

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



December 21, 2011

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

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

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

Dear Mr. Cherry:

Advice Letters 3197-E/E-A/E-B are withdrawn per your letter dated December 2, 2011.

Sincerely,

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

Edward F. Randolph, Director
Energy Division



July 11, 2008

Advice 3197-E-A
(Pacific Gas and Electric Company ID U 39 E)

Public Utilities Commission of the State of California

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

I. PURPOSE

Pursuant to the directions Energy Division set forth in its June 16, 2008 e-mail, Pacific Gas and Electric Company (PG&E) provides this supplement to Advice 3197-E, by which it sought this Commission's approval of PG&E's proposed standard contract for Qualifying Facilities (QFs) mandated in Decision 07-09-040. For the reasons discussed below, the proposed standard contract attached to this supplement (Appendix A) is entirely different from the contract PG&E initially proposed. It is identical to the standard contract Southern California Edison Company (SCE) is submitting today, except that it incorporates PG&E-specific Capacity Allocation Factors. PG&E asks that the Commission expeditiously approve this proposed contract without change.

II. BACKGROUND

Ordering Paragraph 3 of Decision 07-09-040 ordered PG&E and other investor-owned utilities to submit a Tier 3 advice letter with a proposed standard contract for QFs within 60 days of an Energy Division-sponsored workshop that concluded on November 15, 2007. In compliance with that requirement PG&E submitted its proposed contract on January 14, 2008.

By letters dated February 19, 2008, the California Cogeneration Council (CCC), the Cogeneration Association of California and the Energy Producers and Users Coalition (CAC/EPUC) and the Independent Energy Producers Association (IEP), each protested PG&E's advice letter; the California Independent System Operator filed a response in which the CAISO expressed general support for PG&E's contract. In addition, the CAISO asked the Commission to require QFs that sign the new contracts also sign a QF Participating Generator Agreement and a Meter Service Agreement with the CAISO.

PG&E responded to the protests on March 11, 2008. On the same date, SCE responded and, among other things, asked for adoption of a two-phase process to resolve differences among the parties identified in the protests. Energy Division adopted SCE's proposal.

In a series of meetings and conference calls among the utilities and with CCC, IEP and CAC/EPUC, the utilities and CCC were able to reach agreement on numerous issues that had previously been areas of disagreement. The attached contract reflects those areas of agreement. In addition, attached as Appendix B is a matrix that specifies the issues on which agreement was reached. The matrix also cross references the current contract provisions to the analogous contract provisions, if any, in PG&E's January 14, 2008 contract.

III. THE CONTRACT

As a result of meetings among the utilities and with the QFs, and mindful of the Energy Division's stated preference for a single contract with the same terms for each utility, PG&E has elected to use the SCE form of contract. Accordingly, PG&E asks that the Commission adopt the attached contract, which differs from SCE's revised contract only in Exhibit D which contains PG&E-specific Capacity Allocation Factors and separate Time of Delivery Periods defined for energy and capacity.

Protests

Anyone wishing to protest this filing may do so by sending a letter by July 31, 2008, 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 effect, and should be submitted expeditiously. Protests should be mailed to:

CPUC Energy Division
Attention: Tariff Unit, 4th Floor
505 Van Ness Avenue
San Francisco, California 94102
Facsimile: (415) 703-2200
E-mail: mas@cpuc.ca.gov and jnj@cpuc.ca.gov

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

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

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

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

Tier Designation:

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

Effective Date:

PG&E requests that this advice filing become effective by Commission resolution as soon as practicable.

Notice:

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

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



Brian K. Cherry
Vice President - Regulatory Relations

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

CALIFORNIA PUBLIC UTILITIES COMMISSION

ADVICE LETTER FILING SUMMARY ENERGY UTILITY

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

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

Utility type:

ELC

GAS

PLC

HEAT

WATER

Contact Person: David Poster

Phone #: (415) 973-1082

E-mail: DXPU@pge.com

EXPLANATION OF UTILITY TYPE

ELC = Electric

GAS = Gas

PLC = Pipeline

HEAT = Heat

WATER = Water

(Date Filed/ Received Stamp by CPUC)

Advice Letter (AL) #: 3197-E-A

Tier: [3]

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

Keywords (choose from CPUC listing): QF

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

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

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

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

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

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

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

Resolution Required? Yes No

Requested effective date: As soon as practicable.

No. of tariff sheets: N/A

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

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

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

Tariff schedules affected: 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

jnj@cpuc.ca.gov and mas@cpuc.ca.gov

Pacific Gas and Electric Company

Attn: Brian K. Cherry, Vice President, Regulatory Relations

77 Beale Street, Mail Code B10C

P.O. Box 770000

San Francisco, CA 94177

E-mail: PGETariffs@pge.com

POWER PURCHASE AND SALE AGREEMENT

between

[BUYER'S NAME]

and

[SELLER'S NAME]

(ID #[Number])

Standard Contract for Qualifying Facilities

TERMS THAT ARE BOXED AND SHADED IN LIGHT YELLOW AND/OR BRACKETED AND IN BLUE FONT ARE EITHER BUYER COMMENTS OR GENERATING FACILITY-TYPE SPECIFIC COMMENTS THAT SHOULD BE REMOVED OR ACCEPTED, AS APPLICABLE.

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POWER PURCHASE AND SALE AGREEMENT

between

[BUYER'S NAME]

and

[SELLER'S NAME]

(ID# [Number])

PREAMBLE

This Power Purchase and Sale Agreement by and between **[Buyer's Name]**, a California corporation ("Buyer"), and **[Seller's Name]**, a **[Seller's form of business entity and state of registration]** ("Seller"), together with the exhibits, attachments, and any applicable referenced collateral agreement or similar arrangement between the Parties (collectively, this "Agreement"), is made, effective and binding as of **[Date of Execution]** (the "Effective Date").

Buyer and Seller are sometimes referred to in this Agreement individually as a "Party" and jointly as the "Parties." Unless the context otherwise specifies or requires, capitalized terms used in this Agreement have the meanings set forth in Exhibit A.

RECITALS

- A. On or about September 20, 2007, the CPUC issued Decision ("D.") 07-09-040 (the "Decision") which, among other things, directed Buyer to develop a form of a standard contract and offer such contract to Qualifying Facilities meeting the eligibility criteria set forth in the Decision.
- B. Buyer is required to offer this Agreement to Seller in order to fulfill its obligations under the Decision, and Seller desires to accept such offer and enter into this Agreement.
- C. Each Party reserves all rights, claims and defenses with respect to this Agreement, the Decision, and any application for rehearing or appeal filed with respect to the Decision.

The Parties, intending to be legally bound, agree as follows:

ARTICLE ONE. SPECIAL CONDITIONS

{Buyer Comment: Before executing this Agreement, Seller must provide to Buyer documentation evidencing its compliance with the Greenhouse Gas Emissions Performance Standard (EPS), as set forth in D.07-01-039 and in subsequent CPUC rulings implementing D.07-01-039.}

1.01 **Term.** The term of this Agreement (the “**Term**”) commences as set forth in Section 2.01 and ends on [___].

{Buyer Comment: The Term must be between one and five years if this Agreement specifies only As-Available Contract Capacity. The Term must be between one and 10 years if this Agreement specifies only Firm Contract Capacity or if this Agreement specifies both Firm Contract Capacity and As-Available Contract Capacity and (i) 90% or more of the Net Contract Capacity is designated as Firm Contract Capacity, or (ii) less than 90% (but more than 0%) of the Net Contract Capacity is designated as Firm Contract Capacity and the requirements of Station Use or the Site Host Load are the sole reason that 100% of the Net Contract Capacity is not designated as Firm Contract Capacity.}

1.02 **Generating Facility.**

- (a) **Name; Designation.** The name of the Generating Facility is [Generating Facility Name], which is [a New Qualifying Facility] [an Existing Qualifying Facility].
- (b) **Location; Site.** The Generating Facility is located at [Generating Facility Address], and is further described in Exhibit B.
- (c) **Qualifying Facility Type.** The Generating Facility is a [Small Power Production Facility] [Topping Cycle Cogeneration Facility] [Bottoming Cycle Cogeneration Facility].
- (d) **Contract Capacity.** Contract capacity is as set forth in the following table:

	Peak Months	Off-Peak Months
Firm Contract Capacity	[___] kW	[___] kW
As-Available Contract Capacity	[___] kW	[___] kW
Net Contract Capacity	[___] kW	[___] kW

Firm Contract Capacity, As-Available Contract Capacity and Net Contract Capacity are subject to adjustment in accordance with Exhibit C.

{Buyer Comment: The Net Contract Capacity must equal the sum of Firm Contract Capacity and As-Available Contract Capacity, and cannot exceed PMAX.}

- (e) Expected Annual Term Year Energy Production. The Expected Annual Term Year Energy Production for each Term Year equals [] kWh. The Expected Annual Term Year Energy Production may be revised in accordance with and subject to Section 3.07(d); *provided, however*, that such revision must be supported by a certification from a California-licensed professional engineer qualified to make a representation affirming that such revision is reasonable and based on actual modifications to the Generating Facility performed or to be performed by Seller in accordance with and subject to Section 3.07(d). Such certification must include all data relied on to support the revised Expected Annual Term Year Energy Production.

{Buyer Comment: Expected Annual Term Year Energy Production cannot exceed Net Contract Capacity at 100% capacity factor applied over the Term Year.}

- (f) Site Host Load. The Site Host Load equals [] kW. The amount of electric energy to be used to serve the Site Host Load is expected to equal, on average, [] kWh per Term Year.
- 1.03 Delivery Point. The delivery point is the point of interconnection with the CAISO Controlled Grid (the “Delivery Point”). Seller shall provide and convey to Buyer all the electric energy and electric capacity, net of Station Use and, if applicable, Site Host Load, from the Generating Facility at the Delivery Point.
- 1.04 Capacity Performance Requirements. If the Generating Facility elects to provide Firm Contract Capacity, then the Generating Facility must have a minimum Firm Contract Capacity performance requirement of 95% to earn the Maximum Firm Capacity Payment and a minimum Capacity Performance Requirement of 60% to earn any portion of the Maximum Firm Capacity Payment.
- 1.05 Maintenance Outages; Major Overhaul.
- (a) The total Maintenance Debit Value for Maintenance Outages, as determined in accordance with Exhibit E, may not exceed 550 hours in the first year. At the end of each year, up to a maximum of 50 unused hours may be carried over to the following year. For each of the years after the year, the total Maintenance Debit Value for Maintenance Outages may not exceed 550 hours plus hours carried over from prior years; *provided, however*, that such Maintenance Debit Value may not exceed 600 hours in any year.
- (b) If the Term is greater than or equal to five years, Seller may (i) request up to two Major Overhaul Allowances (in accordance with Exhibit E) of up to 750 total hours for each Major Overhaul, and (ii) Schedule up to two Major Overhauls; *provided, however*, that the second Major Overhaul may not occur within 48

months after the completion of the first Major Overhaul and the Maintenance Debit Value for each Major Overhaul may not exceed 750 hours.

- (c) If Seller utilizes all of its Major Overhaul Allowance during a Major Overhaul, the remaining portion of the Major Overhaul may be converted to a Maintenance Outage as far as Maintenance Credit Value and Maintenance Debit Value are concerned; *provided, however*, that before such conversion Seller submits a written request to Buyer and Buyer approves such request.

1.06 Power Product Prices.

- (a) Firm Capacity Price. The Firm Capacity Price equals \$91.97 per kW-year.
- (b) TOD Period Energy Price. The TOD Period Energy Price is set forth in Section 2 of Exhibit D.
- (c) As-Available Capacity Price. The As-Available Capacity Price is set forth in Section 3 of Exhibit D.

1.07 Requirements Applicable Solely to New Qualifying Facilities. If Seller is a New Qualifying Facility, the provisions of this Section 1.07 also apply.

- (a) Credit and Collateral Requirements.
 - (i) Seller shall post and thereafter maintain the Development Security in accordance with Section 1.04(b) of Exhibit F.
 - (ii) Seller shall post and thereafter maintain the Performance Assurance, in accordance with Section 1.02(a), in an amount equal to 12 months of expected revenue of the Generating Facility under this Agreement (the "Performance Assurance Amount"). The initial amount of Performance Assurance equals \$[____]. The Performance Assurance Amount will be revised upon any change to the Expected Annual Term Year Energy Production.
 - (iii) Seller shall comply with all of the provisions of Exhibit F.
- (b) Startup Deadline. The Startup Deadline is [Date], or such other date as provided in this Agreement.
- (c) Seller's Guarantor; Guaranty Amount; Cross Default Amount.
 - (i) Seller's Guarantor, if any, is [____].

- (ii) Guarantor shall guarantee \$[(Performance Assurance Amount x 1.25)].
- (iii) The Cross Default Amount, if any, equals \$[___].

**** End of Article One ****

ARTICLE TWO. TERM AND CONDITIONS PRECEDENT; TERMINATION

2.01 Conditions Precedent to Commencement of the Term. The Term commences on the first day of the calendar month following the date that is the last to occur of the following:

- (a) The Generating Facility is or becomes a Qualifying Facility;
- (b) Seller is in compliance with all applicable decisions of the CPUC;
- (c) Seller has entered into all agreements, obtained all Governmental Authority approvals and Permits, and taken all steps necessary for it to:
 - (i) Operate the Generating Facility;
 - (ii) Effect delivery of electric energy from the Generating Facility to the Delivery Point; and
 - (iii) Schedule, or arrange for a third party or Buyer to Schedule, the electric energy produced by the Generating Facility with the CAISO;
- (d) If Seller designates Buyer as Scheduling Coordinator, as described in Exhibit G, Buyer has been authorized by the CAISO to Schedule the electrical energy produced by the Generating Facility with the CAISO;
- (e) Seller has satisfied its obligation to install the CAISO-Approved Meters, as set forth in Section 3.07(d);
- (f) Seller has furnished to Buyer the insurance documents required under Section 9.10(b);
- (g) Seller has entered into all agreements required by the CAISO Tariff;
- (h) Seller has entered into and fulfilled all of its obligations under (i) the applicable [\[FERC-jurisdictional\]](#) interconnection agreements with the applicable Transmission Provider to enable Parallel Operation of the Generating Facility with the interconnected electric system and the CAISO Controlled Grid, and (ii) any transmission, distribution or other service agreement required to transmit electric energy from the Generating Facility to the Delivery Point;

{Buyer Comment: Bracketed language to be included as applicable. See Section 3.15.}

- (i) Seller has furnished to Buyer the documents required under Section 3.05;
- (j) The Generating Facility meets all applicable greenhouse gas emission standards;

- (k) If Buyer is Scheduling Coordinator and the Generating Facility is PIRP-eligible, the Generating Facility has been certified as a PIRP resource by the CAISO;
- (l) If Seller is a New Qualifying Facility:
 - (i) Seller has achieved Initial Operation; *provided, however*, that Seller provides at least three Business Days advance Notice to Buyer of the Initial Operation Date and the Initial Operation Date is within 60 days after Parallel Operation; and
 - (ii) Seller has posted with Buyer the Performance Assurance Amount.

2.02 Termination Rights of the Parties.

- (a) Termination Rights of Buyer. Buyer has the right to terminate this Agreement on Notice, which becomes effective five Business Days after such Notice is given:
 - (i) If, at any time after the Effective Date, the CPUC eliminates, determines that Buyer does not possess, or in any way diminishes Buyer's rights under D.04-12-048 or other Applicable Law to collect any above-market costs of this Agreement from departing-load customers;
 - (ii) If, at any time after the Effective Date, the FERC eliminates the mandatory purchase obligation under PURPA as applied to Buyer, whether on a prospective or retroactive basis, or if the FERC determines, or it is otherwise determined under Applicable Law, that Buyer does not have the obligation, either prospectively or retroactively, to purchase electric power from Qualifying Facilities; and
 - (iii) If the Term does not commence on or before the Startup Deadline.
- (b) Termination Right of Seller. Seller has the right to terminate this Agreement if Seller (or any venture in which Seller is a participant) and the Generating Facility are jointly selected in a competitive solicitation. The termination of this Agreement will be effective as of midnight the day before the commencement of any delivery period for any energy, capacity or attributes from the Generating Facility which is selected in such competitive solicitation.
- (c) Event of Default. In the event of an uncured Event of Default or an Event of Default for which there is no cure, the Non-Defaulting Party may, at its option, terminate this Agreement as set forth in Section 6.02 and, if the Non-Defaulting Party is Buyer, then Seller (or any entity over which Seller or any owner or manager of Seller exercises control) hereby agrees to waive any right it may have under PURPA to enter into any new agreement to sell energy, capacity or Related

Products from the Generating Facility to Buyer or any other California investor-owned utility for a period of one year following the date of such termination. For purposes of this Section 2.02(c), "control" means the direct or indirect ownership of 20% or more of the outstanding capital stock or other equity interests having ordinary voting power.

- (d) End of Term. This Agreement automatically terminates at midnight at the end of the Term, as set forth in Section 1.01.

2.03 Rights and Obligations Surviving Termination. The rights and obligations of the Parties that are intended to survive a termination of this Agreement are all such rights and obligations that this Agreement expressly provides survive such termination as well as those rights and obligations arising from either Parties' covenants, agreements, representations or warranties applicable to, or to be performed, at, before or as a result of the termination of this Agreement, including:

- (a) The obligation of Buyer to make all outstanding Monthly Contract Payments for periods before termination of this Agreement;
- (b) The obligation of Buyer to invoice Seller for all payment adjustments for periods before termination of this Agreement, as set forth in Section 4.02;
- (c) The obligation of Seller to pay any Buyer payment-adjustment invoice described in Section 4.03(b) for periods before termination of this Agreement within 30 days of Seller's receipt of such invoice;
- (d) The obligation to make a Termination Payment, as set forth in Section 6.03;
- (e) The indemnity obligations, as set forth in Section 9.03;
- (f) The obligation of confidentiality, as set forth in Section 9.09;
- (g) The right to pursue remedies under Section 6.02(c);
- (h) The limitation of damages under Article Seven; and

- (i) If Seller is a New Qualifying Facility, the obligation of Seller to post Performance Assurance in accordance with Exhibit F.

**** End of Article Two ****

ARTICLE THREE. SELLER'S OBLIGATIONS

3.01 Conveyance of the Power Product and Related Products; Retained Benefits.

- (a) Power Product. During the Term, Seller shall provide and convey the Power Product to Buyer in accordance with the terms of this Agreement, and Buyer shall have the exclusive right to the Power Product and all benefits derived therefrom, including the exclusive right to sell, convey, transfer, allocate, designate, award, report or otherwise provide any and all of the Power Product purchased under this Agreement and the right to all revenues generated from the use, sale or marketing of such Power Product.
- (b) Green Attributes. Seller hereby provides and conveys all Green Attributes associated with the Related Products as part of the Product being delivered. Seller represents and warrants that Seller holds the rights to all Green Attributes associated with the Related Products, and Seller agrees to convey and hereby conveys all such Green Attributes to Buyer as included in the delivery of the Product from the Project.
- (c) Further Action by Seller. Seller shall, at its own cost, take all reasonable actions and execute all documents or instruments that are reasonable and necessary to effectuate the use of the Related Products for Buyer's sole benefit throughout the Term, which actions may include:
 - (i) Cooperating with and encouraging the Governmental Authority responsible for resource adequacy administration to certify the Generating Facility for resource adequacy purposes;
 - (ii) Testing the Generating Facility as may be required to certify the Generating Facility for resource adequacy purposes in accordance with the requirements set forth in the CAISO Tariff or as otherwise agreed to by the Parties;
 - (iii) Complying with all CAISO Tariff provisions that address resource adequacy, including provisions regarding performance obligations and penalties;
 - (iv) Committing to Buyer the Net Contract Capacity;
 - (v) Complying with all applicable green house gas regulations; and
 - (vi) Complying with Applicable Laws regarding the registration, transfer or ownership of Green Attributes associated with the Related Products, including, if applicable to the Generating Facility, participation in the

Western Renewable Energy Generation Information System or other process recognized under Applicable Laws.

- (d) Retained Benefits. Seller shall retain for its own use or disposition all Financial Incentives and all attributes, benefits and credits associated with the Generating Facility and the electrical or thermal energy produced therefrom, other than the Power Product and the Related Products.

3.02 Resource Adequacy Rulings. During the Term, Seller shall grant, pledge, assign and otherwise commit to Buyer the generating capacity of the Generating Facility associated with the Related Products in order for Buyer to use in meeting its resource adequacy obligations under any Resource Adequacy Ruling. Seller:

- (a) Has not used, granted, pledged, assigned or otherwise committed any portion of the generating capacity of the Generating Facility associated with the Related Products to meet the Resource Adequacy Rulings of, or to confer Resource Adequacy Benefits on, any Person other than Buyer;
- (b) Will not during the Term use, grant, pledge, assign or otherwise commit any portion of the generating capacity of the Generating Facility associated with the Related Products to meet the Resource Adequacy Rulings of, or to confer Resource Adequacy Benefits on, any Person other than Buyer; and
- (c) Shall take all reasonable actions (including complying with all current and future CAISO Tariff provisions and decisions of the CPUC or any other Governmental Authority that address Resource Adequacy Rulings) and execute all documents that are reasonable and necessary to effect the use of the generating capacity of the Generating Facility associated with the Related Products for Buyer's sole benefit throughout the Term.

3.03 Site Control.

- (a) As of the Effective Date and at all times during the Term, Seller shall have Site Control and shall provide Buyer with prompt Notice of any change in the status of Seller's Site Control.
- (b) If the Generating Facility is a New Qualifying Facility, Seller shall provide Buyer with Notice of the status of its Site Control before commencing construction of the Generating Facility.

3.04 Permits. Seller shall obtain and maintain any and all Permits necessary for the Operation of the Generating Facility and to effect delivery of the electric energy from the Generating Facility to the Delivery Point.

3.05 Transmission.

- (a) Interconnection Studies. Seller has provided, and, as of the Effective Date until the end of the Term, will promptly provide Buyer with true and complete copies of all Interconnection Studies it has received or will receive.
- (b) Seller's Responsibility. Seller shall obtain and maintain all distribution, transmission and interconnection rights and agreements (including all Governmental Authority approvals) required to enable Parallel Operation of the Generating Facility with the Transmission Provider's electric system and the applicable control area operator's electric grid and to effect Scheduling of the electric energy from the Generating Facility and transmission and delivery to the Delivery Point.

Seller shall pay all Transmission Provider charges or other charges directly caused by, associated with, or allocated to the following:

- (i) All required Interconnection Studies, facilities upgrades, and agreements;
 - (ii) Interconnection of the Generating Facility to the Transmission Provider's electric system;
 - (iii) Any costs or fees associated with obtaining and maintaining a wholesale distribution access tariff agreement, if applicable; and
 - (iv) The transmission and delivery of electric energy from the Generating Facility to the Delivery Point.
- (c) Seller's Acknowledgement. Seller acknowledges and agrees that any other agreement between it and Buyer, including any interconnection agreements, is separate and apart from this Agreement and does not modify or add to the Parties' obligations under this Agreement, and that any Party's breach under such other agreement does not excuse such Party's nonperformance under this Agreement.

3.06 CAISO Relationship. Seller shall comply with the CAISO Tariff, including securing and maintaining in full force all of the CAISO agreements, certifications and approvals required in order for the Generating Facility to comply with the CAISO Tariff.

3.07 Generating Facility Modifications.

- (a) Seller is responsible for the design, procurement and construction of all modifications necessary for the Generating Facility to meet the requirements of this Agreement and to comply with any restriction set forth in any Permit.

- (b) Seller shall provide 30 days advance Notice to Buyer if there is any modification (other than a routine fluctuation in output or consumption) of the Generating Facility, the Site Host Load or operations related to the Site Host Load changing:
 - (i) Net Contract Capacity by the greater of 1 MW or 5% of PMAx;
 - (ii) Energy output by 5% of Expected Annual Term Year Energy Production;
or
 - (iii) The fuel source of the Generating Facility.
- (c) Material modifications to the Generating Facility may result in the Generating Facility becoming a New Qualifying Facility; *provided, however*, that a Generating Facility that is modified, repaired, or repowered will not be considered a New Qualifying Facility if:
 - (i) Capacity added as a result of such modification, repair or repower (including the addition of a steam turbine) over the Term is within the applicable MW limits set forth in the following table (for a Generating Facility with multiple turbines, the limits below are limits per turbine):

Current Turbine Name Plate on the Effective Date	Increase to Turbine Name Plate Over the Term
10MW or Less	5MW
Greater than 10MW but less than 20MW	10MW
Greater than or equal to 20MW but less than 25MW	15MW
Greater than or equal to 25MW but less than 50MW	20MW
Greater than or equal to 50MW but less than 100MW	25MW
Greater than or equal to 100 but less than 200MW	35MW
Greater than or equal to 200 but less than 350MW	45MW
Greater than or equal 350MW	50MW

Or,

- (ii) In the event of a Force Majeure or a change in law or regulation, a qualified California-licensed professional engineer verifies that such modification, repair, or repower is not oversized relative to other equipment on the market. Buyer shall bear the cost of the such professional engineer and Seller shall secure all studies and upgrades necessitated by or associated with such modification, repair, or repower.

An example of the modification, repair, or repower contemplated by this subsection (ii), based on technologies existing as of the Effective Date, would be a basic model (e.g., no STIG) LM 2500 that is repowered to an LM 2500+.

- (d) Seller acknowledges that nothing in this Section 3.07 excuses Seller from any applicable requirements of the CAISO's interconnection process.

3.08 Metering.

- (a) CAISO-Approved Meter. Seller shall, at its own cost, install, maintain and test all CAISO-Approved Meters pursuant to the CAISO Tariff.
- (b) Check Meter. Buyer may furnish and install one Check Meter on the high voltage side of each step-up transformer (or any other location at Buyer's sole discretion) for each of the Generating Units or the Generating Facility, as applicable. Each Check Meter shall be interconnected with Buyer's communication network to permit:
 - (i) Periodic, remote collection of revenue quality meter data; and
 - (ii) Back-up real time transmission of operating-quality meter data through the Telemetry System set forth in Section 3.09.

If the Generating Facility is located within Buyer's service territory, before commencement of the Demonstration, Buyer shall provide a Notice to Seller providing Seller with access to all Check Meters for all meter data through a secure internet website.

Buyer shall test and recalibrate the Check Meter at least once every Term Year. The Check Meter will be locked or sealed, and the lock or seal shall be broken, only by a Buyer representative. Seller has the right to be present whenever such lock or seal is broken. Buyer shall replace the Check Meter battery at least once every 36 months; *provided, however*, if the Check Meter battery fails, Buyer shall promptly replace such battery.

- (c) Use of Check Meter for Back-Up Purposes.
 - (i) Buyer shall routinely compare the Check Meter data to the CAISO-Approved Meter data.
 - (ii) If the deviation between the CAISO-Approved Meter data and the Check Meter data for any comparison is greater than 0.3%, Buyer shall provide Notice to Seller of such deviation and the Parties shall mutually arrange

for a meter check or recertification of the Check Meter or CAISO-Approved Meter, as applicable.

- (iii) Each Party shall bear its own costs for any meter check or recertification.
- (iv) Testing procedures and standards for the Check Meter will be the same as for a comparable Buyer-owned meter. Seller shall have the right to have representatives present during all such tests.

3.09 Telemetry System. Seller shall be responsible for designing, furnishing, installing and testing a real time Telemetry System capable of interconnecting the CAISO-Approved Meter(s) and the Generating Facility's control system with the CAISO's Energy Communication Network.

The Telemetry System shall be designed in accordance with the CAISO monitoring and communication requirements and must be capable of:

- (a) Reporting data from each CAISO-Approved Meter;
- (b) Providing the status of key control points from the Generating Facility's control system;
- (c) Routing Generating Unit set points to the Generating Facility's control system; and
- (d) If the Qualifying Facility is subject to PIRP, communicating availability of the Generating Units.

The Telemetry System must include a data processing gateway, internet connection, interconnecting cabling and all service agreements required for accessing the CAISO's Energy Communications Network.

