additional transmission charges, if any, reasonably incurred by Buyer to the Delivery Point, or at Buyer’s option, the market price at the Delivery Point for such Product not delivered as determined by Buyer in a commercially reasonable manner; provided, however, in no event shall such price include any penalties, ratcheted demand or similar charges, nor shall Buyer be required to utilize or change its utilization of its owned or controlled assets or market positions to minimize Seller’s liability. For the purposes of this definition, Buyer shall be considered to have purchased replacement Product to the extent Buyer shall have entered into one or more arrangements in a commercially reasonable manner whereby Buyer repurchases its obligation to sell and deliver the Product to another party at the Delivery Point.

1.52 “S&P” means the Standard & Poor’s Rating Group (a division of McGraw-Hill, Inc.) or its successor.

1.53 “Sales Price” means the price at which Seller, acting in a commercially reasonable manner, resells at the Delivery Point any Product not received by Buyer, deducting from such proceeds any (i) costs reasonably incurred by Seller in reselling such Product and (ii) additional transmission charges, if any, reasonably incurred by Seller in delivering such Product to the third party purchasers, or at Seller’s option, the market price at the Delivery Point for such Product not received as determined by Seller in a commercially reasonable manner; provided, however, in no event shall such price include any penalties, ratcheted demand or similar charges, nor shall Seller be required to utilize or change its utilization of its owned or controlled assets, including contractual assets, or market positions to minimize Buyer’s liability. For purposes of this definition, Seller shall be considered to have resold such Product to the extent Seller shall have entered into one or more arrangements in a commercially reasonable manner whereby Seller repurchases its obligation to purchase and receive the Product from another party at the Delivery Point.

1.54 “Schedule” or “Scheduling” means the actions of Seller, Buyer and/or their designated representatives, including each Party’s Transmission Providers, if applicable, of notifying, requesting and confirming to each other the quantity and type of Product to be delivered on any given day or days during the Delivery Period at a specified Delivery Point.

1.55 “Seller” means the Party to a Transaction that is obligated to sell and deliver, or cause to be delivered, the Product, as specified in the Transaction.

1.56 “Settlement Amount” means, with respect to a Transaction and the Non-Defaulting Party, the Losses or Gains, and Costs, expressed in U.S. Dollars, which such party incurs as a result of the liquidation of a Terminated Transaction pursuant to Section 5.2.

1.57 “Strike Price” means the price to be paid for the purchase of the Product pursuant to an Option.

1.58 “Terminated Transaction” has the meaning set forth in Section 5.2.

1.59 “Termination Payment” has the meaning set forth in Section 5.3.

1.60 “Transaction” means a particular transaction agreed to by the Parties relating to the sale and purchase of a Product pursuant to this Master Agreement.

1.61 “Transmission Provider” means any entity or entities transmitting or transporting the Product on behalf of Seller or Buyer to or from the Delivery Point in a particular Transaction.

ARTICLE TWO: TRANSACTION TERMS AND CONDITIONS

2.1 Transactions. A Transaction shall be entered into upon agreement of the Parties orally or, if expressly required by either Party with respect to a particular Transaction, in writing, including an electronic means of communication. Each Party agrees not to contest, or assert any defense to, the validity or enforceability of the Transaction entered into in accordance with this Master Agreement (i) based on any law requiring agreements to be in writing or to be signed by the parties, or (ii) based on any lack of authority of the Party or any lack of authority of any employee of the Party to enter into a Transaction.

2.2 Governing Terms. Unless otherwise specifically agreed, each Transaction between the Parties shall be governed by this Master Agreement. This Master Agreement (including all exhibits, schedules and any written supplements hereto), , the Party A Tariff, if any, and the Party B Tariff, if any, any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions (including any Confirmations accepted in accordance with Section 2.3) shall form a single integrated agreement between the Parties. Any inconsistency between any terms of this Master Agreement and any terms of the Transaction shall be resolved in favor of the terms of such Transaction.

2.3 Confirmation. Seller may confirm a Transaction by forwarding to Buyer by facsimile within three (3) Business Days after the Transaction is entered into a confirmation (“Confirmation”) substantially in the form of Exhibit A. If Buyer objects to any term(s) of such Confirmation, Buyer shall notify Seller in writing of such objections within two (2) Business Days of Buyer’s receipt thereof, failing which Buyer shall be deemed to have accepted the terms as sent. If Seller fails to send a Confirmation within three (3) Business Days after the Transaction is entered into, a Confirmation substantially in the form of Exhibit A, may be forwarded by Buyer to Seller. If Seller objects to any term(s) of such Confirmation, Seller shall notify Buyer of such objections within two (2) Business Days of Seller’s receipt thereof, failing

which Seller shall be deemed to have accepted the terms as sent. If Seller and Buyer each send a Confirmation and neither Party objects to the other Party's Confirmation within two (2) Business Days of receipt, Seller's Confirmation shall be deemed to be accepted and shall be the controlling Confirmation, unless (i) Seller's Confirmation was sent more than three (3) Business Days after the Transaction was entered into and (ii) Buyer's Confirmation was sent prior to Seller's Confirmation, in which case Buyer's Confirmation shall be deemed to be accepted and shall be the controlling Confirmation. Failure by either Party to send or either Party to return an executed Confirmation or any objection by either Party shall not invalidate the Transaction agreed to by the Parties.

2.4 Additional Confirmation Terms. If the Parties have elected on the Cover Sheet to make this Section 2.4 applicable to this Master Agreement, when a Confirmation contains provisions, other than those provisions relating to the commercial terms of the Transaction (e.g., price or special transmission conditions), which modify or supplement the general terms and conditions of this Master Agreement (e.g., arbitration provisions or additional representations and warranties), such provisions shall not be deemed to be accepted pursuant to Section 2.3 unless agreed to either orally or in writing by the Parties; provided that the foregoing shall not invalidate any Transaction agreed to by the Parties.

2.5 Recording. Unless a Party expressly objects to a Recording (defined below) 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 to this Master 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. 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. The Recording, and the terms and conditions described therein, if admissible, shall be the controlling evidence for the Parties' agreement with respect to a particular Transaction in the event a Confirmation is not fully executed (or deemed accepted) by both Parties. Upon full execution (or deemed acceptance) of a Confirmation, such Confirmation shall control in the event of any conflict with the terms of a Recording, or in the event of any conflict with the terms of this Master Agreement.

ARTICLE THREE: OBLIGATIONS AND DELIVERIES

3.1 Seller's and Buyer's Obligations. With respect to each Transaction, Seller shall sell and deliver, or cause to be delivered, and Buyer shall purchase and receive, or cause to be received, the Quantity of the Product at the Delivery Point, and Buyer shall pay Seller the Contract Price; provided, however, with respect to Options, the obligations set forth in the preceding sentence shall only arise if the Option Buyer exercises its Option in accordance with its terms. Seller shall be responsible for any costs or charges imposed on or associated with the Product or its delivery of the Product up to the Delivery Point. Buyer shall be responsible for any costs or charges imposed on or associated with the Product or its receipt at and from the Delivery Point.

3.2 Transmission and Scheduling. Seller shall arrange and be responsible for transmission service to the Delivery Point and shall Schedule or arrange for Scheduling services

with its Transmission Providers, as specified by the Parties in the Transaction, or in the absence thereof, in accordance with the practice of the Transmission Providers, to deliver the Product to the Delivery Point. Buyer shall arrange and be responsible for transmission service at and from the Delivery Point and shall Schedule or arrange for Scheduling services with its Transmission Providers to receive the Product at the Delivery Point.

3.3 Force Majeure. To the extent either Party is prevented by Force Majeure from carrying out, in whole or part, its obligations under the Transaction and such Party (the “Claiming Party”) gives notice and details of the Force Majeure to the other Party as soon as practicable, then, unless the terms of the Product specify otherwise, the Claiming Party shall be excused from the performance of its obligations with respect to such Transaction (other than the obligation to make payments then due or becoming due with respect to performance prior to the Force Majeure). The Claiming Party shall remedy the Force Majeure with all reasonable dispatch. The non-Claiming Party shall not be required to perform or resume performance of its obligations to the Claiming Party corresponding to the obligations of the Claiming Party excused by Force Majeure.

ARTICLE FOUR: REMEDIES FOR FAILURE TO DELIVER/RECEIVE

4.1 Seller Failure. If Seller fails to schedule and/or deliver all or part of the Product pursuant to a Transaction, and such failure is not excused under the terms of the Product or by Buyer’s failure to perform, then Seller shall pay Buyer, on the date payment would otherwise be due in respect of the month in which the failure occurred or, if “Accelerated Payment of Damages” is specified on the Cover Sheet, within five (5) Business Days of invoice receipt, an amount for such deficiency equal to the positive difference, if any, obtained by subtracting the Contract Price from the Replacement Price. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount.

4.2 Buyer Failure. If Buyer fails to schedule and/or receive all or part of the Product pursuant to a Transaction and such failure is not excused under the terms of the Product or by Seller’s failure to perform, then Buyer shall pay Seller, on the date payment would otherwise be due in respect of the month in which the failure occurred or, if “Accelerated Payment of Damages” is specified on the Cover Sheet, within five (5) Business Days of invoice receipt, an amount for such deficiency equal to the positive difference, if any, obtained by subtracting the Sales Price from the Contract Price. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount.

ARTICLE FIVE: EVENTS OF DEFAULT; REMEDIES

5.1 Events of Default. An “Event of Default” shall mean, with respect to a Party (a “Defaulting Party”), the occurrence of any of the following:

- (a) the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within three (3) Business Days after written notice;

- (b) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated;
- (c) the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default, and except for such Party's obligations to deliver or receive the Product, the exclusive remedy for which is provided in Article Four) if such failure is not remedied within three (3) Business Days after written notice;
- (d) such Party becomes Bankrupt;
- (e) the failure of such Party to satisfy the creditworthiness/collateral requirements agreed to pursuant to Article Eight hereof;
- (f) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other Party;
- (g) if the applicable cross default section in the Cover Sheet is indicated for such Party, the occurrence and continuation of (i) a default, event of default or other similar condition or event in respect of such Party or any other party specified in the Cover Sheet for such Party under one or more agreements or instruments, individually or collectively, relating to indebtedness for borrowed money in an aggregate amount of not less than the applicable Cross Default Amount (as specified in the Cover Sheet), which results in such indebtedness becoming, or becoming capable at such time of being declared, immediately due and payable or (ii) a default by such Party or any other party specified in the Cover Sheet for such Party in making on the due date therefor one or more payments, individually or collectively, in an aggregate amount of not less than the applicable Cross Default Amount (as specified in the Cover Sheet);
- (h) with respect to such Party's Guarantor, if any:
 - (i) if any representation or warranty made by a Guarantor in connection with this Agreement is false or misleading in any material respect when made or when deemed made or repeated;
 - (ii) the failure of a Guarantor to make any payment required or to perform any other material covenant or obligation in any guaranty made in connection with this Agreement and such failure shall not be remedied within three (3) Business Days after written notice;

- (iii) a Guarantor becomes Bankrupt;
- (iv) the failure of a Guarantor's guaranty to be in full force and effect for purposes of this Agreement (other than in accordance with its terms) prior to the satisfaction of all obligations of such Party under each Transaction to which such guaranty shall relate without the written consent of the other Party; or
- (v) a Guarantor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of any guaranty.

5.2 Declaration of an Early Termination Date and Calculation of Settlement Amounts. If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (the "Non-Defaulting Party") shall have the right (i) to designate a day, no earlier than the day such notice is effective and no later than 20 days after such notice is effective, as an early termination date ("Early Termination Date") to accelerate all amounts owing between the Parties and to liquidate and terminate all, but not less than all, Transactions (each referred to as a "Terminated Transaction") between the Parties, (ii) withhold any payments due to the Defaulting Party under this Agreement and (iii) suspend performance. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for each such Terminated Transaction as of the Early Termination Date (or, to the extent that in the reasonable opinion of the Non-Defaulting Party certain of such Terminated Transactions are commercially impracticable to liquidate and terminate or may not be liquidated and terminated under applicable law on the Early Termination Date, as soon thereafter as is reasonably practicable).

5.3 Net Out of Settlement Amounts. The Non-Defaulting Party shall aggregate all Settlement Amounts into a single amount by: netting out (a) all Settlement Amounts that are due to the Defaulting Party, plus, at the option of the Non-Defaulting Party, any cash or other form of security then available to the Non-Defaulting Party pursuant to Article Eight, plus any or all other amounts due to the Defaulting Party under this Agreement against (b) all Settlement Amounts that are due to the Non-Defaulting Party, plus any or all other amounts due to the Non-Defaulting Party under this Agreement, so that all such amounts shall be netted out to a single liquidated amount (the "Termination Payment") payable by one Party to the other. The Termination Payment shall be due to or due from the Non-Defaulting Party as appropriate.

5.4 Notice of Payment of Termination Payment. As soon as practicable after a liquidation, notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Termination Payment and whether the Termination Payment is due to or due from the Non-Defaulting Party. The notice shall include a written statement explaining in reasonable detail the calculation of such amount. The Termination Payment shall be made by the Party that owes it within two (2) Business Days after such notice is effective.

5.5 Disputes With Respect to Termination Payment. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within two (2) Business Days of receipt of Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written

explanation of the basis for such dispute; provided, however, that if the Termination Payment is due from the Defaulting Party, the Defaulting Party shall first transfer Performance Assurance to the Non-Defaulting Party in an amount equal to the Termination Payment.

5.6 Closeout Setoffs.

Option A: After calculation of a Termination Payment in accordance with Section 5.3, if the Defaulting Party would be owed the Termination Payment, the Non-Defaulting Party shall be entitled, at its option and in its discretion, to (i) set off against such Termination Payment any amounts due and owing by the Defaulting Party to the Non-Defaulting Party under any other agreements, instruments or undertakings between the Defaulting Party and the Non-Defaulting Party and/or (ii) to the extent the Transactions are not yet liquidated in accordance with Section 5.2, withhold payment of the Termination Payment to the Defaulting Party. The remedy provided for in this Section shall be without prejudice and in addition to any right of setoff, combination of accounts, lien or other right to which any Party is at any time otherwise entitled (whether by operation of law, contract or otherwise).

Option B: After calculation of a Termination Payment in accordance with Section 5.3, if the Defaulting Party would be owed the Termination Payment, the Non-Defaulting Party shall be entitled, at its option and in its discretion, to (i) set off against such Termination Payment any amounts due and owing by the Defaulting Party or any of its Affiliates to the Non-Defaulting Party or any of its Affiliates under any other agreements, instruments or undertakings between the Defaulting Party or any of its Affiliates and the Non-Defaulting Party or any of its Affiliates and/or (ii) to the extent the Transactions are not yet liquidated in accordance with Section 5.2, withhold payment of the Termination Payment to the Defaulting Party. The remedy provided for in this Section shall be without prejudice and in addition to any right of setoff, combination of accounts, lien or other right to which any Party is at any time otherwise entitled (whether by operation of law, contract or otherwise).

Option C: Neither Option A nor B shall apply.

5.7 Suspension of Performance. Notwithstanding any other provision of this Master Agreement, if (a) an Event of Default or (b) a Potential Event of Default shall have occurred and be continuing, the Non-Defaulting Party, upon written notice to the Defaulting Party, shall have the right (i) to suspend performance under any or all Transactions; provided, however, in no event shall any such suspension continue for longer than ten (10) NERC Business Days with respect to any single Transaction unless an early Termination Date shall have been declared and notice thereof pursuant to Section 5.2 given, and (ii) to the extent an Event of Default shall have occurred and be continuing to exercise any remedy available at law or in equity.

ARTICLE SIX: PAYMENT AND NETTING

6.1 Billing Period. Unless otherwise specifically agreed upon by the Parties in a Transaction, the calendar month shall be the standard period for all payments under this Agreement (other than Termination Payments and, if “Accelerated Payment of Damages” is specified by the Parties in the Cover Sheet, payments pursuant to Section 4.1 or 4.2 and Option premium payments pursuant to Section 6.7). As soon as practicable after the end of each month,

each Party will render to the other Party an invoice for the payment obligations, if any, incurred hereunder during the preceding month.

6.2 Timeliness of Payment. Unless otherwise agreed by the Parties in a Transaction, all invoices under this Master Agreement shall be due and payable in accordance with each Party's invoice instructions on or before the later of the twentieth (20th) day of each month, or tenth (10th) day after receipt of the invoice or, if such day is not a Business Day, then on the next Business Day. Each Party will make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any amounts not paid by the due date will be deemed delinquent and will accrue interest at the Interest Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full.

6.3 Disputes and Adjustments of Invoices. A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice, rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with notice of the objection 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. Upon resolution of the dispute, any required payment shall be made within two (2) Business Days of such resolution along with interest accrued at the Interest Rate from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this Section 6.3 within twelve (12) months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twelve (12) months after the close of the month during which performance of a Transaction occurred, the right to payment for such performance is waived.

6.4 Netting of Payments. The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other on the same date pursuant to all Transactions through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Products during the monthly billing period under this Master Agreement, including any related damages calculated pursuant to Article Four (unless one of the Parties elects to accelerate payment of such amounts as permitted by Article Four), interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

6.5 Payment Obligation Absent Netting. If no mutual debts or payment obligations exist and only one Party owes a debt or obligation to the other during the monthly billing period, including, but not limited to, any related damage amounts calculated pursuant to Article Four, interest, and payments or credits, that Party shall pay such sum in full when due.

6.6 Security. Unless the Party benefiting from Performance Assurance or a guaranty notifies the other Party in writing, and except in connection with a liquidation and termination in accordance with Article Five, all amounts netted pursuant to this Article Six shall not take into account or include any Performance Assurance or guaranty which may be in effect to secure a Party's performance under this Agreement.

6.7 Payment for Options. The premium amount for the purchase of an Option shall be paid within two (2) Business Days of receipt of an invoice from the Option Seller. Upon exercise of an Option, payment for the Product underlying such Option shall be due in accordance with Section 6.1.

6.8 Transaction Netting. If the Parties enter into one or more Transactions, which in conjunction with one or more other outstanding Transactions, constitute Offsetting Transactions, then all such Offsetting Transactions may by agreement of the Parties, be netted into a single Transaction under which:

- (a) the Party obligated to deliver the greater amount of Energy will deliver the difference between the total amount it is obligated to deliver and the total amount to be delivered to it under the Offsetting Transactions, and
- (b) the Party owing the greater aggregate payment will pay the net difference owed between the Parties.

Each single Transaction resulting under this Section shall be deemed part of the single, indivisible contractual arrangement between the parties, and once such resulting Transaction occurs, outstanding obligations under the Offsetting Transactions which are satisfied by such offset shall terminate.

ARTICLE SEVEN: LIMITATIONS

7.1 Limitation of Remedies, Liability and Damages. EXCEPT AS SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN OR IN A TRANSACTION, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, 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 CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

ARTICLE EIGHT: CREDIT AND COLLATERAL REQUIREMENTS

8.1 Party A Credit Protection. The applicable credit and collateral requirements shall be as specified on the Cover Sheet. If no option in Section 8.1(a) is specified on the Cover Sheet, Section 8.1(a) Option C shall apply exclusively. If none of Sections 8.1(b), 8.1(c) or 8.1(d) are specified on the Cover Sheet, Section 8.1(b) shall apply exclusively.

(a) Financial Information. Option A: If requested by Party A, Party B shall deliver (i) within 120 days following the end of each fiscal year, a copy of Party B's annual report containing audited consolidated financial statements for such fiscal year and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of Party B'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 Party B diligently pursues the preparation, certification and delivery of the statements.

Option B: If requested by Party A, Party B shall deliver (i) within 120 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 60 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.

Option C: Party A may request from Party B the information specified in the Cover Sheet.

(b) Credit Assurances. If Party A has reasonable grounds to believe that Party B's creditworthiness or performance under this Agreement has become unsatisfactory, Party A will provide Party B with written notice requesting Performance Assurance in an amount determined by Party A in a commercially reasonable manner. Upon receipt of such notice Party B shall have three (3) Business Days to remedy the situation by providing such Performance Assurance to Party A. In the event that Party B fails to provide such Performance Assurance, or a guaranty or other credit assurance acceptable to Party A within three (3) Business Days of receipt of notice, then an Event of Default under Article Five will be deemed to have occurred and Party A will be entitled to the remedies set forth in Article Five of this Master Agreement.

(c) Collateral Threshold. If at any time and from time to time during the term of this Agreement (and notwithstanding whether an Event of Default has occurred), the Termination Payment that would be owed to Party A plus Party B's Independent Amount, if any, exceeds the Party B Collateral Threshold, then Party A, on any Business Day, may request that Party B provide Performance Assurance in an amount equal to the amount by which the Termination Payment plus Party B's Independent Amount, if any, exceeds the Party B Collateral Threshold (rounding upwards for any fractional amount to the next Party B Rounding Amount) ("Party B Performance Assurance"), less any Party B Performance Assurance already posted with Party A. Such Party B Performance Assurance shall be delivered to Party A within three (3) Business Days of the date of such request. On any Business Day (but no more frequently than weekly with respect to Letters of Credit and daily with respect to cash), Party B, at its sole cost, may request that such Party B Performance Assurance be reduced correspondingly to the amount of such excess Termination Payment plus Party B's Independent Amount, if any, (rounding upwards for any fractional amount to the next Party B Rounding Amount). In the event that Party B fails to provide Party B Performance Assurance pursuant to the terms of this Article Eight within three (3) Business Days, then an Event of Default under Article Five shall be deemed to have occurred and Party A will be entitled to the remedies set forth in Article Five of this Master Agreement.

For purposes of this Section 8.1(c), the calculation of the Termination Payment shall be calculated pursuant to Section 5.3 by Party A as if all outstanding Transactions had been liquidated, and in addition thereto, shall include all amounts owed but not yet paid by Party B to Party A, whether or not such amounts are due, for performance already provided pursuant to any and all Transactions.

(d) Downgrade Event. If at any time there shall occur a Downgrade Event in respect of Party B, then Party A may require Party B to provide Performance Assurance in an amount determined by Party A in a commercially reasonable manner. In the event Party B shall fail to provide such Performance Assurance or a guaranty or other credit assurance acceptable to Party A within three (3) Business Days of receipt of notice, then an Event of Default shall be deemed to have occurred and Party A will be entitled to the remedies set forth in Article Five of this Master Agreement.

(e) If specified on the Cover Sheet, Party B shall deliver to Party A, prior to or concurrently with the execution and delivery of this Master Agreement a guarantee in an amount not less than the Guarantee Amount specified on the Cover Sheet and in a form reasonably acceptable to Party A.

8.2 Party B Credit Protection. The applicable credit and collateral requirements shall be as specified on the Cover Sheet. If no option in Section 8.2(a) is specified on the Cover Sheet, Section 8.2(a) Option C shall apply exclusively. If none of Sections 8.2(b), 8.2(c) or 8.2(d) are specified on the Cover Sheet, Section 8.2(b) shall apply exclusively.

(a) Financial Information. Option A: If requested by Party B, Party A shall deliver (i) within 120 days following the end of each fiscal year, a copy of Party A's annual report containing audited consolidated financial statements for such fiscal year and (ii) within 60 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.

Option B: If requested by Party B, Party A shall deliver (i) within 120 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 60 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.

Option C: Party B may request from Party A the information specified in the Cover Sheet.

(b) Credit Assurances. If Party B has reasonable grounds to believe that Party A's creditworthiness or performance under this Agreement has become unsatisfactory, Party B will provide Party A with written notice requesting Performance Assurance in an amount determined by Party B in a commercially reasonable manner. Upon receipt of such notice Party A shall have three (3) Business Days to remedy the situation by providing such Performance Assurance to Party B. In the event that Party A fails to provide such Performance Assurance, or a guaranty or other credit assurance acceptable to Party B within three (3) Business Days of receipt of notice, then an Event of Default under Article Five will be deemed to have occurred and Party B will be entitled to the remedies set forth in Article Five of this Master Agreement.

(c) Collateral Threshold. If at any time and from time to time during the term of this Agreement (and notwithstanding whether an Event of Default has occurred), the Termination Payment that would be owed to Party B plus Party A's Independent Amount, if any, exceeds the Party A Collateral Threshold, then Party B, on any Business Day, may request that Party A provide Performance Assurance in an amount equal to the amount by which the Termination Payment plus Party A's Independent Amount, if any, exceeds the Party A Collateral

Threshold (rounding upwards for any fractional amount to the next Party A Rounding Amount) (“Party A Performance Assurance”), less any Party A Performance Assurance already posted with Party B. Such Party A Performance Assurance shall be delivered to Party B within three (3) Business Days of the date of such request. On any Business Day (but no more frequently than weekly with respect to Letters of Credit and daily with respect to cash), Party A, at its sole cost, may request that such Party A Performance Assurance be reduced correspondingly to the amount of such excess Termination Payment plus Party A’s Independent Amount, if any, (rounding upwards for any fractional amount to the next Party A Rounding Amount). In the event that Party A fails to provide Party A Performance Assurance pursuant to the terms of this Article Eight within three (3) Business Days, then an Event of Default under Article Five shall be deemed to have occurred and Party B will be entitled to the remedies set forth in Article Five of this Master Agreement.

For purposes of this Section 8.2(c), the calculation of the Termination Payment shall be calculated pursuant to Section 5.3 by Party B as if all outstanding Transactions had been liquidated, and in addition thereto, shall include all amounts owed but not yet paid by Party A to Party B, whether or not such amounts are due, for performance already provided pursuant to any and all Transactions.

(d) Downgrade Event. If at any time there shall occur a Downgrade Event in respect of Party A, then Party B may require Party A to provide Performance Assurance in an amount determined by Party B in a commercially reasonable manner. In the event Party A shall fail to provide such Performance Assurance or a guaranty or other credit assurance acceptable to Party B within three (3) Business Days of receipt of notice, then an Event of Default shall be deemed to have occurred and Party B will be entitled to the remedies set forth in Article Five of this Master Agreement.

(e) If specified on the Cover Sheet, Party A shall deliver to Party B, prior to or concurrently with the execution and delivery of this Master Agreement a guarantee in an amount not less than the Guarantee Amount specified on the Cover Sheet and in a form reasonably acceptable to Party B.

8.3 Grant of Security Interest/Remedies. To secure its obligations under this Agreement and to the extent either or both Parties deliver Performance Assurance hereunder, each Party (a “Pledgor”) hereby grants to the other Party (the “Secured Party”) a present and continuing security interest in, and lien on (and right of setoff against), and assignment of, all 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, such Secured Party, and each Party agrees to take such action as the other Party reasonably requires in order to perfect the Secured Party’s first-priority security interest in, and lien on (and right of setoff against), such collateral 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, the Non-Defaulting Party may do any one or more of the following: (i) exercise any of the rights and remedies of a Secured Party with respect to all Performance Assurance, including any such rights and remedies under law then in effect; (ii) exercise its rights of setoff against any and all property of the Defaulting Party in the possession of the Non-Defaulting Party or its agent; (iii) draw on any outstanding

Letter of Credit issued for its benefit; and (iv) liquidate all Performance Assurance then held by or for the benefit of the Secured Party free from any claim or right of any nature whatsoever of the Defaulting Party, including any equity or right of purchase or redemption by the Defaulting Party. The Secured Party shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce the Pledgor's obligations under the Agreement (the Pledgor remaining liable for any amounts owing to the Secured Party after such application), subject to the Secured Party's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

ARTICLE NINE: GOVERNMENTAL CHARGES

9.1 Cooperation. Each Party shall use reasonable efforts to implement the provisions of and to administer this Master Agreement in accordance with the intent of the parties to minimize all taxes , so long as neither Party is materially adversely affected by such efforts.

9.2 Governmental Charges. Seller shall pay or cause to be paid all taxes imposed by any government authority ("Governmental Charges") on or with respect to the Product or a Transaction arising prior to the Delivery Point. Buyer shall pay or cause to be paid all Governmental Charges on or with respect to the Product or a Transaction at and from the Delivery Point (other than ad valorem, franchise or income taxes which are related to the sale of the Product and are, therefore, the responsibility of the Seller). In the event Seller is required by law or regulation to remit or pay Governmental Charges which are Buyer's responsibility hereunder, Buyer shall promptly reimburse Seller for such Governmental Charges. If Buyer is required by law or regulation to remit or pay Governmental Charges which are Seller's responsibility hereunder, Buyer may deduct the amount of any such Governmental Charges from the sums due to Seller under Article 6 of this Agreement. Nothing shall obligate or cause a Party to pay or be liable to pay any Governmental Charges for which it is exempt under the law.

ARTICLE TEN: MISCELLANEOUS

10.1 Term of Master Agreement. The term of this Master Agreement shall commence on the Effective Date and shall remain in effect until terminated by either Party upon (thirty) 30 days' prior written notice; provided, however, that such termination shall not affect or excuse the performance of either Party under any provision of this Master Agreement that by its terms survives any such termination and, provided further, that this Master Agreement and any other documents executed and delivered hereunder shall remain in effect with respect to the Transaction(s) entered into prior to the effective date of such termination until both Parties have fulfilled all of their obligations with respect to such Transaction(s), or such Transaction(s) that have been terminated under Section 5.2 of this Agreement.

10.2 Representations and Warranties. On the Effective Date and the date of entering into each Transaction, each Party represents and warrants to the other Party that:

- (i) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;

- (ii) it has all regulatory authorizations necessary for it to legally perform its obligations under this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);
- (iii) the execution, delivery and performance of this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3) 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) this Master Agreement, each Transaction (including any Confirmation accepted in accordance with Section 2.3), and each other document executed and delivered in accordance with this Master Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms; subject to any Equitable Defenses.
- (v) it is not Bankrupt 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;
- (vi) 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 Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);
- (vii) no Event of Default or Potential 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 Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);
- (viii) it is acting for its own account, has made its own independent decision to enter into this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3) and as to whether this Master Agreement and each such Transaction (including any Confirmation accepted in accordance with Section 2.3) 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 Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);
- (ix) it is a “forward contract merchant” within the meaning of the United States Bankruptcy Code;

- (x) it has entered into this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3) in connection with the conduct of its business and it has the capacity or ability to make or take delivery of all Products referred to in the Transaction to which it is a Party;
- (xi) with respect to each Transaction (including any Confirmation accepted in accordance with Section 2.3) involving the purchase or sale of a Product or an Option, it is a producer, processor, commercial user or merchant handling the Product, and it is entering into such Transaction for purposes related to its business as such; and
- (xii) the material economic terms of each Transaction are subject to individual negotiation by the Parties.

10.3 Title and Risk of Loss. Title to and risk of loss related to the Product shall transfer from Seller to Buyer at the Delivery Point. Seller warrants that it will deliver to Buyer the Quantity of the Product free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any person arising prior to the Delivery Point.

10.4 Indemnity. Each Party shall indemnify, defend and hold harmless the other Party from and against any Claims arising from or out of any event, circumstance, act or incident first occurring or existing during the period when control and title to Product is vested in such Party as provided in Section 10.3. Each Party shall indemnify, defend and hold harmless the other Party against any Governmental Charges for which such Party is responsible under Article Nine.

10.5 Assignment. Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent may be withheld in the exercise of its sole discretion; provided, however, either Party may, without the consent of the other Party (and without relieving itself from liability hereunder), (i) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements, (ii) transfer or assign this Agreement to an affiliate of such Party which affiliate's creditworthiness is equal to or higher than that of such Party, or (iii) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets whose creditworthiness is equal to or higher than that of such Party; provided, however, that in each such case, any such assignee shall agree in writing to be bound by the terms and conditions hereof and so long as the transferring Party delivers such tax and enforceability assurance as the non-transferring Party may reasonably request.

10.6 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 NEW YORK, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.

10.7 Notices. All notices, requests, statements or payments shall be made as specified in the Cover Sheet. Notices (other than scheduling requests) shall, unless otherwise specified herein, be in writing and may be delivered by hand delivery, United States mail, overnight courier service or facsimile. Notice by facsimile or hand delivery shall be effective at the close of business on the day actually received, if received during business hours on a Business Day, and otherwise shall be effective at the close of business on the next Business Day. Notice by overnight United States mail or courier shall be effective on the next Business Day after it was sent. A Party may change its addresses by providing notice of same in accordance herewith.

10.8 General. This Master Agreement (including the exhibits, schedules and any written supplements hereto), the Party A Tariff, if any, the Party B Tariff, if any, any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions (including any Confirmation accepted in accordance with Section 2.3) constitute the entire agreement between the Parties relating to the subject matter. Notwithstanding the foregoing, any collateral, credit support or margin agreement or similar arrangement between the Parties shall, upon designation by the Parties, be deemed part of this Agreement and shall be incorporated herein by reference. This Agreement shall be considered for all purposes as prepared through the joint efforts of the parties and shall not be construed against one party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. Except to the extent herein provided for, no amendment or modification to this Master Agreement shall be enforceable unless reduced to writing and executed by both Parties. Each Party agrees if it seeks to amend any applicable wholesale power sales tariff during the term of this Agreement, such amendment will not in any way affect outstanding Transactions under this Agreement without the prior written consent of the other Party. Each Party further agrees that it will not assert, or defend itself, on the basis that any applicable tariff is inconsistent with this Agreement. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement). Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default. Any provision declared or rendered unlawful by any applicable court of law or regulatory agency or deemed unlawful because of a statutory change (individually or collectively, such events referred to as "Regulatory Event") will not otherwise affect the remaining lawful obligations that arise under this Agreement; and provided, further, that if a Regulatory Event occurs, the Parties shall use their best efforts to reform this Agreement in order to give effect to the original intention of the Parties. The term "including" when used in this Agreement shall be by way of example only and shall not be considered in any way to be in limitation. The headings used herein are for convenience and reference purposes only. All indemnity and audit rights shall survive the termination of this Agreement for twelve (12) months. This Agreement shall be binding on each Party's successors and permitted assigns.

10.9 Audit. Each Party has the right, at its sole expense and during normal working hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Master Agreement. If requested, a Party shall provide to the other Party statements evidencing the Quantity delivered at the Delivery Point. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be made promptly and shall bear interest calculated at the Interest Rate from the date the overpayment or underpayment was made until paid; provided, however, that no adjustment for any statement or payment will be

made unless objection to the accuracy thereof was made prior to the lapse of twelve (12) months from the rendition thereof, and thereafter any objection shall be deemed waived.

10.10 Forward Contract. The Parties acknowledge and agree that all Transactions constitute “forward contracts” within the meaning of the United States Bankruptcy Code.

10.11 Confidentiality. If the Parties have elected on the Cover Sheet to make this Section 10.11 applicable to this Master Agreement, neither Party shall disclose the terms or conditions of a Transaction under this Master Agreement to a third party (other than the Party’s employees, lenders, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential) except in order to comply with any applicable law, regulation, or any exchange, control area or independent system operator rule or in connection with any court or regulatory proceeding; provided, however, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.