3.10 Provision of Information. Within 30 days of the Effective Date, Seller shall provide to Buyer:

- (a) All agreements with providers of distribution, transmission or interconnection services for the Generating Facility and all amendments thereto, including, for New Qualifying Facilities, any EPC Contract, which may be redacted by Seller to eliminate any portions reasonably believed by Seller to contain confidential information;
- (b) Any filings at FERC, including any rulings, orders or other pleadings or papers filed by FERC, concerning the qualification of the Generating Facility as a Qualifying Facility;

- (c) Any Permits concerning the Operation or licensing of the Generating Facility, and any applications or filings requesting or pertaining to such Permits;
 - (i) Any reports, studies, or assessments done for Seller by an independent engineer;
 - (ii) Each of the following engineering documents for the Generating Facility:
 - 1) Site plan drawings;
 - 2) Electrical one-line diagrams;
 - 3) Control and data acquisition details and configuration documents;
 - 4) Major electrical equipment specifications;
 - 5) Process flow diagrams;
 - 6) Piping and instrumentation diagrams;
 - 7) General arrangement drawings; and
 - 8) Aerial photographs of Site, if any; and
 - (iii) Instrument specifications, installation instructions, operating manuals, maintenance procedures and wiring diagrams for the CAISO-Approved Meter(s) and the Telemetry System.
- (d) As soon as possible, Seller shall provide to Buyer (i) engineering specifications and design drawings for the Telemetry System, and (ii) annual test reports for the CAISO-Approved Meters.

3.11 Progress Reporting. If Seller is a New Qualifying Facility, Seller shall use commercially reasonable efforts to meet the Milestone Schedule and shall advise Buyer as soon as reasonably practicable of any problems or issues of which Seller is aware which may materially impact its ability to meet the Milestone Schedule.

No later than the tenth day of each month while Seller has not yet met one or more milestones set forth in the Milestone Schedule, and within five days of Buyer's request, Seller shall, in accordance with Exhibit H, prepare and provide to Buyer a written report detailing Seller's progress toward meeting the Milestone Schedule.

Seller shall include in such report a list of all letters, notices and Permits to or from any Governmental Authority (including the CAISO) applicable to Seller's effort to meet the Milestone Schedule, and shall provide any such documents as may be reasonably requested on Notice from Buyer.

3.12 Fuel Supply. Seller shall supply all fuel required for the Power Product and any testing or Demonstration of the Generating Facility.

3.13 Demonstrations. Seller shall:

- (a) Complete any Demonstration in accordance with Exhibit C; and
- (b) Comply with any demonstration required for Resource Adequacy Rulings.

3.14 Operation and Record Keeping. Seller shall:

- (a) Operate the Generating Facility in accordance with Prudent Electrical Practices;
- (b) Comply with the Forecasting requirements, as set forth in Exhibit I;
- (c) Use reasonable efforts to Operate the Generating Facility so that the Power Product conforms with the Forecast provided in accordance with Exhibit I;
- (d) Before MRTU implementation, cause its Scheduling Coordinator to Schedule Seller's Day-Ahead Forecast associated with the Generating Facility as an SC to SC Trade in the Day-Ahead Market (*provided, however*, if Buyer is Scheduling Coordinator, then this Section 3.14(d) will not apply);
- (e) After MRTU implementation, cause its Scheduling Coordinator to submit a Self-Schedule of Seller's Day-Ahead Forecast associated with the Generating Facility through the IFM; Seller shall then submit the quantity associated with the Self-Schedule of Seller's Day-Ahead Forecast as a Physical Trade to Buyer in the IFM, specifying the generating resource identifier and all other CAISO-required Inter-SC Trade attributes (*provided, however*, if Buyer is Scheduling Coordinator, this Section 3.14(e) will not apply);
- (f) After MRTU implementation, cause its Scheduling Coordinator to submit the IFM Day-Ahead Schedule quantity associated with the Generating Facility as an Inter-SC Trade of IFM Load Uplift Obligation to Buyer to be cleared through the Real-Time Market, specifying all CAISO-required Inter-SC Trade attributes (*provided, however*, if Buyer is Scheduling Coordinator, this Section 3.14(f) will not apply);
- (g) Pay all CAISO Charges, as set forth in Exhibit J;

- (h) Pay all SDD Charges, as set forth in Exhibit K;
- (i) Comply with the Maintenance Outage scheduling procedures, as set forth in Exhibit E;
- (j) Comply with the Outage Schedule Submittal Requirements, as set forth in Exhibit R;
- (k) Use reasonable efforts to deliver the maximum possible quantity of As-Available Contract Capacity and associated electrical energy during an Emergency;
- (l) Use reasonable efforts to reschedule any outage that occurs during an Emergency;
- (m) Within ten minutes of receiving notice or instruction from the CAISO or Transmission Provider, as the case may be, deliver the Firm Contract Capacity, if applicable, and associated electrical energy during an Emergency;
- (n) Keep a daily operations log for the Generating Facility that includes information on availability, outages, circuit breaker trip operations requiring a manual reset, and any significant events related to the Operation of the Generating Facility, including:
 - (i) Real and reactive power production;
 - (ii) Changes in Operating status;
 - (iii) Protective apparatus operations; and
 - (iv) Any unusual conditions found during inspections;
- (o) Keep all Operating records required by any applicable CPUC order as well as any additional information that may be required in order to demonstrate compliance with all applicable California utility industry standards which have been adopted by the California Facility Standards Committee of the CPUC;
- (p) Provide copies of all daily Operating logs and Operating records to Buyer within 20 days of a Notice from Buyer;
- (q) Provide, upon Buyer's request, all reports of actual or forecasted outages that Buyer may reasonably require for the purpose of enabling Buyer to comply with Section 761.3 of the California Public Utilities Code or any Applicable Law

mandating the reporting by investor-owned utilities of expected or experienced outages by facilities under contract to supply electric energy;

- (r) Pay all Scheduling Fees as set forth in Exhibit G;
- (s) If Buyer is Scheduling Coordinator, at least 30 days before the end of the Term or as soon as practicable before the date of an early termination of this Agreement, (i) submit to the CAISO the name of Scheduling Coordinator that will replace Buyer, and (ii) cause Scheduling Coordinator that will replace Buyer to submit a letter to the CAISO accepting the designation as Scheduling Coordinator;
- (t) If Buyer is not Scheduling Coordinator, (i) provide a copy of the monthly CAISO invoice to Buyer, and (ii) make available to Buyer CAISO settlement data with respect to the Generating Facility;
- (u) Not participate in the CAISO Station Power Protocol;
- (v) Not net the electric energy output from the Generating Facility, Station Use and, if applicable, Site Host Load, over an interval any longer than the period prescribed by the applicable retail tariff;

(w) Register with NERC as the Generating Facility's Generator Owner and Generator Operator if Seller meets NERC Registration Criteria; and

(x) Maintain documentation of all procedures applicable to the testing and maintenance of the Generating Facility protective devices as necessary to comply with NERC Reliability Standards applicable to protection systems for electric generators.

{ Buyer Comment: If applicable. }

3.15 Power Product Curtailments at Transmission Provider's or CAISO's Request.

(a) Seller shall promptly curtail the production of the Power Product upon receipt of a notice or instruction from the Transmission Provider or the CAISO (which may be communicated by Buyer if Buyer is Scheduling Coordinator), which notice shall only be provided when it reasonably believes that curtailment of the Power Product is required to comply with:

(i) CAISO instructions and orders;

(ii) The Transmission Provider's maintenance requirements and operating orders;

- (iii) A CAISO Declared Over-Generation Condition; or
- (iv) An Emergency.

(b) Notwithstanding the immediately preceding sentence, except as may be required in order to respond to any Emergency, Buyer shall:

- (i) Use reasonable efforts to coordinate the Transmission Provider's curtailment needs with Seller to the extent Buyer can influence such needs; or
- (ii) Request that the Transmission Provider and CAISO limit the curtailment duration.

{Buyer Comment: Applicable if Seller does not execute a FERC-jurisdictional interconnection agreement. }

3.16 Report of Lost Output. Seller shall prepare and provide to Buyer, by the fifth Business Day following the end of each month during the Term, a lost output report. The lost output report shall identify the date, time, duration, cause and amount by which the Metered Energy was reduced below the Seller's Energy Forecast due to:

- (a) Maintenance Outages;
- (b) Major Overhauls;
- (c) CAISO or Transmission Provider-ordered curtailments;
- (d) Force Majeure; or
- (e) Forced Outages.

3.17 FERC Qualifying Facility Status.

- (a) If the Generating Facility is a "qualifying cogeneration facility" as contemplated in 18 CFR Section 292.205, then within 30 Business Days following the end of each year, and within 30 Business Days following the end of the Term, Seller shall provide to Buyer a copy of a FERC order waiver for the Generating Facility, the applicable operating and efficiency standards for qualifying cogeneration facilities for the applicable year, or a completed copy of Buyer's "QF Efficiency Monitoring Program – Cogeneration Data Reporting Form" with calculations and verifiable supporting data, which demonstrates the compliance of the Generating Facility with cogeneration Qualifying Facility operating and efficiency standards set forth in 18 CFR Section 292.205 "Criteria for Qualifying Cogeneration Facilities."

- (b) If Generating Facility is a “qualifying small power production facility” as contemplated in 18 CFR Section 292.204, then within 30 Business Days following the end of each year, and within 30 Business Days following the end of the Term, Seller shall provide to Buyer a copy of a FERC order waiver for the Generating Facility, the applicable operating and fuel use standards for qualifying cogeneration facilities for the applicable year or a completed copy of Buyer’s “QF Efficiency Monitoring Program – Small Power Producer Data Reporting Form” with calculations and verifiable supporting data, which demonstrates the compliance of the Generating Facility with small power producer Qualifying Facility fuel use standards set forth in 18 CFR Section 292.204 “Criteria for Qualifying Small Power Production Facilities.”
- (c) Seller shall take all necessary steps including, but not limited to, making or supporting timely filings with the FERC in order to maintain the Qualifying Facility status of the Generating Facility throughout the Term; *provided, however*, that this obligation does not apply to the extent Seller is unable to maintain Qualifying Facility status using commercially reasonable efforts because of (1) a change in PURPA or in regulations of the FERC implementing PURPA occurring after the Effective Date, or (ii) a change in Applicable Laws directly impacting the Qualifying Facility status of the Generating Facility occurring after the Effective Date.

The term “commercially reasonable efforts” in this Section 3.17(c) does not require Seller to pay or incur more than \$20,000 multiplied by the number of Term Years in the Term.

3.18 Notice of Cessation or Termination of Service Agreements. Seller shall provide Notice to Buyer within one Business Day of termination of, or cessation of service under, any agreement required in order for the Generating Facility to:

- (a) Interconnect with the Transmission Provider’s electric system;
- (b) Transmit and deliver electric energy to the Delivery Point; or
- (c) Own and operate any CAISO-Approved Meter.

3.19 Buyer’s Access Rights. Upon providing at least 1 Business Day advance Notice to Seller, or as set forth in any Applicable Law (whichever is later), Buyer has the right to examine the Site, Generating Facility and Operating records for:

- (a) Any purpose reasonably connected with this Agreement;
- (b) The exercise of any and all rights of Buyer under Applicable Law or its tariff schedules and rules on file with the CPUC; or

- (c) The inspection and testing of any Check Meter, CAISO-Approved Meter or the Telemetry System.

3.20 Seller Financial Information.

- (a) The Parties shall determine, through consultation with their respective independent registered public accounting firms, whether Buyer is required to consolidate Seller's financial statements with Buyer's financial statements for financial accounting purposes under Financial Accounting Standard Boards Interpretation No. 46(R), "Consolidation of Variable Interest Entities" or future guidance issued by accounting profession governance bodies or the SEC that affects Buyer accounting treatment for this Agreement. If, as a result of this review (or subsequent reviews as required), the Parties determine that such consolidation is required for a given period, or in the event the Parties cannot agree on whether consolidation is required, then the Parties agree to the following provisions for such period.
- (b) Within 30 days following the end of each year, Seller shall deliver to Buyer (i) unaudited financial statements together with related footnotes as necessary to comply with GAAP, and (ii) a completed annual disclosure checklist with supporting financial schedules necessary for Buyer to prepare its annual filing with the SEC. Buyer will provide to Seller such checklist before the end of each year and include only items considered material to Buyer. If audited financial statements are prepared for the year, Seller shall provide such statements to Buyer within five Business Days after those statements are issued.
- (c) Within 20 days following the end of each calendar quarter, Seller shall deliver to Buyer: (i) an unaudited condensed statement of income for the calendar quarter and year-to-date, (ii) an unaudited condensed statement of cash flows for the calendar quarter and year-to-date, (iii) an unaudited condensed balance sheet at the end of such calendar quarter, and (iv) a completed quarterly disclosure checklist with supporting financial schedules necessary for Buyer to prepare its quarterly filing with the United States Securities and Exchange Commission. Buyer will provide to Seller such checklist before the end of each quarter and include only items considered material to Buyer.
- (d) Seller shall prepare its financial statements to be delivered under the terms of this Section 3.20 in accordance with GAAP.
- (e) Promptly upon Notice from Buyer, Seller shall allow Buyer access to Seller's records and personnel, so that Buyer's internal auditors and independent registered public accounting firm can conduct financial statement audits in

accordance with the standards of the Public Company Accounting Oversight Board (United States), as well as internal control audits in accordance with Section 404 of the Sarbanes-Oxley Act of 2002, as applicable. Within 30 days of Seller's receipt of Notice from Buyer, Seller shall remediate any deficiency in Seller's internal controls of financial reporting identified by Buyer or Buyer's independent registered public accounting firm during or as a result of the audits permitted in this Section 3.20(e). All reasonable expenses for the foregoing shall be borne by Buyer.

- (f) Within two Business Days following the occurrence of any event affecting Seller which, during the Term, would require Buyer to disclose such event in a Form 8-K filing with the SEC, Seller shall provide to Buyer a Notice describing such event in sufficient detail to permit Buyer to make a Form 8-K filing. Such items include the following:
- (i) Acquisition or disposition of a material amount of assets;
 - (ii) Creation of a material direct financial obligation or off-balance sheet financing arrangement;
 - (iii) Existence of material litigation; and
 - (iv) Entry into, or termination of, a material contract upon which Seller's business is substantially dependent.
- (g) Buyer shall treat Seller's financial statements or other financial information provided in accordance with this Section 3.20 in strict confidence and, accordingly:
- (i) Shall utilize such Seller financial information *only* for purposes of preparing, reviewing or certifying Buyer's or any Buyer parent company financial statements, for making regulatory, tax or other filings required by law in which Buyer is required to demonstrate or certify its or any parent company's financial condition or to obtain Credit Ratings; and
 - (ii) Shall make such Seller financial information available only to its officers, directors, employees or auditors who are responsible for preparing, reviewing or certifying Buyer's or any Buyer parent company financial

statements, to the SEC and the Public Company Accounting Oversight Board (United States) in connection with any oversight of Buyer's or any Buyer parent company financial statement and to those Persons who are entitled to receive confidential information as identified in Sections 9.09(a)(ii) through 9.09(a)(vii).

3.21 NERC Electric System Reliability Standards. During the Term, for purposes of complying with any NERC Reliability Standards applicable to the Generating Facility, Seller (or an agent of Seller as agreed to by Buyer in its reasonable discretion) must be registered with NERC as the Generator Operator and the Generator Owner for the Generating Facility and must perform all Generator Operator Obligations and Generator Owner Obligations except those Generator Operator Obligations that Buyer, in its capacity as Scheduling Coordinator (if Seller has elected to have Buyer serve as its Scheduling Coordinator), is required to perform under this Agreement or under the CAISO Tariff.

Notwithstanding anything to the contrary set forth in this Section 3.21 and subject to the indemnity obligations set forth in Section 9.03(g), each Party acknowledges that such Party's performance of the Generator Operator Obligations or Generator Owner Obligations may not satisfy the requirements for self-certification or compliance with the NERC Reliability Standards, and that it shall be the sole responsibility of each Party to implement the processes and procedures required by NERC, WECC, the CAISO, or a Governmental Authority in order to comply with the NERC Reliability Standards.

If Buyer is Seller's Scheduling Coordinator, Buyer as Scheduling Coordinator will reasonably cooperate with Seller to the extent necessary to enable Seller to comply and for Seller to demonstrate Seller's compliance with the NERC Reliability Standards referenced above. Buyer's cooperation will include providing to Seller information in Buyer's possession that Buyer as Scheduling Coordinator has provided to the CAISO related to the Generating Facility or actions that Buyer has taken as Scheduling Coordinator related to Seller's compliance with the NERC Reliability Standards referenced above. Buyer may, in its reasonable discretion (depending upon the quantity of information requested by Seller and the timeframe established by Seller for compliance), comply with the requirement to provide information set forth in the previous sentence, by making such information available for inspection by Seller or by providing responsive summaries or excerpts of same. In addition, Buyer may redact any information or data that is confidential to Buyer from materials or information to be supplied to Seller.

{ Buyer Comment: If applicable. }

*** End of Article Three ***

ARTICLE FOUR. BUYER'S OBLIGATIONS

- 4.01 Obligation to Pay. For Seller's full compensation under this Agreement, Buyer shall make a monthly payment (a "Monthly Contract Payment") calculated in accordance with Exhibit D.
- 4.02 Payment Adjustments.
- (a) Buyer shall adjust each Monthly Contract Payment to Seller to account for:
 - (i) Scheduling Fees owed by Seller to Buyer, as set forth in Exhibit G;
 - (ii) Any SDD Charges owed by Seller to Buyer, as set forth in Exhibit K;
 - (iii) Any Forecast penalties owed by Seller to Buyer, as set forth in Exhibit I;
 - (iv) Any CAISO Charges owed by Seller to Buyer, as set forth in Exhibit J;
 - (v) Any Physical Trade Settlement Amount owed by either Party to the other Party, as set forth in Exhibit L;
 - (vi) Any SC Trade Settlement Amount owed by either Party to the other Party, as set forth in Exhibit M;
 - (vii) Any subsequent charges, penalties, fees, or adjustments (including adjustments to CAISO Charges) provided for under this Agreement;
 - (viii) Any Governmental Charges owed by either Party to the other Party, as set forth in Section 8.02; and
 - (ix) The agreement of the Parties that Buyer shall have no liability to make any energy payments to Seller for any electricity deliveries from the Generating Facility in a year that exceed 120% of Expected Annual Term Year Energy Production.
 - (b) During the Term, any payment adjustments will be added to or deducted from the next regular Monthly Contract Payment that is made by Buyer to Seller after the expiration of a 30-day period which begins upon Buyer's receipt of all of the information required in order to calculate the payment adjustment.
 - (c) After the end of the Term, Buyer shall invoice Seller for any payment adjustments within 60 days of Buyer's receipt of all of the information required in order to calculate the payment adjustment.

4.03 Payment Statement and Payment.

- (a) No later than 30 days after the end of each calendar month (or the last day of the month if the month in which the payment statement is being sent is February), or the last Business Day of the month if such 30th day (or 28th or 29th day for February) is not a Business Day, Buyer shall mail to Seller:
- (i) A table showing the hourly electric energy quantities for each of the following, in MWh per hour:
- 1) Seller's Energy Forecast;
 - 2) Seller's Day-Ahead Forecast;
 - 3) Metered Energy;
 - 4) The final Buyer Energy Schedule; and
 - 5) The final Buyer Parent Energy Schedule.
- (ii) A statement showing:
- 1) TOD Period subtotals and overall monthly totals for each of the items set forth in Section 4.03(a)(i).
 - 2) A calculation of the Monthly Contract Payment, as set forth in Exhibit D;
 - 3) A calculation of any payment adjustments pursuant to Section 4.02; and
 - 4) A calculation of the net dollar amount due to Seller for the month.
- (iii) Buyer's payment check to Seller made out in the net dollar amount owed to Seller for the month.
- (b) If Buyer determines that a calculation of Metered Energy is incorrect as a result of an inaccurate meter reading or the correction of data by the CAISO in CAISO's meter-data acquisition and processing system, Buyer shall promptly recompute the Metered Energy quantity for the period of the inaccuracy based on an adjustment of such inaccurate meter reading in accordance with the CAISO Tariff.

Buyer shall then promptly recompute any payment or payment adjustment affected by such inaccuracy. Any amount due from Buyer to Seller or Seller to Buyer, as the case may be, shall be made as an adjustment to the next monthly statement that is calculated after Buyer's recomputation using corrected measurements.

If the recomputation results in a net amount owed to Buyer after offsetting any amounts owing to Seller as shown on the next monthly statement, any such additional amount still owing to Buyer shall be shown as an adjustment on Seller's monthly statement until such amount is fully collected by Buyer.

At Buyer's sole discretion, Buyer may offset any remaining amount owed to Buyer in any subsequent monthly payments to Seller or invoice Seller for such amount, in which case Seller must pay the amount owing to Buyer within 20 days of receipt of such invoice.

- (c) Buyer reserves the right to deduct amounts that would otherwise be due to Seller under this Agreement from any amounts owing and unpaid by Seller to Buyer:
 - (i) Under this Agreement; or
 - (ii) Arising out of or related to any other agreement, tariff, obligation or liability pertaining to the Generating Facility.
- (d) Except as provided in Section 4.03(b) and as otherwise provided in this Section 4.03(d), if, within 45 days of receipt of Buyer's payment statement, Seller does not give Notice to Buyer of an error, then Seller shall be deemed to have waived any error in Buyer's statement, computation and payment and the statement shall be conclusively deemed correct and complete; *provided, however*, that if an error is identified by Seller as a result of settlement, audit or other information provided to Seller by the CAISO after the expiration of the original 45-day period, Seller shall have an additional 90 days from the date on which it receives the information from the CAISO in which to give Notice to Buyer of the error identified by such settlement, audit or other information.

If Seller identifies an error in Seller's favor and Buyer agrees that the identified error occurred, Buyer shall reimburse Seller for the amount of the underpayment caused by the error and add the underpayment to the next monthly statement that is calculated.

If Seller identifies an error in Buyer's favor and Buyer agrees that the identified error occurred, Seller shall reimburse Buyer for the amount of overpayment

caused by the error and Buyer shall apply the overpayment to the next monthly statement that is calculated.

If the recomputation results in a net amount still owing to Buyer after applying the overpayment, the next monthly statement shall show a net amount owing to Buyer.

At Buyer's sole discretion, Buyer may apply this net amount owing to Buyer in any subsequent monthly statements to Seller or invoice Seller for such amount, in which case Seller must pay the amount owing to Buyer within 20 days of receipt of such invoice.

The Parties shall negotiate to resolve any disputes regarding claimed errors in a statement. Any disputes which the Parties are unable to resolve through negotiation may be submitted for resolution through the dispute resolution procedure in Article Ten.

Nothing in this Section 4.03 limits Buyer's rights under applicable tariffs, other agreements or Applicable Law.

4.04 No Representation by Buyer. Any review by Buyer of the design, engineering, construction, testing and Operation of the Generating Facility is solely for Buyer's information. Buyer makes no representation that:

- (a) It has reviewed the financial viability, technical feasibility, operational capability, or long term reliability of the Generating Facility;
- (b) The Generating Facility complies with any Applicable Laws; or
- (c) The Generating Facility will be able to meet the terms of this Agreement.

Seller shall in no way represent to any third party that any such review by Buyer constitutes any such representation.

*** End of Article Four ***

ARTICLE FIVE. FORCE MAJEURE

- 5.01 No Default for Force Majeure. Neither Party will be in default in the performance of any of its obligations set forth in this Agreement, except for obligations to pay money, when and to the extent failure of performance is caused by Force Majeure.
- 5.02 Requirements Applicable to the Claiming Party. If a Party, because of Force Majeure, is rendered wholly or partly unable to perform its obligations when due under this Agreement, such Party (the "Claiming Party") shall be excused from whatever performance is affected by the Force Majeure to the extent so affected.

In order to be excused from its performance obligations under this Agreement by reason of Force Majeure:

- (a) The Claiming Party, within 14 days after the initial occurrence of the claimed Force Majeure, must give the other Party Notice describing the particulars of the occurrence; and
- (b) The Claiming Party must provide timely evidence reasonably sufficient to establish that the occurrence constitutes Force Majeure as defined in this Agreement.

The suspension of the Claiming Party's performance due to Force Majeure may not be greater in scope or longer in duration than is required by such Force Majeure.

In addition, the Claiming Party shall use diligent efforts to remedy its inability to perform.

This Article Five will not require the settlement of any strike, walkout, lockout or other labor dispute on terms which, in the sole judgment of the Claiming Party, are contrary to its interest. It is understood and agreed that the settlement of strikes, walkouts, lockouts or other labor disputes shall be at the sole discretion of the Claiming Party.

When the Claiming Party is able to resume performance of its obligations under this Agreement, the Claiming Party shall give the other Party prompt Notice to that effect.

- 5.03 Termination. Either Party may terminate this Agreement on Notice, which Notice will be effective five Business Days after such Notice is provided, in the event of Force Majeure which extends for more than 365 consecutive days, or for more than a total of 365 days in any consecutive 540-day period.

*** End of Article Five ***

ARTICLE SIX. EVENTS OF DEFAULT; REMEDIES

6.01 Events of Default. An “Event of Default” means the occurrence of any of the following:

- (a) With respect to either Party (a “Defaulting Party”):
 - (i) Any representation or warranty made by such Party in this Agreement is false or misleading in any material respect when made or when deemed made or repeated if the representation or warranty is continuing in nature, if such misrepresentation or breach of warranty is not:
 - 1) Remedied within five Business Days after Notice from the Non-Defaulting Party to the Defaulting Party; or
 - 2) Capable of a cure, but the Non-Defaulting Party’s damages resulting from such misrepresentation or breach of warranty can reasonably be ascertained and the payment of such damages is not made within ten Business Days after a Notice of such damages is provided by the Non-Defaulting Party to the Defaulting Party;
 - (ii) Except for an obligation to make payment when due, the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default or to the extent excused by a Force Majeure) if such failure is not remedied within 30 days after Notice of such failure is provided by the Non-Defaulting Party to the Defaulting Party, which Notice sets forth in reasonable detail the nature of the Event of Default; *provided, however*, that if the Event of Default is not reasonably capable of being cured within such 30-day cure period, the Defaulting Party shall have such additional time (not to exceed 120 days) as is reasonably necessary to cure such Event of Default, so long as such Defaulting Party promptly commences and diligently pursues such cure;
 - (iii) A Party fails to make when due any payment (other than amounts disputed in accordance with the terms of this Agreement) due and owing under this Agreement and such failure is not cured within five Business Days after Notice is provided by the Non-Defaulting Party to the Defaulting Party of such failure;
 - (iv) A Party becomes Bankrupt; or

- (v) A Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another Person and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee Person fails to assume all the obligations of such Party under this Agreement to which such Party or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other Party;
- (b) With respect to Seller's Guarantor, if any (each event listed below to be deemed an Event of Default with respect to Seller):
 - (i) 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 if the representation or warranty is continuing in nature and the misrepresentation or breach of warranty is not remedied within five Business Days after Notice;
 - (ii) The failure of a Guarantor to make any payment required or to perform any other material covenant or obligation in any Guaranty Agreement and such failure will not be remedied within three Business Days after Notice is provided by the Non-Defaulting Party to the Guarantor;
 - (iii) A Guarantor becomes Bankrupt;
 - (iv) The occurrence and continuation of a default, event of default or other similar condition or event under one or more agreements or instruments, individually or collectively, relating to indebtedness for borrowed money in the aggregate amount of not less than the Cross Default Amount, which results in such indebtedness becoming, or becoming capable at such time of being declared, immediately due and payable;
 - (v) The occurrence and continuation of a default in making on the due date therefore one or more payments, individually or collectively, in an aggregate amount of not less than the applicable Cross Default Amount;
 - (vi) The failure of any Guaranty Agreement to be in full force and effect for purposes of this Agreement (other than in accordance with its terms); or
 - (vii) The Guarantor repudiates, disaffirms, disclaims, or rejects, in whole or in part, or challenges the validity of any Guaranty Agreement given to Buyer.
- (c) With respect to Seller:

- (i) Seller does not own the Generating Facility or otherwise have the authority over the Generating Facility as required in Section 3.03;
- (ii) Seller has not cured a failure with respect to Section 3.03(a) within the earlier of 30 days after providing Notice to Buyer in accordance with Section 3.03(a);
- (iii) The total quantity of Metered Energy in any year is less than 10% percent the Expected Annual Term Year Energy Production, and Seller fails to demonstrate a legitimate reason for such failure within 10 Business Days after Notice from Buyer;
- (iv) Seller (1) conveys, transfers, allocates, designates, awards, reports or otherwise provides any and all of the Product, or any portion thereof, or any benefits derived therefrom, to any party other than Buyer (except as may relate to transactions in the imbalance market where Buyer is not Scheduling Coordinator arising from ordinary course deviations between Metered Energy and energy scheduled to Buyer notwithstanding Seller's diligent efforts to schedule all Metered Energy to Buyer), or (2) start-ups or Operates the Generating Facility per instruction of or for the benefit of any third party (except in order to satisfy Site Host Load, or as required by other Applicable Law);
- (v) Seller intentionally or knowingly delivers, Schedules, or attempts to deliver or Schedule at the Delivery Point for sale under this Agreement electric energy that was not generated by the Generating Facility;
- (vi) Seller removes from the Site equipment upon which the Net Contract Capacity has been based, except for the purposes of replacement, refurbishment, repair or maintenance, and such equipment is not returned within five Business Days after Notice from Buyer to Seller;
- (vii) Subject to Section 3.17(c), the Generating Facility fails to maintain its status as a Qualifying Facility;
- (viii) Termination of, or cessation of service under, any agreement necessary for the interconnection of the Generating Facility to the Transmission Provider's electric system for transmission and delivery of the electric energy from the Generating Facility to the Delivery Point, or for metering the Metered Energy, and such service is not reinstated, or alternative arrangements implemented, within 120 days after such termination or cessation;

- (ix) Seller fails to make all reasonable efforts to increase the Power Output from the Generating Facility to the Firm Contract Capacity during an Emergency;
- (x) Seller fails to provide any financial statements or other information within the timeframe and in the manner set forth in Section 3.20(b), (c) and (d), and such failure is not remedied within 10 days after Notice from Buyer;
- (xi) Seller fails to remediate any deficiency in internal controls over financial reporting in accordance with Section 3.20(e);
- (xii) Seller fails to take any actions necessary to dedicate, convey or effectuate the use of any and all Related Products for Buyer's sole benefit as specified in Section 3.01;
- (xiii) The stock or equity ownership interest in Seller, if Seller is a New Qualifying Facility, has been pledged or assigned as collateral or otherwise to any party other than Lender;
- (xiv) If Seller is a New Qualifying Facility, Seller fails to post and maintain the Development Security pursuant to Section 1.04(b) of Exhibit F and such failure is not cured within five Business Days after Notice of such failure;
- (xv) The occurrence and continuation of a default, event of default or other similar condition or event under one or more agreements or instruments relating to indebtedness for borrowed money, which results in such indebtedness becoming, or becoming capable at such time of being declared, immediately due and payable;
- (xvi) If Seller is a New Qualifying Facility, Seller fails to achieve Initial Operation within the timeframes set forth in Section 2.01(l)(i) and such failure is not cured within five Business Days after Notice from Buyer;
- (xvii) If Seller is a New Qualifying Facility, Seller fails to satisfy the creditworthiness and collateral requirements in Section 1.01 through 1.04 of Exhibit F and such failure is not cured within three Business Days after Notice is provided by Buyer to Seller of such failure.
- (xviii) If Seller materially fails to comply with the CAISO Tariff; or
- (xix) If Seller materially modifies the Generating Facility:
 - 1) Without Buyer's prior written consent; and
 - 2) For modifications which have the effect of converting the Generating Facility to New Qualifying Facility, Seller does not

follow the terms of Agreement with respect to all obligations and requirements applicable to New Qualifying Facilities.

6.02 Early Termination. If an Event of Default has occurred, there will be no opportunity for cure except as specified in Section 6.01 or, if Seller is a New Qualifying Facility, pursuant to a Collateral Assignment Agreement agreed upon by Buyer, Seller and Lender in accordance with Section 9.05. The Party taking the default (the “Non-Defaulting Party”) will have the right to:

- (a) Designate by Notice to the Defaulting Party a day, no earlier than 20 days after the Notice is effective, for the early termination of this Agreement (an “Early Termination Date”);
- (b) Immediately suspend performance under this Agreement; and
- (c) Pursue all remedies available at law or in equity against the Defaulting Party (including monetary damages), except to the extent that such remedies are limited by the terms of this Agreement.

6.03 Termination Payment. As soon as practicable after an Early Termination Date is declared, the Non-Defaulting Party shall provide Notice to the Defaulting Party of the sum of all amounts owed by the Defaulting Party under this Agreement less any amounts owed by the Non-Defaulting Party to the Defaulting Party, including any Forward Settlement Amount (the “Termination Payment”). The Notice shall include a written statement setting forth, in reasonable detail, the calculation of such Termination Payment, including the Forward Settlement Amount, together with appropriate supporting documentation.

If the Termination Payment is positive, the Defaulting Party shall pay such amount to the Non-Defaulting Party within ten Business Days after the Notice is provided. If the Termination Payment is negative (i.e., the Non-Defaulting Party owes the Defaulting Party more than the Defaulting Party owes the Non-Defaulting Party), then the Non-Defaulting Party shall pay such amount to the Defaulting Party within ten Business Days after the Notice is provided.

The Parties shall negotiate to resolve any disputes regarding the calculation of the Termination Payment and Forward Settlement Amount. Any disputes which the Parties are unable to resolve through negotiation may be submitted for resolution through the dispute resolution procedure in Article Ten.

*** End of Article Six ***

ARTICLE SEVEN. LIMITATIONS OF LIABILITIES

EXCEPT AS SET FORTH IN THIS ARTICLE SEVEN, THERE ARE NO WARRANTIES BY EITHER PARTY UNDER THIS AGREEMENT, INCLUDING ANY 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 IS THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY IS LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED, UNLESS THE PROVISION IN QUESTION PROVIDES THAT THE EXPRESS REMEDIES ARE IN ADDITION TO OTHER REMEDIES THAT MAY BE AVAILABLE.

IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED FOR IN THIS AGREEMENT, THE OBLIGOR'S LIABILITY IS LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES IS THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED.

UNLESS EXPRESSLY PROVIDED FOR IN THIS AGREEMENT, INCLUDING THE PROVISIONS OF SECTION 9.03, 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 IMPOSED IN THIS ARTICLE SEVEN 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 UNDER THIS AGREEMENT 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 UNDER THIS AGREEMENT CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

NOTHING IN THIS ARTICLE SEVEN PREVENTS, OR IS INTENDED TO PREVENT BUYER FROM PROCEEDING AGAINST OR EXERCISING ITS RIGHTS WITH RESPECT TO ANY SECURED INTEREST IN COLLATERAL.

*** End of Article Seven ***

ARTICLE EIGHT. GOVERNMENTAL CHARGES

8.01 Cooperation to Minimize Tax Liabilities. Each Party shall use diligent efforts to implement the provisions of and to administer this 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.

8.02 Governmental Charges. Seller shall pay or cause to be paid all taxes imposed by any Governmental Authority ("Governmental Charges") on or with respect to the Generating Facility, Monthly Contract Payments made by Buyer to Seller, or the Power Product before and at the Delivery Point, including ad valorem taxes and other taxes attributable to the Generating Facility, the Site or land rights or interests in the Site or the Generating Facility.

Buyer shall pay or cause to be paid all Governmental Charges on or with respect to the Power Product from the Delivery Point.

If Seller is required by Applicable Laws to remit or pay Governmental Charges which are Buyer's responsibility under this Agreement, Buyer shall promptly reimburse Seller for such Governmental Charges.

If Buyer is required by Applicable Law or regulation to remit or pay Governmental Charges which are Seller's responsibility under this Agreement, Buyer may deduct such amounts from payments to Seller made pursuant to Article Four.

If Buyer elects not to deduct such amounts from Seller's payments, Seller shall promptly reimburse Buyer for such amounts upon Notice from Buyer of the amount to be reimbursed.

Nothing shall obligate or cause a Party to pay or be liable to pay any Governmental Charges for which it is exempt under Applicable Laws.

8.03 Providing Information to Taxing Governmental Authorities. Seller or Buyer, as necessary, shall provide information concerning the Generating Facility to any requesting taxing Governmental Authority.

*** End of Article Eight ***

ARTICLE NINE. MISCELLANEOUS

9.01 Representations and Warranties. On the Effective Date, each Party represents, warrants, and covenants to the other Party that:

- (a) It is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;
- (b) It has or will timely acquire all regulatory authorizations necessary for it to legally perform its obligations under this Agreement;
- (c) The execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any Applicable Laws;
- (d) This Agreement constitutes a legally valid and binding obligation enforceable against it in accordance with its terms, subject to any Equitable Defenses;
- (e) There is not pending, or to its knowledge, threatened against it or, in the case of Seller, any of its Affiliates, any legal proceeding that could materially adversely affect its ability to perform under this Agreement;
- (f) No Event of Default with respect to it has occurred and is continuing and no such event or circumstance will occur as a result of its entering into or performing its obligations under this Agreement;
- (g) It is acting for its own account, and its decision to enter into this Agreement is based upon its own judgment, not in reliance upon the advice or recommendations of the other Party and it is capable of assessing the merits of and understanding, and understands and accepts the terms, conditions and risks of this Agreement;
- (h) It has not relied on any promises, representations, statements or information of any kind whatsoever that are not contained in this Agreement in deciding to enter into this Agreement; and

- (i) It has entered into this Agreement in connection with the conduct of its business and it has the capacity or ability to provide or receive the Power Product as contemplated by this Agreement.

9.02 Additional Representations, Warranties, and Covenants by Seller. Seller represents, warrants and covenants to Buyer that:

- (a) It has Site Control as of the Effective Date throughout the Term;
- (b) Throughout the Term, it will own and Operate the Generating Facility;
- (c) It will deliver the Product to Buyer free and clear of all liens, security interests, Claims and encumbrances or any interest therein or thereto by any Person throughout the Term;
- (d) It will hold throughout the Term the rights to all of the Product, subject to the terms of this Agreement;
- (e) Subject to Section 3.17(c), the Generating Facility qualifies as of the Effective Date, and will qualify throughout the Term, as a Qualifying Facility;
- (f) It does not, and will not during the Term, make wholesale sales of electric energy or capacity from the Generating Facility; and
- (g) It meets the Greenhouse Gas Emissions Performance Standard, as set forth in D.07-01-039 and in subsequent rulings of the CPUC implementing D.07-01-039.

9.03 Indemnity.

- (a) Each Party as indemnitor shall defend, save harmless and indemnify the other Party and the directors, officers, employees, and agents of such other Party against and from any and all loss, liability, damage, claim, cost, charge, demand, or expense (including any direct, indirect, or consequential loss, liability, damage, claim, cost, charge, demand, or expense, including reasonable attorneys' fees) for injury or death to Persons, including employees of either Party, and physical damage to property including property of either Party arising out of or in connection with the gross negligence or willful misconduct of the indemnitor relating to its obligations under this Agreement.

This indemnity applies notwithstanding the active or passive negligence of the indemnitee.

However, neither Party is indemnified under this Agreement for its loss, liability, damage, claim, cost, charge, demand or expense resulting from its sole negligence or willful misconduct.

- (b) Each Party releases and shall defend, save harmless and indemnify the other Party from any and all loss, liability, damage, claim, cost, charge, demand or expense arising out of or in connection with any breach made by the indemnifying Party of its representations, warranties and covenants in Section 9.01 and Section 9.02.
- (c) The provisions of this Section 9.03 may not be construed to relieve any insurer of its obligations to pay any insurance Claims in accordance with the provisions of any valid insurance policy.
- (d) Notwithstanding anything to the contrary in this Agreement, if Seller fails to comply with the provisions of Section 9.10, Seller shall, at its own cost, defend, save harmless and indemnify Buyer, its directors, officers, employees, and agents, assigns, and successors in interest, from and against any and all loss, liability, damage, claim, cost, charge, demand, or expense of any kind or nature (including any direct, indirect, or consequential loss, damage, claim, cost, charge, demand, or expense, including reasonable attorneys' fees and other costs of litigation), resulting from injury or death to any person or damage to any property, including the personnel or property of Buyer, to the extent that Buyer would have been protected had Seller complied with all of the provisions of Section 9.10.

The inclusion of this Section 9.03(d) is not intended to create any express or implied right in Seller to elect not to provide the insurance required under Section 9.10.

- (e) Each Party shall defend, save harmless and indemnify the other Party against any Governmental Charges for which such indemnifying Party is responsible under Article Eight.
- (f) Seller shall defend, save harmless and indemnify Buyer against any penalty imposed upon Buyer as a result of Seller's failure to fulfill its obligations regarding Resource Adequacy Benefits as set forth in Sections 3.01 and 3.02.

(g) Seller is solely responsible for any NERC Standards Non-Compliance Penalties arising from or relating to Seller's failure to perform the Generator Operator Obligations or the Generator Owner Obligations, in accordance with Section 3.21, and will indemnify, defend and hold Buyer harmless from and against all liabilities, damages, Claims, losses, and reasonable costs and expenses (which shall include reasonable costs and expenses of outside or in-house counsel) incurred by Buyer arising from or relating to NERC Standards Non-Compliance Penalties or an attempt by any Governmental Authority, Person to assess such NERC Standards Non-Compliance Penalties against Buyer. Buyer will indemnify, defend and hold Seller harmless from and against all liabilities, damages, Claims, losses and reasonable costs and expenses (which shall include reasonable costs of outside and in-house counsel) incurred by Seller for any NERC Standards Non-Compliance Penalties to the extent they are due to Buyer's negligence in performing its role as Seller's Scheduling Coordinator during the Term.

{Buyer Comment: If applicable.}

(h) All indemnity rights will survive the termination of this Agreement for 12 months.

- 9.04 Assignment. Seller may not assign this Agreement or its rights under this Agreement without the prior written consent of Buyer, which consent may not be unreasonably withheld or delayed. Any direct or indirect change of control of Seller (whether voluntary or by operation of law) will be deemed an assignment and will require the prior written consent of Buyer, which consent will not be unreasonably withheld.
- 9.05 Consent to Collateral Assignment. Subject to the provisions of this Section 9.05, Seller has the right to assign this Agreement as collateral for any financing or refinancing of the Generating Facility. In connection with any financing or refinancing of the Generating Facility by Seller, Buyer shall work with Seller and Lender to agree upon a consent to collateral assignment of this Agreement (“Collateral Assignment Agreement”). The Collateral Assignment Agreement will be in form and substance agreed to by Buyer, Seller and Lender, and shall include the following provisions:
- (a) Buyer shall give Notice of an Event of Default by Seller to the Person(s) to be specified by Lender in the Collateral Assignment Agreement before exercising its right to terminate this Agreement as a result of such Event of Default;
 - (b) Following an Event of Default by Seller under this Agreement, Buyer may require Seller or Lender to provide to Buyer a report concerning:
 - (i) The status of efforts by Seller or Lender to develop a plan to cure the Event of Default;
 - (ii) Impediments to the cure plan or its development;
 - (iii) If a cure plan has been adopted, the status of the cure plan’s implementation (including any modifications to such cure plan as well as the expected timeframe within which any cure is expected to be implemented); and
 - (iv) Any other information which Buyer may reasonably require related to the development, implementation and timetable of such cure plan.

Seller or Lender shall provide such report to Buyer within ten Business Days after Notice from Buyer requesting such report. Buyer will have no further right to require the report with respect to a particular Event of Default after that Event of Default has been cured;

- (c) Lender has the right to cure an Event of Default on behalf of Seller only if Lender sends a Notice to Buyer before the end of any cure period indicating Lender's intention to cure such Event of Default. Lender shall remedy or cure the Event of Default within the cure period under this Agreement; *provided, however*, that such cure period may be extended in Buyer's sole discretion by no more than an additional 180 days;
- (d) Lender has the right to consent before any termination of this Agreement which does not arise out of an Event of Default;
- (e) Lender shall receive prior Notice of and the right to approve material amendments to this Agreement, which approval may not be unreasonably withheld, delayed or conditioned;
- (f) In the event Lender, directly or indirectly, takes possession of or title to the Generating Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure), Lender shall assume all of Seller's obligations arising under this Agreement and all related agreements (subject to such limits on liability as are mutually agreed to by Seller, Buyer and Lender as set forth in the Collateral Assignment Agreement); *provided, however*, that Lender will have no personal liability for any monetary obligations of Seller under this Agreement which are due and owing to Buyer as of the assumption date; *provided further*, that before such assumption, if Buyer advises Lender that Buyer will require that Lender cure (or cause to be cured) any Event of Default existing as of the possession date in order to avoid the exercise by Buyer (in its sole discretion) of Buyer's right to terminate this Agreement with respect to such Event of Default, then Lender may elect, in its sole discretion, to either cause such Event of Default to be cured or not assume this Agreement;
- (g) If Lender elects to sell or otherwise transfer the Generating Facility (after Lender directly or indirectly takes possession of or title to the Generating Facility), or the sale or other transfer of the Generating Facility occurs through the actions of Lender (including a foreclosure sale where a third party is the buyer), then Lender must cause the transferee or buyer of the Generating Facility to assume all of Seller's obligations arising under this Agreement and all related agreements as a condition of such sale or transfer.

Such sale or transfer may be made only to a Person with financial qualifications (including collateral support and any other additional security as may be required by Buyer) and operating experience equivalent to that of Seller as of the Effective Date satisfactory to Buyer in its sole discretion; and

- (h) If this Agreement is rejected in Seller's Bankruptcy or otherwise terminated in connection therewith and if Lender or its designee directly or indirectly takes possession of or title to the Generating Facility (including possession by a

receiver or title by foreclosure or deed in lieu of foreclosure), Lender shall or shall cause its designee to promptly enter into a new agreement with Buyer having substantially the same terms as this Agreement.

Notwithstanding the foregoing, Buyer will not be required to enter into such agreement with Lender or such designee if there has been a change in circumstances resulting from actions of Seller in its Bankruptcy case that would, in Buyer's judgment, materially impact the rights or obligations of Buyer under such an agreement.

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

9.07 Notices. All notices, requests, statements or payments shall be made as specified in Exhibit N. Notices (other than Forecasts and Scheduling requests) shall, unless otherwise specified in this Agreement, be in writing and may be delivered by hand delivery, first class United States mail, overnight courier service or facsimile. Notices provided in accordance with this Section 9.07 are deemed given as follows:

- (a) Notice by facsimile, electronic transmission or hand delivery is deemed given at the close of business on the day actually received, if received during business hours on a Business Day, and otherwise are deemed given at the close of business on the next Business Day;
- (b) Notice by overnight first class United States mail or courier is deemed given on the next Business Day after such Notice is sent out;
- (c) Notice by first class United States mail is deemed given two Business Days after the postmarked date;
- (d) Notices are effective on the date deemed given, unless a different date for the Notice to go into effect is stated in another section of this Agreement;
- (e) A Party may change its designated representatives, addresses and other contact information by providing notice of same in accordance herewith; and
- (f) All notices, requests, statements or payments for this Generating Facility must reference the identification number set forth on the cover page of this Agreement.

9.08 General.

- (a) This Agreement supersedes all prior agreements, whether written or oral, between the Parties with respect to its subject matter and constitutes the entire agreement between the Parties relating to its subject matter.
- (b) This Agreement will not be construed against any Party as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof.
- (c) Except to the extent provided for in this Agreement, no amendment or modification to this Agreement is enforceable unless reduced to a writing signed by all Parties.
- (d) If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement will remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.
- (e) Waiver by a Party of any default by the other Party will not be construed as a waiver of any other default.
- (f) The term “including” when used in this Agreement is by way of example only and will not be considered in any way to be in limitation.
- (g) The word “or” when used in this Agreement includes the meaning “and/or” unless the context unambiguously dictates otherwise.
- (h) The headings used in this Agreement are for convenience and reference purposes only and will not affect its construction or interpretation. All references to “Articles”, “Sections” and “Exhibits” refer to the corresponding Articles, Sections and Exhibits of this Agreement. Unless the otherwise specified, all references “Articles” or “Sections” in Exhibits A through R refer to the corresponding Articles and Sections in the main body of this Agreement. Words having well-known technical or industry meanings have such meanings unless otherwise specifically defined in this Agreement.

- (i) Where days are not specifically designated as Local Business Days, or Business Days, they are calendar days. Where years are not specifically designated as Term Years, they are calendar years.
- (j) This Agreement will apply to, be binding in all respects upon and inure to the benefit of the successors and permitted assigns of the Parties. Nothing in this Agreement will be construed to give any Person other than the Parties any legal or equitable right, remedy or claim under or with respect to this Agreement or any provision of this Agreement, except as shall inure to a successor or permitted assignee.
- (k) No provision of this Agreement is intended to contradict or supersede any applicable agreement between the Parties covering transmission, distribution, metering, scheduling or interconnection of electric energy. In the event of an apparent contradiction between this Agreement and any such agreement, the applicable agreement controls.
- (l) Whenever this Agreement specifically refers to any law, tariff, government department or agency, regional reliability council, Transmission Provider, or credit rating agency, the Parties agree that the reference also refers to any successor to such law, tariff or organization.
- (m) The Parties acknowledge and agree that this Agreement and the transactions contemplated by this Agreement constitute a “forward contract” within the meaning of the United States Bankruptcy Code and that Buyer and Seller are each “forward contract merchants” within the meaning of the United States Bankruptcy Code.
- (n) This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Agreement and of signature pages by facsimile transmission, an Adobe Acrobat file or by other electronic means constitutes effective execution and delivery of this Agreement as to the Parties and may be used in lieu of the original Agreement for all purposes. Signatures of the Parties transmitted by facsimile or by other electronic means will be deemed to be their original signatures for all purposes.

9.09 Confidentiality.

- (a) Communications Related to this Agreement. Neither Party may disclose any communication, whether written or oral, in connection with or relating to the implementation of this Agreement (including information related to Seller's compliance with operating and efficiency standards applicable to a qualifying cogeneration facility or fuel use standards applicable to a qualifying small power production facility) to a third party, other than:
- (i) To such Party's employees, Lenders, attorneys, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential;
 - (ii) To potential Lenders with the consent of Buyer, which consent will not be unreasonably withheld; *provided, however*, that disclosure (1) of cash flow and other financial projections to any potential Lender in connection with a potential loan or tax equity investment; or (2) to potential Lenders with whom Seller has negotiated (but not necessarily executed) a term sheet or other similar written mutual understanding, will not require such consent of Buyer; *provided further*, that in each case such potential Lender has a need to know such information and has agreed to keep such terms confidential;
 - (iii) To Buyer's Procurement Review Group, as defined in D.02-08-071, subject to a protective order applicable to Buyer's Procurement Review Group;
 - (iv) With respect to information other than nonpublic financial information of Seller supplied to Buyer pursuant to Section 3.20, to the CPUC, the CEC or the FERC, under seal for any regulatory purpose, including policymaking, subject to the disclosing Party making reasonable efforts to obtain confidentiality protection from the CPUC under Section 583 of the California Public Utilities Code or other statute, order or rule offering comparable confidentiality protection;
 - (v) In order to comply with any Applicable Law or any exchange, control area or CAISO rule, or order issued by a court or entity with competent jurisdiction over the disclosing party, other than to those entities set forth in Section 9.09(a)(vi);
 - (vi) In order to comply with any applicable regulation, rule, subpoena, or order of the CPUC, CEC, FERC, any court, administrative agency, legislative body or other tribunal, or any discovery or data request of a party to any proceeding pending before any of the foregoing;

- (vii) To representatives of a Party's credit ratings agencies who have a need to review the terms and conditions of this Agreement for the purpose of assisting the Party in evaluating this Agreement for credit rating purposes or with respect to the potential impact of this Agreement on the Party's financial reporting obligations;
- (viii) In connection with requests or orders to produce documents or information in the circumstances provided in Section 9.09(a)(vi) ("Disclosure Order") each Party shall, to the extent practicable, use reasonable efforts to:
 - 1) Notify the other Party before disclosing the confidential information; and
 - 2) Prevent or limit such disclosure; or
- (ix) After using such reasonable efforts, the disclosing party may not be:
 - 1) Prohibited from complying with a Disclosure Order; or
 - 2) Liable to the other Party for monetary or other damages incurred in connection with the disclosure of any terms or conditions of this Agreement which are the subject of such Disclosure Order.

Except as provided in Section 9.09(a)(ix)(2), the Parties are entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, the confidentiality obligations set forth in this Section 9.09.

9.10 Insurance.

- (a) Throughout the Term, Seller shall obtain and maintain in force as hereinafter provided commercial general liability insurance, including contractual liability coverage, with a combined single limit of not less than \$5,000,000 for each occurrence and a combined aggregate limit of not less than \$10,000,000. The insurance carrier or carriers and form of policy (including any deductible amount), or any plan for self-insurance shall be subject to review and approval by Buyer which approval shall not be unreasonably withheld, conditioned or delayed.
- (b) Before the commencement of the Term, as provided in Section 2.01, Seller shall:
 - (i) Furnish a certificate of insurance to Buyer, which certificate shall provide that such insurance shall not be terminated nor expire except on 30 days prior Notice to Buyer;

- (ii) Furnish to Buyer an additional insured endorsement with respect to such insurance in substantially the following form:

“In consideration of the premium charged, Buyer is named as additional insured with respect to all liabilities arising out of Seller’s use and ownership of Seller’s Generating Facility.

The inclusion of more than one insured under this policy shall not operate to impair the rights of one insured against another insured and the coverage afforded by this policy will apply as though separate policies had been issued to each insured. The inclusion of more than one insured will not, however, operate to increase the limit of the carrier’s liability. Buyer will not, by reason of its inclusion under this policy, incur liability to the insurance carrier for payment of premium for this policy.

Any other insurance carried by Buyer which may be applicable shall be deemed excess insurance and Seller’s insurance primary for all purposes despite any conflicting provisions in Seller’s policy to the contrary.”

- 9.11 Nondedication. Notwithstanding any other provisions of this Agreement, neither Party dedicates any of the rights that are or may be derived from this Agreement or any part of its facilities involved in the performance of this Agreement to the public or to the service provided under this Agreement, and such service shall cease upon termination of this Agreement.
- 9.12 Mobile Sierra. Notwithstanding any provision of this Agreement, neither Party will seek, nor will they support any third party in seeking, to prospectively or retroactively revise the rates, terms, or conditions of service of this Agreement through application or complaint to FERC pursuant to the provisions of Section 205, 206, or 306 of the Federal Power Act, or any other provisions of the Federal Power Act, absent prior written agreement of the Parties.

Further, absent the prior agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of service of this Agreement proposed by a Party, a non-Party or the FERC acting sua sponte shall be the “public interest” standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 US 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 US 348 (1956).

- 9.13 Seller Ownership and Control of Generating Facility. Seller agrees, that, in accordance with FERC Order No. 697, upon request of Buyer, Seller shall submit a letter of concurrence in support of any affirmative statement by Buyer that the contractual arrangement set forth in this Agreement does not transfer “ownership or control of generation capacity” from Seller to Buyer as the term “ownership or control of generation

capacity” is used in 18 CFR Section 35.42. Seller also agrees that it will not, in filings, if any, made subject to Order Nos. 652 and 697, claim that the contractual arrangement set forth in this Agreement conveys ownership or control of generation capacity from Seller to Buyer.

- 9.14 Simple Interest Payments. Except as specifically provided in this Agreement, any outstanding and past due amounts owing and unpaid by either Party under the terms of this Agreement shall be eligible to receive a Simple Interest Payment calculated using the Interest Rate for the number of days between the date due and the date paid.
- 9.15 Payments. Payments to be made under this Agreement shall be made, at Buyer’s option, by check or electronic wire funds transfer.
- 9.16 Provisional Relief. The Parties acknowledge and agree that irreparable damage would occur if certain provisions of this Agreement are not performed in accordance with the terms hereof, that money damages would not be a sufficient remedy for any breach of such provisions of this Agreement, and that the Parties shall be entitled, without the requirement of posting a bond or the other security, to seek a preliminary injunction, temporary restraining order, or other provisional relief as a remedy for a breach of Section 3.01, 3.02, 3.03, 9.09 of this Agreement (and, if applicable, Section 1.04(e) of Exhibit F of this Agreement) in any court of competent jurisdiction, notwithstanding the obligation to submit all other disputes (including all Claims for monetary damages under this Agreement) to arbitration pursuant to Section 10.01. The Parties further acknowledge and agree that the results of such arbitration may be rendered ineffectual without such provisional relief.