SCHEDULE M

(THIS SCHEDULE IS INCLUDED IF THE APPROPRIATE BOX ON THE COVER SHEET IS MARKED INDICATING A PARTY IS A GOVERNMENTAL ENTITY OR PUBLIC POWER SYSTEM)

A. The Parties agree to add the following definitions in Article One.

“Act” means _____.¹

“Governmental Entity or Public Power System” means a municipality, county, governmental board, public power authority, public utility district, joint action agency, or other similar political subdivision or public entity of the United States, one or more States or territories or any combination thereof.

“Special Fund” means a fund or account of the Governmental Entity or Public Power System set aside and or pledged to satisfy the Public Power System’s obligations hereunder out of which amounts shall be paid to satisfy all of the Public Power System’s obligations under this Master Agreement for the entire Delivery Period.

B. The following sentence shall be added to the end of the definition of “Force Majeure” in Article One.

If the Claiming Party is a Governmental Entity or Public Power System, Force Majeure does not include any action taken by the Governmental Entity or Public Power System in its governmental capacity.

C. The Parties agree to add the following representations and warranties to Section 10.2:

Further and with respect to a Party that is a Governmental Entity or Public Power System, such Governmental Entity or Public Power System represents and warrants to the other Party continuing throughout the term of this Master Agreement, with respect to this Master Agreement and each Transaction, as follows: (i) all acts necessary to the valid execution, delivery and performance of this Master Agreement, including without limitation, competitive bidding, public notice, election, referendum, prior appropriation or other required procedures has or will be taken and performed as required under the Act and the Public Power System’s ordinances, bylaws or other regulations, (ii) all persons making up the governing body of Governmental Entity or Public Power System are the duly elected or appointed incumbents in their positions and hold such

¹ Cite the state enabling and other relevant statutes applicable to Governmental Entity or Public Power System.

positions in good standing in accordance with the Act and other applicable law, (iii) entry into and performance of this Master Agreement by Governmental Entity or Public Power System are for a proper public purpose within the meaning of the Act and all other relevant constitutional, organic or other governing documents and applicable law, (iv) the term of this Master Agreement does not extend beyond any applicable limitation imposed by the Act or other relevant constitutional, organic or other governing documents and applicable law, (v) the Public Power System's obligations to make payments hereunder are unsubordinated obligations and such payments are (a) operating and maintenance costs (or similar designation) which enjoy first priority of payment at all times under any and all bond ordinances or indentures to which it is a party, the Act and all other relevant constitutional, organic or other governing documents and applicable law or (b) otherwise not subject to any prior claim under any and all bond ordinances or indentures to which it is a party, the Act and all other relevant constitutional, organic or other governing documents and applicable law and are available without limitation or deduction to satisfy all Governmental Entity or Public Power System' obligations hereunder and under each Transaction or (c) are to be made solely from a Special Fund, (vi) entry into and performance of this Master Agreement and each Transaction by the Governmental Entity or Public Power System will not adversely affect the exclusion from gross income for federal income tax purposes of interest on any obligation of Governmental Entity or Public Power System otherwise entitled to such exclusion, and (vii) obligations to make payments hereunder do not constitute any kind of indebtedness of Governmental Entity or Public Power System or create any kind of lien on, or security interest in, any property or revenues of Governmental Entity or Public Power System which, in either case, is proscribed by any provision of the Act or any other relevant constitutional, organic or other governing documents and applicable law, any order or judgment of any court or other agency of government applicable to it or its assets, or any contractual restriction binding on or affecting it or any of its assets.

D. The Parties agree to add the following sections to Article Three:

Section 3.4 Public Power System's Deliveries. On the Effective Date and as a condition to the obligations of the other Party under this Agreement, Governmental Entity or Public Power System shall provide the other Party hereto (i) certified copies of all ordinances, resolutions, public notices and other documents evidencing the necessary authorizations with respect to the execution, delivery and performance by Governmental Entity or Public Power System of this Master Agreement and (ii) an opinion of counsel for Governmental Entity or Public Power System, in form and substance reasonably satisfactory to the Other Party, regarding the validity, binding effect and enforceability of this Master Agreement against Governmental Entity or Public Power System in

respect of the Act and all other relevant constitutional organic or other governing documents and applicable law.

Section 3.5 No Immunity Claim. Governmental Entity or Public Power System warrants and covenants that with respect to its contractual obligations hereunder and performance thereof, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (a) suit, (b) jurisdiction of court (including a court located outside the jurisdiction of its organization), (c) relief by way of injunction, order for specific performance or recovery of property, (d) attachment of assets, or (e) execution or enforcement of any judgment.

E. If the appropriate box is checked on the Cover Sheet, as an alternative to selecting one of the options under Section 8.3, the Parties agree to add the following section to Article Three:

Section 3.6 Governmental Entity or Public Power System Security. With respect to each Transaction, Governmental Entity or Public Power System shall either (i) have created and set aside a Special Fund or (ii) upon execution of this Master Agreement and prior to the commencement of each subsequent fiscal year of Governmental Entity or Public Power System during any Delivery Period, have obtained all necessary budgetary approvals and certifications for payment of all of its obligations under this Master Agreement for such fiscal year; any breach of this provision shall be deemed to have arisen during a fiscal period of Governmental Entity or Public Power System for which budgetary approval or certification of its obligations under this Master Agreement is in effect and, notwithstanding anything to the contrary in Article Four, an Early Termination Date shall automatically and without further notice occur hereunder as of such date wherein Governmental Entity or Public Power System shall be treated as the Defaulting Party. Governmental Entity or Public Power System shall have allocated to the Special Fund or its general funds a revenue base that is adequate to cover Public Power System's payment obligations hereunder throughout the entire Delivery Period.

F. If the appropriate box is checked on the Cover Sheet, the Parties agree to add the following section to Article Eight:

Section 8.4 Governmental Security. As security for payment and performance of Public Power System's obligations hereunder, Public Power System hereby pledges, sets over, assigns and grants to the other Party a security interest in all of Public Power System's right, title and interest in and to [specify collateral].

G. The Parties agree to add the following sentence at the end of Section 10.6 - Governing Law:

NOTWITHSTANDING THE FOREGOING, IN RESPECT OF THE APPLICABILITY OF THE ACT AS HEREIN PROVIDED, THE LAWS OF THE STATE OF _____² SHALL APPLY.

² Insert relevant state for Governmental Entity or Public Power System.

SCHEDULE P: PRODUCTS AND RELATED DEFINITIONS

“Ancillary Services” means any of the services identified by a Transmission Provider in its transmission tariff as “ancillary services” including, but not limited to, regulation and frequency response, energy imbalance, operating reserve-spinning and operating reserve-supplemental, as may be specified in the Transaction.

“Capacity” has the meaning specified in the Transaction.

“Energy” means three-phase, 60-cycle alternating current electric energy, expressed in megawatt hours.

“Firm (LD)” means, with respect to a Transaction, that either Party shall be relieved of its obligations to sell and deliver or purchase and receive without liability only to the extent that, and for the period during which, such performance is prevented by Force Majeure. In the absence of Force Majeure, the Party to which performance is owed shall be entitled to receive from the Party which failed to deliver/receive an amount determined pursuant to Article Four.

“Firm Transmission Contingent - Contract Path” means, with respect to a Transaction, that the performance of either Seller or Buyer (as specified in the Transaction) shall be excused, and no damages shall be payable including any amounts determined pursuant to Article Four, if the transmission for such Transaction is interrupted or curtailed and (i) such Party has provided for firm transmission with the transmission provider(s) for the Product in the case of the Seller from the generation source to the Delivery Point or in the case of the Buyer from the Delivery Point to the ultimate sink, and (ii) such interruption or curtailment is due to “force majeure” or “uncontrollable force” or a similar term as defined under the applicable transmission provider’s tariff. This contingency shall excuse performance for the duration of the interruption or curtailment notwithstanding the provisions of the definition of “Force Majeure” in Section 1.23 to the contrary.

“Firm Transmission Contingent - Delivery Point” means, with respect to a Transaction, that the performance of either Seller or Buyer (as specified in the Transaction) shall be excused, and no damages shall be payable including any amounts determined pursuant to Article Four, if the transmission to the Delivery Point (in the case of Seller) or from the Delivery Point (in the case of Buyer) for such Transaction is interrupted or curtailed and (i) such Party has provided for firm transmission with the transmission provider(s) for the Product, in the case of the Seller, to be delivered to the Delivery Point or, in the case of Buyer, to be received at the Delivery Point and (ii) such interruption or curtailment is due to “force majeure” or “uncontrollable force” or a similar term as defined under the applicable transmission provider’s tariff. This transmission contingency excuses performance for the duration of the interruption or curtailment, notwithstanding the provisions of the definition of “Force Majeure” in Section 1.23 to the contrary. Interruptions or curtailments of transmission other than the transmission either immediately to or from the Delivery Point shall not excuse performance

“Firm (No Force Majeure)” means, with respect to a Transaction, that if either Party fails to perform its obligation to sell and deliver or purchase and receive the Product, the Party to which performance is owed shall be entitled to receive from the Party which failed to perform an

amount determined pursuant to Article Four. Force Majeure shall not excuse performance of a Firm (No Force Majeure) Transaction.

“Into _____ (the “Receiving Transmission Provider”), Seller’s Daily Choice” means that, in accordance with the provisions set forth below, (1) the Product shall be scheduled and delivered to an interconnection or interface (“Interface”) either (a) on the Receiving Transmission Provider’s transmission system border or (b) within the control area of the Receiving Transmission Provider if the Product is from a source of generation in that control area, which Interface, in either case, the Receiving Transmission Provider identifies as available for delivery of the Product in or into its control area; and (2) Seller has the right on a daily prescheduled basis to designate the Interface where the Product shall be delivered. An “Into” Product shall be subject to the following provisions:

1. Prescheduling and Notification. Subject to the provisions of Section 6, not later than the prescheduling deadline of 11:00 a.m. CPT on the Business Day before the next delivery day or as otherwise agreed to by Buyer and Seller, Seller shall notify Buyer (“Seller’s Notification”) of Seller’s immediate upstream counterparty and the Interface (the “Designated Interface”) where Seller shall deliver the Product for the next delivery day, and Buyer shall notify Seller of Buyer’s immediate downstream counterparty.

2. Availability of “Firm Transmission” to Buyer at Designated Interface; “Timely Request for Transmission,” “ADI” and “Available Transmission.” In determining availability to Buyer of next-day firm transmission (“Firm Transmission”) from the Designated Interface, a “Timely Request for Transmission” shall mean a properly completed request for Firm Transmission made by Buyer in accordance with the controlling tariff procedures, which request shall be submitted to the Receiving Transmission Provider no later than 30 minutes after delivery of Seller’s Notification, provided, however, if the Receiving Transmission Provider is not accepting requests for Firm Transmission at the time of Seller’s Notification, then such request by Buyer shall be made within 30 minutes of the time when the Receiving Transmission Provider first opens thereafter for purposes of accepting requests for Firm Transmission.

Pursuant to the terms hereof, delivery of the Product may under certain circumstances be redesignated to occur at an Interface other than the Designated Interface (any such alternate designated interface, an “ADI”) either (a) on the Receiving Transmission Provider’s transmission system border or (b) within the control area of the Receiving Transmission Provider if the Product is from a source of generation in that control area, which ADI, in either case, the Receiving Transmission Provider identifies as available for delivery of the Product in or into its control area using either firm or non-firm transmission, as available on a day-ahead or hourly basis (individually or collectively referred to as “Available Transmission”) within the Receiving Transmission Provider’s transmission system.

3. Rights of Buyer and Seller Depending Upon Availability of/Timely Request for Firm Transmission

A. Timely Request for Firm Transmission made by Buyer, Accepted by the Receiving Transmission Provider and Purchased by Buyer. If a Timely Request for Firm Transmission is made by Buyer and is accepted by the Receiving Transmission Provider

and Buyer purchases such Firm Transmission, then Seller shall deliver and Buyer shall receive the Product at the Designated Interface.

i. If the Firm Transmission purchased by Buyer within the Receiving Transmission Provider's transmission system from the Designated Interface ceases to be available to Buyer for any reason, or if Seller is unable to deliver the Product at the Designated Interface for any reason except Buyer's non-performance, then at Seller's choice from among the following, Seller shall: (a) to the extent Firm Transmission is available to Buyer from an ADI on a day-ahead basis, require Buyer to purchase such Firm Transmission from such ADI, and schedule and deliver the affected portion of the Product to such ADI on the basis of Buyer's purchase of Firm Transmission, or (b) require Buyer to purchase non-firm transmission, and schedule and deliver the affected portion of the Product on the basis of Buyer's purchase of non-firm transmission from the Designated Interface or an ADI designated by Seller, or (c) to the extent firm transmission is available on an hourly basis, require Buyer to purchase firm transmission, and schedule and deliver the affected portion of the Product on the basis of Buyer's purchase of such hourly firm transmission from the Designated Interface or an ADI designated by Seller.

ii. If the Available Transmission utilized by Buyer as required by Seller pursuant to Section 3A(i) ceases to be available to Buyer for any reason, then Seller shall again have those alternatives stated in Section 3A(i) in order to satisfy its obligations.

iii. Seller's obligation to schedule and deliver the Product at an ADI is subject to Buyer's obligation referenced in Section 4B to cooperate reasonably therewith. If Buyer and Seller cannot complete the scheduling and/or delivery at an ADI, then Buyer shall be deemed to have satisfied its receipt obligations to Seller and Seller shall be deemed to have failed its delivery obligations to Buyer, and Seller shall be liable to Buyer for amounts determined pursuant to Article Four.

iv. In each instance in which Buyer and Seller must make alternative scheduling arrangements for delivery at the Designated Interface or an ADI pursuant to Sections 3A(i) or (ii), and Firm Transmission had been purchased by both Seller and Buyer into and within the Receiving Transmission Provider's transmission system as to the scheduled delivery which could not be completed as a result of the interruption or curtailment of such Firm Transmission, Buyer and Seller shall bear their respective transmission expenses and/or associated congestion charges incurred in connection with efforts to complete delivery by such alternative scheduling and delivery arrangements. In any instance except as set forth in the immediately preceding sentence, Buyer and Seller must make alternative scheduling arrangements for delivery at the Designated Interface or an ADI under Sections 3A(i) or (ii), Seller shall be responsible for any additional transmission purchases and/or associated congestion charges incurred by Buyer in connection with such alternative scheduling arrangements.

B. Timely Request for Firm Transmission Made by Buyer but Rejected by the Receiving Transmission Provider. If Buyer's Timely Request for Firm Transmission is rejected by the Receiving Transmission Provider because of unavailability of Firm Transmission from the Designated Interface, then Buyer shall notify Seller within 15 minutes after receipt of the Receiving Transmission Provider's notice of rejection ("Buyer's Rejection Notice"). If Buyer timely notifies Seller of such unavailability of Firm Transmission from the Designated Interface, then Seller shall be obligated either (1) to the extent Firm Transmission is available to Buyer from an ADI on a day-ahead basis, to require Buyer to purchase (at Buyer's own expense) such Firm Transmission from such ADI and schedule and deliver the Product to such ADI on the basis of Buyer's purchase of Firm Transmission, and thereafter the provisions in Section 3A shall apply, or (2) to require Buyer to purchase (at Buyer's own expense) non-firm transmission, and schedule and deliver the Product on the basis of Buyer's purchase of non-firm transmission from the Designated Interface or an ADI designated by the Seller, in which case Seller shall bear the risk of interruption or curtailment of the non-firm transmission; provided, however, that if the non-firm transmission is interrupted or curtailed or if Seller is unable to deliver the Product for any reason, Seller shall have the right to schedule and deliver the Product to another ADI in order to satisfy its delivery obligations, in which case Seller shall be responsible for any additional transmission purchases and/or associated congestion charges incurred by Buyer in connection with Seller's inability to deliver the Product as originally prescheduled. If Buyer fails to timely notify Seller of the unavailability of Firm Transmission, then Buyer shall bear the risk of interruption or curtailment of transmission from the Designated Interface, and the provisions of Section 3D shall apply.

C. Timely Request for Firm Transmission Made by Buyer, Accepted by the Receiving Transmission Provider and not Purchased by Buyer. If Buyer's Timely Request for Firm Transmission is accepted by the Receiving Transmission Provider but Buyer elects to purchase non-firm transmission rather than Firm Transmission to take delivery of the Product, then Buyer shall bear the risk of interruption or curtailment of transmission from the Designated Interface. In such circumstances, if Seller's delivery is interrupted as a result of transmission relied upon by Buyer from the Designated Interface, then Seller shall be deemed to have satisfied its delivery obligations to Buyer, Buyer shall be deemed to have failed to receive the Product and Buyer shall be liable to Seller for amounts determined pursuant to Article Four.

D. No Timely Request for Firm Transmission Made by Buyer, or Buyer Fails to Timely Send Buyer's Rejection Notice. If Buyer fails to make a Timely Request for Firm Transmission or Buyer fails to timely deliver Buyer's Rejection Notice, then Buyer shall bear the risk of interruption or curtailment of transmission from the Designated Interface. In such circumstances, if Seller's delivery is interrupted as a result of transmission relied upon by Buyer from the Designated Interface, then Seller shall be deemed to have satisfied its delivery obligations to Buyer, Buyer shall be deemed to have failed to receive the Product and Buyer shall be liable to Seller for amounts determined pursuant to Article Four.

4. Transmission

A. Seller's Responsibilities. Seller shall be responsible for transmission required to deliver the Product to the Designated Interface or ADI, as the case may be. It is expressly agreed that Seller is not required to utilize Firm Transmission for its delivery obligations hereunder, and Seller shall bear the risk of utilizing non-firm transmission. If Seller's scheduled delivery to Buyer is interrupted as a result of Buyer's attempted transmission of the Product beyond the Receiving Transmission Provider's system border, then Seller will be deemed to have satisfied its delivery obligations to Buyer, Buyer shall be deemed to have failed to receive the Product and Buyer shall be liable to Seller for damages pursuant to Article Four.

B. Buyer's Responsibilities. Buyer shall be responsible for transmission required to receive and transmit the Product at and from the Designated Interface or ADI, as the case may be, and except as specifically provided in Section 3A and 3B, shall be responsible for any costs associated with transmission therefrom. If Seller is attempting to complete the designation of an ADI as a result of Seller's rights and obligations hereunder, Buyer shall co-operate reasonably with Seller in order to effect such alternate designation.

5. Force Majeure. An "Into" Product shall be subject to the "Force Majeure" provisions in Section 1.23.

6. Multiple Parties in Delivery Chain Involving a Designated Interface. Seller and Buyer recognize that there may be multiple parties involved in the delivery and receipt of the Product at the Designated Interface or ADI to the extent that (1) Seller may be purchasing the Product from a succession of other sellers ("Other Sellers"), the first of which Other Sellers shall be causing the Product to be generated from a source ("Source Seller") and/or (2) Buyer may be selling the Product to a succession of other buyers ("Other Buyers"), the last of which Other Buyers shall be using the Product to serve its energy needs ("Sink Buyer"). Seller and Buyer further recognize that in certain Transactions neither Seller nor Buyer may originate the decision as to either (a) the original identification of the Designated Interface or ADI (which designation may be made by the Source Seller) or (b) the Timely Request for Firm Transmission or the purchase of other Available Transmission (which request may be made by the Sink Buyer). Accordingly, Seller and Buyer agree as follows:

A. If Seller is not the Source Seller, then Seller shall notify Buyer of the Designated Interface promptly after Seller is notified thereof by the Other Seller with whom Seller has a contractual relationship, but in no event may such designation of the Designated Interface be later than the prescheduling deadline pertaining to the Transaction between Buyer and Seller pursuant to Section 1.

B. If Buyer is not the Sink Buyer, then Buyer shall notify the Other Buyer with whom Buyer has a contractual relationship of the Designated Interface promptly after Seller notifies Buyer thereof, with the intent being that the party bearing actual responsibility to secure transmission shall have up to 30 minutes after receipt of the Designated Interface to submit its Timely Request for Firm Transmission.

C. Seller and Buyer each agree that any other communications or actions required to be given or made in connection with this “Into Product” (including without limitation, information relating to an ADI) shall be made or taken promptly after receipt of the relevant information from the Other Sellers and Other Buyers, as the case may be.

D. Seller and Buyer each agree that in certain Transactions time is of the essence and it may be desirable to provide necessary information to Other Sellers and Other Buyers in order to complete the scheduling and delivery of the Product. Accordingly, Seller and Buyer agree that each has the right, but not the obligation, to provide information at its own risk to Other Sellers and Other Buyers, as the case may be, in order to effect the prescheduling, scheduling and delivery of the Product

“Native Load” means the demand imposed on an electric utility or an entity by the requirements of retail customers located within a franchised service territory that the electric utility or entity has statutory obligation to serve.

“Non-Firm” means, with respect to a Transaction, that delivery or receipt of the Product may be interrupted for any reason or for no reason, without liability on the part of either Party.

“System Firm” means that the Product will be supplied from the owned or controlled generation or pre-existing purchased power assets of the system specified in the Transaction (the “System”) with non-firm transmission to and from the Delivery Point, unless a different Transmission Contingency is specified in a Transaction. Seller’s failure to deliver shall be excused: (i) by an event or circumstance which prevents Seller from performing its obligations, which event or circumstance was not anticipated as of the date the Transaction was agreed to, which is not within the reasonable control of, or the result of the negligence of, the Seller; (ii) by Buyer’s failure to perform; (iii) to the extent necessary to preserve the integrity of, or prevent or limit any instability on, the System; (iv) to the extent the System or the control area or reliability council within which the System operates declares an emergency condition, as determined in the system’s, or the control area’s, or reliability council’s reasonable judgment; or (v) by the interruption or curtailment of transmission to the Delivery Point or by the occurrence of any Transmission Contingency specified in a Transaction as excusing Seller’s performance. Buyer’s failure to receive shall be excused (i) by Force Majeure; (ii) by Seller’s failure to perform, or (iii) by the interruption or curtailment of transmission from the Delivery Point or by the occurrence of any Transmission Contingency specified in a Transaction as excusing Buyer’s performance. In any of such events, neither party shall be liable to the other for any damages, including any amounts determined pursuant to Article Four.

“Transmission Contingent” means, with respect to a Transaction, that the performance of either Seller or Buyer (as specified in the Transaction) shall be excused, and no damages shall be payable including any amounts determined pursuant to Article Four, if the transmission for such Transaction is unavailable or interrupted or curtailed for any reason, at any time, anywhere from the Seller’s proposed generating source to the Buyer’s proposed ultimate sink, regardless of whether transmission, if any, that such Party is attempting to secure and/or has purchased for the Product is firm or non-firm. If the transmission (whether firm or non-firm) that Seller or Buyer is attempting to secure is from source to sink is unavailable, this contingency excuses performance for the entire Transaction. If the transmission (whether firm or non-firm) that Seller

or Buyer has secured from source to sink is interrupted or curtailed for any reason, this contingency excuses performance for the duration of the interruption or curtailment notwithstanding the provisions of the definition of “Force Majeure” in Article 1.23 to the contrary.

“Unit Firm” means, with respect to a Transaction, that the Product subject to the Transaction is intended to be supplied from a generation asset or assets specified in the Transaction. Seller’s failure to deliver under a “Unit Firm” Transaction shall be excused: (i) if the specified generation asset(s) are unavailable as a result of a Forced Outage (as defined in the NERC Generating Unit Availability Data System (GADS) Forced Outage reporting guidelines) or (ii) by an event or circumstance that affects the specified generation asset(s) so as to prevent Seller from performing its obligations, which event or circumstance was not anticipated as of the date the Transaction was agreed to, and which is not within the reasonable control of, or the result of the negligence of, the Seller or (iii) by Buyer’s failure to perform. In any of such events, Seller shall not be liable to Buyer for any damages, including any amounts determined pursuant to Article Four.

**MASTER POWER PURCHASE AND SALE AGREEMENT
CONFIRMATION LETTER**

This confirmation letter shall confirm the Transaction agreed to on _____, _____ between _____ (“Party A”) and _____ (“Party B”) regarding the sale/purchase of the Product under the terms and conditions as follows:

Seller: _____

Buyer: _____

Product:

Into _____, Seller’s Daily Choice

Firm (LD)

Firm (No Force Majeure)

System Firm

(Specify System: _____)

Unit Firm

(Specify Unit(s): _____)

Other _____

Transmission Contingency (If not marked, no transmission contingency)

FT-Contract Path Contingency Seller Buyer

FT-Delivery Point Contingency Seller Buyer

Transmission Contingent Seller Buyer

Other transmission contingency

(Specify: _____)

Contract Quantity: _____

Delivery Point: _____

Contract Price:

Energy Price: _____

Other Charges: _____

Delivery Period: _____
Special Conditions: _____
Scheduling: _____
Option Buyer: _____
Option Seller: _____
Type of Option: _____
Strike Price: _____
Premium: _____
Exercise Period: _____

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

[Party A]

[Party B]

Name: _____
Title: _____
Phone No: _____
Fax: _____

Name: _____
Title: _____
Phone No: _____
Fax: _____

PUBLIC APPENDIX F
ADVICE 3559-E

PUBLIC VERSION OF ADVICE 2803-E
RESOLUTION 4002-E



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March 24, 2006

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

Public Utilities Commission of the State of California

Subject: Duke Energy Marketing America, LLC Tolling Agreement

Pacific Gas and Electric Company ("PG&E") hereby submits for California Public Utilities Commission ("Commission") review and approval a four year physical tolling agreement beginning in 2007¹ with Duke Energy Marketing America, LLC ("Duke" or "DEMA") for the capacity and associated energy from Duke Energy Moss Landing, LLC ("DEML"), Units 6 and 7 (collectively, the "Facility").

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

Purpose

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

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

Background

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

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

On September 26, 2005, PG&E submitted indicative bids² on products 1 and 4. PG&E was notified on October 3, 2005, that it had been selected to DEMA’s short-list and subsequently entered into contract negotiations.

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

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

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

- **Unique nature of this complex, structured product:** A single contract for 1,509 MW of capacity and energy for 4 years represents a significant portion of PG&E's contracted resources. PG&E feels that this, along with the issues discussed below, makes it reasonable that the decision to enter into the proposed tolling agreement be subject to Commission review.
- **Multiple-year RA:** The RA rules are continuing to evolve, and full implementation, particularly with respect to counting and penalties, is not yet clear. PG&E does, however, have a need to meet its forward RA requirements, and PG&E anticipates that this contract will count toward meeting PG&E's future resource adequacy requirements. PG&E therefore seeks a Commission finding that PG&E's actions through this contract to procure RA on a greater than just a one year-ahead basis, absent a long-term RA ruling, is both reasonable and prudent.
- **Pending sale of the Facility to LS Power Equity Partners ("LS Power"):** On January 9, 2006, Duke Energy announced the sale of the Facility, as well as certain other Duke Energy assets, including Duke Energy Morro Bay and Duke Energy Oakland, to LS Power. Privately held LS Power is a new entrant to the California power market and is not rated by S&P, Moody's, or Fitch with respect to its creditworthiness. Including the tolling agreement that PG&E has in place for Duke Energy's Morro Bay Units 3 and 4, as well as other transactions with Duke, the addition of the tolling agreement for Moss Landing Units 6 and 7 (1,509 MW) will, upon the completion of the asset sale to LS Power, bring PG&E's contracts with LS Power to over 2,000 MW. The proposed Moss Landing Units 6 & 7 tolling agreement contains credit requirements that are consistent with PG&E's standards, including mark-to-market posting and other collateral requirements, to mitigate a potential risk of loss due to non-performance by the seller. The agreement also has rigid contract assignment language to protect PG&E from exposure created by the asset sale. However, the unique nature of this contract, given the little-known history of LS Power, creates an additional layer of performance risk in the proposed transaction. PG&E asks the Commission to make a finding that PG&E's decision to enter into this contract, in light of the uncertainties associated with the pending asset sale, is both reasonable and prudent.

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

Protests

Anyone wishing to protest this filing may do so by sending a letter by **April 13, 2006**, which is 20 days from the date of this filing. The protest must state the grounds upon which it is based, including such items as financial and service impact, and should be submitted expeditiously. Protests should be mailed to:

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

Protests also should be sent by e-mail and facsimile to Mr. Jerry Royer, Energy Division, as shown above, and by U.S. mail to Mr. Royer at the above address. The protest should be sent via both e-mail and facsimile to PG&E on the same date it is mailed or delivered to the Commission at the address shown below.

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

Request for Commission Approval

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

Notice

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

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

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

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

Brian K. Cheng

Director – Regulatory Relations

Attachments

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

CALIFORNIA PUBLIC UTILITIES COMMISSION

ADVICE LETTER FILING SUMMARY ENERGY UTILITY

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

Company name/CPUC Utility No. Pacific Gas and Electric Company U39M

Utility type:

ELC

GAS

PLC

HEAT

WATER

Contact Person: Shilpa Ramaiya

Phone #: (415) 973-3186

E-mail: srrd@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) #: **2803-E**

Subject of AL: Duke Energy Marketing America, LLC Tolling Agreement

Keywords (choose from CPUC listing): Procurement, Agreement

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

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

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

Summarize differences between the AL and the prior withdrawn or rejected AL¹: _____

Resolution Required? Yes No

Requested effective date: **5-11-2006**

No. of tariff sheets: 0

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

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

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

Tariff schedules affected: N/A

Service affected and changes proposed¹: Tolling Agreement proposed

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

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

CPUC, Energy Division

Attention: Tariff Unit

505 Van Ness Ave.,

San Francisco, CA 94102

jjr@cpuc.ca.gov and jnj@cpuc.ca.gov

Utility Info (including e-mail)

Attn: Brian K. Cherry

Director, Regulatory Relations

77 Beale Street, Mail Code B10C

P.O. Box 770000

San Francisco, CA 94177

E-mail: PGETariffs@pge.com

¹ Discuss in AL if more space is needed.

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

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

Appendix B

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

Duke Energy Marketing America, LLC

Capacity Auction for Moss Landing Units 6 & 7

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

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

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

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

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

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

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

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

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

Duke Energy North America, LLC

Moss Landing Units 6 & 7 Capacity Auction

Notice of Intent to Bid Form

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

Bidder Information:

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

Authorized Signature: _____

Name: _____

Title: _____

Date: _____

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

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

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

Duke Energy Marketing America, LLC

Term Sheet

Product 1 Unit Contingent Tolling Agreement

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

calculated by averaging over the course of a Month.. If the Unit’s available capacity is reduced as the result of an event other than an Excusable Event, Buyer shall be entitled to a rebate of Capacity Payments. The methodology for calculating such rebates is detailed in the Availability Factor section of this solicitation.

Dispatch Rights: In consideration for Capacity Payments made to Seller, Buyer shall have full dispatch rights to the Facility, limited by (a) the rules of the California Independent System Operator (“CAISO”), as may be amended from time to time; (b) the operational and environmental limitations of the Facility; and (c) any contractual and/or physical limitations of the facility. All known Unit-specific limitations have been detailed by Seller in Attachment A to this solicitation, “Duke Energy Moss Landing Units 6 & 7 Capabilities.” Attachment A and its associated Schedules are provided solely as indicative information to assist Qualified Bidders in their evaluation and should not be viewed as a guarantee of Unit performance.

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

Contract Capacity: The Contract Capacity for each Facility shall be equal to:

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

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

	Three Year <u>Term</u>	Five Year <u>Term</u>
Moss Landing Unit 6:	\$4.25	\$4.55
Moss Landing Unit 7:	\$4.45	\$4.75

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

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

	Three Year <u>Term</u>	Five Year <u>Term</u>
Moss Landing Unit 6:	\$2.56	\$2.72
Moss Landing Unit 7:	\$2.56	\$2.72

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

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

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

	Fuel per <u>Start</u>
Moss Landing Unit 6:	10,394 MMBtu
Moss Landing Unit 7:	10,394 MMBtu

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

	Power per <u>Start</u>
Moss Landing Unit 6:	407 MWh
Moss Landing Unit 7:	407 MWh

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

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

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

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

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

Gas Delivery Point: PG&E City-gate

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

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

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

Delivered Energy: The amount of Product, expressed in MWh, delivered by Seller to Buyer at the Power Delivery Point.

Scheduled Energy: The amount of Product, expressed in MWh, requested by Buyer in accordance with the scheduling procedures, for delivery to the Power Delivery Point.

Available Energy: The sum of the actual capacity available for dispatch for each hour of the Delivery Period.

Total Energy: The product of the Contract Capacity and all hours of the Delivery Period.

Actual Availability Factor: The quotient of (a) the sum of i) Available Energy and ii) Excused Energy, divided by (b) the Total Energy.

Guaranteed Availability Factor: The Guaranteed Availability Factors for the Units shall be:

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

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

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

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

Force Majeure Event: Force Majeure Event shall mean a cause or event that prevents a Party from performing any of its obligations under this Agreement that is not within the reasonable control of the Party, without the fault or negligence of the Party and that by the exercise of due diligence the Party is unable and could not reasonably be expected to avoid, cause to be avoided, or overcome. Events of Force Majeure may include, but are not restricted to, acts of God; acts of the public enemy, war, blockades, insurrections, sabotage, civil disturbances, riots, terrorism; strikes or other work stoppages, lock-outs, or other industrial disturbances or labor disputes, labor or materials shortage; epidemics, landslides, lightning, earthquakes, firestorms, hurricanes, tornadoes, floods, washouts; fire, explosion, or other unusually severe or extreme actions of the elements; catastrophic equipment failure; and actions or failures to act of any governmental agency preventing, delaying or otherwise adversely affecting performance by a Party hereto.

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

Credit: Credit provisions satisfactory to Seller will be negotiated in the form of an EEI Master Agreement.

Scheduling Coordinator: No later than thirty days prior to the first (1st) day of the Delivery Period, Buyer shall designate a Scheduling Coordinator for purposes of scheduling the Product.

Power Scheduling Procedure: No later than 0615 PPT on the applicable pre-scheduling day, Buyer shall provide Seller with a schedule indicating the amount of the Product Buyer requests for delivery to the Power Delivery Point for every hour of the day of delivery. Pre-scheduling days are established by the ISAS Subcommittee of the Western Electric Coordinating Council (“WECC”). Buyer’s Scheduling Coordinator shall be responsible for complying with any existing or future Must-Offer Obligation (“MOO”) including, but not limited to, requesting waivers of any MOO and submitting bids for available, unscheduled Contract Capacity during waiver denial periods.

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

Scheduled Maintenance: Consistent with Seller’s adherence to Good Utility Practices, Seller expects to perform certain scheduled maintenance procedures (“Scheduled Maintenance”) on the Facilities during the Delivery Period. Seller anticipates that Scheduled Maintenance will comprise approximately the following amount of time during the Delivery Period:

	Hours per Year
Moss Landing Unit 6:	360 Hours
Moss Landing Unit 7:	360 Hours

Operational and Environmental Limitations: All applicable operational and environmental limitations are detailed in Attachment A.