Such a request for provisional relief shall not waive a Party’s right to seek other remedies for the breach of the provisions specified above in accordance with Section 10.01, notwithstanding any prohibition against claim-splitting or other similar doctrine. The other remedies that may be sought include specific performance and injunctive or other equitable relief, plus any other remedy specified in this Agreement for such breach of the provision, or if this Agreement does not specify a remedy for such breach, all other remedies available at law or equity to the Parties for such breach.

*** End of Article Nine ***

ARTICLE TEN. DISPUTE RESOLUTION

10.01 Dispute Resolution. Other than requests for provisional relief under Section 9.16, any and all disputes, Claims or controversies arising out of, relating to, concerning, or pertaining to the terms of this Agreement, or to either Party's performance or failure of performance under this Agreement ("Disputes"), which Disputes the Parties have been unable to resolve by informal methods, will first be submitted to mediation in accordance with the procedures described in Section 10.02, and if the matter is not resolved through mediation, then for final and binding arbitration in accordance with the procedures described in Section 10.03. The Parties waive any right to a jury and agree that there will be no interlocutory appellate relief (such as writs) available.

10.02 Mediation. Either Party may initiate mediation by providing Notice to the other Party of a written request for mediation, setting forth a description of the Dispute and the relief requested.

The Parties will cooperate with one another in selecting the mediator ("Mediator") from the panel of neutrals from JAMS or any other mutually acceptable non-JAMS Mediator, and in scheduling the time and place of the mediation. Such selection and scheduling will be completed within 45 days after Notice of the request for mediation.

Unless otherwise agreed to by the Parties, the mediation will not be scheduled for a date that is greater than 120 days from the date of Notice of the request for mediation.

The Parties covenant that they will participate in the mediation, and that they will share equally in its costs (other than each Party's individual attorneys' fees and costs related to the Party's participation in the mediation, which fees and costs will be borne by such Party).

All offers, promises, conduct and statements, whether oral or written, made in connection with or during the mediation by either of the Parties, their agents, representatives, employees, experts and attorneys, and by the Mediator or any of the Mediator's agents, representatives and employees, will not be subject to discovery and will be confidential, privileged and inadmissible for any purpose, including impeachment, in any arbitration or other proceeding between or involving the Parties, or either of them; *provided, however*, that evidence that is otherwise admissible or discoverable will not be rendered inadmissible or non-discoverable as a result of its use in the mediation.

10.03 Arbitration. Either Party may initiate binding arbitration with respect to the matters first submitted to mediation by providing Notice of a demand for binding arbitration before a single, neutral arbitrator (the "Arbitrator") at any time following the unsuccessful conclusion of the mediation provided for above.

The Parties will cooperate with one another in selecting the Arbitrator within 60 days after Notice of the demand for arbitration and will further cooperate in scheduling the arbitration to commence no later than 180 days from the date of Notice of the demand. If the Parties are unable to agree upon a mutually acceptable Arbitrator, the Arbitrator will be appointed as provided for in California Code of Civil Procedure Section 1281.6. To be qualified as an Arbitrator, each candidate must be a retired judge of a trial court of any state or federal court, or retired justice of any appellate or supreme court.

Unless otherwise agreed to by the Parties, the individual acting as the Mediator will be disqualified from serving as the Arbitrator in the dispute, although the Arbitrator may be another member of the JAMS panel of neutrals or such other panel of neutrals from which the Parties have agreed to select the Mediator.

Upon Notice of a Party's demand for binding arbitration, such Dispute submitted to arbitration, including the determination of the scope or applicability of this agreement to arbitrate, will be determined by binding arbitration before the Arbitrator, in accordance with the laws of the State of California, without regard to principles of conflicts of laws.

Except as provided for in this Section 10.03, the arbitration will be conducted by the Arbitrator in accordance with the rules and procedures for arbitration of complex business disputes for the organization with which the Arbitrator is associated. Absent the existence of such rules and procedures, the arbitration will be conducted in accordance with the California Arbitration Act, California Code of Civil Procedure Section 1280 et seq. and California procedural law (including the Code of Civil Procedure, Civil Code, Evidence Code and Rules of Court, but excluding local rules).

Notwithstanding the rules and procedures that would otherwise apply to the arbitration, and unless the Parties agree to a different arrangement, the place of the arbitration will be in [____], California, and discovery will be limited as follows:

{Buyer Comment: For PG&E, insert San Francisco; for SDG&E, insert San Diego; and for SCE, insert Los Angeles. }

- (a) Before discovery commences, the Parties shall exchange an initial disclosure of all documents and percipient witnesses which they intend to rely upon or use at any arbitration proceeding (except for documents and witnesses to be used solely for impeachment);
- (b) The initial disclosure will occur within 30 days after the initial conference with the Arbitrator or at such time as the Arbitrator may order;
- (c) Discovery may commence at any time after the Parties' initial disclosure;

- (d) The Parties will not be permitted to propound any interrogatories or requests for admissions;
- (e) Discovery will be limited to 25 document requests (with no subparts), three lay witness depositions, and three expert witness depositions (unless the Arbitrator holds otherwise following a showing by the Party seeking the additional documents or depositions that the documents or depositions are critical for a fair resolution of the Dispute or that a Party has improperly withheld documents);
- (f) Each Party is allowed a maximum of three expert witnesses, excluding rebuttal experts;
- (g) Within 60 days after the initial disclosure, or at such other time as the Arbitrator may order, the Parties shall exchange a list of all experts upon which they intend to rely at the arbitration proceeding;
- (h) Within 30 days after the initial expert disclosure, the Parties may designate a maximum of two rebuttal experts;
- (i) Unless the Parties agree otherwise, all direct testimony will be in form of affidavits or declarations under penalty of perjury; and
- (j) Each Party shall make available for cross-examination at the arbitration hearing its witnesses whose direct testimony has been so submitted.

Subject to Article Seven, the Arbitrator will have the authority to grant any form of equitable or legal relief a Party might recover in a court action. The Parties acknowledge and agree that irreparable damage would occur in the event certain provisions of this Agreement are not performed in accordance with the terms hereof, that money damages would not be a sufficient remedy for any breach of such provisions of this Agreement, and that the Parties shall be entitled, without the requirement of posting a bond or other security, to specific performance and injunctive or other equitable relief as a remedy for a breach of Sections 3.01, 3.02, 3.03 or 9.09 of this Agreement (and, if applicable, Section 1.04(e) of Exhibit F of this Agreement).

Judgment on the award may be entered in any court having jurisdiction.

The Arbitrator must, in any award, allocate all of the costs of the binding arbitration (other than each Party's individual attorneys' fees and costs related to the Party's

participation in the arbitration, which fees and costs will be borne by such Party), including the fees of the Arbitrator and any expert witnesses, against the Party who did not prevail.

Until such award is made, however, the Parties will share equally in paying the costs of the arbitration.

**** End of Article Ten ****

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed by their respective authorized representatives as of the Effective Date.

[SELLER'S NAME],

[BUYER'S NAME],

a [Seller's business registration]

a California corporation

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

EXHIBIT A
Definitions

For purposes of this Agreement, the following terms and variations thereof have the meanings specified or referred to in this Exhibit A:

“Affiliate” means, with respect to a Party, any Person that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with such Party. For purposes of this Agreement, “control” means the direct or indirect ownership of 50% or more of the outstanding capital stock or other equity interests having ordinary voting power.

“Agreement” has the meaning set forth in the Preamble.

“Allowed Firm Energy”, or “AFE”, is determined in Section 3(l) of Exhibit D.

“Allowed Hourly Energy”, or “E”, is determined in Section 3(f) of Exhibit D.

“Allowed Payment Energy”, or “APE”, is determined in Section 2(c) of Exhibit D.

“Applicable Laws” means all constitutions, treaties, laws, ordinances, rules, regulations, interpretations, permits, judgments, decrees, injunctions, writs and orders of any Governmental Authority or arbitrator that apply to either or both of the Parties, the Generating Facility or the terms of this Agreement.

“Arbitrator” has the meaning set forth in Article Ten.

“As-Available Capacity”, or “AAC”, is determined in Section 3(c) of Exhibit D.

“As-Available Capacity Payment”, or “ACP”, is determined in Section 3(b) of Exhibit D.

“As-Available Capacity Price” means the price adopted by the CPUC in the Decision and in subsequent rulings of the CPUC implementing the Decision, or pursuant to any such other formula as the CPUC may adopt from time to time for As-Available Capacity Payments to be made to Buyer’s Qualifying Facilities for the applicable year, as set forth in Section 3(b) of Exhibit D, in dollars per kW-year.

“As-Available Contract Capacity” means the electric energy generating capacity that Seller commits to have available at the Site on an as-available basis for the Power Product, as set forth in Section 1.02(d), as may be adjusted from time to time in accordance with Exhibit C.

“Availability Credit Factor”, or “ACF”, is determined in Section 3(i) of Exhibit D.

“Availability Penalty Factor”, or “APF”, is determined in Section 3(n) of Exhibit D.

“Bankrupt” means with respect to any Person, such Person:

- (a) 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;
- (b) Makes an assignment or any general arrangement for the benefit of creditors;
- (c) Otherwise becomes bankrupt or insolvent (however evidenced);
- (d) 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
- (e) Is generally unable to pay its debts as they fall due.

“Benchmark Capacity” is determined, as applicable, in Section 3(a) of Exhibit D-1, Section 3(a) of Exhibit D-2, and Section 9(a) of Exhibit E.

“Bottoming-Cycle Cogeneration Facility” has the meaning set forth in 18 CFR §292.202(c), as amended from time to time.

“Business Day” means any day except a Saturday, Sunday, the Friday after the United States Thanksgiving holiday, or a Federal Reserve Bank holiday that begins at 8:00 a.m. and end at 5:00 p.m. local time for the Party sending a Notice or payment or performing a specified action.

“Buyer” has the meaning set forth in the Preamble.

“Buyer Energy Schedule” means the schedule of electric energy that Buyer establishes with the CAISO for electric energy produced by the Generating Facility.

“Buyer Parent Energy Schedule” means the schedule of electric energy that Buyer establishes with the CAISO for electric energy delivered to the CAISO for the CAISO Global Resource ID associated with the Generating Facility.

“Buyer Projected Energy Forecast” has the meaning set forth in Section 2(a) of Exhibit G.

“CAISO” means the California Independent System Operator Corporation or successor entity that dispatches certain generating units, supplies certain loads and controls the transmission facilities of entities that (a) own, operate and maintain transmission lines and associated facilities or have entitlements to use certain transmission lines and associated facilities, and (b) have transferred to the CAISO or its successor entity operational control of such facilities or entitlements.

“CAISO-Approved Meter” means any revenue quality, electric energy measurement meter furnished by Seller, that (a) is designed, manufactured and installed in accordance with the CAISO’s metering requirements, and (b) includes all of the associated metering transformers and

related appurtenances that are required in order to [measure the net electric energy output from a Generating Unit] [measure the net electric energy output from the Generating Facility].

“CAISO Approved Quantity” means the total quantity of electric energy that Buyer Schedules with the CAISO and the CAISO approves in its final schedule which is published in accordance with the CAISO Tariff.

“CAISO Charges Invoice” means an invoice rendered by Buyer to Seller for all CAISO Charges for which Seller is responsible under this Agreement.

“CAISO Charges” means the debits, costs, fees, penalties, sanctions, interest or similar charges that are directly assigned by the CAISO to the CAISO Global Resource ID for the Generating Facility for, or attributable to, Scheduling or deliveries from the Generating Facility under this Agreement.

“CAISO Controlled Grid” has the meaning set forth in the CAISO Tariff.

“CAISO Declared Over-Generation Condition” means a CAISO declared condition on the CAISO Controlled Grid where the sum of the desired generation output of all of Scheduling Coordinators in the Control Area, absent mitigation, would be greater than the system load.

“CAISO Forced Outage Report” means a complete copy of a forced outage report in a form acceptable to Buyer which includes detailed information regarding the event, including the affected Generating Unit, outage start date and time, estimation of outage duration, MW unavailable and summary of work to be performed.

“CAISO Global Resource ID” means the number or name assigned by the CAISO to the CAISO-Approved Meter.

“CAISO's Energy Communications Network” means a secure internet based, communications network which is used by the CAISO to collect data from and transmit instructions to Participating Generators (as such term is defined in the CAISO Tariff).

“CAISO Station Power Protocol” means the CAISO protocol that the CAISO filed with the FERC in Docket ER05-849, including all revisions, amendments and successor protocols that would allow a generating facility to self-supply its Station Power by any means other than permitted netting, when permitted netting allows netting of generator output with Station Power load that is electrically connected to the generator at the same time when the generator is on-line.

“CAISO Tariff” means the California Independent System Operator Corporation Operating Agreement and Tariff, including the rules, protocols, procedures and standards attached thereto, as the same may be amended or modified from time to time and approved by the FERC.

“Capacity Attributes” means any and all current or future defined characteristics, certificates, tag, credits, ancillary service attributes, or accounting constructs, howsoever entitled, other than Resource Adequacy Benefits, attributed to or associated with the Generating Facility.

“Capacity Credit Hours”, or “CCH”, is determined in Section 3(m) of Exhibit D.

“Capacity Credit Period” has the meaning set forth in Section 3(b)(vii) of Exhibit E.

“Capacity Demonstration Factor” has the meaning set forth in Exhibit C.

“Capacity Measurement Interval” means each 15-minute time period, beginning on the hour (e.g. 12:00 to 12:15, 12:30, 12:45, etc.), for which the Power Output is measured.

“Capacity Payment Allocation Factors”, or “CAF”, means the TOD Period factors which are used to calculate the Maximum TOD Period Capacity Payment, as set forth in the table in Section 3(a) of Exhibit D.

“Capacity Performance Requirement”, or “CR”, means the percentage of firm capacity equivalent available hours determined by dividing the sum of Earned Capacity Hours and Capacity Credit Hours by the number of period hours, as set forth in Section 3(i) Exhibit D.

“CEC” means the California Energy Commission, or any successor entity.

“Check Meter” means the Buyer revenue-quality meter section or meter, which Buyer may require at its discretion, as set forth in Section 3.08(b).

“Claiming Party” has the meaning set forth in Section 5.02.

“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 before or after the termination of this Agreement.

“Collateral Assignment Agreement” has the meaning set forth in Section 9.05.

“Control Area” means the electric power system (or combination of electric power systems) under the operational control of the CAISO or any other electric power system under the operational control of another organization vested with authority comparable to that of the CAISO.

“Converted Physical Trade”, or “CPT”, means the quantity from Physical Trades, in MWh, that did not pass CAISO’s physical validation of the IFM.

“Converted Physical Trade Price” means the price, in dollars per MWh, used by the CAISO to settle the quantity, in MWh, associated with the Converted Physical Trade.

“Costs” means, with respect to the Non-Defaulting Party, brokerage fees, commissions, legal expenses and other similar third party transaction costs and expenses reasonably incurred by such Party in entering into any new arrangement which replaces this Agreement.

“CPUC” means the California Public Utilities Commission, or any successor entity.

“Credit Rating” means with respect to any Person, on the relevant date of determination, the respective ratings then assigned to such Person’s unsecured, senior long-term debt or deposit obligations (not supported by third party credit enhancement) by S&P or Moody’s. If no rating is assigned to such Person’s unsecured, senior long-term debt or deposit obligation by either S&P or Moody’s, then “Credit Rating” shall mean the general corporate credit rating or long-term issuer rating assigned to the Person by S&P or Moody’s, as the case may be.

“Cross Default Amount” is the dollar amount set forth in Section 1.07(c)(iii).

“Curtailment Period” means a time period for which Seller is requested to curtail its Power Product for Force Majeure or otherwise.

“D.” has the meaning set forth in the Recitals.

“Daily Delay Liquidated Damages” has the meaning set forth in Section 1.04(c)(ii) of Exhibit F.

“Day-Ahead” has the meaning set forth in the CAISO Tariff.

“Day-Ahead Market” has the meaning set forth in the CAISO Tariff.

“Day-Ahead Price” means the CAISO Day-Ahead Market Locational Marginal Price (as such term is defined in the CAISO Tariff) for electric energy at the Generating Facility’s PNode as published by the CAISO. The values used in this Agreement will be those appearing on the CAISO website on the third Business Day of the calendar month following the month for which such prices are being applied.

“Day-Ahead Schedule” has the meaning set forth in the CAISO Tariff.

“Decision” has the meaning set forth in the Recitals.

“Defaulting Party” has the meaning set forth in Section 6.01(a).

“Delivery Point” has the meaning set forth in Section 1.03(a).

“Demonstrated Firm Contract Capacity” means the rate of electric energy delivery that the Generating Facility is able to demonstrate as a result of the Demonstration set forth in Exhibit C.

“Demonstration” means the testing procedures for the Power Product set forth in Exhibit C.

“Demonstration Rate of Metered Energy” means the quantity, in kWh per hour, calculated by multiplying the Metered Energy amount, within a Metering Interval in kWh per interval, times the number of Metering Intervals in a one-hour period.

“Development Security” has the meaning set forth in Section 1.04(b)(i) of Exhibit F.

“Disclosure Order” has the meaning set forth in Section 9.09(a)(viii).

“Dispute” has the meaning set forth in Section 10.01.

“Early Termination Date” has the meaning set forth in Section 6.02(a).

“Earned Capacity Hours”, or “ECH”, means the number of firm capacity equivalent available hours determined by dividing the Firm TOD Energy by the Firm Contract Capacity, as set forth in Section 3(j) of Exhibit D.

“Effective Date” has the meaning set forth in the Preamble.

“Emergency” means an actual or imminent condition or situation which:

- (a) Is defined and declared by the CAISO or Transmission Provider;
- (b) Jeopardizes the integrity or reliability of the CAISO Controlled Grid or Transmission Provider’s electric system;
- (c) Requires automatic or immediate manual action to prevent or limit loss of load or generation supply; or
- (d) Poses a threat to public safety.

“EPC Contract” means Seller’s engineering, procurement and construction contract with the EPC Contractor.

“EPC Contractor” means the entity chosen by Seller to perform the engineering, procurement and construction activities for the Generating Facility.

“Equitable Defense” means any Bankruptcy or 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.

“Event of Default” has the meaning set forth in Section 6.01.

“Existing Qualifying Facility” means a Qualifying Facility that is not a New Qualifying Facility.

“Expected Annual Term Year Energy Production” means the Metered Energy quantity expected to be produced by the Generating Facility during each Term Year, as set forth in Section 1.02(e).

“Federal Funds Effective Rate” means the rate for that day opposite the caption “Federal Funds (effective)” as set forth in the weekly statistical release as H.15(519), or any successor publication, published by the Board of Governors of the Federal Reserve System.

“FERC” means the Federal Energy Regulatory Commission, or any successor entity.

“Financial Incentives” means any and all financial incentives, benefits or credits associated with the Generating Facility, or the ownership or Operation thereof, or the electrical or thermal output of the Generating Facility, including any production or investment tax credits, real or personal property tax credits or sales or use tax credits, but not including any Green Attributes, Capacity Attributes or Resource Adequacy Benefits.

“Firm Capacity Payment”, or “FCP”, has the meaning set forth in Section 3(g) of Exhibit D.

“Firm Capacity Price” or “CP” is set forth in Section 1.06(a).

“Firm Contract Capacity”, or “FCC”, means the generating capacity that Seller commits to have available at the Site for the Power Product, as set forth in Section 1.02(d), as may be adjusted from time to time in accordance with Exhibit C.

“Firm Operation Date” means the date that is six months after the commencement of the Term.

“First Penalty Month” has the meaning set forth in Section 3(b)(i) of Exhibit I.

“Firm TOD Energy”, or “FE”, has the meaning set forth in Section 3(k) of Exhibit D.

“Forced Outage” has the meaning set forth in the CAISO Tariff.

“Force Majeure” means 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. Force Majeure shall not include:

- (a) A failure of performance of any other Person, including any Person providing electric transmission service or fuel transportation to the Generating Facility, except to the extent that such failure was caused by an event that would otherwise qualify as a Force Majeure event;
- (b) Failure to timely apply for or obtain Permits or other credits required to Operate the Generating Facility;
- (c) Breakage or malfunction of equipment (except to the extent that such failure was caused by an event that would otherwise qualify as a Force Majeure); or

- (d) A lack of fuel of an inherently intermittent nature such as wind, water, solar radiation or waste gas or waste derived fuel.

“Force Majeure Credit Value”, or “FCV”, is the adder applied to the Earned Capacity Hours to account for the time during which Seller is not able to meet the Firm Contract Capacity obligation due to a Force Majeure curtailment requested by Buyer, determined in accordance with Section 3 of Exhibit D-1.

“Forecast” means the hourly forecast of (a) the total electric energy production of the Generating Facility (in MWh) when the Generating Facility is not PIRP-eligible or Buyer is not Scheduling Coordinator, or (b) the available total generation capacity of the Generating Facility (in MW) when the Generating Facility is PIRP-eligible and Buyer is Scheduling Coordinator.

“Forward Settlement Amount” means the Non-Defaulting Party’s Costs and Losses on the one hand, netted against its Gains, on the other. If the Non-Defaulting Party’s Gains exceed its Costs and Losses, then the Forward Settlement Amount shall be zero dollars. If the Non-Defaulting Party’s Costs and Losses exceed its Gains, then the Forward Settlement Amount shall be an amount owing to the Defaulting Party. The Forward Settlement Amount shall not include consequential, incidental, punitive, exemplary or indirect or business interruption damages.

“GAAP” means generally accepted accounting principles for financial reporting in the United States, consistently applied.

“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), as of the Early Termination Date resulting from the termination of this Agreement, expressed in dollars and determined in a commercially reasonable manner. Factors used in determining the gain of economic benefit to a Party may include:

- (a) Reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets;
- (b) market price referents set by the CPUC;
- (c) Comparable transactions;
- (d) Forward price curves based on economic analysis of the relevant markets;
- (e) Settlement prices for comparable transaction at liquid trading hubs (e.g., NYMEX);
and

All of which should be calculated for the remaining Term and shall include the value of Related Products.

Only if the Non-Defaulting Party is unable, after using commercially reasonable efforts, to obtain third party information to determine the gain of economic benefits, then the Non-Defaulting Party may use information available to it internally.

“Generating Facility” means Seller’s power plant, as more particularly described in Section 1.02 and Exhibit B, including all other materials, equipment, systems, structures, features and improvements necessary to produce electric energy and thermal energy, excluding the Site, land rights and interests in land.

“Generating Unit” means one or more generating equipment combinations typically consisting of prime mover(s), electric generator(s), electric transformer(s), steam generator(s) and air emission control devices.

“Generation Operations Center” means the location of Buyer’s real-time operations personnel.

“Generator Operator” means the Person that Operates the Generating Facility and performs the functions of supplying energy and interconnected operations services as described at http://www.nerc.com/~filez/standards/Reliability_Standards_Regulatory_Approved.html, or any successor thereto.

“Generator Operator Obligations” means the obligations of a Generator Operator as set forth in all applicable NERC Reliability Standards available at http://www.nerc.com/~filez/standards/Reliability_Standards_Regulatory_Approved.html, or any successor thereto.

“Generator Owner” means the Person that owns Generating Facility and has registered with NERC as the Person responsible for complying with those NERC reliability standards applicable to owner of the Generating Facility.

“Generator Owner Obligations” means the obligations of a Generator Owner as set forth in all applicable NERC Reliability Standards available at http://www.nerc.com/~filez/standards/Reliability_Standards_Regulatory_Approved.html, or any successor thereto.

“Governmental Authority” means (a) any federal, state, local, municipal or other government, (b) any governmental, regulatory or administrative agency, commission, or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power, or (c) any court or governmental tribunal.

“Governmental Charges” has the meaning as set forth in Section 8.02.

“Green Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Project, and its displacement of conventional energy generation. Green Attributes include but are not limited to Renewable Energy Credits, as well as:

- (1) Any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SO_x), nitrogen oxides (NO_x), carbon monoxide (CO) and other pollutants;
- (2) Any avoided emissions of carbon dioxide (CO₂), methane (CH₄), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere;
- (3) The reporting rights to these avoided emissions, such as Green Tag Reporting Rights.

Green Tag Reporting Rights are the right of a Green Tag Purchaser to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party at the Green Tag Purchaser's discretion, and include without limitation those Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Green Tags are accumulated on a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of energy.

Green Attributes do *not* include:

- i) Any energy, capacity, reliability or other power attributes from the Project,
- ii) Production tax credits associated with the construction or Operation of the Project and other financial incentives in the form of credits, reductions, or allowances associated with the Project that are applicable to a state or federal income taxation obligation,
- iii) Fuel-related subsidies or "tipping fees" that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or
- iv) Emission reduction credits encumbered or used by the Project for compliance with local, state, or federal operating or air quality permits.

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

"Guarantor" is that certain guarantor of Seller set forth in Section 1.05(c)(i).

“Guaranty Agreement” means a guaranty agreement substantially in the form of Exhibit O.

“Hourly Credit Value” is determined in Section 3(b) of Exhibit D-1 and Section 9(b)(i) of Exhibit E.

“Hourly Debit Value” is determined in Section 9(b)(ii) of Exhibit E.

“Host Site” means the site at which Site Host Load is consumed, including real property, facilities and equipment owned or operated by the Site Host or its Affiliates located at such site.

“IFM” or “Integrated Forward Market” has the meaning set forth in the CAISO Tariff.

“IFM Load Uplift Obligation” means the obligation of a Scheduling Coordinator to pay its share of unrecovered IFM Bid Costs (as defined in the CAISO Tariff) paid to resources through Bid Cost Recovery (as defined in the CAISO Tariff).

“Initial Operation” means the initial Operation of the Generating Facility, which will be deemed to have been achieved on the Initial Operation Date.

“Initial Operation Date” means the date selected by Seller to begin Forecasting and delivering the Power Product to Buyer.

“Interconnection Study” means any of the following studies, as may be defined in the CAISO Tariff or the Transmission Provider’s tariff, as applicable: (a) an interconnection feasibility study; (b) an interconnection system impact study; or (c) an interconnection facilities study.

“Interest Rate” means an annual rate equal to the rate published in The Wall Street Journal as the “Prime Rate” (or, if more than one rate is published, the arithmetic mean of such rates) as of the date payment is due plus two percentage points; *provided, however*, that in no event shall the Interest Rate exceed the maximum interest rate permitted by Applicable Laws.

“Inter-SC Trade” means a trade between Scheduling Coordinators of energy, Ancillary Service (as defined in the CAISO Tariff), or IFM Load Uplift Obligation in accordance with the CAISO Tariff.

“JAMS” means the Judicial Arbitration and Mediation Services, Inc. or any successor entity.

“kWh” means a kilowatt-hour (1,000 watt-hours) of electric energy.

“kW” means a kilowatt (1,000 watts) of electric capacity or power output.

“Lease” means one or more agreements whereby Seller leases the Site(s) described in Section 1.01 and Exhibit B from a third party, the term of which lease begins on or before the commencement of the Term and extends at least through the end of the Term.

“Lender” means any financial institution or successor in interest or assignees that provides development, bridge, construction, permanent debt or tax equity financing or refinancing for the Generating Facility to Seller.

“Letter of Credit” means an irrevocable, nontransferable standby letter of credit provided by Seller and issued by a U.S. commercial bank or a U.S. branch of a foreign bank with such bank having a Credit Rating of at least “A-” from S&P and “A3” from Moody’s, substantially in the form of Exhibit P and acceptable to Buyer. All Letter of Credit costs shall be borne by Seller.

“Letter of Credit Default” means with respect to a Letter of Credit, the occurrence of any of the following events:

- (a) The issuer of such Letter of Credit fails to maintain a Credit Rating of at least “A-” by S&P and “A3” by Moody’s;
- (b) The issuer of the Letter of Credit fails to comply with or perform its obligations under such Letter of Credit;
- (c) The issuer of such Letter of Credit disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, such Letter of Credit;
- (d) Such Letter of Credit fails or ceases to be in full force and effect at any time;
- (e) Seller fails to provide an extended or replacement Letter of Credit within 20 Business Days before such Letter of Credit expires or terminates; or
- (f) The issuer of such Letter of Credit becomes Bankrupt;

provided, however, that no Letter of Credit Default shall occur or be continuing in any event with respect to a Letter of Credit after the time such Letter of Credit is required to be canceled or returned to a Party in accordance with the terms of this Agreement.

“Limited TOD Energy”, or “LE”, has the meaning set forth in Section 3(e) of Exhibit D.

“Local Business Day” means a Business Day (except for the Friday immediately following the U.S. Thanksgiving holiday or a Federal Reserve Bank holiday) on which commercial banks are open for business in relation to (a) any payment, in the place where the relevant account is located or (b) any notice or other communication, in the city specified in the address for Notice provided by the recipient.

“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), as of the Early Termination Date, resulting from the termination of this Agreement, expressed in dollars and determined in a commercially reasonable manner. Factors used in determining the loss of economic benefit to a Party may include:

- (a) Reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets;
- (b) Market price referents set by the CPUC;
- (c) Comparable transactions;
- (d) Forward price curves based on economic analysis of the relevant markets; and
- (e) Settlement prices for comparable transaction at liquid trading hubs (e.g., NYMEX);

All of which should be calculated for the remainder of the Term and must include the value of Related Products. Only if the Non-Defaulting Party is unable, after using commercially reasonable efforts, to obtain third party information to determine the loss of economic benefits, then the Non-Defaulting Party may use information available to it internally.

“MAE_m” has the meaning set forth in Section 3(a) of Exhibit I.

“MAE Failure” has the meaning set forth in Section 3(b) of Exhibit I.

“Maintenance Credit Value”, or “MCV”, is the adder applied to the Earned Capacity Hours to account for the time during which Seller is not able to meet the Firm Contract Capacity obligation due to a Maintenance Outage or a Major Overhaul which has been properly scheduled in accordance with Exhibit E.

“Maintenance Debit Value” is a value indicating how much allowance is used when Seller requests credit for a Maintenance Outage or a Major Overhaul in accordance with Exhibit E.

“Maintenance Outage” means a time period during which Seller plans to reduce the Power Output of the Power Product, in full or in part, in order to facilitate maintenance work on the Generating Facility.

“Major Overhaul” means a time period during which Seller plans to remove the Generating Facility from Operation in order to dismantle the Generating Facility’s equipment for inspections, repairs or replacement, with the goal that such equipment will be reassembled and made available for Operation.

“Major Overhaul Allowance” is a value indicating a calendar-year maximum allowance with which Seller can request credit for a Major Overhaul in accordance with Exhibit E.

“Market Price” means the real-time price for Uninstructed Imbalance Energy or any successor price for short-term imbalance energy, as such price or successor price is defined in Appendix A of the CAISO Tariff, that would apply to the Generating Facility, which values are, as of the

Effective Date, posted by the CAISO on its website. The values used in this Agreement will be those appearing on the CAISO website on the third Business Day of the calendar month following the month for which such prices are being applied.

“Material Change” means, with respect to a Qualifying Facility, a change in equipment of the Qualifying Facility that is expected to remain in effect for at least three full months and that results in a change in the Firm Contract Capacity of the Generating Facility in excess of the lesser of five MW or five percent of the Firm Contract Capacity of the Generating Facility.

“Maximum Allowable Capacity”, or “MAC”, is determined in Section 3(d) of Exhibit D.

“Maximum Firm Capacity Payment”, or “MFCP”, means the maximum payment that Seller can earn during a year for the delivery of Firm Contract Capacity that is calculated in accordance with the procedure set forth in Section 3(h) of Exhibit D.

“Mediator” has the meaning set forth in Section 10.02.

“Metered Energy”, or “ME”, means the total electric energy kWh quantity measured by any or all of the CAISO-Approved Meters or Check Meters at the Generating Facility; *provided, however,* if Buyer is not Scheduling Coordinator; *provided further,* that “Metered Energy” as used in Section 2 of Exhibit D shall mean the lesser of (a) the total electric energy kWh quantity measured by any or all of the CAISO-Approved Meters or Check Meters at the Generating Facility or (b) the Performance Tolerance Band Upper Limit for each Settlement Interval during the Term.

“Metering Interval” means the smallest measurement time period over which data are recorded by the CAISO-Approved Meters or Check Meters.

“Milestone Schedule” means Seller’s milestone schedule, the form of which is attached to this Agreement as Exhibit Q.

“Monthly Contract Payment” has the meaning set forth in Section 4.01.

“Monthly Scheduling Fee” is described in Section 4(b) of Exhibit G.

“Moody’s” means Moody’s Investor Services, Inc.

“MRTU” means the Market Redesign and Technology Upgrade to be implemented by CAISO.

“MW” means a megawatt (1,000,000 watts) of electric capacity or power output.

“MWh” means a megawatt-hour (1,000,000 watt-hours) of electric energy or power output.

“NERC” means the North American Electric Reliability Corporation, or any successor entity.

“NERC Registration Criteria” means the NERC State of Compliance Registry Criteria (Revision 3.1), which is available at ftp://www.nerc.com/pub/sys/all_updl/ero/Statement_of_Registry_Criteria_Rev3-1.pdf, or any successor thereto.

“NERC Reliability Standards” means the set of FERC-approved standards that define the reliability requirements for planning and operating the North American bulk power system, which is available at http://www.nerc.com/~filez/standards/Reliability_Standards_Regulatory_Approved.html, or any successor thereto.

“NERC Standards Non-Compliance Penalties” means any and all monetary fines, penalties, damages, interest or assessments by NERC, the CAISO, WECC, a Governmental Authority or any Person acting at the direction of a Governmental Authority arising from or relating to a failure to perform the obligations of Generator Operator or Generator Owner as set forth in the NERC Reliability Standards.

“Net Contract Capacity”, or “NCC”, means the sum of Firm Contract Capacity and As-Available Contract Capacity, as set forth in Section 1.02(d) and as may be adjusted from time to time in accordance with Exhibit C. Net Contract Capacity may not exceed PMAX.

“New Qualifying Facility” means a Qualifying Facility that was: (i) not operating on September 20, 2007, (ii) not under a contract to sell its output pursuant to PURPA on September 20, 2007, or (iii) materially modified, repowered, or repaired (including expansions of the Generating Facility) after September 20, 2007, in a manner other than as provided in Sections 3.07(d).

“Non-Defaulting Party” has the meaning set forth in Section 6.02.

“Notice” means notices, requests, statements or payments provided in accordance with Section 9.07 and Exhibit N.

“Off-Peak Month” means any month that is not a Peak Month.

“Operate” means to provide (or the provision of) all the operation, engineering, purchasing, repair, supervision, training, inspection, testing, protection, use management, improvement, replacement, refurbishment, retirement, and maintenance activities associated with operating the Generating Facility in order to produce the Power Product in accordance with Prudent Electrical Practices.

“Outage Period” is described in Section 3(b)(iv) of Exhibit E.

“Outage Schedule” has the meaning set forth in Section 2(a) of Exhibit R.

“Outage Schedule Submittal Requirements” describes the obligations of Seller to submit maintenance and planned outage schedules (as defined in the CAISO Tariff under WECC rules) to Buyer 24 months in advance, as set forth in Exhibit R.

“Parallel Operation” means the Generating Facility’s electrical apparatus is connected to the Transmission Provider’s system and the circuit breaker at the point of common coupling is closed. The Generating Facility may be producing electric energy or consuming electric energy at such time.

“Party” has the meaning set forth in the Preamble.

“Peak Months” means [___].

{Buyer Comment: For SCE and PG&E, the Peak Months are June, July, August and September. For SDG&E, the Peak Months are May, June, July, August and September.}

“Penalized As-Available Contract Capacity” has the meaning set forth in Section 3(b)(ii) of Exhibit I.

“Penalized Firm Contract Capacity” has the meaning set forth in Section 3(b)(i) of Exhibit I.

“Performance Assurance” means collateral (in the amount of the Performance Assurance Amount) for Seller’s performance under this Agreement in the form of cash, Letter(s) of Credit, or other security acceptable to Buyer. Performance Assurance is only required to be posted by a Seller which is a New Qualifying Facility.

“Performance Assurance Amount” has the meaning set forth in Section 1.07(a)(ii).

“Performance Tolerance Band Lower Limit” is determined in Section 1 of Exhibit K.

“Performance Tolerance Band Upper Limit” is determined in Section 1 of Exhibit K.

“Permits” means all applications, approvals, authorizations, consents, filings, licenses, orders, permits or similar requirements imposed by any Governmental Authority, or the CAISO, in order to develop, construct, Operate, maintain, improve, refurbish or retire the Generating Facility or to Forecast or deliver the electric energy produced by the Generating Facility to Buyer.

“Person” means an individual, partnership, corporation, business trust, limited liability company, limited liability partnership, joint stock company, trust, unincorporated association, joint venture or other entity or a Governmental Authority.

“Physical Trade” has the meaning set forth in the CAISO Tariff.

“Physical Trade Settlement Amount” means the dollar amount calculated in accordance with Exhibit L.

“PIRP” or “Participating Intermittent Resource Program” means the CAISO’s intermittent resource program initially established pursuant to Amendment No. 42 of the CAISO Tariff in Docket No. ER02-922-000, or any successor program that Buyer determines accomplishes a similar purpose.

“PNode” has the meaning set forth in the CAISO Tariff.

“Power Output” means the average rate of electric energy delivery during one Metering Interval, converted to an hourly rate of electric energy delivery, in kWh per hour, that is equal to the product of Metered Energy for one Metering Interval, in kWh per Metering Interval, times the number of Metering Intervals in a one-hour period.

“Power Product” means (a) the Net Contract Capacity and (b) all electric energy produced by the Generating Facility, net of all Station Use and any and all Site Host Load.

“Product” means the Power Product and the Related Products.

“Project” means the Generating Facility.

“Prudent Electrical Practices” means those practices, methods and acts that would be implemented and followed by prudent operators of electric generating facilities in the Western United States, similar to the Generating Facility, during the relevant time period, which practices, methods and acts, in the exercise of prudent and responsible professional judgment in the light of the facts known at the time a decision was made, could reasonably have been expected to accomplish the desired result consistent with good business practices, reliability and safety.

Prudent Electrical Practices includes, at a minimum, those professionally responsible practices, methods and acts described in the preceding sentence that comply with the manufacturer’s warranties, restrictions in this Agreement, and the requirement of Governmental Authorities, WECC standards, the CAISO and Applicable Laws. Prudent Electrical Practices shall include taking reasonable steps to ensure that:

- (a) Equipment, materials, resources and supplies, including spare parts inventories, are available to meet the Generating Facility’s needs;
- (b) Sufficient operating personnel are available at all times and are adequately experienced, trained and licensed as necessary to Operate the Generating Facility properly and efficiently, and are capable of responding to reasonably foreseeable emergency conditions at the Generating Facility and Emergencies whether caused by events on or off the Site;
- (c) Preventative, routine, and non-routine maintenance and repairs are performed on a basis that ensures reliable, long term and safe operation of the Generating Facility, and are performed by knowledgeable, trained and experienced personnel utilizing proper equipment and tools;
- (d) Appropriate monitoring and testing are performed to ensure equipment is functioning as designed;

- (e) Equipment is not operated in a reckless manner, in violation of manufacturer's guidelines or in a manner unsafe to workers, the general public or the Transmission Provider's electric system, or contrary to environmental laws, permits or regulations or without regard to defined limitations, such as flood conditions, safety inspection requirements, operating voltage, current, volt ampere reactive (VAR) loading, frequency, rotational speed, polarity, synchronization, and control system limits; and
- (f) Equipment and components designed and manufactured to meet or exceed the standard of durability that is generally used for electric energy generation operations in the Western United States and will function properly over the full range of ambient temperature and weather conditions reasonably expected to occur at the Site and under both normal and emergency conditions.

“PPT” means Pacific Daylight time when California observes Daylight Savings Time and Pacific Standard Time otherwise.

“PTSA_i” has the meaning set forth in Section 2 of Exhibit L.

“PURPA” means the Public Utility Regulatory Policies Act of 1978, Public Law, 95-617, as amended from time to time.

“Qualifying Facility” means an electric energy generating facility that complies with the qualifying facility definition established by PURPA and any FERC rules as amended from time to time (18 Code of Federal Regulations Part 292, Section 292.203 et seq.) implementing PURPA and is certified as a Qualifying Facility by the FERC.

“Real-Time Forced Outage” means a Forced Outage which occurs only after 5:00 p.m. PPT on the day before the Trading Day.

“Real-Time Market” has the meaning set forth in the CAISO Tariff.

“Related Products” means (i) with respect to Resource Adequacy Benefits (a) that portion of the Resource Adequacy Benefits that are associated with the Firm Contract Capacity, and (b) to the extent that there are Resource Adequacy Benefits associated with the generating capacity of the Generating Facility other than the Firm Contract Capacity, that portion of the Resource Adequacy Benefits that are not associated with the Firm Contract Capacity and that are in excess of those Resource Adequacy Benefits used by Seller or by a Site Host, both in connection with the Host Site, to meet a known and established, at the point in time when the Resource Adequacy Benefits are to be used, resource adequacy obligation under any Resource Adequacy Ruling, and (ii) any Green Attributes, Capacity Attributes and all other attributes associated with the electric energy or capacity of the Generating Facility (but not including any Financial Incentives) that are in excess of those Green Attributes, Capacity Attributes or other attributes used, or retained for future use, by Seller or a Site Host, both in connection with the Host Site, to meet a known and established, at the point in time when the relevant attribute(s) are to be used or retained, obligation under Applicable Law.

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

“Resource Adequacy Benefits” means the rights and privileges attached to the Generating Facility that satisfy any Person’s resource adequacy obligations, as those obligations are set forth in any Resource Adequacy Rulings and shall include any local, zonal or otherwise locational attributes associated with the Generating Facility.

“Resource Adequacy Rulings” means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-06-024, 06-07-031 and any subsequent CPUC ruling or decision, or any other resource adequacy laws, rules or regulations enacted, adopted or promulgated by any applicable Governmental Authority, as such CPUC decisions, rulings, laws, rules or regulations may be amended or modified from time to time during the Term.

“Responsible Officer” means the chief financial officer, treasurer or any assistant treasurer of a Party or its Guarantor or any employee of a Party or its Guarantor designated by any of the foregoing.

“S&P” means the Standard & Poor’s Rating Group.

“Schedule” means the action of Buyer, or its designated representatives, of notifying, requesting, and confirming to the CAISO, the CAISO Approved Quantity of electric energy in a Buyer Parent Energy Schedule.

“Scheduled Amount” means the Day-Ahead Schedule comprised of the quantity (in MWh) of electric energy expected to be produced by the Generating Facility that is scheduled from Seller or Seller’s Scheduling Coordinator to Buyer in either a SC to SC Trade (before MRTU implementation) or Physical Trade in the IFM (upon MRTU implementation).

“Scheduled Output” is described in Section 3(b)(v) of Exhibit E.

“Scheduling Coordinator” means a Person certified by the CAISO for the purposes of undertaking the functions specified in Exhibit G.

“Scheduling Fee” means the Monthly Scheduling Fee and the SC Set-Up Fee.

“SC Replacement Date” has the meaning set forth in Section 7 of Exhibit G.

“SC Set-Up Fee” is described in Section 4(a) of Exhibit G.

“SC to SC Trade” means Scheduling Coordinator trades of energy from the Generating Facility by Seller, or Seller’s authorized agent, to Buyer in accordance with the CAISO Tariff.

“SC Trade Tolerance Band” means the greater of (a) three percent of the Scheduled Amount or (b) one MW.

“SDD Administrative Charge” has the meaning set forth in Section 2 of Exhibit K.

“SDD Charge” means the SDD Energy Charge and the SDD Administrative Charge.

“SDD Energy Charge” has the meaning set forth in Section 1 of Exhibit K.

“SEC” means the United States Securities and Exchange Commission, or any successor entity.

“Security Interest” has the meaning set forth in Section 1.03 of Exhibit F.

“Self-Schedule” has the meaning set forth in the CAISO Tariff.

“Seller” has the meaning set forth in the Preamble.

“Seller's Day-Ahead Forecast” means the most recently update Forecast submitted by 5:00 p.m. PPT on the day before the Trading Day.

“Seller's Energy Forecast” means Seller's most recently updated Forecast submitted 30 minutes before the commencement of any hour and in accordance with Exhibit I.

“Settlement Interval” has meaning set forth in the CAISO Tariff.

“Simple Interest Payment” means a dollar amount calculated by multiplying the:

- (a) Dollar amount on which the Simple Interest Payment is based; by
- (b) Federal Funds Effective Rate or Interest Rate as applicable; by
- (c) The result of dividing the number of days in the calculation period by 360.

“Site” means the real property on which the Generating Facility is located, as further described in Section 1.02(b) and Exhibit B.

“Site Control” means that Seller (a) owns the Site, (b) is the lessee of the Site under a Lease, (c) is the holder of a right-of-way grant or similar instrument with respect to the Site, or (d) is managing partner or other Person authorized to act in all matters relating to the control and Operation of the Site and Generating Facility.

“Site Host” means the Person or Persons purchasing Site Host Load.

“Site Host Load” means the electric energy and capacity produced by or associated with the Generating Facility that serves electrical loads (that are not Station Use) of Seller and/or one or more third parties conducted pursuant to California Public Utilities Code Section 218(b).

“Six-Hour Demonstration” has the meaning set forth in Section 3 of Exhibit D.

“SLIC” has the meaning set forth in Section 3 of Exhibit G.

“Small Power Production Facility” means a Qualifying Facility that complies with the requirements of 18 CFR §202.203(a), as amended from time to time.

“Startup Deadline” means the date set forth in Section 1.07(b) by which Seller must have achieved Initial Operation.

“Station Power” has the meaning set forth in the CAISO Tariff.

“Station Use” means electric energy produced by the Generating Facility that is:

- (a) Used within the Generating Facility to power the lights, motors, control systems and other electrical loads that are necessary for Operation; and
- (b) Consumed as losses within:
- (c) The low voltage, electrical distribution system of the Generating Facility;
 - i. The Generating Facility’s, or, if applicable, each Generating Unit’s [____]kV electric voltage step-up transformer; and
 - ii. The portion of the electric bus work that:
 1. Connects the high voltage side of the Generating Facility’s, or, if applicable, each Generating Unit’s electric voltage step-up transformer to the [Substation Name]; and
 2. Is located on the Generating Facility side of the measurement points for the CAISO-Approved Meters.

“20-Day Demonstration” has the meaning set forth in Section 1 of Exhibit C.

“Telemetry System” means a system of electronic components that interconnects the CAISO-Approved Meters and the Generating Facility’s control system with the CAISO’s Energy Communications Network as set forth in Section 3.09.

“Term” has the meaning set forth in Section 1.01.

“Termination Payment” has the meaning set forth in Section 6.03.

“Term Year” means a 12-month period beginning on the first day of the Term and each successive 12-month period thereafter.

“TOD Period” means the time of delivery period used to calculate the Monthly Contract Payment set forth in Section 4 of Exhibit D.

“TOD Period Capacity Payment” means the monthly payment to be calculated and made by Buyer to Seller for Power Product capacity during each TOD Period for the month for which a calculation is being performed, as set forth in Section 3 of Exhibit D, in dollars.

“TOD Period Energy Payment” means the monthly payment to be calculated and made by Buyer to Seller for the Metered Energy during each TOD Period for the month for which a calculation is being performed, as set forth in Section 2 of Exhibit D, in dollars.

“TOD Period Energy Price” means the price used to calculate the TOD Period Energy Payment, as set forth in Section 2(b) of Exhibit D, in dollars per kWh.

“Topping-Cycle Cogeneration Facility” has the meaning set forth in 18 CFR §292.202(d), as amended from time to time.

“Trading Day” means the day in which Day-Ahead trading occurs in accordance with the WECC Preschedule Calendar (as found on the WECC’s website).

“Transmission Curtailment Credit Value” or “TCV” is the adder applied to the Earned Capacity Hours to account for the time during which Seller is not able to meet the Firm Contract Capacity obligation due to a curtailment of Power Product requested by the Transmission Provider, the CAISO or otherwise, as determined in accordance with Section 3 of Exhibit D-3.

“Transmission Provider” means any Person responsible for the interconnection of the Generating Facility with the CAISO Controlled Grid or transmitting the Metered Energy on behalf of Seller from the Generating Facility to the Delivery Point.

“Uninstructed Deviation GMC Rate” means any administrative charge applied by the CAISO due to an Uninstructed Imbalance Energy.

“Uninstructed Deviation Penalty” means the penalty set forth in the CAISO Tariff.

“Uninstructed Imbalance Energy” has the meaning set forth in the CAISO Tariff.

“Web Client” has the meaning set forth in Section 2(a) of Exhibit R.

“Web Scheduler” has the meaning set forth in Section 2 of Exhibit E.

“WECC” means the Western Electricity Coordinating Council, the regional reliability council for the western United States, northwestern Mexico, and southwestern Canada, or any successor entity.

*** End of Exhibit A ***

EXHIBIT B
Generating Facility and Site Description

1. Generating Facility Description.

{Buyer Comment: Provide description of the Generating Facility equipment, systems, control systems and features, including a site plan drawing and a one-line diagram, and the generator nameplate(s).}

2. Site Description.

{Buyer Comment: Provide a legal description of the site, including a site map.}

*** End of Exhibit B ***

EXHIBIT C
Demonstration

This Exhibit C describes the procedure by which Seller must demonstrate the ability of the Generating Facility to supply the Firm Contract Capacity by performing a Twenty-Day Demonstration and a Six-Hour Demonstration.

An Existing Qualifying Facility is not required to perform the Twenty-Day Demonstration.

A Six-Hour Demonstration must be performed upon the request of either Buyer or Seller if: (a) there is a Material Change in the Qualifying Facility; (b) there has been a Force Majeure directly affecting the Firm Contract Capacity of the Generating Facility; (d) there has been a Forced Outage directly affecting the Generating Facility which lasts for more than two weeks; or (e) the Generating Facility fails, during a peak month, to meet the minimum Capacity Performance Requirements as set forth in Section 1.04 during a peak TOD Period (Capacity).

New Qualifying Facilities are required, at Buyer's election, to perform both the 20-Day Demonstration and Six-Hour Demonstration.

1. Demonstration Dates for the Initial Demonstration. The 20-Day Demonstration shall commence at noon on a date following or coincident with the actual commencement of the Term that is mutually agreed upon by Buyer and Seller and shall extend for a total period of 20 consecutive non-holiday weekdays (the "20-Day Demonstration").

The Six-Hour Demonstration must be scheduled for a non-holiday weekday within the 20-Day Demonstration period.

Concurrently with the selection of the commencement date for the 20-Day Demonstration, Seller shall also select which Generating Units will be the Generating Units for the Demonstration, if applicable. This selection may not be changed for any reason whatsoever during the Demonstration or the Demonstration will be repeated in its entirety.

Buyer and Seller may each, upon three Business Days advance Notice, make up to two requests to reschedule the commencement date for either the 20-Day Demonstration or the Six-Hour Demonstration.

The commencement date for the Six-Hour Demonstration may only be rescheduled to a different date within the 20-Day Demonstration.

Neither the 20-Day Demonstration nor a Six-Hour Demonstration may be rescheduled once it has commenced, except as set forth under Section 4 of this Exhibit C.

2. 20-Day Demonstration. In order to pass the 20-Day Demonstration, the Generating Facility must achieve a Capacity Demonstration Factor of *greater than or equal* to 0.95. The Capacity Demonstration Factor is calculated as follows:

$$\text{CAPACITY DEMONSTRATION FACTOR} = A / (B \times C)$$

Where A = The number of Capacity Measurement Intervals during the test period when the Power Output equals or exceeds the Firm Contract Capacity specified in Section 1.02(d).

B = The total number of hours during the 20 consecutive non-holiday weekday test period that begin at noon and end at 6:00 p.m. (i.e., 120 hours).

C = The number of Capacity Measurement Intervals within each hour.

3. Six-Hour Demonstration. For the Six-Hour Demonstration, Seller shall demonstrate the ability of the Generating Facility to Operate for a six consecutive hour period, starting at noon and ending at 6:00 p.m. (the "Six-Hour Demonstration"). The Generating Facility shall be deemed to have satisfied the Six-Hour Demonstration if the Demonstration Rate of Metered Energy in each and every Metering Interval during the six-hour period equals or exceeds the Firm Contract Capacity set forth in Section 1.02(d).

4. Remedial Action for Seller's Failing a Demonstration.

(a) If, during the initial Demonstration, the Generating Facility fails to Demonstrate the Firm Contract Capacity during either the 20-Day Demonstration or the Six-Hour Demonstration, Seller may request one additional 20-Day Demonstration or one additional Six-Hour Demonstration within the first 20-Day Demonstration upon providing three Business Days advance Notice sent by facsimile transmission or e-mail.

Any new 20-Day Demonstration must include another Six-Hour Demonstration.

(b) If, during the second Demonstration, the Generating Facility fails to Demonstrate the Firm Contract Capacity during either the 20-Day Demonstration or the Six-Hour Demonstration due to an abnormal and unforeseeable operating condition, as verified and determined in Buyer's sole judgment, one additional and final Demonstration may be scheduled.

5. Demonstrated Firm Contract Capacity.

(a) If the Generating Facility passes both the 20-Day Demonstration and the Six-Hour Demonstration, the Demonstrated Firm Contract Capacity shall be deemed to be equal to the Firm Contract Capacity in Section 1.02(d).

- (b) If the Generating Facility fails to meet the minimum requirements of either the 20-Day Demonstration or the Six-Hour Demonstration during the initial Demonstration and, if one or two additional Demonstrations are conducted at Seller's request pursuant to the procedure described above and Seller fails in both of these additional Demonstrations to meet the minimum requirements of either the 20-Day Demonstration or the Six-Hour Demonstration, *then* the Demonstrated Firm Contract Capacity shall be deemed to be the lowest of:
- (i) The lowest Power Output achieved in 95% of the Capacity Measurement Intervals during the 20-Day Demonstration;
 - (ii) The lowest Power Output in any Capacity Measurement Interval during the Six-Hour Demonstration; and
 - (iii) A Firm Contract Capacity amount, designated by Seller and approved by Buyer, that represents a Power Output that the Generating Facility can achieve during all hours of the entire Term while conforming with Prudent Electrical Practices.

In all instances, the Firm Contract Capacity for Seller shall either (1) be reduced pursuant to the applicable Demonstration(s), or (2) increased pursuant to the applicable Demonstration(s), provided that such increase may not exceed the limits for Firm Contract Capacity set forth in Section 1.02(d). The Net Contract Capacity and As-Available Contract Capacity, if applicable, may also be adjusted by Buyer based on the results of the Demonstration and the circumstances under which a Demonstration was required.

6. Representation and Access. Buyer representatives may attend the Demonstration or any portion thereof, including the setup, start-up, ramp-up, ramp-down and shutdown of the Generating Facility related to the Demonstration. Buyer's representatives may, as part of their observation of the Demonstration, conduct a site visual inspection of the Generating Facility and the Site; *provided, however*, that Buyer's representatives follow the requirements set forth in Section 3.19.

Seller shall provide Buyer access to and copies of control room logs, control system display screens, and instrumentation data during and after the Demonstrations.

7. Cost of Demonstration. Seller is responsible for all costs associated with operating the Generating Facility during the Demonstrations, including the cost of the natural gas fuel. Buyer is responsible for all of its costs associated with witnessing the Demonstration and shall pay for the electric energy and electric capacity produced during the Demonstration in the next regular Monthly Contract Payment that occurs at least 30 days after the completion of the Demonstration.