Contractual Limitations: Operational performance of the Units is not limited by any pre-existing contractual agreements.

Good Utility Practices: Good Utility Practices means the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry operating in the WECC region during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practices are not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather includes all acceptable practices, method, or acts generally accepted in the region. Good Utility Practice shall include, but not be limited to, applicable law and regulatory requirements, and the criteria, rules and standards promulgated by NERC, the WECC, RTO, National Electric Safety Code, National Electrical Code and California Public Utilities Commission’s General Order No. 167 as they may be amended from time to time, including the rules and guidelines and criteria of any successor organizations.

Exclusions: Any and all environmental attributes, emission allowances, credits or rights to pollute shall be retained by Seller.

ATTACHMENT A

Duke Energy Moss Landing 6 & 7 Capabilities

Applicable Generating Units:

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

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

ISO UNIT DESIGNATION: MOSSLD_7_UNIT 6

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

ISO UNIT DESIGNATION: MOSSLD_7_UNIT 7

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

SCHEDULE 1

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

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

Heat Rate Coefficients:

A = .00075

B = 8.0952

C = 400

Heat Input = $(Ax^2 + Bx + C)/x$ (See Heat Rate Table below)

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

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

Heat Rate Coefficients:

A = .0011

B = 7.602

C = 490

Heat Input = $(Ax^2 + Bx + C)/x$ (See Heat Rate Table below)

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

**Expected Heat Rate and Ramp Rate Table
(Illustrative)**

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

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

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

Schedule 2

Operating Restrictions
Moss Landing Unit #6 and #7

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

Schedule 2 (continued)

Operating Restrictions
Moss Landing Unit #6 and #7

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

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

PM10, SO₂ and VOC are based on fuel burned and therefore emissions vary based on Unit heat rate. The following table illustrates the emissions of each constituent, based on lbs. per MW of production at minimum load (52 MW), 50% load (377 MW) and full load (755 MW).

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

Duke Energy Marketing America, LLC

Term Sheet

Product 2

Daily Heat Rate Call Option

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

Seller: Duke Energy Marketing America, LLC (“DEMA”)

Buyer: Party A

Form of Base Agreement: EEI Master Power Purchase and Sale Agreement

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

On-Peak and Off-Peak periods may be exercised independently.

On-Peak: Hour Ending (“HE”) 0700 through HE 2200, Monday through Saturday, excluding NERC Holidays; Pacific Prevailing Time (“PPT”).

Off-Peak Period: HE 0100 through HE 0600 and HE 2300 through HE 2400, Monday through Saturday, and HE 0100 through HE 2400, Sundays and NERC Holidays, Pacific Prevailing Time (“PPT”).

Type of Service: Daily Call Option

Product: CAISO Energy

Contract Quantity: 375 MW

Delivery Point: NP15 Zone; provided, however, if the California Independent System Operator or its successor (“CAISO”) implements trading hubs under a locational marginal pricing design during the Delivery Period, the Delivery Point shall be the Existing Zone Generation NP15 Trading Hub (“NP15 EZ Gen Hub”), as such trading hub is contemplated by the CAISO in its filing made to the FERC dated March 15, 2005 (“Comprehensive Design Proposal for Inter-Scheduling Coordinator Trades Under the California Independent System Operator Corporation’s

Market Redesign and Technology Upgrade, Docket No. ER02-1656-025”); provided further, if the NP15 EZ Gen Hub (under any name) is not established as part of a market redesign that is implemented during the Delivery Period, the parties agree to promptly work together in good faith to designate an alternate Delivery Point to reasonably approximate the characteristics of the NP-15 Zone.

Scheduling:

In consideration for payment of the Option Premium, Seller grants Buyer the right (subject to the terms below) for each day during the Delivery Period to require Seller, at Buyer’s option, to sell and deliver to Buyer the Product, for the Contract Quantity. If Buyer chooses to exercise its option to receive the Product during the On-Peak Period for a given day within the Delivery Period, Buyer must schedule and receive the Product in an amount equal to the Contract Quantity each and every hour of the On-Peak hours for which this option was exercised. If Buyer chooses to exercise its option to receive the Product during the Off-Peak Period for a given day within the Delivery Period, Buyer must schedule and receive the Product in an amount equal to the Contract Quantity each and every hour of the Off-Peak hours for which this option was exercised.

In order for the option exercise to be valid, Buyer shall give Seller prior telephonic notice of its intent to exercise its option no later than 0615 PPT on the Exercise Date before the delivery is to take place. If the option is exercised, both parties shall be obligated to schedule the Contract Quantity. Furthermore, Seller shall be obligated to deliver the Contract Quantity and Buyer shall be obligated to pay the Energy Price for the relevant Contract Quantity. “Exercise Date” shall mean the mutually recognized WECC Pre-Scheduling Day prior to the delivery day or day(s) of delivery as defined by the most recent WECC Pre-Schedule calendar. For example, if Buyer exercises an option on Thursday, the relevant delivery days for that Pre-Scheduling Day will be Friday and Saturday. Buyer shall have the obligation to buy and receive from Seller and Seller shall have the obligation to sell and deliver to Buyer the Contract Quantity of the Product for all Delivery hours for both Friday and Saturday (consistent with the customary practices regarding the trading of daily electricity).

Option Premium:

US \$____ / kW-month for each calendar month during the Delivery Period, to be paid five (5) Business Days prior to the month of delivery.

Energy Price:

Calculated, on a \$/MWh basis, as the Gas Price multiplied by the Contract Heat Rate plus the Variable O&M Fee

Contract Heat Rate:

9.50 MMBtu / MWh

Gas price: Expressed in \$/MMBtu, the Midpoint price for delivery on the relevant Flow Date for “PG&E City-Gate” as reported in the Daily Price Survey in *Gas Daily*. The Gas Price for any calendar day for which prices are not published in *Gas Daily* shall be the Midpoint price as reported on the next day for which prices are published in *Gas Daily*. The “Flow Date” shall mean the date on which the Product is delivered by Seller to Buyer.

Variable O&M Fee: \$4.75 / MWh

Transmission: Seller is responsible for all transmission arrangements and costs for delivery of the Product to the Delivery Point. Buyer is responsible for all transmission arrangements and costs for receipt of the Product at and beyond the Delivery Point.

Duke Energy Marketing America, LLC

Term Sheet

Product 3

Heat Rate Call Option with Peaking Flexibility

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

Seller:	Duke Energy Marketing America, LLC ("DEMA")
Buyer:	Party A
Form of Base Agreement:	EEI Master Power Purchase and Sale Agreement
Delivery Period:	January 1, 2006 through December 31, 2008; or January 1, 2006 through December 31, 2010
Exercise Protocol:	Buyer's exercise shall follow day-ahead scheduling protocols and will be subject to the following flexibility and limitations: <ul style="list-style-type: none">• Buyer's schedule must maintain the Minimum Quantity for a minimum of 48 contiguous hours.• Buyer may schedule the Maximum Quantity in blocks of 8 or more contiguous hours.
Type of Service:	Daily Call Option
Product:	CAISO Energy
Minimum Quantity:	100 MW
Maximum Quantity:	375 MW
Delivery Point:	NP15 Zone; provided, however, if the California Independent System Operator or its successor ("CAISO") implements trading hubs under a locational marginal pricing design during the Delivery Period, the Delivery Point shall be the Existing Zone Generation NP15 Trading Hub ("NP15 EZ Gen Hub"), as such trading hub is contemplated by the CAISO in its filing made to the FERC dated March 15, 2005 ("Comprehensive Design Proposal for Inter-Scheduling Coordinator Trades Under the California Independent System Operator Corporation's

Market Redesign and Technology Upgrade, Docket No. ER02-1656-025”); provided further, if the NP15 EZ Gen Hub (under any name) is not established as part of a market redesign that is implemented during the Delivery Period, the parties agree to promptly work together in good faith to designate an alternate Delivery Point to reasonably approximate the characteristics of the NP-15 Zone.

Scheduling:

In consideration for payment of the Option Premium, Seller grants Buyer the right (subject to the terms below) for each day during the Delivery Period to require Seller, at Buyer’s option, to sell and deliver to Buyer the Product, for either the Minimum Quantity or the Maximum Quantity. If Buyer chooses to exercise its option to receive the Product, Buyer must schedule and receive the Product for a minimum of 48 contiguous hours. Furthermore, Seller grants Buyer the flexibility to schedule and receive the Maximum Quantity for a period of no less than 8 contiguous hours.

In order for the option exercise to be valid, Buyer shall give Seller prior telephonic notice of its intent to exercise its option no later than 0615 PPT on the Exercise Date before the delivery is to take place. If the option is exercised, both parties shall be obligated to schedule the product for the Minimum and/or Maximum Quantity, at Buyer’s discretion within the limitations described herein. Furthermore, Seller shall be obligated to deliver the Product and Buyer shall be obligated to pay the Energy Price for the relevant Product quantity. “Exercise Date” shall mean the mutually recognized WECC Pre-Scheduling Day prior to the delivery day or day(s) of delivery as defined by the most recent WECC Pre-Schedule calendar. For example, if Buyer exercises an option on Thursday, the relevant delivery days for that Pre-Scheduling Day will be Friday and Saturday. Buyer shall have the obligation to buy and receive from Seller and Seller shall have the obligation to sell and deliver to Buyer the Contract Quantity of the Product for all Delivery hours for both Friday and Saturday (consistent with the customary practices regarding the trading of daily electricity).

Option Premium:

US \$ ____ / kW-month for each calendar month during the Delivery Period, to be paid five (5) Business Days prior to the month of delivery.

Energy Price:

Calculated, on a \$/MWh basis, as the Gas Price multiplied by the Contract Heat Rate plus the Variable O&M Fee.

Contract Heat Rate:

9.50 MMBtu / MWh

Gas price:

Expressed in \$/MMBtu, the Midpoint price for delivery on the relevant Flow Date for “PG&E City-Gate” as reported in the

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

Variable O&M Fee: \$4.75 / MWh

Transmission: Seller is responsible for all transmission arrangements and costs for delivery of the Product to the Delivery Point. Buyer is responsible for all transmission arrangements and costs for receipt of the Product at and beyond the Delivery Point.

Duke Energy Marketing America, LLC

Term Sheet

Product 4

Resource Adequacy Capacity

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

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

Delivery Point: Moss Landing Substation; within the current NP-15 zone and within the CAISO controlled grid

Contract Price: US \$____ / kW-month for each calendar month during the Delivery Period, to be paid five (5) Business Days prior to the month of delivery.

Appendix C

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

Duke Energy Marketing America, LLC
Information Sheet

Address & phone number: 5400 Westheimer Ct.
Houston, TX 77056
713-627-5400

Website: www.duke-energy.com

State of Incorporation: Delaware
DUNS #: 11-393-2268
Federal Tax ID #: 76-0668086

Credit Support Provider: Duke Capital LLC
Address: 526 S. Church St.
Charlotte, NC 28242

State of Incorporation: Delaware
Senior Unsecured Rating: BBB- (S&P)
Baa3 (Moody's)
DUNS#: 60-376-9753
Federal Tax ID#: 51-0282142

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

Ultimate parent: Duke Energy Corp.

CONFIDENTIALITY AGREEMENT

This Confidentiality Agreement (the "Agreement") is made as of the ____ day _____ 2005 by and between DUKE ENERGY MARKETING AMERICA, LLC ("Seller") and _____ ("Buyer") (all of the foregoing referred to individually as "Party" or collectively as the "Parties").

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

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

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

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

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

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

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

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

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

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

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

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

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

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

DUKE ENERGY MARKETING AMERICA, LLC

By: _____

Title: _____

Dated: _____

By: _____

Title: _____

Dated: _____

Duke Energy Marketing America, LLC
Capacity Auction Bid Sheet

Bidder: _____

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

Notes:

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

**MASTER POWER PURCHASE AND SALE AGREEMENT
CONFIRMATION LETTER
BETWEEN**

**Duke Energy Marketing America, LLC and _____
October _____, 2005**

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

Seller: DEMA

Buyer: _____

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

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

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

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

Applicable Generating Units:

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

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

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

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

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

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

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

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

Moss Landing Unit 6: \$ _____
Moss Landing Unit 7: \$ _____

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

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

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

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

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

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

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

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

	<u>Fuel per Start</u>
Moss Landing Unit 6:	10,394 MMBtu
Moss Landing Unit 7:	10,394 MMBtu

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

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

	<u>Power per Start</u>
Moss Landing Unit 6:	407 MWh
Moss Landing Unit 7:	407 MWh

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

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

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

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

Contract Gas Quantity:

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

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

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

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

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

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

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

Gas Transportation Charge:

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

Capacity Payment: Seller will provide Buyer with an invoice for the Contract Capacity Payment no later than ten (10) Business Days in advance of the calendar delivery month. No

later than five (5) Business Days prior to each month of delivery, Buyer shall pay Seller a Capacity Payment, calculated as the product of (a) the Contract Capacity, (b) the Capacity Price and (c) 1,000 kW per MW.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Power Scheduling: No later than 0615 PPT on the pre-Scheduling Day, Buyer shall provide Seller with a schedule indicating the amount of the Associated Energy and/or Ancillary Services Buyer requests for delivery to the Power Delivery Point for every hour of the day of delivery. Buyer shall be responsible for its Scheduling Coordinator's compliance with any existing or future Must-offer Obligation ("MOO") or Flexible Offer Obligation ("FOO") including, but not limited to, requesting waivers of any MOO or FOO and submitting bids for available, unscheduled Contract Capacity

during waiver denial periods. Buyer, or Buyer's representative, as Scheduling Coordinator, shall also be responsible for compliance with Residual Unit Commitment requirements under the CAISO Tariff. For intra-day scheduling, Buyer shall provide Seller with an hour-ahead schedule indicating the amount of Associated Energy and/or Ancillary Services Buyer requests for delivery to the Power Delivery Point consistent with the Unit delivery capabilities specified in Schedules 1 and 2. If no hour-ahead schedule is submitted and the CAISO (in the event of an emergency) does not instruct otherwise, the day-ahead schedule governs.

**Non-Buyer
Dispatches:**

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

**Operating
Restrictions:**

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

CAISO Charges:

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

**Generation Deviation
Charges:**

Should Seller fail to operate the Units in a manner to comply with Buyer's dispatch schedule (unless due to an Unscheduled Outage) and a deviation

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

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

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

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

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

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

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

**Scheduled
Maintenance:**

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

	<u>Hours per Year</u>
Moss Landing Unit 6:	456 hours
Moss Landing Unit 7:	456 hours

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

Outages:

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

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

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

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

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

Resource Adequacy: Seller, upon Buyer's request, shall commit the full Contract Capacity during the Delivery Period in an effort to assist Buyer in meeting Buyer's resource adequacy requirements, as determined under the prevailing Resource Adequacy Requirement ("RAR") rules for determining the quantity and deliverability of qualifying RAR capacity ("Qualifying Capacity") that can be counted toward Buyer's RAR obligation, as described in D.04-10-035, and as may be amended from time to time by the California Public Utilities Commission ("CPUC") in the Resource Adequacy phases of Rulemaking 04-04-003 or by any successor proceeding, and all other resource adequacy requirements established by any other regional entity responsible for RAR implementation or enforcement. However, Seller does not represent or warrant

in any way that the Units meet such requirements, as those requirements may change during the term of the transaction. The Parties shall take all reasonable actions (including, but not limited to, amending this Confirmation) and execute all documents or instruments necessary to use the Contract Capacity during the Delivery Period for the benefit of Buyer's RAR. During the Delivery Period, Seller and its affiliate, DEML, shall not use or otherwise commit any portion of the Applicable Generating Unit to in any way satisfy the RAR of any party other than Buyer.

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

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

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

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

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

Contact Information:

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

ACKNOWLEDGED AND AGREED TO AS OF _____, 2005.

Duke Energy Marketing America, LLC _____

By: _____

Name: _____

Title: _____

Date: _____

By: _____

Name: _____

Title: _____

Date: _____

APPENDIX A

Duke Energy Moss Landing 6 & 7 Capabilities

Applicable Generating Units:

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

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

ISO UNIT DESIGNATION: MOSSLD_7_UNIT 6

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

ISO UNIT DESIGNATION: MOSSLD_7_UNIT 7

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

SCHEDULE 1

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

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

Heat Rate Coefficients:

$$A = .00075$$

$$B = 8.0952$$

$$C = 400$$

$$\text{Heat Input} = (Ax^2 + Bx + C)/x \quad (\text{See Heat Rate Table below})$$

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

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

Heat Rate Coefficients:

$$A = .0011$$

$$B = 7.602$$

$$C = 490$$

$$\text{Heat Input} = (Ax^2 + Bx + C)/x \quad (\text{See Heat Rate Table below})$$

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

**Expected Heat Rate and Ramp Rate Table
(Illustrative)**

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

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

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

Schedule 2

Operating Restrictions
Moss Landing Unit #6 and #7

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

Schedule 2 (continued)

Operating Restrictions
Moss Landing Unit #6 and #7

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

PM10, SO₂ and VOC are based on fuel burned and therefore emissions vary based on Unit heat rate. The following table illustrates the emissions of each constituent, based on lbs. per MW of production at minimum load (52 MW), 50% load (377 MW) and full load (755 MW).