*** End of Exhibit C ***

EXHIBIT D
Monthly Contract Payment Calculation

1. Introduction. Each Monthly Contract Payment is calculated as follows:

MONTHLY CONTRACT PAYMENT, in dollars =

TOD Period Energy Payment_{1st TOD Period} +
TOD Period Energy Payment_{2nd TOD Period} +
TOD Period Energy Payment_{3rd TOD Period} +
TOD Period Energy Payment_{4th TOD Period} +
TOD Period Capacity Payment_{1st TOD Period} +
TOD Period Capacity Payment_{2nd TOD Period} +
TOD Period Capacity Payment_{3rd TOD Period} +
TOD Period Capacity Payment_{4th TOD Period}

All TOD Period Energy Payments shall be calculated as set forth in Section 2 of this Exhibit D.

All TOD Period Capacity Payments shall be calculated as set forth in Section 3 of this Exhibit D.

The “1st TOD Period,” “2nd TOD Period,” “3rd TOD Period” and “4th TOD Period” subscripts refer to the four TOD Periods that apply for the calculation month, as set forth in Section 4 of this Exhibit D.

2. TOD Period Energy Payment Calculation.

- (a) Each monthly TOD Period Energy Payment is calculated as follows:

TOD PERIOD ENERGY PAYMENT, in dollars = EP x APE x LF

Where:

EP = TOD Period Energy Price, stated in Section 2(b) of this Exhibit D, in dollar per kWh.

APE = The sum of the Allowed Payment Energy from the Generating Facility for all hours for the TOD Period, in kWh, as determined in accordance with Section 2(c) of this Exhibit D.

LF = Any loss or other adjustment factor required by Applicable Law.

Once 120% of the Expected Term Year Net Energy Production is achieved, no further energy payments will be calculated for the remaining TOD Periods within any remaining months of the current Term Year.

- (b) Factor “EP” in Section 2(a) of this Exhibit D. The TOD Period Energy Price for any energy TOD Period of any month shall be calculated pursuant to the Market Index Formula adopted by the CPUC in the Decision and in subsequent rulings of the CPUC implementing the Decision, including any TOD period allocation factors approved or revised by the CPUC from time to time, or pursuant to any such other formula as the CPUC may adopt from time to time for energy payments to be made to Buyer’s Qualifying Facilities.
- (c) Factor “APE” in Section 2(a) of this Exhibit D. The Allowed Payment Energy for each TOD Period of any month is calculated as follows:

APE = The sum of the Metered Energy when Buyer is Scheduling Coordinator or Scheduled Amounts when Buyer is not Scheduling Coordinator from the Generating Facility for all hours for the TOD Period, in kWh.

3. TOD Period Capacity Payment Calculation.

- (a) Each monthly TOD Period Capacity Payment is calculated as follows:

TOD PERIOD CAPACITY PAYMENT in dollars = (ACP + FCP) x CAF

Where:

- ACP = As-Available Capacity Payment for the TOD Period, as determined in accordance with Section 3(b) of this Exhibit D, in dollars per year.
- FCP = Firm Capacity Payment for the TOD Period, as determined in accordance with Section 3(g) of this Exhibit D, in dollars per year.
- CAF = The CPUC approved Capacity Payment Allocation Factor for the TOD Period in the year, based upon the formula adopted by the CPUC in D.01-03-067. For purposes of this Agreement, the CPUC approved Capacity Payment Allocation Factors are:

Capacity Payment Allocation Factors		
Season	TOD Period	Factor
Summer	On-Peak	0.19048
	Partial-Peak	0.00595
	Off-Peak	0.00005
	Super Off-Peak	0
Winter	On-Peak	N/A
	Partial-Peak	0.02656
	Off-Peak	0.00019
	Super-Off-Peak	0

- (b) Factor “ACP” in Section 3(a) of this Exhibit D. The As-Available Capacity Payment shall be calculated pursuant to the following formula:

$$\text{AS-AVAILABLE CAPACITY PAYMENT, in dollars} \\ = \text{AAC} \times \text{AACP}$$

Where:

AAC = As-Available Capacity for the TOD Period, as determined in accordance with Section 3(c) of this Exhibit D, in kWh per hour.

AACP= The As-Available Capacity Price adopted by the CPUC in the Decision for the applicable year as set forth in the following table:

As-Available Capacity Price	
Year	Price \$/kW-yr
2008	35.87
2009	37.61
2010	39.39
2011	41.22
2012	43.09
2013	45.00
2014	46.97
2015	48.98
2016	51.05
2017	53.16

- (c) Factor “AAC” in Section 3(b) of this Exhibit D. The As-Available Capacity for each TOD Period of each month is calculated as follows:

$$\text{AS-AVAILABLE CAPACITY, in kWh per hour} = \text{MAC} - \text{FCC}$$

Where:

MAC = The Maximum Allowable Capacity for the TOD Period as determined in Section 3(d) in this Exhibit D, in kWh per hour.

FCC = The Firm Contract Capacity for all TOD Periods during a month.

- (d) Factor “MAC” in Section 3(c) of this Exhibit D. The Maximum Allowed Capacity for each monthly TOD Period is calculated as follows:

MAXIMUM ALLOWED CAPACITY, in kWh per hour = LE / PH

Where:

LE = The sum of the Limited TOD Energy from the Generating Facility for all hours of the TOD Period, as determined in Section 3(e) of this Exhibit D, in kWh.

PH = The total number of hours in the TOD Period (period hours).

- (e) Factor “LE” in Section 3(d) of this Exhibit D. The Limited TOD Energy for each TOD Period of any month is calculated as follows:

LIMITED TOD ENERGY, in kWh =
$$\sum_{\text{FirstHour}}^{\text{LastHour}} (E)_{\text{Hour}}$$

Where:

E = The lesser of: (i) Metered Energy for the applicable hour, in kWh; and (ii) Allowed Hourly Energy, as determined in Section 3(f) of this Exhibit D, in kWh.

First Hour = First hour of the applicable TOD Period.

Last Hour = Last hour of the applicable TOD Period.

- (f) Factor “E” in Section 3(e) of this Exhibit D. The Allowed Hourly Energy is calculated as follows:

ALLOWED HOURLY ENERGY in kWh = 1 hour x NCC

Where:

NCC = The Net Contract Capacity, as set forth in Section 1.02(d), in kW.

- (g) Factor “FCP” in Section 3(a) of this Exhibit D. Each monthly Firm Capacity Payment is calculated as follows:

FIRM CAPACITY PAYMENT in dollars = MFCP x AF

Where:

MFCP = Maximum Firm Capacity Payment for the TOD Period, as determined in accordance with Section 3(h) of this Exhibit D, in dollars.

- AF = (i) One (1), if the Availability Credit Factor, as calculated in Section 3(i) of this Exhibit D is greater than or equal to the minimum Firm Capacity Performance Requirement as set forth in Section 1.04; or
- (ii) Zero (0), if the Availability Credit Factor, as calculated in Section 3(i) of this Exhibit D is less than the applicable hurdle Capacity Performance Requirement as set forth in Section 1.04; or
- (iii) If neither (i) nor (ii) are true, then AF is the Availability Penalty Factor, as calculated in Section 3(n) of this Exhibit D.

- (h) Factor “MFCP” in Section 3(g) of this Exhibit D. The Maximum Firm Capacity Payment for each TOD Period of each month is calculated as follows:

MAXIMUM FIRM CAPACITY PAYMENT, in dollars = FCC x CP

Where:

FCC = The Firm Contract Capacity for all TOD Periods during a month is the amount in Section 1.02(d), in kWh per hour.

CP = Firm Capacity Price set forth in Section 1.06(a), in \$/kW-year.

- (i) Factor “ACF” in Section 3(g) of this Exhibit D. The Availability Credit Factor for each monthly TOD Period is calculated as follows:

AVAILABILTY CREDIT FACTOR = (ECH + CCH) / PH

Where:

ECH = The total number of Earned Capacity Hours, determined in accordance with Section 3(j) of this Exhibit D.

CCH = The total number of Capacity Credit Hours, determined in accordance with Section 3(m) of this Exhibit D.

PH = The total number of hours in the TOD Period (period hours).

- (j) Factor “ECH” in Section 3(i) of this Exhibit D. The Earned Capacity Hours for each monthly TOD Period is calculated as follows:

EARNED CAPACITY HOURS = FE / FCC

Where:

FE = The sum of the Firm TOD Energy from the Generating Facility for all hours of the TOD Period, as determined in Section 3(k) of this Exhibit D, in kWh.

FCC = The Firm Contract Capacity for all TOD Periods during a month is the amount in Section 1.02(d) in kWh per hour.

- (k) Factor “FE” in Section 3(j) of this Exhibit D. The Firm TOD Energy for each TOD Period of any month is calculated as follows:

$$\text{FIRM TOD ENERGY in kWh} = \sum_{\text{FirstHour}}^{\text{LastHour}} (E)_{\text{Hour}}$$

Where:

E = The lesser of: (i) Metered Energy for the applicable hour in kWh; and (ii) Allowed Firm Energy, as determined in Section 3(l) of this Exhibit D, in kWh.

First Hour = First hour of the applicable TOD Period.

Last Hour = Last hour of the applicable TOD Period.

- (l) Factor “E” in Section 3(k) of this Exhibit D. The Allowed Firm Energy is calculated as follows:

$$\text{ALLOWED FIRM ENERGY in kWh} = 1 \text{ hour} \times \text{FCC}$$

Where:

FCC = The Firm Contract Capacity set forth in Section 1.02(d).

- (m) Factor “CCH” in Section 3(i) of this Exhibit D. The total number of Capacity Credit Hours for each monthly TOD Period is determined as follows:

$$\text{CAPACITY CREDIT HOURS} = \text{TCV} + \text{FCV} + \text{MCV}$$

Where:

TCV = The total Transmission Curtailment Credit Value during the TOD Period, determined in accordance with Section 3 of Exhibit D-3, when the Metered Energy was curtailed by either the CAISO or the Transmission Provider.

FCV = The total Force Majeure Credit Value during the TOD Period, determined in accordance with Section 3 of Exhibit D-1, when the Metered Energy was curtailed by a Force Majeure event claimed by Buyer to the extent the Generating Facility is otherwise available.

MCV = The total Maintenance Credit Value during the TOD Period, determined in accordance with Section 9 of Exhibit E.

- (n) Factor “APF” in Section 3(g) of this Exhibit D. The Availability Penalty Factor for each monthly TOD Period is calculated as follows:

$$\text{AVAILABILITY PENALTY FACTOR} = 1.0 - 2.0 \times (\text{CR} - \text{ACF})$$

Where:

APF = The greater of: (i) zero; and (ii) the result of the above equation for APF.

CR = The minimum Capacity Performance Requirement, as set forth in Section 1.04, in kW.

ACF = The Availability Credit Factor determined in accordance with Section 3(i) of this Exhibit D.

4. Time of Delivery Periods.

These Time of Delivery Periods for Energy and Capacity are subject to modification by the CPUC from time to time.

For Energy (subject to Exhibit D, 2 (b))

<i>TOD Period</i>	<i>Summer May 1st – Oct 31st</i>	<i>Winter Nov 1st – April 30th</i>	<i>Applicable Days</i>
On-Peak	Noon – 6:00 p.m.	Not Applicable.	Weekdays except Holidays.
Partial-Peak	8:30 a.m. – Noon	8:30 a.m. - 9:30 p.m.	Weekdays except Holidays.
	6:00 p.m. – 9:30 p.m.		Weekdays except Holidays.
Off-Peak	9:30 p.m. – 1:00 a.m.	9:30 p.m. – 1:00 a.m.	Weekdays except Holidays.
	5:00 a.m. – 8:30 a.m.	5:00 a.m. – 8:30 a.m.	Weekdays except Holidays.
	5:00 a.m. – 1:00 a.m.	5:00 a.m. – 1:00 a.m.	Weekends and Holidays.
Super Off-Peak	1:00 a.m. – 5:00 a.m.	1:00 a.m. – 5:00 a.m.	All Days.

For Capacity:

<i>TOD Period</i>	<i>Summer June 1st – Sept 30th</i>	<i>Winter Oct 1st – May 31st</i>	<i>Applicable Days</i>
On-Peak	Noon – 6:00 p.m.	Not Applicable.	Weekdays except Holidays.
Partial-Peak	8:30 a.m. – Noon	8:30 a.m. - 9:30 p.m.	Weekdays except Holidays.
	6:00 p.m. – 9:30 p.m.		Weekdays except Holidays.
Off-Peak	9:30 p.m. – 1:00 a.m.	9:30 p.m. – 1:00 a.m.	Weekdays except Holidays.
	5:00 a.m. – 8:30 a.m.	5:00 a.m. – 8:30 a.m.	Weekdays except Holidays.
	5:00 a.m. – 1:00 a.m.	5:00 a.m. – 1:00 a.m.	Weekends and Holidays.
Super Off-Peak	1:00 a.m. – 5:00 a.m.	1:00 a.m. – 5:00 a.m.	All Days.

“Holiday”, as used in the above tables, means New Year’s Day, Presidents’ Day, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day, and Christmas Day. When a Holiday falls on a Sunday, the following Monday will be recognized as a Holiday. No change will be made for Holidays falling on Saturday.

*** End of Exhibit D ***

EXHIBIT D-1
Force Majeure Credit Value

1. **Overview.** This Exhibit D-1 describes the methodology for computing Force Majeure Curtailment Credit Value.
2. **Scheduling.** Each Curtailment Period shall be scheduled to start and stop at the beginning of an hour. Also, the notification time shall be rounded to the nearest hour. For examples: 11:29 becomes 11:00 and 11:30 becomes 12:00.
3. **Calculation of Force Majeure Curtailment Credit Value.** For every period of Force Majeure curtailment requested by Buyer, Buyer shall compute the Force Majeure Curtailment Credit Value following these steps:
 - (a) A Benchmark Capacity shall be determined for every Curtailment Period. “Benchmark Capacity” is defined as the highest hourly Power Output, not to exceed Firm Contract Capacity, during the first 24-hour period which precedes the curtailment notification and does not overlap another Curtailment Period, Maintenance Outage, or Major Overhaul.
 - (b) For each hour in the Curtailment Period, an Hourly Credit Value shall be calculated using following formula:

$$\text{Hourly Credit Value} = (\text{Delta} / \text{Benchmark Capacity}) * 1 \text{ hour}$$

where *Delta* is the greater of

Benchmark Capacity minus Power Output

or

zero

In case of division by zero, the value being calculated shall be zero.

- (c) For each hour in the Curtailment Period, the Hourly Credit Value shall be applied as Force Majeure Curtailment Credit Value, by TOD Period, to the Capacity Credit Hours in Section 3(m) of Exhibit D, until the Hourly Credit Values for all hours in the Curtailment Period have been applied.
- (d) After all the Hourly Credit Values have been applied, the final monthly Force Majeure Curtailment Credit Value shall be rounded to the nearest whole number. However, all intermediate computations leading up to the final result shall be carried out with appropriate numeric precision.

*** End of Exhibit D-1 ***

EXHIBIT D-2
Transmission Curtailment Credit Value

1. Overview. This Exhibit D-2 describes the methodology for computing Transmission Curtailment Credit Value.
2. Scheduling. Each Curtailment Period shall be scheduled to start and stop at the beginning of an hour. Also, the notification time shall be rounded to the nearest hour. For examples: 11:29 becomes 11:00 and 11:30 becomes 12:00.
3. Calculation of Transmission Curtailment Credit Value. For every period of curtailment of Power Product requested by the Transmission Provider, the CAISO or otherwise, Buyer shall compute the Transmission Curtailment Credit Value following these steps:
 - (a) A Benchmark Capacity shall be determined for every Curtailment Period. “Benchmark Capacity” is defined as the highest hourly Power Output, not to exceed Firm Contract Capacity, during the first 24-hour period which precedes the curtailment notification and does not overlap another Curtailment Period, Maintenance Outage, or Major Overhaul.
 - (b) For each hour in the Curtailment Period, an Hourly Credit Value shall be calculated using following formula:

$$\text{Hourly Credit Value} = (\text{Delta} / \text{Benchmark Capacity}) * 1 \text{ hour}$$

where *Delta* is the greater of:

Benchmark Capacity minus Power Output

or

zero

In case of division by zero, the value being calculated shall be zero.

- (c) For each hour in the Curtailment Period, the Hourly Credit Value shall be applied as Transmission Curtailment Credit Value, by TOD Period, to the Capacity Credit Hours in Section 3(m) of Exhibit D, until the Hourly Credit Values for all hours in the Curtailment Period have been applied.
 - (d) After all the Hourly Credit Values have been applied, the final monthly Transmission Curtailment Credit Value shall be rounded to the nearest whole number. However, all intermediate computations leading up to the final result shall be carried out with appropriate numeric precision.

*** End of Exhibit D-2 ***

EXHIBIT E

Scheduling and Calculation of Maintenance Outage and Major Overhaul

1. **Overview.** Seller shall follow the protocols established in this Exhibit E for the scheduling of Maintenance Outages and Major Overhauls, and for any subsequent notification that may be required to update a previously scheduled Maintenance Outage or Major Overhaul. This Exhibit E also describes the methodology for computing Maintenance Credit Value and Maintenance Debit Value.
2. **Notification.** Seller shall direct all Maintenance Outage and Major Overhaul notifications to Buyer's Web-based Outage Scheduling System or an e-mail address designated by Buyer (the "Web Scheduler") and Generation Operations Center, whose URL and telephone number(s) respectively can be found in Exhibit N.
3. **Scheduling.**
 - (a) Seller shall schedule all Maintenance Outages and Major Overhauls with Buyer in advance. The notice requirements are as follows:

<i>Outage Duration</i>	<i>Minimum Advance Notice</i>
Maintenance Outage, Less than 1 day	24 Hours
Maintenance Outage, 1 day or more	168 Hours
Major Overhaul	6 Months

- (b) Seller shall provide the following information when scheduling a Maintenance Outage or a Major Overhaul via the Web Scheduler:
 - (i) The identification number set forth on the cover page of this Agreement;
 - (ii) Password (supplied by Buyer);
 - (iii) Generating Unit Number*;
 - (iv) Outage Period**, including:
 - (1) The date and time when Seller expects the Power Output to be reduced, and
 - (2) The date and time when Seller expects the Power Output to return to the Firm Contract Capacity.
 - (v) Scheduled Output***, in kW, which will be on-line during the Outage Period.
 - (vi) Reason for the requested Maintenance Outage or Major Overhaul.

(vii) Capacity Credit Period****, including:

- (1) The date and time when credit is requested to begin, and
- (2) The date and time when credit is requested to end.

**Unit designation is applicable only when the contract calls for separate tracking of outage allowance for each Generating Unit.*

***If credit is requested for an outage, the Outage Period must be the same as the Capacity Credit Period. If the Outage Period is different from the Capacity Credit Period, no credit will be given.*

****If unit designation is applicable, Seller must provide the expected Scheduled Output of the Generating Unit scheduled for maintenance; otherwise, Seller must provide the expected Scheduled Output of the Generating Facility.*

*****The Capacity Credit Period information is not applicable if Seller requests that no credit be applied to the outage. When no credit is requested, no outage allowance will be used.*

4. Rescheduling.

- (a) A Maintenance Outage may be rescheduled if Seller's request to reschedule is received by Buyer no later than 5:00 a.m. PPT on the day before the Maintenance Outage was previously scheduled to begin.
- (b) A Major Overhaul may be rescheduled provided:
 - (i) The rescheduled Major Overhaul begins six months or more after the first outage notification date and time;
 - (ii) The notification to reschedule is made at least one week before the Major Overhaul was previously scheduled to begin; and
 - (iii) There is at least a one-month period between the notification to reschedule and the commencement of the rescheduled Major Overhaul.
- (c) Maintenance Outages and Major Overhauls may be rescheduled more than once.

5. Extension.

- (a) Seller may extend a Maintenance Outage or a Major Overhaul by notifying Buyer of the extension no later than 5:00 a.m. PPT on the day before the outage was previously scheduled to end.

- (b) Maintenance Outages and Major Overhauls may be extended more than once.
 - (c) For a Maintenance Outage which is less than 24 hours in duration, the extension cannot result in a total outage duration greater than 23 hours.
6. Cancellation. If Seller cancels a scheduled Maintenance Outage or Major Overhaul, a cancellation notice must be received by Buyer no later than 5:00 a.m. PPT on the day before the such Maintenance Outage or Major Overhaul was scheduled to begin.
7. Updating Scheduled Output.
- (a) The Scheduled Output must always follow the Power Output as closely as possible. If a change in the Power Output is anticipated or occurs during a Maintenance Outage or a Major Overhaul before 5:00 a.m. PPT on the day before the such Maintenance Outage or Major Overhaul is scheduled to end, the Scheduled Output must be updated as soon as possible via the Web Scheduler. Scheduled Output cannot be updated once the Maintenance Outage or Major Overhaul is over.
 - (b) Multiple updates to the Scheduled Output can be submitted if necessary.
 - (c) If a Maintenance Outage or a Major Overhaul is completed ahead of schedule and Seller's Power Output has returned to the Firm Contract Capacity earlier than expected, Seller may advise Buyer of the situation by providing an update to the Scheduled Output as described in Section 7(a) of this Exhibit E.
8. Restrictions.
- (a) Maintenance Outage and Major Overhaul may not be scheduled from June 1st through September 30th.
 - (b) Each Outage Period and Capacity Credit Period must be scheduled to start and stop at the beginning of an hour. Also, when scheduling an outage, the notification time shall be rounded to the nearest hour. For examples: 11:29 becomes 11:00 and 11:30 becomes 12:00.
 - (c) Seller shall not schedule a Maintenance Outage or a Major Overhaul that overlaps another Maintenance Outage, Major Overhaul, or Curtailment Period already scheduled on the Generating Facility. If unit designation is applicable in Section 3(b)(iii) of this Exhibit E, this restriction applies to the Generating Unit.
9. Maintenance Credit Calculation. For every properly scheduled Maintenance Outage and Major Overhaul, Buyer shall compute and apply the associated Maintenance Credit Value and the Maintenance Debit Value following these steps:

- (a) A Benchmark Capacity shall be determined for every scheduled Maintenance Outage and Major Overhaul. “Benchmark Capacity” is defined as the highest hourly Power Output, not to exceed Firm Contract Capacity, at or after the time of outage notification, and before the start of the outage. If the outage is rescheduled, the most recent notification time shall be used in defining Benchmark Capacity. If the outage is extended, or its Scheduled Output is updated, the notification time before the most recent one shall be used in defining Benchmark Capacity.

In the special case of a less-than-one-day Maintenance Outage that directly follows another less-than-one-day Maintenance Outage, Benchmark Capacity of the outage that follows is defined as the highest hourly Power Output, not to exceed Firm Contract Capacity, between these two outage time periods. In the event of back-to-back, less-than-one-day Maintenance Outages, Benchmark Capacity for the second outage shall be zero.

- (b) For each hour in the Outage Period of the Maintenance Outage or the Major Overhaul, an Hourly Credit Value and Hourly Debit Value shall be calculated using following formulas:

- (i) Hourly Credit Value is based on the difference between Benchmark Capacity and Power Output for the hour or the difference between Benchmark Capacity and Scheduled Output for the hour, whichever difference is smaller.

$$\text{Hourly Credit Value} = (\textit{Delta} / \text{Benchmark Capacity}) * 1 \text{ hour}$$

where *Delta* is the greater of

Benchmark Capacity minus the greater of Scheduled Output or Power Output

or

zero

- (ii) Hourly Debit Value is based on the difference between Benchmark Capacity and Scheduled Output for the hour, unless this difference is less than the absolute difference between Power Output and Scheduled Output for the hour, in which case Hourly Debit Value shall be based on this absolute difference.

$$\text{Hourly Debit Value} = \textit{Normalized Delta} * 1 \text{ hour}$$

where *Normalized Delta* is the greatest of

(Benchmark Capacity - Scheduled Output) / Benchmark Capacity

or

(Scheduled Output - Power Output) / Scheduled Output

or

(Power Output - Scheduled Output) / Power Output

In case of division by zero, the value being calculated shall be zero.

- (c) For each hour in the Outage Period, the Hourly Credit Value shall be applied as Maintenance Credit Value, by TOD Period, to the Capacity Credit Hours in Section 3(m) of Exhibit D, until the Hourly Credit Values for all hours in the Outage Period have been applied, or until the condition described in Section 9(d) of this Exhibit E is met, whichever comes first.
- (d) Simultaneous to Section 9(c) of this Exhibit E, for each hour in the Outage Period, the Hourly Debit Value shall be accumulated as Maintenance Debit Value in a year-to-date account whose increasing total is to be compared to the appropriate limit set forth in Sections 1.05(a) or (b). Once the year-to-date total reaches or exceeds the limit, no more Hourly Credit Values shall be applied.
- (e) After all the Hourly Credit Values have been applied and the Hourly Debit Values accounted for, the final monthly Maintenance Credit Value and the year-to-date cumulative Maintenance Debit Value shall be rounded to the nearest whole number. However, all intermediate computations leading up to the final result shall be carried out with appropriate numeric precision.

The above description of the evaluation process assumes that the outage was properly scheduled with sufficient advance notice pursuant to this Exhibit E and was approved by Buyer (or the CAISO, if applicable). Any deviation from the proper scheduling protocol can result in reduced Maintenance Credit Value or increased Maintenance Debit Value.

*** End of Exhibit E ***

EXHIBIT F
New Qualifying Facilities Requirements

1.01 Financial Information.

- (a) If requested by Buyer, Seller shall deliver the following financial statements, which in all cases shall be for the most recent accounting period and prepared in accordance with GAAP:
- (i) Within 120 days following the end of each fiscal year, a copy of its annual report containing audited consolidated financial statements (income statement, balance sheet, statement of cash flows and statement of retained earnings and all accompanying notes) for such fiscal year, setting forth in each case in comparative form the figures for the previous year; and
 - (ii) Within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of its and its quarterly report containing consolidated financial statements (income statement, balance sheet, statement of cash flows and statement of retained earnings and all accompanying notes) for such fiscal quarter and the portion of the fiscal year through the end of such quarter, setting forth in each case in comparative form the figures for the previous year;
- provided, however,* that if Seller is not an SEC reporting company or if the financial statements required under 1.01(a)(i) or 1.01(a)(ii) of this Exhibit F are not audited financial statements, a Responsible Officer of Seller will certify such financial statements as being in accordance with all Applicable Laws, prepared in accordance with GAAP and fairly stated in all material respects (subject to normal year end audit adjustments for the quarterly financial statements).
- (b) For purposes of the requirement set forth in Section 1.01(a) of this Exhibit F:
- (i) If a Party or its Guarantor's financial statements are publicly available electronically on the website of such Party, its Guarantor or the SEC, then such Party shall be deemed to have met this requirement; and
 - (ii) Should any such financial 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 producing party diligently pursues the preparation, certification and delivery of the statements.

1.02 Performance Assurance.

- (a) Posting Performance Assurance. On or before the commencement of the Term, Seller shall post Performance Assurance with Buyer, and shall maintain the

Performance Assurance Amount shall at all times on and after the commencement of the Term until such time as Seller has satisfied all monetary obligations which survive any termination of this Agreement, not to exceed one year following the end of the Term.

The Performance Assurance Amount shall be either in the form of cash or Letter of Credit acceptable to Buyer; *provided, however*, that as of the commencement of the Term, if Seller has posted the Development Security in the form of cash or a Letter of Credit and Buyer has either not returned the Development Security to Seller or given Seller Notice, in accordance with this Exhibit F, of its determination regarding the disposition of the Development Security by such date, then Seller may withhold the portion of the Performance Assurance Amount equal to the Development Security or any portion thereof held by Buyer until three Business Days following the later of Seller's receipt or forfeiture of the Development Security or any portion thereof pursuant to Section 1.04(c) or (e) of this Exhibit F, after which Seller shall be obligated to post the full Performance Assurance Amount.

In lieu of cash or a Letter of Credit, Buyer may accept a Guaranty Agreement, in accordance with Section 1.02(c) of this Exhibit F, from a Guarantor acceptable to Buyer to satisfy Seller's Performance Assurance obligation.

- (b) Letters of Credit. Performance Assurance provided in the form of a Letter of Credit is subject to the following provisions:
- (i) Each Letter of Credit must be maintained for the benefit of Buyer.
 - (ii) Seller shall:
 - (1) Renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit;
 - (2) If the bank that issued an outstanding Letter of Credit has indicated its intent not to renew such Letter of Credit, provide alternative Performance Assurance acceptable to Buyer at least 20 Business Days before the expiration of the outstanding Letter of Credit; and
 - (3) If the bank issuing a Letter of Credit fails to honor Buyer's properly documented request to draw on an outstanding Letter of Credit, provide alternative Performance Assurance acceptable to Buyer within one Business Day after such refusal;
 - (iii) Upon the occurrence of a Letter of Credit Default, Seller shall provide to Buyer either a substitute Letter of Credit or alternative Performance Assurance acceptable to Buyer, in each case on or before the first Business

Day after the occurrence thereof (or the fifth Business Day after the occurrence thereof if only Section a) in the definition of "Letter of Credit Default" in Exhibit A applies);

- (iv) Upon, or at any time after, the occurrence and continuation of an Event of Default by Seller, or if an Early Termination Date has occurred or been designated as a result of an Event of Default by Seller for which there exist any unsatisfied payment obligations, *then* Buyer may draw on any undrawn portion of any outstanding Letter of Credit upon submission to the bank issuing such Letter of Credit of one or more certificates specifying that such Event of Default or Early Termination Date has occurred and is continuing.

Cash proceeds received by Buyer from drawing upon the Letter of Credit shall be deemed Performance Assurance as security for Seller's obligations to Buyer and Buyer shall have the rights and remedies set forth in Section 1.03 with respect to such cash proceeds.

Notwithstanding Buyer's receipt of cash proceeds of a drawing under the Letter of Credit, Seller shall remain liable for any (1) failure to provide or maintain sufficient Performance Assurance, or (2) any amounts owing to Buyer and remaining unpaid after the application of the amounts so drawn by Buyer.

- (v) In all cases, the costs and expenses of establishing, renewing, substituting, canceling, and increasing the amount of a Letter of Credit shall be borne by Seller.
- (c) Guaranty Agreement. If Seller's Performance Assurance obligation is satisfied by a Guaranty Agreement, such agreement shall be in the form of Exhibit O executed by the Guarantor identified in Section 1.07(c)(i) or other party acceptable to Buyer meeting the Credit Rating requirements for the Guarantor set forth immediately below. The Guarantor shall maintain a Credit Rating of at least:
- (i) "BBB-" from S&P and "Baa3" from Moody's, if it is rated by both S&P and Moody's; or
- (ii) "BBB-" from S&P or "Baa3" from Moody's if it is rated by either S&P or Moody's but not by both.

If at any time the Guarantor fails to maintain such Credit Ratings, Seller shall provide to Buyer Performance Assurance in the form of cash or a Letter of Credit, or a replacement Guaranty Agreement from a party acceptable to Buyer, within five Business Days.

- 1.03 First Priority Security Interest in Cash or Cash Equivalent Collateral. To secure its obligations under this Agreement, and until released as provided herein, Seller hereby grants to Buyer a present and continuing first-priority security interest (“Security Interest”) in, and lien on (and right to net against), and assignment of the Development Security (if applicable), Performance Assurance, any other cash collateral and cash equivalent collateral posted pursuant to Sections 1.02 and 1.04 of this Exhibit D and any and all interest thereon or proceeds resulting therefrom or from the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of Buyer, and Seller agrees to take such action as Buyer reasonably requires in order to perfect Buyer’s Security Interest in, and lien on (and right to net against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

Upon or any time after the occurrence of, and during the continuation of, an Event of Default caused by Seller or an Early Termination Date resulting from an Event of Default caused by Seller, Buyer may do any one or more of the following:

- (a) Exercise any of its rights and remedies with respect to all Development Security and Performance Assurance, including any such rights and remedies under law then in effect;
- (b) Draw on any outstanding Letter of Credit issued for its benefit; and
- (c) Liquidate all Development Security and Performance Assurance then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller.

Buyer shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce Seller’s obligations under this Agreement (Seller shall remain liable for any amounts owing to Buyer after such application), subject to Buyer’s obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

1.04 Development Security.

- (a) Introduction. If Seller is required to post Development Security, such Development Security shall be held by Buyer as security for Seller’s meeting the Startup Deadline and: (i) for Sellers designating Firm Contract Capacity, successful completion of the Demonstration as set forth in Exhibit C; or (ii) for Sellers designating As-Available Contract Capacity, Buyer determines in its reasonable discretion that Seller has installed the equipment sufficient to provide the entire designated As-Available Contract Capacity.
- (b) Development Security. If Seller is required to post Development Security, Seller shall post such Development Security in accordance with the following terms and conditions:

- (i) Seller shall post a development fee (the “Development Security”) in the amount of \$20 per kW of Net Contract Capacity within 30 days after the Effective Date. Seller shall post additional Development Security in the amount of \$40 per kW of Net Contract Capacity (for a total posted amount of \$60 per kW of Development Security) within 18 months after the Effective Date. The Development Security shall be held by Buyer and shall be in the form of either a cash deposit or a Letter of Credit; and
 - (ii) If Seller establishes the Development Security by means of a Letter of Credit, such Letter of Credit shall be substantially in the form of Exhibit P.
- (c) Forfeiture of Development Security for Failure to Meet Startup Deadline; Extension of the Startup Deadline.
- (i) Failure to Meet Startup Deadline. Subject to Seller’s right to extend the Startup Deadline as provided in Section 1.04(c)(ii), if the commencement of the Term does not occur on or before the Startup Deadline or, based upon Buyer’s reasonable determination, will not occur at all (including due to any termination of this Agreement as a result of an Event of Default by Seller occurring before the Startup Deadline), Buyer shall be entitled to retain the entire Development Security (if applicable) and terminate this Agreement, and neither Party shall have liability for damages for failure to deliver or purchase Product after the effective date of such termination.
 - (ii) Daily Delay Liquidated Damages to Extend Startup Deadline. Seller may elect to extend the Startup Deadline by paying to Buyer liquidated damages in an amount equal to one percent of the Development Security per day for each day (or portion thereof) from and including the Startup Deadline to and excluding the Initial Operation Date (“Daily Delay Liquidated Damages”). If Seller is not required to post Development Security, the Daily Delay Liquidated Damages will be calculated as if Seller did post Development Security.

To extend the Startup Deadline, Seller must, at the earliest possible time, but no later than 6 a.m. on the first day of the proposed extension, provide Buyer with Notice of its election to extend the Startup Deadline along with its estimate of the duration of the extension and its payment of Daily Delay Liquidated Damages for the full estimated Startup Deadline extension period.

Seller may further extend the Startup Deadline beyond the original Startup Deadline extension period subject to the same terms applicable to the original Startup Deadline extension.

The Daily Delay Liquidated Damages payments applicable to days included in any Startup Deadline extension shall be nonrefundable and are in addition to and not to be considered part of the Development Security.

Seller shall be entitled to a refund (without interest) of any estimated Daily Delay Liquidated Damages payments paid by Seller which exceed the amount required to cover the number of days by which the Startup Deadline was actually extended.

In no event may Seller extend the Startup Deadline for more than a total of 180 days by the payment of Daily Delay Liquidated Damages.

- (d) Full Return of Development Security. The Development Security shall be returned to Seller in accordance with the following procedure:
- (i) Subject to Seller's achievement of Initial Operation by the Startup Deadline or any extended Startup Deadline as provided in Section 1.04(c), Seller demonstrates the Net Contract Capacity as follows:
 - (1) For Sellers designating Firm Contract Capacity, successful completion of the Demonstration as set forth in Exhibit C; or
 - (2) For Sellers designating As-Available Contract Capacity, Buyer determines in its reasonable discretion that Seller has installed the equipment sufficient to provide the entire designated As-Available Contract Capacity.
- (e) Deficient Installation of Net Contract Capacity; Partial Forfeiture and Partial Return of the Development Security. If, on or before the Firm Operation Date, Seller has achieved Initial Operation by the Startup Deadline but is only able to demonstrate a portion of the Net Contract Capacity by the Firm Operation Date:
- (i) For Sellers designating Firm Contract Capacity, based upon the Demonstration as set forth in Exhibit C; or
 - (ii) For Sellers designating As-Available Contract Capacity, based upon Buyer's determination in its reasonable discretion,

then Seller will only be entitled to a return of the portion of the Development Security posted by Seller equal to the product of either (1) \$20 per kW times the kilowatts of Net Contract Capacity which Seller has demonstrated, if Seller achieved Initial Operation within 18 months of the Effective Date, or (2) \$60 per kW times the kilowatts of Net Contract Capacity which Seller has demonstrated, if Seller achieved Initial Operation after the 18th month following the Effective Date.

Seller shall forfeit and Buyer shall be entitled to retain the balance of the Development Security.

In addition, as of the Firm Operation Date, the Performance Assurance Amount for the Performance Assurance required to be posted and maintained pursuant to Section 1.02 of this Exhibit D shall be calculated using the Net Contract Capacity, and any amount of Performance Assurance in excess of that required for the adjusted Net Contract Capacity shall be returned to Seller.

- (f) Seller shall provide Notice to Buyer of its request for a refund of the Development Security.

1.05 Interest Payments on Cash Deposits.

- (a) Buyer shall make monthly Simple Interest Payments, calculated using the Federal Funds Effective Rate, to Seller on cash amounts posted for the Development Security and Performance Assurance.
- (b) Upon receipt of a monthly invoice that sets forth the calculation of the Simple Interest Payment amount due, Buyer shall make payment thereof by the third Local Business Day of the first month after the last month to which the invoice relates so long as such date is after the day on which such invoice is received; *provided, however*, that:
 - (i) No Event of Default has occurred and is continuing with respect to Seller; and
 - (ii) No Early Termination Date for which any unsatisfied payment obligation of Seller exists, has occurred or has been designated as the result of an Event of Default by Seller.
- (c) On or after the occurrence of an Event of Default by Seller or an Early Termination Date as a result of an Event of Default by Seller, Buyer shall retain any such Simple Interest Payment amount as an additional Development Security amount or a Performance Assurance amount hereunder until:
 - (i) In the case of an Early Termination Date, the obligations of Seller under this Agreement have been satisfied; or
 - (ii) In the case of an Event of Default, for so long as such Event of Default is continuing.

1.06 Waivers. SELLER SHALL NOT AT ANY TIME INSIST UPON, PLEAD, CLAIM OR TAKE THE BENEFIT OR ADVANTAGE OF ANY LAW NOW OR HEREAFTER IN FORCE PROVIDING FOR ANY APPRAISEMENT, VALUATION, STAY OF

EXECUTION, EXEMPTION, EXTENSION OR REDEMPTION, OR REQUIRING FORECLOSURE OF ANY RIGHTS GRANTED TO BUYER BY SELLER UNDER ANY DEED OF TRUST BEFORE EXERCISING ANY OTHER REMEDY GRANTED HEREUNDER.

**** End of Exhibit F ****

EXHIBIT G
Scheduling Coordinator Services

This Exhibit G is only applicable when Buyer is Scheduling Coordinator.

1. Designation of Buyer as Scheduling Coordinator.
 - (a) At least 30 days before the commencement of the Term, Seller shall take all actions and execute and deliver to Buyer and the CAISO all documents necessary to authorize or designate Buyer as Scheduling Coordinator with the CAISO effective as of the commencement of the Term.
 - (b) During the Term, Seller may not authorize or designate any other party to act as Scheduling Coordinator, nor shall Seller perform for its own benefit the duties of Scheduling Coordinator, and Seller may not revoke Buyer's authorization to act as Scheduling Coordinator unless agreed to by Buyer;
 - (c) Buyer shall submit bids and schedules to the CAISO in accordance with the CAISO Tariff;
 - (d) Buyer shall submit all required notices and updates regarding each Generating Unit's or the Generating Facility's status, as applicable, to the CAISO in accordance with the CAISO procedures.
 - (e) Seller is not entitled to any Monthly Capacity Payment until Buyer is fully authorized as Scheduling Coordinator for the Generating Facility.

2. Buyer's Scheduling Responsibilities. Pursuant to the CAISO Tariff, Buyer shall be responsible for the following:
 - (a) Using the Forecast submitted by Seller to Buyer pursuant to Exhibit I, including updated Forecasts to the extent reasonably practicable, to forecast Seller's expected generation using Buyer's forecasting model ("Buyer Projected Energy Forecast") in any given hour;
 - (b) Adjusting Buyer Projected Energy Forecast for forecasted electric energy line losses to reflect Seller's self-provision of those losses and the amount of electric energy Seller is expected to deliver to the Delivery Point;
 - (c) Submitting the adjusted Forecasts to the CAISO as Scheduling Coordinator Schedules (as defined in the CAISO Tariff); and
 - (d) Receiving notification of the Final Schedules from the CAISO.

3. **Notices.** As Scheduling Coordinator, Buyer shall submit all notices and updates required under the CAISO Tariff regarding each Generating Unit's or the Generating Facility's status, as applicable, to the CAISO, including all Scheduling and Logging for the CAISO of California ("SLIC") Outage requests, SLIC Forced Outages, CAISO Forced Outage Reports, or must offer waiver forms.
4. **Scheduling Fees.** In accordance with Section 4.02, Buyer shall invoice to Seller and Seller shall pay to Buyer the following Scheduling Fees:
 - (a) **SC Set-Up Fee.** The SC Set-Up Fee is equal to the costs Buyer incurs as a result of the Generating Units or the Generating Facility registration, as applicable, as well as installation, configuration, and testing of all equipment and software necessary, in Buyer's sole discretion, to schedule the Generating Unit or the Generating Facility, as applicable, in accordance with the CAISO Tariff.
 - (b) **Monthly Scheduling Fee.** The Monthly Scheduling Fee will be as forth in the table below.

Net Contract Capacity (kW)	Monthly Scheduling Fee
Less than 10,000	\$2,500
10,000 – 100,000	\$5000
Greater than 100,000	\$7500

5. **CAISO Settlements.** As Scheduling Coordinator, Buyer shall be responsible for all settlement functions with the CAISO related to the Generating Units or the Generating Facility, as applicable. Seller shall cooperate with Buyer in Buyer's performance of any settlement functions, and Seller shall promptly deliver to Buyer all Generating Unit or the Generating Facility, as applicable, data and any correspondence or communications with CAISO related to the Generating Units or the Generating Facility, as applicable, including any invoices or settlement data, in the format reasonably requested by Buyer.

Buyer shall render a separate invoice to Seller for all CAISO Charges ("CAISO Charges Invoice") for which Seller is responsible under this Agreement as described in Exhibit J, in accordance with the applicable billing and payment methodologies utilized for the specific CAISO Charge as set forth in the CAISO Tariff. CAISO Charges Invoices shall be rendered after final settlement information becomes available from the CAISO that identifies any CAISO Charges.

Seller shall pay the amount of CAISO Charges Invoices on or before the later of the 20th day of each month, or tenth day after receipt of the CAISO Charges Invoice or, if such day is not a Business Day, then on the next Business Day. If Seller fails to pay a CAISO

Charges Invoice within such timeframe, Buyer may offset any amounts owing to it for these CAISO Charges Invoices as set forth in Section 4.02.

6. Disputes and Adjustments of CAISO Invoices. The Parties agree that all CAISO Charges Invoices are subject to the CAISO Tariff and may be adjusted by the CAISO, or disputed by Buyer, as Scheduling Coordinator, in accordance with the CAISO Tariff. The Parties agree that all CAISO Charges Invoices are subject to dispute between the Parties in accordance with this Agreement. Notwithstanding anything to the contrary contained in this Agreement, the Parties agree that the obligations under this Exhibit G with respect to the payment of CAISO Charges Invoices, or the adjustment of such CAISO Charges Invoices, shall survive the expiration or termination of this Agreement for a period of one year beyond the time period which CAISO may adjust, modify or change any previously issued invoice, or any charges or revenues set forth on such invoice pursuant to the CAISO Tariff.

7. Terminating Buyer's Designation as Scheduling Coordinator. At least 30 days before the expiration of the Term or as soon as an Early Termination Date is declared (regardless of which Party declared it), the Parties will take all actions necessary to terminate the designation of Buyer as Scheduling Coordinator as of 11:59 p.m. on the final date of the Term ("SC Replacement Date"). Such actions include the following: (a) Seller shall (i) submit to the CAISO a designation of a new Scheduling Coordinator to replace Buyer effective as of the SC Replacement Date and (ii) cause its newly designated Scheduling Coordinator to submit a letter to the CAISO accepting the designation; and (b) Buyer shall submit a letter to the CAISO resigning as Scheduling Coordinator effective as of the SC Replacement Date. Seller bears sole responsibility for locating, selecting, and reaching agreement on terms with any replacement Scheduling Coordinator.

*** End of Exhibit G ***

EXHIBIT H
Milestone Progress Reporting Form

1. Introduction. Seller shall prepare a written milestone progress report as set forth in Section 3.11 on its progress relative to the:
 - (a) Installation of the CAISO-Approved Meters and Telemetry System;
 - (b) Installation of the Telemetry System; and
 - (c) Work on other agreements with the CAISO and the Transmission Provider.

2. Format. The report must be sent via e-mail in the form of a single Adobe Acrobat file or facsimile to Buyer's Contract Administrator, as noted in Exhibit N, on the fifth Business Day of each month. Each such milestone progress report must include the following items:
 - (a) Cover page;
 - (b) Brief Generating Facility description;
 - (c) Site plan of the Generation Facility;
 - (d) Description of any planned changes to the Generating Facility and Site Description in Exhibit B;
 - (e) Bar chart schedule showing progress on achieving the Milestone Schedule;
 - (f) PERT or GANT chart showing critical path schedule of major items and activities;
 - (g) Summary of activities during the previous month;
 - (h) Forecast of activities scheduled for the current month;
 - (i) Written description about the progress relative to the Milestone Schedule;
 - (j) List of issues that could potentially impact the Milestone Schedule;
 - (k) Enumeration and schedule of any support or actions requested of Buyer;
 - (l) Progress and schedule of all material agreements, contracts, Permits, approvals, technical studies, financing agreements and major equipment purchase orders showing the start dates, completion dates, and completion percentages; and

(m) List of items required under Section 3.11.

**** End of Exhibit H ****

EXHIBIT I

Seller's Forecasting Submittal and Accuracy Requirements

1. General Requirements. The Parties shall abide by the Forecasting requirements and procedures described below and shall agree upon reasonable changes to these requirements and procedures from time to time as necessary to:
 - (a) Comply with the CAISO Tariff;
 - (b) Accommodate changes to their respective generation technology and organizational structure; and
 - (c) Address changes in the Operating and Scheduling procedures of both Buyer and the CAISO, including automated Forecast and outage submissions.

2. Seller's Forecasting Submittal Requirements for all Generating Facilities.
 - (a) 30-Day Forecast.

No later than 30 days before the commencement of the Term (or, in the case of a New Qualifying Facility no later than 30 days before the commencement of Parallel Operation), Seller shall provide Buyer with a Forecast for the 30-day period commencing on the start of the Term (or, if applicable, Parallel Operation) using the Web Client.

In the case of a New Qualifying Facility, if, after submitting the Forecast pursuant to this Section 2(a), Seller learns that Parallel Operation will occur on a date and time other than that reflected on the Forecast, Seller shall provide an updated Forecast reflecting the new Parallel Operation date at the earliest practicable time but no later than 5:00 p.m. PPT on the Wednesday before the new Parallel Operation date, if Seller has learned of the new Parallel Operation date by that time, but in no event less than three Business Days before the new Parallel Operation date.

If the Web Client becomes unavailable, Seller shall provide Buyer with the Forecast by telephoning Buyer's Generation Operations Center, at the telephone number(s) listed in Exhibit N.

The Forecast, and any updated Forecasts provided pursuant to this Section 2, shall:

- (i) Not include any anticipated or expected electric energy losses between the CAISO-Approved Meter and the Delivery Point; and

- (ii) Limit hour-to-hour Forecast changes to no less than 250 kWh during any period when the Web Client is unavailable. Seller shall have no restriction on hour-to-hour Forecast changes when the Web Client is available.
- (b) Weekly Update to 30-Day Forecast. Commencing on or before 5:00 p.m. PPT of the Wednesday before the first week covered by the Forecast provided pursuant to Section 2(a) of this Exhibit I, and on or before 5:00 p.m. PPT every Wednesday thereafter until the end of the Term, Seller shall update the Forecast for the 30-day period commencing on the Sunday following the weekly Wednesday Forecast update submission. Seller shall use the Web Client, if available, to supply this weekly update or, if the Web Client is not available, Seller shall provide Buyer with the weekly Forecast update by telephoning Buyer's Generation Operations Center, at the telephone number(s) listed in Exhibit N.
- (c) Intra-Week Update to 30-Day Forecast.

In the event:

- (i) Seller does not provide real-time communication of the expected energy production via a telecommunication system designed to provide Buyer with Seller's cumulative expected energy production of the Generating Facility on a real-time basis;
- (ii) The telecommunications path to obtain real-time data is inoperable; or
- (iii) Instrumentation is providing faulty or incorrect data;

and Seller learns of any change in the available capacity of the Generating Facility or any change in the energy production expected to be delivered to Buyer for a period covered by the most recent Forecast update resulting from any cause, including, but not limited to, an unplanned outage, before the time that the next weekly update of the Forecast is due under any applicable provisions of the CAISO Tariff related to availability and outage reporting, then Seller shall provide an updated Forecast to Buyer. This updated Forecast must be submitted to Buyer via the Web Client by no later than:

- (i) 5:00 p.m. PPT on the day before the Trading Day impacted by the change, if the change is known to Seller at that time;
- (ii) 30 minutes before the commencement of any hour impacted by the change, if the change is known to Seller at that time; or
- (iii) If the change is not known to Seller by the timeframes indicated in (i) or (ii) immediately above, no later than 20 minutes after Seller becomes aware of the event which caused the expected energy production change.

Seller's updated Forecast must contain the following information:

- (i) The beginning date and time of the event resulting in the availability of the Generating Facility and expected energy production change;
- (ii) The expected ending date and time of the event;
- (iii) The expected energy production, in MWh; and
- (iv) Any other information required by the CAISO as communicated to Seller by Buyer.

3. Seller's Forecasting Accuracy Requirements. If a (non-zero) Firm Contract Capacity quantity is applicable to this Agreement, then this Section 3 applies to Seller.

- (a) Accuracy Metric. With respect to each calendar month "m", as soon as practicable after the end of such month, Buyer shall calculate and report to Seller the monthly mean absolute error (" MAE_m ") between Seller's Day-Ahead Forecasts and the respective daily summations of Metered Energy:

$$MAE_m = \frac{\text{Forecast Error}}{\text{Total Forecast}}$$

$$\text{Forecast Error} = \sum_i^n |f_i - a_i|$$

$$\text{Total Forecast} = \sum_i^n f_i$$

where:

- n = the total number of hours in calendar month "m"
- i = an hour within month "m"
- f_i = Seller's Day-Ahead Forecast for hour "i"
- a_i = the quantity of (i) Metered Energy for hour "i" plus the quantity of energy not delivered as a result of a Real-Time Forced Outage for hour "i" (in MWh) when the Generating Facility is not PIRP-eligible, or when Buyer is not Scheduling Coordinator; or (ii) the actual available total generation capacity of the Generating Facility (in MW) when the Generating Facility is PIRP-eligible and Buyer is Scheduling Coordinator.

Buyer shall report each MAE_m to Seller and, upon Seller's request, Buyer shall furnish all supporting calculations within a reasonable timeframe.

- (b) Forecasting Penalty. If the MAE_m for a particular month "m" is greater than 15% or if the average Forecast error for all hours of the month is greater than three MW, then an "MAE Failure" will be deemed to have occurred. An MAE Failure will be waived if Seller demonstrates to Buyer's reasonable satisfaction that the MAE Failure was the result of unexpected changes that could not be anticipated in either electrical or steam demand associated with the Site Host Load. If such MAE Failure has been waived, then that month shall not count as a month in which there was an MAE Failure.

For each month an MAE Failure has occurred, Seller shall pay a fee equal to the applicable Monthly Scheduling Fee in addition to any otherwise applicable Monthly Scheduling Fee.

During each month an MAE Failure occurs, subject to the limitations of the following paragraph, Seller will continue to receive Monthly Capacity Payments for the Firm Contract Capacity based on the Firm Capacity Price and capacity payment calculations for firm capacity as set forth in Section 3 of Exhibit D.

If, however, an MAE Failure occurs three times in any rolling 12-month period, then starting on the first day of the calendar month immediately following the third such occurrence (such month, the "First Penalty Month"):

- (i) The quantity of Firm Contract Capacity specified in Section 1.02(d) will be deemed to be zero ("Penalized Firm Contract Capacity"); and
- (ii) The quantity of As-Available Contract Capacity specified in Section 1.02(d) will be deemed increased by the quantity of Firm Contract Capacity as such quantity existed before the First Penalty Month ("Penalized As-Available Contract Capacity").

The Penalized Firm Contract Capacity and Penalized As-Available Contract Capacity quantities shall continue to be in effect during every subsequent calendar month until there are two consecutive calendar months without an MAE Failure (including a month in which an MAE Failure has been waived).

Upon such event, starting on the first day of the calendar month immediately following the second consecutive month during which Buyer does not have an MAE Failure, the Penalized Firm Contract Capacity and Penalized As-Available Contract Capacity quantities shall revert to the Firm Contract Capacity and As-Available Contract Capacity quantities existing before the First Penalty Month.

ATTACHMENT 1
Seller's 30-Day Forecast
(Form of Microsoft Excel File Attachment to Email Notice)

		SELLER'S 30 DAY ENERGY FORECAST ID #[Number], [Seller's Name] <i>All Amounts are in kWh</i>																															
		<i>Hour Ending Pacific Prevailing Times</i>																															
Day	Date	Weekday	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	
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ATTACHMENT 2

Seller's Hour-Ahead Forecast

(Form of Microsoft Excel File Attachment to Email Notice)

<u>SELLER'S HOUR AHEAD ENERGY FORECAST</u> ID #[Number], [Seller's Name]		
Trading Date:		Issued By:
Issue Time:		Telephone:
<i>Hour Ending PPT</i>	<i>kWh</i>	<i>Comments</i>
1:00		
2:00		
3:00		
4:00		
5:00		
6:00		
7:00		
8:00		
9:00		
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16:00		
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18:00		
19:00		
20:00		
21:00		
22:00		
23:00		
0:00		
Comments:		

*** End of Exhibit I ***

EXHIBIT J
CAISO Charges

If at any time after the commencement of the Term Buyer is not Scheduling Coordinator for the Generating Facility, then Buyer will not be responsible for any CAISO Charges.

If at any time after the commencement of the Term Buyer is Scheduling Coordinator for the Generating Facility, then Buyer shall pay all CAISO Charges and receive all CAISO revenues associated with such Scheduling activities; *provided, however*, if at any time after the commencement of the Term:

1. The CAISO implements or has implemented any sanction or penalty related to Scheduling, outage reporting or generator Operation, and any such sanctions or penalties are imposed on the Generating Facility or to Buyer as Scheduling Coordinator for the Generating Facility due to the actions or inactions of Seller, then such sanctions or penalties will be Seller's responsibility;
2. Seller or any third party dispatches any portion of the Net Contract Capacity for the benefit of any party other than Buyer or a Site host in respect of the Host Site, then Seller shall indemnify, defend, and hold Buyer harmless against any CAISO Charges;
3. There is a CAISO or Transmission Provider declared Emergency and Seller fails to meet Seller's obligations associated with any CAISO or Transmission Provider instruction or request (as may be communicated by Buyer as Scheduling Coordinator), as the case may be, to (a) increase output to the Firm Contract Capacity, (b) curtail output, or (c) reschedule a planned outage set to occur during an Emergency, then, in each case, Seller shall indemnify, defend, and hold Buyer harmless against all CAISO Charges associated with the failure to respond to such Emergency; or
4. If the Generating Facility is PIRP-eligible and is not certified as a PIRP resource for any reason, then Seller shall indemnify, defend, and hold Buyer harmless against all CAISO Charges associated with the energy generated and delivered from the Generating Facility.