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

Appendix B

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

A. Operation Obligations of Seller

1. The Applicable Generating Unit shall be operated in accordance with Good Utility Practices and CAISO Tariff.
2. A daily operations log shall be maintained for the Applicable Generating Unit which shall include but not be limited to information on power production, fuel consumption and efficiency (if applicable), availability, maintenance performed, outages, changes in operating status, inspections and any other significant events related to the operation of the Applicable Generating Unit. In addition, records shall be maintained for the electrical characteristics of the generators and settings or adjustments of the generator control equipment and protective devices in the Applicable Generating Unit. Information maintained pursuant to this Appendix B shall be provided at reasonable intervals to Buyer, within thirty (30) days of Buyer's written request.
3. Accurate records shall be maintained with respect to the Applicable Generating Unit's (a) operating capacity as defined in the Confirmation and in accordance with the procedures and parameters described in such Confirmation, (b) annual so-called "wide open valve heat rate test" and the outcomes of such tests, subject to the procedures, parameters and assumptions that are further described in the Confirmation, in place of the "wide open valve heat rate test", actual data may be used in the normal operation of the unit, where the unit has been requested (scheduled) to operate at full capacity for a minimum of one (1) hour and the required data is recorded, and (c) any major scheduled turbine overhaul and the results, if any, as part of DEML's customary overhaul procedure, of a so-called "wide open valve heat rate test" immediately prior to overhaul and immediately after such overhaul, subject to the procedures, parameters and assumptions that are further described in the Confirmation.
4. Seller shall obtain and maintain any governmental authorizations and permits required for the continued operation of the Applicable Generating Unit during the Delivery Period.
5. Within thirty (30) days of the date of the Transaction, Seller shall operate, or test, the Applicable Generating Units in order to demonstrate, to Buyer's reasonable satisfaction, the ability of the Applicable Generating Units to provide Buyer with the specified Contract Capacity. If the Applicable Generating Unit has operated at or above its specified Contract Capacity within the previous forty-five (45) days of the Effective Date of the Transaction, the preceding shall be deemed satisfied. Thereafter, once per year at Buyer's request, DEML shall cause to be re-performed such test or operation for a reasonable period of time. Seller's demonstration of Contract Capacity shall be at Seller's expense and conducted at a time and pursuant to procedures mutually agreed upon by the Parties. For these capacity test operations, Seller shall provide all gas necessary for start up, operation and shut-down and the electric output from the test operations shall be for the account of Seller. Furthermore, Seller shall have the right to perform any testing in accordance with Good Utility Practices during periods in which Buyer has dispatched the Applicable Generating Unit and will only be obligated to compensate Buyer for any Generation Deviation Charges that result directly from Seller's testing activities. Likewise, if Buyer wishes for the Applicable Generating Unit to continue operating at the conclusion of testing operations conducted under Seller's dispatch, Buyer shall provide the fuel required for the continued operations and shall not be obligated to compensate Seller for

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

B. Seller's Maintenance and Repair Obligations

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

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

Appendix C

Definitions

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

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

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

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

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

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

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

Good Utility Practices: The practices, methods and acts engaged in or approved by a significant portion of the electric utility industry operating in the WECC region during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather includes all acceptable practices, method or acts generally accepted in the region. Good Utility Practice shall include, but not be limited to, applicable law and regulatory requirements, and the criteria, rules and standards promulgated by NERC, the WECC, RTO, National Electric Safety Code, and National Electrical Code, as they may be amended from time to time, including the rules and guidelines and criteria of any successor organizations.

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

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

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

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

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

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

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

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

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

**MASTER POWER PURCHASE AND SALE AGREEMENT
CONFIRMATION LETTER**

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

Seller: Duke Energy Marketing America, LLC (“DEMA”).

Buyer: _____ (“_____”).

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

On-Peak and Off-Peak periods may be exercised independently.

On-Peak Period: Hour Ending (“HE”) 0700 through HE 2200, Monday through Saturday, excluding NERC Holidays; Pacific Prevailing Time (“PPT”).

Off-Peak Period: HE 0100 through HE 0600 and HE 2300 through HE 2400, Monday through Saturday, and HE 0100 through HE 2400, Sundays and NERC Holidays, Pacific Prevailing Time (“PPT”).

Type of Service: Daily Call Option

Product: CAISO Energy

Contract Quantity: 375 MW

Delivery Point: NP-15; provided, however, if the California Independent System Operator or its successor (“CAISO”) implements trading hubs under a locational marginal pricing design during the Delivery Period, the Delivery Point shall be the Existing Zone Generation NP15 Trading Hub (“NP15 EZ Gen Hub”), as such trading hub is contemplated by the CAISO in its filing made to the FERC dated March 15, 2005 (“Comprehensive Design Proposal for Inter-Scheduling Coordinator Trades Under the California Independent System Operator Corporation’s Market Redesign and Technology Upgrade, Docket No. ER02-1656-025”); provided further, if the NP15 EZ Gen Hub (under any name) is not established as part of a market redesign that is implemented during the Delivery Period, the parties agree to promptly work together in good faith to designate an alternate Delivery Point to reasonably approximate the characteristics of the NP-15 Zone.

Scheduling:

In consideration for payment of the Option Premium, Seller grants Buyer the right (subject to the terms below) for each day during the Delivery Period to require Seller, at Buyer's option, to sell and deliver to Buyer the Product, for the Contract Quantity. If Buyer chooses to exercise its option to receive the Product during the On-Peak Period for a given day within the Delivery Period, Buyer must schedule and receive the Product in an amount equal to the Contract Quantity each and every hour of the On-Peak hours for which this option was exercised. If Buyer chooses to exercise its option to receive the Product during the Off-Peak Period for a given day within the Delivery Period, Buyer must schedule and receive the Product in an amount equal to the Contract Quantity each and every hour of the Off-Peak hours for which this option was exercised.

In order for the option exercise to be valid, Buyer shall give Seller prior telephonic notice of its intent to exercise its option no later than 0615 PPT on the Exercise Date before the delivery is to take place. If the option is exercised, both parties shall be obligated to schedule the Contract Quantity. Furthermore, Seller shall be obligated to deliver the Contract Quantity and Buyer shall be obligated to pay the Energy Price for the relevant Contract Quantity. "Exercise Date" shall mean the mutually recognized WECC Pre-Scheduling Day prior to the delivery day or day(s) of delivery as defined by the most recent WECC Pre-Schedule calendar. For example, if Buyer exercises an option on Thursday, the relevant delivery days for that Pre-Scheduling Day will be Friday and Saturday. Buyer shall have the obligation to buy and receive from Seller and Seller shall have the obligation to sell and deliver to Buyer the Contract Quantity of the Product for all Delivery hours for both Friday and Saturday (consistent with the customary practices regarding the trading of daily electricity).

Option Premium:

US \$ _____ / kW-month for each calendar month during the Delivery Period, to be paid five (5) Business Days prior to the month of delivery.

Energy Price:

Calculated, on a \$/MWh basis, as the Gas Price multiplied by the Contract Heat Rate plus the Variable O&M Fee.

Variable O&M Fee:

\$4.75 / MWh

Contract Heat Rate:

9.50 MMBtu/MWh

Gas price:

Expressed in \$/MMBtu, the Midpoint price for delivery on the relevant Flow Date for "PG&E City-Gate" as reported in the Daily Price Survey in *Gas Daily*. The Gas Price for any calendar day for which prices are not published in *Gas Daily* shall be the Midpoint price as reported on the next day for which prices are

published in *Gas Daily*. The "Flow Date" shall mean the date on which the Product is delivered by Seller to Buyer.

Transmission:

Seller is responsible for all transmission arrangements and costs for delivery of the Product to the Delivery Point. Buyer is responsible for all transmission arrangements and costs for receipt of the Product at and beyond the Delivery Point.

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

DUKE ENERGY MARKETING
AMERICA, LLC

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

**MASTER POWER PURCHASE AND SALE AGREEMENT
CONFIRMATION LETTER**

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

Seller: Duke Energy Marketing America, LLC (“DEMA”)

Buyer: _____

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

Exercise Protocol: Buyer’s exercise shall follow day-ahead scheduling protocols and will be subject to the following flexibility and limitations:

- Buyer’s schedule must maintain the Minimum Quantity for a minimum of 48 contiguous hours.
- Buyer may schedule the Maximum Quantity in blocks of 8 or more contiguous hours.

Type of Service: Daily Call Option

Product: CAISO Energy

Minimum Quantity: 100 MW

Maximum Quantity: 375 MW

Delivery Point: NP15 Zone; provided, however, if the California Independent System Operator or its successor (“CAISO”) implements trading hubs under a locational marginal pricing design during the Delivery Period, the Delivery Point shall be the Existing Zone Generation NP15 Trading Hub (“NP15 EZ Gen Hub”), as such trading hub is contemplated by the CAISO in its filing made to the FERC dated March 15, 2005 (“Comprehensive Design Proposal for Inter-Scheduling Coordinator Trades Under the California Independent System Operator Corporation’s Market Redesign and Technology Upgrade, Docket No. ER02-1656-025”); provided further, if the NP15 EZ Gen Hub (under any name) is not established as part of a market redesign that is implemented during the Delivery Period, the parties agree to promptly work together in good faith to designate an alternate Delivery Point to reasonably approximate the characteristics of the NP-15 Zone.

Scheduling: In consideration for payment of the Option Premium, Seller grants Buyer the right (subject to the terms below) for each day during the Delivery Period to require Seller, at Buyer’s option, to

sell and deliver to Buyer the Product, for either the Minimum Quantity or the Maximum Quantity. If Buyer chooses to exercise its option to receive the Product, Buyer must schedule and receive the Product for a minimum of 48 contiguous hours. Furthermore, Seller grants Buyer the flexibility to schedule and receive the Maximum Quantity for a period of no less than 8 contiguous hours.

In order for the option exercise to be valid, Buyer shall give Seller prior telephonic notice of its intent to exercise its option no later than 0615 PPT on the Exercise Date before the delivery is to take place. If the option is exercised, both parties shall be obligated to schedule the product for the Minimum and/or Maximum Quantity, at Buyer's discretion within the limitations described herein. Furthermore, Seller shall be obligated to deliver the Product and Buyer shall be obligated to pay the Energy Price for the relevant Product quantity. "Exercise Date" shall mean the mutually recognized WECC Pre-Scheduling Day prior to the delivery day or day(s) of delivery as defined by the most recent WECC Pre-Schedule calendar. For example, if Buyer exercises an option on Thursday, the relevant delivery days for that Pre-Scheduling Day will be Friday and Saturday. Buyer shall have the obligation to buy and receive from Seller and Seller shall have the obligation to sell and deliver to Buyer the Contract Quantity of the Product for all Delivery hours for both Friday and Saturday (consistent with the customary practices regarding the trading of daily electricity).

- Option Premium: US \$ ____ / kW-month for each calendar month during the Delivery Period, to be paid five (5) Business Days prior to the month of delivery.
- Energy Price: Calculated, on a \$/MWh basis, as the Gas Price multiplied by the Contract Heat Rate plus the Variable O&M Fee.
- Contract Heat Rate: 9.50 MMBtu / MWh
- Gas price: Expressed in \$/MMBtu, the Midpoint price for delivery on the relevant Flow Date for "PG&E City-Gate" as reported in the Daily Price Survey in *Gas Daily*. The Gas Price for any calendar day for which prices are not published in *Gas Daily* shall be the Midpoint price as reported on the next day for which prices are published in *Gas Daily*. The "Flow Date" shall mean the date on which the Product is delivered by Seller to Buyer.
- Variable O&M Fee: \$4.75 / MWh
- Transmission: Seller is responsible for all transmission arrangements and costs for delivery of the Product to the Delivery Point. Buyer is responsible for all transmission arrangements and costs for receipt of the Product at and beyond the Delivery Point.

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

DUKE ENERGY MARKETING
AMERICA, LLC

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

**MASTER POWER PURCHASE AND SALE AGREEMENT
CONFIRMATION LETTER**

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

Seller: Duke Energy Marketing America, LLC (“DEMA”)

Buyer: _____

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

Product: Resource Adequacy Qualifying Capacity

Product Description: “Resource Adequacy (“RA”) Qualifying Capacity” means the qualified and deliverable capacity from the Unit(s), as determined under the prevailing Resource Adequacy Requirement (“RAR”) rules for determining the quantity and deliverability of qualifying RAR capacity (“Qualifying Capacity”) that can be counted toward Buyer’s RAR obligation, as described in D.04-10-035, and as may be amended from time to time by the California Public Utilities Commission (“CPUC”) in the Resource Adequacy phases of Rulemaking 04-04-003 or by any successor proceeding, and all other resource adequacy requirements established by any other regional entity responsible for RAR implementation or enforcement. RA Qualifying Capacity does not confer to Buyer any right to the Contract Quantity of Seller’s Unit(s) other than the right to count such Contract Quantity toward Buyer’s RAR obligation during the Delivery Period. Specifically, no energy associated with Seller’s Unit(s) is required to be made available to Buyer as part of this RA Qualifying Capacity obligation.

If, during the Delivery Period, a standard capacity product is developed as a replacement to the RA product, and Buyer is authorized, if necessary, by an appropriate regulatory body to procure the product, Buyer and Seller shall negotiate in good faith to convert the RA product contemplated in this Term Sheet to one that resembles the new capacity product. If Buyer and Seller cannot agree on such new product, either party may have the right to terminate this agreement as of the first day of the month following their failure to reach agreement.

Contract Quantity: _____ MW
(Increments of 125 MW, up to a maximum of 1,500 MW)

Designated Unit(s): Moss Landing Unit 6 or Unit 7

Delivery Point: Moss Landing Substation; within the current NP-15 zone and within the CAISO controlled grid

Contract Price: US \$____ / kW-month for each calendar month during the Delivery Period, to be paid five (5) Business Days prior to the month of delivery.

Capacity Tagging: Should the CPUC or CAISO, during the term of this Confirmation Agreement, create an RAR implementation methodology utilizing capacity tagging [such as, but not limited to, distinct Installed Capacity (“ICAP”) products], Seller shall provide Buyer with the capacity tags for the remaining term of the Confirmation Agreement, for the Contract Quantity. Seller shall take reasonable actions and execute all reasonable documents necessary to ensure that the capacity tags are used for the sole benefit of the Buyer.

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

DUKE ENERGY MARKETING
AMERICA, LLC

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Appendix D

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

REQUEST FOR OFFERS

December 8, 2005

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

Dear Prospective Bidder:

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

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

Description of Products Solicited

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

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

Pricing Structure for Energy (Variable Component)

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

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

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

For heat rate Offers:
7.5 to 10.0 MMBtu/MWh

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

Operating Flexibility

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

Ancillary Services ("A/S")

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

Resource Adequacy ("RA")

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

Delivery Point

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

Term

PG&E is seeking Offers for deliveries between May 1, 2006 and December 31, 2010. Offers may be

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

Energy and RA Quantities

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

Scheduling Provisions

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

Requirement for CPUC Review/Confidentiality

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

Credit Requirements

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

Schedule and Procedure for RFO

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

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

Contact Information

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

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

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

- (1) the bid table attached to the accompanying Term Sheet (Term Sheet Attachment 4), with any explanatory notes; and
- (2) a mark-up of the Term Sheet, if changes are proposed.

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

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

Thank you for your consideration of this solicitation.

Attachments

Power Purchase Agreement Term Sheet

[SERVICE PROVIDER]

PACIFIC GAS AND ELECTRIC COMPANY

POWER PURCHASE AGREEMENT

CONFIDENTIAL NON-BINDING SUMMARY OF PRINCIPAL COMMERCIAL TERMS

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

Parties	[SERVICE PROVIDER], a _ (" Seller ") and Pacific Gas and Electric Company, (" Buyer "), referred to individually as " Party " or collectively as " Parties ".
Transaction	Seller will provide and make available to Buyer and Buyer will purchase and pay for all Product provided by the Unit(s). For purposes of this Term Sheet, the term Unit or Unit(s) shall mean the unit(s) identified by Seller on Attachment 4.
Contract Term	The " Contract Term " will commence upon execution and delivery of the Definitive Agreement (" Execution Date ") and continue until final settlement (after the end of the Contract Term, defined below). The Definitive Agreement may include conditions relating to regulatory approvals of the Definitive Agreement which must be satisfied prior to the time the remainder of the Parties' obligations become effective. Only upon satisfaction of such conditions will terms of the Definitive Agreement be deemed to have been met.

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

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

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

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

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

Resource Adequacy or RA Capacity Eligibility to count MW toward the RA or RA Capacity requirement is determined by identifying specific Unit(s). This RA requires that unit specific capacity be identified and the physical Unit be made available to the CAISO for dispatch. Seller agrees that the Unit(s) offered to Buyer here will meet all requirements necessary to qualify as a resource capable of contributing to Buyer's RA or RA Capacity requirement and will consent in

the Definitive Agreement to take such measures as necessary to qualify as a resource that counts toward Buyer's RA Requirement. In addition, Seller agrees to comply with all associated bidding/dispatch requirements imposed through either CAISO market design and tariffs, CPUC or FERC. Such bidding requirements may be imposed in the day ahead, hour ahead or real time timeframe. Buyer will also have exclusive rights to all RA or RA Capacity related products such as capacity tags, capacity credits, or installed capacity ("ICAP") products, as applicable. Seller shall comply with any CPUC or CAISO requirements for meeting RA.

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

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

This section is relevant only for unit contingent Energy products.

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

Energy Call and Scheduling Rights, Minimum Operating Flexibility As a minimum threshold for shapeable Energy, Buyer shall have at least hour-ahead call rights. Seller shall select from one of the following:

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

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

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

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

Scheduling Protocols

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

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

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

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

applicable hour(s).

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

**Uninstructed
Deviations**

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

**Operational
Constraints**

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

Delivery Point

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

For non-unit contingent Energy under Option A, the Delivery Point is what is presently defined as NP15. If at any time during the Delivery Term the CAISO or a successor organization replaces the current NP-15 zone with a nodal system, then the new delivery point for this Transaction shall be the Existing Zone Generation NP15 Trading Hub ("**NP15 EZ Gen Hub**"), as such trading hub is contemplated by the CAISO in its market design whitepaper entitled "CAISO Status Update on the Development of Trading Hubs Under LMP", dated October 26, 2004, as updated by a presentation made at the CAISO Stakeholder Meeting made on January 11, 2005 ("**CAISO Materials**"), subject to reasonable modification by the CAISO and regardless of whether (i) the NP15 EZ Gen Hub is referred to by another

name, (ii) the weighting factors used to calculate the NP15 EZ Gen Hub change and/or (iii) there is physical validation at the NP15 EZ Gen Hub, if such Generation Hub is designated for Energy delivery. However, if the NP 15 Gen Hub is not so designated, the Parties shall in good faith negotiate a new delivery point that most accurately reflects the characteristics of the NP-15 zone and maintains the balance of benefits and burdens of the Parties as they exist on the date of the Definitive Agreement.

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

**Electric
Interconnection
and
Transmission
Service**

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

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

This section is relevant only for unit contingent Energy products.

**Fuel Supply and
Transportation**

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

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

Guaranteed

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

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

The calculation for "**Availability**" is:

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

Where:

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

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

mnthhrs_m is the total amount of hours for the month

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

This section is relevant only for unit contingent Energy products.

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

Discount (also known as Non-Performance Penalties) for Unit Contingent Energy Products

below) due Seller from Buyer for that month will be subject to reduction for shortfalls in Guaranteed Availability for that month. The applicable "Non-Availability Discount" will be equal to:

Summer Months: If Availability is between 70% and 96%, then 2% reduction in Fixed Payment for Energy Call Rights for every 1% reduction in Availability below 96%; and
Non-Summer Months: If Availability is between 60% and 92%, then 2% reduction in Fixed Payment for Energy Call Rights for every 1% reduction in Availability below 92%.

In the event that the availability drops below 70% in any Summer Month or 60% in any Non-Summer Month, Buyer shall have no obligation to make Fixed Payment for Energy Call Rights for the month when Availability dropped below the 70% or 60% thresholds.

In addition to the above, in the event that the Unit(s) are under contract to provide Ancillary Services under Option B, and fails to meet the standards established by the CAISO for the provision of Ancillary Services (e.g., Section 2.5.25 of the CAISO, or such additional or substitute standards as may be applicable from time to time), the Fixed Payment for Energy Call Rights shall be reduced by an amount equal to the charges assessed on Buyer due to such failure.

This section is relevant only for unit contingent Energy products.

Availability Bonus Structure for Unit Contingent Energy Products

Every Summer Month that Seller exceeds Guaranteed Availability for such month the Capacity Payment for such month shall be determined in accordance with the following:

Summer Month at 97% or above = 102.0% of Capacity Payment

This section is relevant only for unit contingent Energy products.

Maintenance Outages for Unit Contingent Energy Products

Seller will be responsible for all operation and maintenance of the Unit(s) and will bear all costs related thereto. The Parties shall agree to, and include in the Definitive Agreement, detailed "Maintenance Protocol" for the Unit(s), subject to inclusion of the following:

- Seller shall provide a schedule of its expected annual planned partial or full maintenance outages ("**Planned Maintenance**") for the next calendar year by September 1 of each year of the Contract Term; and shall update such schedule for each calendar quarter no later than 30 days before the commencement of such quarter.

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

This section is relevant only for unit contingent Energy products.

- Compensation:**
- (A). **"Fixed Payment for Energy Call Rights"**— specify the annual values in Attachment 4 as \$ per kW-year (price to include right for all Energy related Products, including Ancillary Services, if applicable);
 - (B). **"Fixed Payment for RA"** — specify the annual values in Attachment 4 as \$ per kW-year for the Resource Adequacy attribute. This fixed payment may be separate, or bundled with the fixed payment rate in (A) above;
 - (C). **"Variable O&M Price"**— specify the Price or prices in Attachment 4 as \$ per MWh;

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

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

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

Start-Up Costs

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

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

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

For each Hot, Warm, or Cold start, Buyer will (1) provide or compensate Seller the quantities of gas per start for Unit(s) Start-Ups (**"Start Up Fuel Amounts"**) (i) necessary to meet Buyer's schedule and (ii) following a shutdown of the Unit(s) at the end of a Buyer requested scheduling period,

and (2) pay Seller the associated costs for each Start-Up ("**Start-Up Charge**"), each as specified by Seller in Attachment 4. Seller shall also specify in Attachment 4 the amount of time, in minutes, required for Start-Up (from zero schedule to Minimum Schedule) and the maximum number of starts allowed per year for each year of the Contract Term

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

This section is relevant only for unit contingent Energy products.

Billing and Payment

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

Events of Default

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

Applicable only to Seller:

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

Applicable to both Parties:

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

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

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

Force Majeure

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

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

excused; and (ii) the unavailability of the capacity of the Units due to Force Majeure shall be deemed to be unavailability for purposes of determining Availability and the Non-Availability Discount.

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

Metering

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

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

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

This section is relevant only for unit contingent Energy products;

Compliance with Law, Environmental Risk and Indemnity

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

Credit Requirements

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

EEI Master Agreement

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

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

the remaining calendar months of the Delivery Term.

WSPP Master Agreement:

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

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

(x) is

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

plus

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

plus

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

plus

when the Beneficiary Party is the Buyer and the Posting Party is the Seller (the Independent Amount shall not be used in the Collateral Requirement calculation as it applies to Buyer as the Posting Party), the Parties agree that should Seller not maintain at least a senior unsecured debt rating or issuer rating of at least BBB- by Standard & Poor’s (“**S&P**”) and Baa3 by Moody’s an Independent Amount

shall apply to the Seller. Such Independent Amount shall be equal to \$_____ multiplied by the Contract Quantity. (“**Independent Amount**”). Such Independent Amount will be comprised of two component calculations as follows: (1) Energy: an amount adequate to cover 10 days of VAR per MW; and (2) RA: an amount equal to the greater of (i) 25% of the sum of the notional value of the RA for each year of the Contract Term, and (ii) \$5/kw-year multiplied by the number of years of the Contract Term, The Independent Amount will be adjusted on an annual basis (on the first business day of each year) to reflect the appropriate amount for the remaining Contract Term.

(y) is

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

the Collateral Threshold applicable to the Posting Party.

**Non-Inclusive;
Non-Binding;
Definitive
Agreement**

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

Attachment 1 – Fixed Payment Allocations by Month

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

Attachment 2 -- Valuation Formulae for Credit Requirements

Formula Definitions:

t_0 – date Definitive Agreement approved by the appropriate regulatory bodies

t - ongoing Transaction date after Execution Date

$P_{peak}(i, t)$ - price of monthly forward NP-15 defined peak Energy for month i as observed at the moment of time t measured in \$/MWh

$P_{off-peak}(i, t)$ - price of monthly forward NP-15 defined off-peak Energy for month i as observed at the moment of time t measured in \$/MWh

$P_{gas}(i, t)$ - price of monthly forward gas for month i as observed at the moment of time i measured in \$/MMBtu

VOM_i - Variable O&M (measured in \$/MWh) for year of current month set forth in Definitive Agreement for month i

HR – the Heat Rate at Maximum Capacity set forth in the Definitive Agreement at ISO Conditions

$HourlyVolume$ – Maximum MW size set forth the Definitive Agreement for the specific month

$NumberOfPeakHours(i)$ - number of WECC defined peak hours in month i

$NumberOfOff-PeakHours(i)$ - number of WECC defined off-peak hours in month I

Calculation of "Mark-to-Market Value":

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

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

Initial MIV calculation formula:

$$MIV(i,t_0) = [NumberOfPeakHours(i) * \max[(P_{peak}(i,t_0) - HR * P_{gas}(i,t_0) - VOM_i), 0] * HourlyVolume] + [NumberOfOff-PeakHours(i) * \max[(P_{off-peak}(i,t_0) - HR * P_{gas}(i,t_0) - VOM_i), 0] * HourlyVolume]$$

Initial MIV will be calculated once at t_0 for the expected delivery life of the Transaction.

Current MIV calculation formula:

$$MIV(i,t) = [NumberOfPeakHours(i) * \max[(P_{peak}(i,t) - HR * P_{gas}(i,t) - VOM(i)), 0] * HourlyVolume] + [NumberOfOff-PeakHours(i) * \max[(P_{off-peak}(i,t) - HR * P_{gas}(i,t) - VOM(i)), 0] * HourlyVolume]$$

Attachment 3— Resource Adequacy Requirements

1. Definitions for purposes of Attachment 3 to this Term Sheet:
 - 1.1 “Resource Adequacy (“RA”) Capacity Product, or RA Capacity” means the qualified and deliverable capacity from Unit(s) that can be counted toward Buyer’s Resource Adequacy Requirements (“RAR”) as described in D.04-10-035 and D.05-10-042, and as may be amended from time to time by the California Public Utilities Commission (“CPUC”) in the Resource Adequacy phases of Rulemaking 04-04-003 or by any successor proceeding, and all other resource adequacy requirements established by any other regional entity responsible for RAR. RA Capacity does not confer to Buyer any right to the Contract Quantity of Seller’s Unit(s) other than the right to count such Contract Quantity toward Buyer’s RAR during the Delivery Period. Specifically, no Energy associated with Seller’s Unit(s) is required to be made available to Buyer as part of this RA Capacity obligation, and Buyer shall in no way be responsible to compensate Seller for any commitments to CAISO as set forth in this Transaction.
 - 1.2 “Contract Quantity” means the amount of RA Capacity as set forth in this Transaction.
 - 1.3 “Unit” or “Units” shall mean the generation assets described as follows [Note: to be repeated for each Unit if more than one.]:

Name (not applicable for imports): _____

Location (not applicable for imports): _____

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

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

2. Representation and Warranties:
 - 2.1 Seller and Buyer represent and warrant that throughout the Delivery Term they shall take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to ensure Buyer’s right to the use of the Contract Quantity for the sole benefit of Buyer’s RAR. Such commercially reasonable actions may include but are not be limited to the following:
 - A. Cooperating with and encouraging the regional entity responsible for resource adequacy administration to certify or qualify the Contract Quantity for RAR purposes. This includes meeting requirements established by the CPUC in its resource adequacy counting protocols, including demonstration of the ability to deliver the Contract Quantity over all hours required for full RAR eligibility, and demonstrating that the Contract Quantity can be delivered to the CAISO Controlled

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

- B. Negotiating in good faith to make necessary amendments, if any, to this Transaction to conform this Transaction to subsequent clarifications, revisions or decisions rendered by the CPUC or regional entity or entities responsible for RA administration, so as to maintain the benefits of the bargain struck by the Parties; and
- C. Using “Good Utility Practice,” as defined in the CAISO Tariff, with respect to maintenance of Unit(s); however, such commercially reasonable actions shall not include any obligation that the Seller undertake capital improvements, facility enhancements, or the construction of new facilities.

2.2 Seller represents and warrants that throughout the Delivery Term:

- A. Seller has ownership of, or a demonstrable exclusive right¹ to control the Unit(s) located within the CAISO Control Area or connected to the CAISO Controlled Grid;
- B. Buyer has the exclusive right to count the Contract Quantity from Unit(s) toward Buyer’s RAR;
- C. No portion of the Contract Quantity has been committed by Seller to any third party in order to satisfy RAR, or analogous obligations in other markets, unless through a Reliability Must Run (“RMR”) contract between Seller and CAISO;
- D. Should Seller schedule Contract Quantity as Energy outside the CAISO, or commit Energy to a third party in a manner that would result in scheduling up to the Contract Quantity as Energy outside the CAISO, it shall do so only as allowed by, and in accordance with, the CAISO Tariff and final RA rules approved by the CPUC; and
- E. Seller shall abide by all applicable CAISO rules and procedures approved by the FERC, and RA rules approved by the CPUC.

3. CAISO Dispatch Requirements:

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

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

¹ Such rights could be acquired through bilateral contracting.

- B. Seller shall bid the Contract Quantity² into the CAISO Day-Ahead integrated forward market (“DA IFM”) for all hours of the operating day when such a market is established, and to the extent such bids are cleared in such CAISO DA IFM, Seller shall provide that portion of the Contract Quantity cleared in the DA IFM to the CAISO in accordance with the CAISO Tariff. To the extent the Contract Quantity is not cleared in such DA IFM, Seller shall schedule, or submit supplemental Energy or Ancillary Services bids regarding the remaining Contract Quantity volumes into the CAISO Hour-Ahead Scheduling Process (“HASP”) (if such a market is established); however, any Unit(s) not committed through the DA IFM or Day-Ahead Residual Unit Commitment (“RUC”)³ and whose start-up time do not permit such Unit(s) to be committed in HASP will be relieved of its obligations for that operating day. Seller’s Unit(s) will remain available to CAISO through its RUC process after each market closes, if such a process is developed.
- C. If FERC’s Must Offer Obligation (“MOO”) is operative, Seller shall make all Unit(s) subject to MOO. In the event of a Must Offer Waiver Denial (“MOWD”) by the CAISO, Seller shall submit supplemental Energy or Ancillary Service bids² to the CAISO from the Unit(s); and/or
- D. If FERC’s MOO is no longer operative and the CAISO has not implemented its Market Redesign Technical Update (“MRTU”), Seller shall make Unit(s) subject to the same obligations to the CAISO and timelines that exist under the current MOO process. Seller shall submit Hour-Ahead (if it exists) schedules and/or supplemental Energy or Ancillary Services bids² for the Contract Quantity for all hours for which the Unit(s) has been committed by the CAISO pursuant to the following rights granted by the Parties to the CAISO through this Transaction: (1) the CAISO shall have the right to commit any type of Unit(s) on a Day-Ahead basis; and (2) the CAISO shall have the right, on an intra-hour or Hour-Ahead basis, to call on supplemental Energy and/or Ancillary Services from only those Unit(s) whose start-up time permits such a call. The CAISO and appropriate stakeholders will work together to consider what, if any, successor tariff language is needed after the MOO obligation expires.

4. RA Capacity Delivery Point.

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

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

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

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

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

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

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

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

Note:

For a variable energy price that is indexed to gas, enter HR in MMBtu/MWh

If the term includes partial years, the specified fixed charges for the applicable months of any partial year will be multiplied by the monthly allocation factors in Attachment 1 (Bidder does not receive the full specified fixed payment in that year)

To specify more detailed HR pricing, go to the worksheet labeled "Heat Rate"

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

RESOLUTION E-4002

DATE: July 20, 2006

R E S O L U T I O N

Resolution E-4002: Pacific Gas and Electric (PG&E) requests approval of a tolling agreement between itself and Duke Energy Marketing America (DEMA) for electricity and capacity from the Moss Landing generating station, units 6 and 7. PG&E's Request is approved.

By Advice Letter 2803-E filed March 24, 2006

SUMMARY

AL 2803-E and the tolling agreement with DEMA is approved.

In Advice Letter (AL) 2803-E PG&E requests the Commission finds the proposed tolling agreement with DEMA for Moss Landing units 6 and 7 for energy and capacity beginning in January 2007 and lasting until December 2010 both reasonable and prudent, for all purposes including PG&E's rate recovery of payments made pursuant to this contract, for the full duration of the contract. The contract is for a total capacity of 1509 MW.

This tolling agreement fits within the confines of PG&E's approved Long Term Procurement Plan (LTPP), and is consistent with the requirements of Commission decisions and with the Energy Action Plan (EAP) Loading Order. D.02-10-062 lists a set of products and transaction types that PG&E may use to fill residual net open position, and D.04-12-048 approved the LTPP containing both Loading Order targets and net short positions. These decisions place a restriction on the sort of contracts into which PG&E can enter; AL 2803-E, filed pursuant to the authority granted under its LTPP, is compliant with all the requirements of the decision and with the approved LTPP; therefore it is approved.

BACKGROUND

The Commission issued D.02-10-062 authorizing the IOUs to re-enter the process of procurement

In D.02-10-062 we ordered the IOUs to recommence procurement and to facilitate more long term planning. The decision set January 1, 2003 for the recommencement of IOU driven procurement, and for implementation of AB 57.

This decision approved short term procurement plans, but maintained the flexibility for the Commission to create more structure later. It also authorized the IOUs to enter into contracts of less than five years in duration, and authorized a list of procurement products and transactions into which the IOUs can enter. Preparation and approval of LTPPs were left until a later decision.

D.04-12-048 found reasonable and approved Long Term Procurement Plans (LTPPs) for the 3 IOUs.

D.04-12-048 extended the procurement authority of IOUs to ten years, and maintained the requirement to consult with the Procurement Review Group (PRG). Specifically the decision found reasonable PG&E's Net Short Position and resource scenarios and found its bottom up approach with respect to the Loading Order to be in compliance. This decision updated and reiterated the findings of D.02-10-062. In closing its net open position, PG&E is restricted to a set of authorized products and types of transactions authorized in its LTPP.

DEMA issued a Request For Bids for Moss Landing and selected PG&E; PG&E issued RFO9 and chose DEMAs Moss Landing offer

DEMA issued a Request for Bids (RFB) on August 30, 2005 for purchase of a maximum of 1500 MW of capacity with day-ahead call options from the Moss Landing Plants. The RFB allowed for purchase of the capacity in increments of 375 MW. The RFB was updated on September 8. PG&E submitted indicative bids into the RFB on September 30, 2005 and was notified October 3, 2005 that it had been short listed. On December 8, PG&E issued Request For Offer Number 9 (RFO9) to address needs for intermediate term shapeable energy while continuing negotiations with DEMA. PG&E's RFO9 asked for offers of energy and capacity with a minimum contract term of three years and a minimum size of 25MW. RFO9 also encouraged specific price and heat rate ranges. Eight companies, including DEMA, submitted offers totaling 8000 MW of capacity. On December 28, 2005 PG&E determined that DEMAs offer, relative to the other offers received via RFO9, gave PG&E higher market value.

Under its LTPP, PG&E has sufficient authority to enter into this agreement without filing an Advice Letter, but some issues in the contract arrangement make it prudent to seek Commission approval

- The size of this agreement (1509 MW of capacity) represents a significant portion of PG&E's contracted resources.
- This agreement transacts for RA prospectively four years out, although the rules of the program are evolving and the applicability of this product four years from now is not certain.

- Pending sale of the Moss Landing facility will create uncertainty as the counterparty to this agreement will change. In total, PG&E will purchase over 2000 MW of contracted capacity from LS Power.

The PRG was notified regarding the RFO and DEMA's offer on September 30th, 2005, December 1st, 2005, and January 12th of 2006. On February 27th PG&E notified the PRG that it intended to move forward with this agreement, and the PRG expressed no concerns.

NOTICE

Notice of PG&E AL 2803-E was made by publication in the Commission's Daily Calendar. PG&E mailed a redacted copy of the Advice Letter and distributed it in accordance with Section III-G of General Order 96-A.

PROTEST

Aglet Consumer Alliance (Aglet) protested AL 2803-E on April 13, 2006 raising three key issues.

1. The findings requested by PG&E are beyond the scope of the Advice Letter process. The Commission should not make these findings unless PG&E files an application and the strength of PG&E's showing is tested by testimony submitted by interested parties.
2. AL 2803-E requests finding that their purchase of RA four years out was reasonable and prudent. If this was determined, that would constitute a finding that the contract counts towards future RA obligations, when that issue is still unsettled.
3. AL 2803-E requests cost recovery for this contract via Advice Letter, instead of the more appropriate Energy Resource Recovery Account (ERRA) proceeding.

PG&E RESPONSE TO PROTEST

PG&E filed a response April 20 countering each of these three claims. The response counters the three key areas as follows:

1. PG&E has sufficient procurement authority to enter into the proposed tolling agreement

PG&E has authority granted under D.04-12-048 to execute contracts for less than five years (this contract runs 4 years) without the need to file an application. The Commission has previously approved contracts

less than five years in duration via the AL process (Resolution E-3929 approving a contract with Morro Bay Units 3 and 4)

2. PG&E acknowledges that rules for Resource Adequacy (RA) are continuing to evolve

The RA program is evolving and changing, and although PG&E asks for approval of entry into this contract including purchase of RA capacity, there is enough flexibility in the contract to allow the program to evolve further. The contract provides for the possibility of amendments to this contract due to regulatory orders, and assigns oversight to current and future regulatory agencies tasked with administering the RA program. The contract also allows both parties to turn this contract into a standard capacity product once the market for such products evolves. For that reason, PG&E is not asking for upfront approval before the program develops.

3. PG&E has the authority to request approval to enter into the proposed contract, subject to review by the Commission with respect to the reasonableness of PG&E's administration of the contract.

D. 02-10-062 states that the current cost recovery mechanism should diminish the need for after the fact reasonableness review and provide for expedited recovery of all procurement costs in order to support the credit of utilities. AL 2803-E asks for a finding that PG&E's actions are reasonable and prudent for all purposes, including rate recovery of all payments made under this contract, for the entire duration of the contract, subject only to Commission oversight as to the reasonableness of PG&E's administration of the contract. This administration oversight and any rate adjustments occur via the ERRRA proceeding and not in this AL, and for that reason PG&E is not asking for a change in the review process. This contract is within the scope of the AL process.

DISCUSSION

In D.04-12-048 we established a list of specific criteria from which to judge whether a contract is in accordance with the policies and procurement requirements.¹ Specifically PG&E must demonstrate:

1. that there is a residual energy or capacity need to be met with this transaction;

¹ D.04-12-048, page 154, exempts contracts of five years or less from the requirement to add a GHG adder to all fossil bids.

2. this transaction fits within the EAP Loading Order only after cost effective higher order resources are procured first;
3. that this transaction occurs via approved transaction types, and PG&E is transacting in approved products for approved durations;
4. the RFO was open to all offers and transparent, within the constraints of the product offered;
5. that the product transacted gives the highest ratepayer value compared with alternatives using the Least Cost Best Fit Methodology; and
6. that the RFO, bid valuation, and selection were thoroughly reviewed with the PRG

Finally we also evaluate the specific issues contained in Aglet's protest and PG&E's response to the protest.

Residual Energy and Capacity Need

PG&E demonstrates its residual need via a set of energy and capacity tables required by D.04-12-048. These tables were most recently updated in the LTPP filings of March 2005². The Energy Division has reviewed these tables and determined a net short position in energy and capacity, especially hour ahead dispatchable and shapeable energy that PG&E needs for operational reliability. These needs increase in 2006 and 2007 as current contracts begin to expire. PG&E also needs RA capacity to fill a shortfall that beginning in 2007 is greater than the total purchase proposed here. These shortfalls necessitate and justify PG&E's RFO9.

Compliance with the EAP Loading Order

The EAP Loading Order, published May 8, 2003 and endorsed again in D.04-12-048, contains explicit direction regarding the state's preferences for meeting identified resource needs, and the IOUs are to prioritize their resource selections accordingly."³ Cost effective procurement of Demand Response (DR), Distributed Generation (DG), and Renewable Energy (RE) are to occur prior to any procurement of fossil resources.

In D.04-12-048 we chose to accept compliance with the EAP by finding that the LTPPs "are EAP-compliant to the extent they include EAP targets established in the RPS, DR and EE proceedings; included, at a minimum, the DG forecasts in the 2003 IEPR, and added transmission and clean central-station generation to meet remaining energy and capacity needs."⁴ Chapter 4 of PG&E's LTPP laid out the goals for the growth of DR, DG, and RE in a table alongside projections of need for fossil resources. Chapter 4 discussed the "bottom-up" methodology

² These tables are the most current information available, as these tables are only updated when IOUs update their LTPPs. IOUs are set to update their LTPPs in the middle of 2006.

³ D.04-12-048, page 31

⁴ D.04-12-048, page 45..

that PG&E would use to compute residual need for cost effective fossil generation after all the higher order resources are accounted for and subtracted. In order to protect resource mixes and other commercially sensitive information, we merely say here that this contract does not constitute a departure from the EAP, since it is in line with PG&E's LTTP and fits within the residual net short after preferred higher order resource targets are carved out.

Types of Approved Transactions and Products

D. 02-10-062 lists a set of approved products and transactions, including the terms of this contract. An RFO for energy and capacity is approved. PG&E also has authority to enter into a tolling agreement with duration of under five years.⁵

Open and Transparent RFO

D.04-12-048 requires that RFOs be open to all sources and be conducted transparently and without prejudice towards utility owned generation or counterparty. IOUs have the option however "to tailor their RFOs to reflect their specific resource needs."⁶ This RFO for shapeable energy is a type of specific resource need; PG&E would need to show in issuing RFO9, through which DEMA bid Moss Landing units 6 and 7, that there was no restriction other than particular product specifications that encouraged or discouraged particular products from bidding. Of primary concern is bias towards utility owned generation, and bias against renewable or other non-central station fossil fuel.

Part of the determination is made by examination of the specific RFO language , and part is made via survey of the PRG materials presented regarding the RFO and from the general determination of PRG recipients.

The language from the RFO makes clear the exact and precise product being solicited by PG&E. The RFO solicits offers for flexible dispatchable resources with an hour ahead and real time call option and a minimum size of 25 MW. Resources with day ahead and less flexibility were not accepted. A 25 MW minimum offer is warranted due to the magnitude of the needed capacity sought in the RFO. We see it as reasonable that PG&E is trying to more efficiently procure resources, and we find the 25 MW minimum offer to be warranted. .

PG&E has the authority to issue RFO9 for shapeable energy, and within the technical and operational limits of the product, we find that the RFO was open and transparent. Of importance is the nature and quality of the bids. Significantly, no renewable generator bid into this RFO, as well as no one with

⁵ D.02-10-062, page 37-38

⁶ D.04-12-048, page 218

dispatchability concerns. Also of note is that PG&E has no affiliates, and the only bids were from truly independent facilities.⁷

Highest Value to Ratepayers via Least Cost Best Fit

D.04-12-048 requires the use of Least Cost - Best Fit (LCBF) methodology⁸. Application of this methodology can be verified via PRG comments and presentations of valuation. PG&E demonstrated via the PRG presentations on January 12, 2006 that DEMA's offer for Moss Landing held the most value. When PG&E added a proxy value for local RA attribute at a level higher than regular system RA, one other offer emerged as higher valued; without a significantly high value for local RA, the other offer was not competitive with DEMA's offer. DEMA's offer also gives PG&E full dispatch rights to the unit including ancillary services.

Backing up this conclusion, Aglet in their protest specifically supported the economics of the agreement and agreed with PG&E that "this agreement is competitively priced relative to market prices."⁹

We are convinced that the methodology has been used adequately here, and that this contract provides positive and maximized value to ratepayers, relative to the other offers in RFO9.

Consultation with PRG

PG&E consulted with the PRG on various occasions through the development and execution of RFO9. PG&E presented needs analysis and bid strategy to the PRG on September 30, 2005; PG&E updated the PRG on December 1 after PG&E had been shortlisted by DEMA; and PG&E discussed the upcoming RFO9. PG&E presented the response to its RFO at the January 12th meeting, with valuations and rankings of offers. On February 27th, PG&E presented the final arrangements for this offer to the PRG and stated its intention to move forward.

PRG participants are allowed and encouraged to submit support, opposition, or analysis to the Commission via comments during the Advice Letter protest period.

⁷ D.04-12-048, page 217, Finding of Fact No. 84 lifts the ban on dealing with affiliates in RFOs, but requires an Independent Evaluator when affiliates are present in the bids.

⁸ D.04-12-048, page 127, orders IOUs to use "Qualitative and quantitative attributes include performance risk, credit risk, price diversity (10 vs. 20 yr. price terms), and operational flexibility etc." when evaluating bids in an all source RFO.

⁹ Aglet Protest (April 13, 2006) page 1

Discussion of Protest and Response to Protest

Aglet protested AL 2803-E due to concerns over the scope of the AL process, provisions for multi-year RA, and rate recovery. PG&E responded to these concerns, and offered more explanation. We have reviewed Aglet's protest and PG&E's response. We find that the responses to the protest provided by PG&E are persuasive, and reject Aglet's protests.

Scope of the Advice Letter Process

Aglet's protest raised the issue of the scope of the Advice Letter process. D.04-12-048 requires that all contracts of larger than five years be filed via the application process, which allows for public testimony to review PG&E's claims. Filing this contract as an Advice Letter cuts short the review process and hampers public input; there are too many issues to be decided in this agreement that would benefit from public hearing.

We find this unpersuasive, since we have issued no mandate for PG&E to bring this contract to the Commission. We have approved other contracts with a duration of less than five years via the Advice Letter process (e.g. Resolution E-3929); we appreciate the opportunity to review this contract, since the complex nature and significant size of this commitment, as well as the pending asset sale to LS Power warrants the attention that we can provide.

Although doing so here, we are not expecting all contracts of less than five years to be brought to us for approval via advice letter, and we are not altering in any way the other requirements of the Long Term Procurement Proceeding; contracts with duration of over five years must still "be submitted with an application to the Commission for preapproval."¹⁰ We find that this agreement and Advice Letter are within the scope of the Advice Letter process, and deny Aglet's protest.

Multi-year RA

Aglet correctly states that the rules for RA, and in particular multi-year RA, are under development. It is our intention to facilitate and encourage long term planning, and have determined to take up the issue of multi-year RA contracts in Rulemaking 05-12-013. The terms and conditions of AL 2803-E do not dispute our authority to develop RA rules through the RA program, or whatever successor agency manages a future RA program. We believe there is sufficient certainty in this program over the four year term of the agreement to warrant forward contracting for RA capacity, and that AL 2803-E clearly does not ask us to prejudge future policy decisions regarding counting conventions and resource requirements. This contract also sets up a mechanism by which the parties (PG&E and DEMA) meet upon any change in the RA program that materially

¹⁰ D.04-12-048 page 108

affects the economics of this agreement to adjust and resettle the agreement. We are left with no challenge to our ability to alter and evolve the RA program via approval of this contract. We deny this part of Aglet's protest and accept PG&E's response.

Rate Recovery via ERRA Proceeding

Aglet protests that in filing this contract and asking for a finding that this contract and PG&E's entrance into it are reasonable and prudent for all purposes including rate recovery, PG&E is asking to circumvent the ERRA Proceeding.

PG&E disagreed with Aglet's protest by reaffirming its intention to track procurement related expenses in a separate account and using the ERRA proceeding to balance that account for purposes of determining future rate recovery. In approving this contract, we would not be allowing PG&E to claim rate recovery outside of the ERRA proceeding, but only that PG&E's entrance into this contract is reasonable and prudent.

We have outlined the process for balancing the ERRA accounts and tracking administration of power procurement contracts, and reaffirm that this process is the correct one for determining rate recovery.¹¹ PG&E does not disagree. We appreciate the reminder that Aglet provides, but we reject its protest on this point.

PG&E's entrance into this tolling agreement is reasonable and prudent

Due to the preceding discussion, we are convinced that PG&E's entrance into this tolling agreement is reasonable and prudent for all purposes including rate recovery for the entire duration of the contract. We are satisfied that the specific contracting requirements established in D.02-10-062 and D.04-12-048 are met, and that this contract fits within the restrictions of PG&E's approved LTPP. This agreement represents positive ratepayer value through use of the Least Cost Best Fit methodology.

COMMENTS

Public Utilities Code section 311(g) (1) provides that this resolution must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. Section 311(g) (2) provides that this 30-day period may be reduced / waived upon the stipulation of all parties in the proceeding.

On July 1, 2006 Aglet filed comments to the draft decision specifically concerning three key issues: that the draft resolution misstated Aglet's protest to AL 2803-E (page 3), that the draft resolution incorrectly stated that no member of the PRG

¹¹ D.02-10-062 pages 62-64

filed comments to AL 2803-E (page 7), and that Aglet's protest was inaccurately characterized in finding number 2 (page 10). All three of these comments have been accepted and the proposed changes have been integrated into this resolution 4002-E.

FINDINGS

This resolution finds:

1. On March 24, 2006, PG&E filed AL 2803-E requesting approval of a tolling agreement between DEMA and PG&E for energy and capacity from Moss Landing units 6 and 7.
2. Aglet filed a protest to AL 2803-E on April 13, 2006 stating opposition to some of PG&Es requested findings.
3. PG&E replied to the protest on April 20, 2006.
4. PG&E has demonstrated sufficient residual need for capacity and shapeable energy that this contract will fulfill.
5. D.04-12-048, by approving the LTPP, also determined that PG&E has satisfied the requirements of the EAP Loading Order. This tolling agreement does not prevent the cost effective procurement of higher order resources; this tolling agreement fits within the residual need after said resources are procured.
6. PG&E can enter into a tolling agreement lasting less than five years for energy and capacity through a public RFO, under authority granted by the Commission.
7. RFO09, for shapeable energy, fulfilled the requirement that the RFO was open to all sources, given the constraints of the product being solicited.
8. PG&E has demonstrated that the DEMA contract is preferred in terms of economic value via application of the LCBF methodology.
9. PG&E has satisfied D.04-12-048 by consulting with the PRG prior to the RFO and throughout the bidding and contracting process. The PRG has provided useful comment and oversight in the method of valuation and ranking of offers.
10. Although D.04-12-048 does not require PG&E to bring a contract of duration under five years to the Commission for approval, in doing so PG&E does not seek nor is granted a modification of the process

11. We find that although the RA program is developing, there is sufficient structure to allow PG&E to pursue multi-year RA products, given that the agreement specifically realizes our oversight of the eventual counting rules, and our prerogative to change rules as the program evolves.
12. PG&E must use the ERRA proceeding in order to recover in rates the procurement costs related to this contract. AL 2803-E does not seek nor have we granted exception to that rule.
13. The entry of PG&E into this contract is both reasonable and prudent for all purposes of rate recovery during the entire duration of the contract.

THEREFORE IT IS ORDERED THAT:

1. The request of PG&E for Commission approval of a tolling agreement between itself and DEMA for capacity and energy from Moss Landing units 6 and 7, to begin January 2007 and expire in December 2010, entitled Master Power Purchase and Sale Agreement, dated March 2, 2006 is approved.
2. PG&E shall track expenses incurred from the operation of this tolling agreement in its ERRA account which shall be subject to Commission jurisdiction via the ERRA proceeding.

This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on July 20, 2006.

STEVE LARSON
Executive Director

MICHAEL R. PEEVEY
PRESIDENT
GEOFFREY F. BROWN
DIAN M. GRUENEICH
JOHN A. BOHN
RACHELLE B. CHONG
Commissioners

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

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