If any of Sections 1 through 4 of this Exhibit J apply and the Generating Facility is subject to an Uninstructed Deviation Penalty, Seller will not be required to pay the SDD Energy Charge and, instead, shall be responsible for all applicable Uninstructed Deviation Penalty charges for the Generating Facility.

*** End of Exhibit J ***

EXHIBIT K
Scheduling and Delivery Deviation Charges

If Buyer is Scheduling Coordinator for the Generating Facility or if the Generating Facility is not PIRP-eligible, then Seller shall be responsible for the following SDD Charges with respect to the Generating Facility:

1. SDD Energy Charge. Seller shall make a payment to Buyer (the “SDD Energy Charge”) for each Settlement Interval in a month if the Metered Energy is either (a) less than the Performance Tolerance Band Lower Limit in any Settlement Interval or (b) greater than the Performance Tolerance Band Upper Limit in any Settlement Interval. The SDD Energy Charge is calculated as follows:

If $A < D$, then SDD Energy Charge = $(D - A) \times P$

or

If $A > E$, then SDD Energy Charge = $(A - E) \times P$

where:

A = Metered Energy;

B = Seller's Energy Forecast;

C = Performance Tolerance Band =

The greater of (a) three percent of the Seller's Energy Forecast and divided by the number of Settlement Intervals in such hour or (b) one MWh and divided by the number of Settlement Intervals in such hour;

D = Performance Tolerance Band Lower Limit = $(B - C)$;

E = Performance Tolerance Band Upper Limit = $(B + C)$; and

P = Real-Time Market price for the Generator's PNode as published by the CAISO on OASIS for the applicable APNode (as defined in the CAISO Tariff) for the Settlement Interval.

2. SDD Administrative Charge. Seller shall make a payment to Buyer (the “SDD Administrative Charge”) for each Settlement Interval in a month if Metered Energy (i) exceeds the Performance Tolerance Band Upper Limit or (ii) is less than the Performance

Tolerance Band Lower Limit, in any Settlement Interval. The SDD Administrative Charge is calculated as follows:

$$\text{SDD Administrative Charge} = \text{Absolute Value (B - A)} - C \times \text{Uninstructed Deviation GMC Rate.}$$

where:

A = Metered Energy;

B = Seller's Energy Forecast; and

C = Performance Tolerance Band =

The greater of (a) three percent of the Seller's Energy Forecast amount and divided by the number of Settlement Intervals in such hour or (b) one MWh and divided by the number of Settlement Intervals in such hour.

*** End of Exhibit K ***

EXHIBIT L
Physical Trade Settlement Amount

This Exhibit L is only applicable when Buyer is not Scheduling Coordinator and only after the implementation of MRTU.

1. Physical Trades Cleared in the IFM. Any CAISO revenue associated with a Physical Trade having cleared in the IFM shall be for Buyer's account.
2. Physical Trades not Cleared in the IFM. With respect to each calendar month "m", as soon as practicable after the end of such month, Buyer shall calculate the Physical Trade Settlement Amount ("PTSA_i") for each hour as follows:

$$PTSA_i = CPT_i \times (CPTP_i - PNode_i)$$

Where:

- i = an hour within month "m"
- CPT = Converted Physical Trade, in MWh
- CPTP = Converted Physical Trade Price, and
- PNode = the Generating Facility's PNode price, in dollars per MWh.

If the PTSA_i is positive *and* Seller submitted the original Physical Trade in accordance with Section 3.14(d) and Exhibit I, then Buyer shall owe Seller the PTSA_m for month m. In any event the PTSA_i is negative, however, then Seller shall owe Buyer the PTSA_i.

*** End of Exhibit L ***

EXHIBIT M
SC Trade Settlement Amount

This Exhibit M is only applicable when Buyer is not Scheduling Coordinator.

If, in any Settlement Interval, a Generating Facility's Scheduled Amount differs from the Generating Facility's Metered Energy by more than the SC Trade Tolerance Band, then Seller shall be subject to a payment adjustment calculated by Buyer in accordance with the procedures and formulas set forth below.

(1) Under-Scheduling Adjustment.

If during any Settlement Interval the Scheduled Amount plus the SC Trade Tolerance Band is less than the Metered Energy, and the real-time price is greater than the Day-Ahead Price payable during the Settlement Interval;

Then Seller's monthly payment amount shall be reduced by each Under-Scheduling Settlement Interval Adjustment Amount calculated by the following formula:

UNDER-SCHEDULING SETTLEMENT INTERVAL ADJUSTMENT AMOUNT =

$$[A - B] \times [D - C]$$

- Where A = The Metered Energy in the Settlement Interval being calculated.
B = The Scheduled Amount in the Settlement Interval being calculated.
C = Day-Ahead Price for the Settlement Interval being calculated in \$/kWh.
D = Real-time price for the Settlement Interval being calculated in \$/kWh.

No under-scheduling adjustment shall be assessed against Seller for a Settlement Interval in which the Scheduled Amount plus the SC Trade Tolerance Band is less than the Metered Energy if, during such Settlement Interval, the real-time price is equal to or less than the Day-Ahead Price payable during the Settlement Interval.

(2) Over-Scheduling Adjustment.

If during any Settlement Interval the Scheduled Amount is greater than the SC Trade Tolerance Band plus the Metered Energy, and the real-time price is less than the Day-Ahead Price payable during the Settlement Interval;

Then Seller's monthly payment amount shall be reduced by each Over-Scheduling Settlement Interval Adjustment Amount calculated by the following formula:

OVER-SCHEDULING SETTLEMENT INTERVAL ADJUSTMENT AMOUNT =

$$[B - A] \times [(C - D)]$$

- Where A = The Metered Energy in the Settlement Interval being calculated.
B = The Scheduled Amount in the Settlement Interval being calculated.
C = Day-Ahead Price for the Settlement Interval being calculated in \$/kWh.
D = Real-time price for the Settlement Interval being calculated in \$/kWh.

No over-scheduling adjustment shall be assessed against Seller for a Settlement Interval in which the Scheduled Amount is greater than the SC Trade Tolerance Band plus the Metered Energy if, during such Settlement Interval, the real-time price is greater than or equal to the Day-Ahead Price payable during the Settlement Interval.

*** End of Exhibit M ***

EXHIBIT N

Notice List

<u>[SELLER'S NAME]</u>	<u>[BUYER'S NAME]</u>
All Notices are deemed provided in accordance with Section 9.07 if made to the address, facsimile numbers or e-mail addresses provided below:	All Notices are deemed provided in accordance with Section 9.07 if made to the address, facsimile numbers or e-mail addresses provided below:
Contract Sponsor: Attn: Street: City: Phone: Facsimile:	
Reference Numbers: Duns: Federal Tax ID Number:	
Contract Administration: Attn: Phone: Facsimile:	
Forecasting: Attn: Control Room Phone: Facsimile:	
Day-Ahead Forecasting: Phone:	
Real-Time Forecasting: Phone:	
Payment Statements: Attn: Phone: Facsimile: E-mail:	

CAISO Charges and CAISO Sanctions: Attn: Phone: Facsimile: E-mail:	
Payments: Attn: Phone: Facsimile: E-mail:	
Wire Transfer: BNK: ABA: ACCT:	
Credit and Collections: Attn: Phone: Facsimile: E-mail:	
With additional Notices of an Event of Default or Potential Event of Default to: Attn: Phone: Facsimile: E-mail:	
Guarantor: Attn: Phone: Facsimile: E-mail:	
Lender: Attn: Phone: Facsimile: E-mail:	

*** End of Exhibit N ***

EXHIBIT O
Form of Guaranty Agreement

1. **Guaranty.** For valuable consideration, [Guarantor's legal name] , [legal status] (“Guarantor”) guarantees payment to [Buyer's Name], a California corporation (“Beneficiary”), its successors and assigns, of all amounts owed to Beneficiary by [Seller's legal name] , [legal status] (“Principal”) under that certain Power Purchase and Sale Agreement between Beneficiary and Principal dated [date] , as amended from time to time (“Agreement”) (said amounts are hereinafter referred to as the “Obligations”).

Initially capitalized words that are used but not otherwise defined in this agreement (“Guaranty”) shall have the meanings given them in the Agreement.

Upon the failure or refusal by Principal to pay all or any portion of the Obligations, the Beneficiary may make a demand upon the Guarantor.

Such demand shall be in writing and shall state the amount Principal has failed to pay and an explanation of why such payment is due, with a specific statement that Beneficiary is calling upon Guarantor to pay under this Guaranty.

Guarantor shall promptly, but in no event less than ten (10) Business Days following demand by Beneficiary, pay such Obligations in immediately available funds.

The obligations of Guarantor hereunder shall not be subject to any counterclaim, setoff, withholding, or deduction unless required by applicable law.

A payment demand satisfying the foregoing requirements shall be deemed sufficient notice to Guarantor that it must pay the Obligations.

2. **Guaranty Limit.** Subject to Paragraph 13, the liability of Guarantor hereunder shall not exceed \$_____ in the aggregate, which amount shall include all interest that has accrued on any amount owed hereunder.
3. **Guaranty Absolute.** Guarantor agrees that its obligations under this Guaranty are irrevocable, absolute, independent and unconditional and shall not be affected by any circumstance which constitutes a legal or equitable discharge of a guarantor. In furtherance of the foregoing and without limiting the generality thereof, Guarantor agrees as follows:
- (a) The liability of Guarantor under this Guaranty is a continuing guaranty of payment and not of collectibility, and is not conditional or contingent upon the genuineness, validity, regularity or enforceability of the Agreement or the pursuit by Beneficiary of any remedies which it now has or may hereafter have under the Agreement;

- (b) Beneficiary may enforce this Guaranty upon the occurrence of a default by Principal under the Agreement notwithstanding the existence of a dispute between Beneficiary and Principal with respect to the existence of the default;
- (c) The obligations of Guarantor under this Guaranty are independent of the obligations of Principal under the Agreement and a separate action or actions may be brought and prosecuted against Guarantor whether or not any action is brought against Principal or any other guarantors and whether or not Principal is joined in any such action or actions;
- (d) Beneficiary may, at its election, foreclose on any security held by Beneficiary, whether or not the means of foreclosure is commercially reasonable, or exercise any other right or remedy available to Beneficiary without affecting or impairing in any way the liability of Guarantor under this Guaranty, except to the extent the amount(s) owed to Beneficiary by Principal have been paid; and
- (e) Guarantor shall continue to be liable under this Guaranty and the provisions hereof shall remain in full force and effect notwithstanding:
 - (i) Any modification, amendment, supplement, extension, agreement or stipulation between Principal and Beneficiary or their respective successors and assigns, with respect to the Agreement or the obligations encompassed thereby;
 - (ii) Beneficiary's waiver of or failure to enforce any of the terms, covenants or conditions contained in the Agreement;
 - (iii) Any release of Principal or any other guarantor from any liability with respect to the Obligations or any portion thereof;
 - (iv) Any release, compromise or subordination of any real or personal property then held by Beneficiary as security for the performance of the Obligations or any portion thereof, or any substitution with respect thereto;
 - (v) Without in any way limiting the generality of the foregoing, if Beneficiary is awarded a judgment in any suit brought to enforce a portion of the Obligations, such judgment shall not be deemed to release Guarantor its covenant to pay that portion of the Obligations which is not the subject of such suit;
 - (vi) Beneficiary's acceptance or enforcement of, or failure to enforce, any other guaranties or any portion of this Guaranty;

- (vii) Beneficiary's exercise of any other rights available to it under the Agreement;
- (viii) Beneficiary's consent to the change, reorganization or termination of the corporate structure or existence of the Principal and to any corresponding restructuring of the Obligations;
- (ix) Any failure to perfect or continue perfection of a security interest in any collateral that secures the Obligations;
- (x) Any defenses, setoffs or counterclaims that Principal may allege or assert against Beneficiary with respect to the Obligations, including failure of consideration, breach of warranty, statute of frauds, statute of limitations and accord and satisfaction; and
- (xi) Any other act or thing or omission, or delay to do any other act or thing that might in any manner or to any extent vary the risk of Guarantor as an obligor with respect to the Obligations.

4. Termination; Reinstatement.

- (a) The term of this Guaranty is continuous until the earlier of: (i) the date on which the Obligations have been performed or paid in full or (ii) with regard to future transactions, the date on which Guarantor provides Beneficiary with written notice of termination, with such termination becoming effective 60 days from the date Beneficiary receives such written notice from Guarantor.

No such notice or termination shall release Guarantor from any liability as to any amount or performance that is owing under the Agreement as of the termination date.

- (b) This Guaranty shall be reinstated if at any time following the termination of this Guaranty, any payment by Guarantor under this Guaranty or pursuant hereto is rescinded or must otherwise be returned by the Beneficiary or other person upon the insolvency, bankruptcy, reorganization, dissolution or liquidation of Principal, Guarantor or otherwise, and is so rescinded or returned to the party or parties making such payment, all as though such payment had not been made.

If all or any portion of the Obligations are paid by Principal, the obligations of Guarantor hereunder shall continue and remain in full force and effect or be reinstated, as the case may be, in the event that all or any part of such payment(s) are rescinded or recovered directly or indirectly from Beneficiary as a preference, fraudulent transfer or otherwise, and any such payments which are so rescinded or recovered shall constitute Obligations for all purposes under this Guaranty.

5. Bankruptcy; Post-Petition Interest.

- (a) So long as any Obligations remain outstanding, Guarantor shall not, without the prior written consent of Beneficiary, commence or join with any other person in commencing any bankruptcy, reorganization or insolvency proceedings of or against Principal.

The obligations of Guarantor under this Guaranty shall not be reduced, limited, impaired, discharged, deferred, suspended or terminated by any proceeding, voluntary or involuntary, involving the bankruptcy, insolvency, receivership, reorganization, liquidation or arrangement of the Principal or by any defense which Principal may have by reason of the order, decree or decision of any court or administrative body resulting from any such proceeding.

- (b) Any interest on any portion of the Obligations which accrues after the commencement of any such proceeding (or, if interest on any portion of the Obligations ceases to accrue by operation of law by reason of the commencement of said proceeding, such interest as would have accrued on such portion of the Obligations if said proceedings had not been commenced) shall be included in the Obligations.

Guarantor will permit any trustee in bankruptcy, receiver, debtor in possession, assignee for the benefit of creditors or similar person to pay Beneficiary, or allow the claim of Beneficiary in respect of, any such interest accruing after the date on which such proceeding is commenced.

6. Subrogation. Guarantor shall be subrogated to all rights of the Beneficiary against Principal with respect to any amounts paid by the Guarantor pursuant to the Guaranty, provided that Guarantor postpones all subrogation rights until all Obligations have been irrevocably paid in full to the Beneficiary.

If any amount shall be paid to Guarantor on account of such subrogation, reimbursement, contribution or indemnity rights at any time when all the Obligations guaranteed hereunder shall not have been indefeasibly paid in full, Guarantor shall hold such amount in trust for the benefit of Beneficiary and shall promptly pay such amount to Beneficiary.

7. Subordination.

- (a) Any indebtedness of Principal now or hereafter held by Guarantor is hereby subordinated in right of payment to the Obligations.

Guarantor assigns all such indebtedness to Beneficiary as security for this Guaranty and the Agreement.

Guarantor shall make no claim for such indebtedness until all Obligations of

Principal have been fully discharged.

Guarantor shall not assign all or any part of such indebtedness unless Beneficiary is given prior notice and such assignment is expressly made subject to the terms of this Guaranty.

- (b) If Beneficiary so requests:
 - (i) All instruments evidencing such indebtedness shall be duly endorsed and delivered to Beneficiary;
 - (ii) All security for such indebtedness shall be duly assigned and delivered to Beneficiary;
 - (iii) Such indebtedness shall be enforced, collected and held by Guarantor as trustee for Beneficiary and shall be paid over to Beneficiary on account of the Obligations but without reducing or affecting in any manner the liability of Guarantor under the other provisions of this Guaranty; and
 - (iv) Guarantor shall execute, file and record such documents and instruments and take such other actions as Beneficiary deems necessary or appropriate to perfect, preserve and enforce Beneficiary's rights in and to such indebtedness and any security therefore.
- (c) If Guarantor fails to take any such action, Beneficiary, as attorney-in-fact for Guarantor, is hereby authorized to do so in the name of Guarantor. The foregoing power of attorney is coupled with an interest and cannot be revoked.

8. Waivers of Guarantor.

- (a) Guarantor waives, to the fullest extent permitted by law, the benefit of any statute of limitations affecting its liability under this Guaranty or the enforcement of this Guaranty.
- (b) Guarantor waives any right to require Beneficiary to proceed against or exhaust any security held from Principal or any other party acting under a separate agreement.
- (c) Guarantor waives all of the rights and defenses described in subdivision (a) of Section 2856 of the California Civil Code, including any rights and defenses that are or may become available to the Guarantor by reason of Sections 2787 to 2855 thereof, inclusive. Without limiting the generality of the foregoing waiver:
 - (i) The guarantor waives all rights and defenses that the guarantor may have because the debtor's debt is secured by real property.

This means, among other things:

- a. The creditor may collect from the guarantor without first foreclosing on any real or personal property collateral pledged by the debtor.
- b. If the creditor forecloses on any real property collateral pledged by the debtor:
 - (1) The amount of the debt may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price.
 - (2) The creditor may collect from the guarantor even if the creditor, by foreclosing on the real property collateral, has destroyed any right the guarantor may have to collect from the debtor.

This is an unconditional and irrevocable waiver of any rights and defenses the guarantor may have because the debtor's debt is secured by real property. These rights and defenses include, but are not limited to, any rights or defenses based upon Section 580a, 580b, 580d, or 726 of the California Code of Civil Procedure.

- (ii) The guarantor waives all rights and defenses arising out of an election of remedies by the creditor, even though that election of remedies, such as a nonjudicial foreclosure with respect to security for a guaranteed obligation, has destroyed the guarantor's rights of subrogation and reimbursement against the principal by the operation of Section 580d of the Code of Civil Procedure or otherwise.
- (d) Guarantor assumes all responsibility for keeping itself informed of Principal's financial condition and all other factors affecting the risks and liability assumed by Guarantor hereunder, and Beneficiary shall have no duty to advise Guarantor of information known to it regarding such risks.
- (e) Guarantor waives any defense arising by reason of the incapacity, lack of authority or any disability or other defense of the Principal, including any defense based on or arising out of the lack of validity or enforceability of the Obligations or by reason of the cessation of liability of the Principal under the Agreement for any reason other than full performance or payment;
- (f) Guarantor waives any defense based upon Beneficiary's errors or omissions in the administration of the Obligations;

- (g) Guarantor waives its right to raise any defenses based upon promptness, diligence, and any requirement that Beneficiary protect, secure, perfect or insure any security interest or lien or any property subject thereto;
 - (h) Guarantor waives its right to raise any principles of law, statutory or otherwise, that limit the liability of or exonerate guarantors, provide any legal or equitable discharge of Guarantor's obligations hereunder, or which may conflict with the terms of this Guaranty;
 - (i) Other than demand for payment, the Guarantor hereby expressly waives all notices between the Beneficiary and the Principal including all notices with respect to the Agreement and this Guaranty, notice of acceptance of this Guaranty, any notice of credits extended and sales made by the Beneficiary to Principal, any information regarding Principal's financial condition, and all other notices whatsoever; and
 - (j) Guarantor waives filing of claims with a court in the event of the insolvency or bankruptcy of the Principal.
9. No Waiver of Rights by Beneficiary. No right or power of Beneficiary under this Guaranty shall be deemed to have been waived by any act or conduct on the part of Beneficiary, or by any neglect to exercise a right or power, or by any delay in doing so, and every right or power of Beneficiary hereunder shall continue in full force and effect until specifically waived or released in a written document executed by Beneficiary.
10. Assignment, Successors and Assigns. This Guaranty shall be binding upon Guarantor, its successors and assigns, and shall inure to the benefit of, and be enforceable by, the Beneficiary and its successors, assigns and creditors. The Beneficiary shall have the right to assign this Guaranty to any individual or entity without the prior consent of the Guarantor; *provided, however,* that no such assignment shall be binding upon the Guarantor until it receives written notice of such assignment from the Beneficiary. The Guarantor shall have no right to assign this Guaranty or its obligations hereunder without the prior written consent of the Beneficiary.
11. Representations of Guarantor. Guarantor hereby represents and warrants that:
- (a) It is a corporation duly organized, validly existing and in good standing in all necessary jurisdictions and has full power and authority to execute, deliver and perform this Guaranty;
 - (b) It has taken all necessary actions to execute, deliver and perform this Guaranty;
 - (c) This Guaranty constitutes the legal, valid and binding obligation of Guarantor, enforceable in accordance with its terms, subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws effecting creditors' rights

generally and to general equitable principles;

- (d) Execution, delivery and performance by Guarantor of this Guaranty does not conflict with, violate or create a default under any of its governing documents, any agreement or instruments to which it is a party or to which any of its assets is subject or any applicable law, rule, regulation, order or judgment of any Governmental Authority; and
- (e) All consents, approvals and authorizations of governmental authorities required in connection with Guarantor's execution, delivery and performance of this Guaranty have been duly and validly obtained and remain in full force and effect.

12. Financial Statements.

- (a) If requested by Beneficiary, Guarantor shall deliver the following financial statements, which in all cases shall be for the most recent accounting period and prepared in accordance with GAAP:
 - (i) Within one hundred-twenty (120) days following the end of each fiscal year that any Obligations are outstanding, a copy of its annual report containing its audited consolidated financial statements (income statement, balance sheet, statement of cash flows and statement of retained earnings and all accompanying notes) for such fiscal year, setting forth in each case in comparative form the figures for the previous year; and
 - (ii) Within sixty (60) days after the end of each of its first three fiscal quarters of each fiscal year that any Obligations are outstanding, a copy of its quarterly report containing its consolidated financial statements (income statement, balance sheet, statement of cash flows and statement of retained earnings and all accompanying notes) for such fiscal quarter and the portion of the fiscal year through the end of such quarter, setting forth in each case in comparative form the figures for the previous year.;

Such annual and quarterly financial statements shall be (1) certified in accordance with all applicable laws and regulations, including all applicable SEC rules and regulations, if Guarantor is an SEC reporting company, or (2) certified by a Responsible Officer as being fairly stated in all material respects (subject to normal year end audit adjustments) if Guarantor is not an SEC reporting company.

- (b) For the purposes of the requirement in this Paragraph 12, if Guarantor's financial statements are publicly available electronically on the website of Guarantor or the SEC, then Guarantor shall be deemed to have met this requirement.

13. Attorneys' Fees. In addition to the amounts for which payment is guaranteed hereunder, Guarantor agrees to pay reasonable attorneys' fees and all other costs and expenses incurred by Beneficiary in enforcing this Guaranty or in any action or proceeding arising out of or relating to this Guaranty. Any costs for which Guarantor becomes liable pursuant to this Paragraph 13 shall not be subject to, and shall not count toward, the guaranty limit set forth in Paragraph 2 above.
14. Governing Law. This Guaranty is made under and shall be governed in all respects by the laws of the State of California, without regard to conflict of law principles. If any provision of this Guaranty is held invalid under the laws of California, this Guaranty shall be construed as though the invalid provision has been deleted, and the rights and obligations of the parties shall be construed accordingly.
15. Construction. All parties to this Guaranty are represented by legal counsel. The terms of this Guaranty and the language used in this Guaranty shall be deemed to be the terms and language chosen by the parties hereto to express their mutual intent. This Guaranty shall be construed without regard to any presumption or rule requiring construction against the party causing such instrument or any portion thereof to be drafted, or in favor of the party receiving a particular benefit under this Guaranty. No rule of strict construction will be applied against any party.
16. Amendment; Severability. Neither this Guaranty nor any of the terms hereof may be terminated, amended, supplemented or modified, except by an instrument in writing executed by an authorized representative of each of Guarantor and Beneficiary. If any provision in or obligation under this Guaranty shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.
17. Third Party Rights. This Guaranty shall not be construed to create any rights in any parties other than Guarantor and Beneficiary and their respective successors and permitted assigns.
18. Notices. Any demand for payment, notice, request, instruction, correspondence or other document to be given hereunder by any party to another shall be made by facsimile to the person and at the address for notices specified below.

Beneficiary: [Buyer]
 [Street]
 [City, State Zip]
 Attn:
 Phone:
 Facsimile:

with a copy to: [Name]
 [Street]
 [City, State Zip]
 Attn:
 Phone:
 Facsimile:

Guarantor: [Guarantor]
 [Street]
 [City, State Zip]
 Attn:
 Phone:
 Facsimile:

Principal: [Principal]
 [Street]
 [City, State Zip]
 Attn:
 Phone:
 Facsimile:

Such notice shall be effective upon confirmation of the actual receipt if received during the recipient's normal business hours, or at the beginning of the recipient's next Business Day after receipt if receipt is outside of the recipient's normal business hours. Either party may periodically change any address to which notice is to be given it by providing notice of such change as provided herein.

[signature page follows]

IN WITNESS WHEREOF, Guarantor has executed this Guaranty as of _____, ____.

[legal name]

By: _____
Name: _____
Title: _____

*** End of Exhibit O ***

EXHIBIT P
Form of Letter of Credit

IRREVOCABLE NONTRANSFERABLE STANDBY
LETTER OF CREDIT

Reference Number:

Transaction Date:

BENEFICIARY:

Ladies and Gentlemen:

_____ (the "Bank") hereby establishes this Irrevocable Nontransferable Standby Letter of Credit ("Letter of Credit") in favor of _____, a California corporation (the "Beneficiary"), for the account of _____, a _____ corporation, also known as ID# _____ (the "Applicant"), for the amount of XXX AND XX/100 Dollars (\$_____) (the "Available Amount"), effective immediately and expiring at 5:00 p.m., California time, on _____ (the "Expiration Date").

This Letter of Credit shall be of no further force or effect upon the close of business on _____ or, if such day is not a Business Day (as hereinafter defined), on the next preceding Business Day.

For the purposes hereof, "Business Day" shall mean any day on which commercial banks are not authorized or required to close in California.

Subject to the terms and conditions herein, funds under this Letter of Credit are available to Beneficiary by presentation in compliance on or before 5:00 p.m. California time, on or before the Expiration Date of the following:

1. The original of this Letter of Credit and all amendments (or photocopy of the original for partial drawings); and
2. The Drawing Certificate issued in the form of Attachment A attached hereto and which forms an integral part hereof, duly completed and purportedly bearing the signature of an authorized representative of the Beneficiary.

Notwithstanding the foregoing, any drawing hereunder may be requested by transmitting the requisite documents as described above to the Bank by facsimile at _____ or such other number as specified from time to time by the Bank.

The facsimile transmittal shall be deemed delivered when received. Drawings made by facsimile transmittal are deemed to be the operative instrument without the need of originally signed documents.

Partial drawing of funds shall be permitted under this Letter of Credit, and this Letter of Credit shall remain in full force and effect with respect to any continuing balance;

provided that, the Available Amount shall be reduced by the amount of each such drawing.

This Letter of Credit is not transferable or assignable. Any purported transfer or assignment shall be void and of no force or effect.

Banking charges shall be the sole responsibility of the Applicant.

This Letter of Credit sets forth in full our obligations and such obligations shall not in any way be modified, amended, amplified or limited by reference to any documents, instruments or agreements referred to herein, except only the attachment referred to herein; and any such reference shall not be deemed to incorporate by reference any document, instrument or agreement except for such attachment.

The Bank engages with the Beneficiary that Beneficiary's drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored if presented to the Bank on or before the Expiration Date.

Except so far as otherwise stated, this Letter of Credit is subject to the International Standby Practices ISP98 (also known as ICC Publication No. 590), or revision currently in effect (the "ISP"). As to matters not covered by the ISP, the laws of the State of California, without regard to the principles of conflicts of laws thereunder, shall govern all matters with respect to this Letter of Credit.

AUTHORIZED SIGNATURE for Issuer

Name: _____

Title: _____

ATTACHMENT A
Drawing Certificate

TO [ISSUING BANK NAME]

IRREVOCABLE NON-TRANSFERABLE STANDBY LETTER OF CREDIT

No. _____

DRAWING CERTIFICATE

Bank

Bank Address

Subject: Irrevocable Non-transferable Standby Letter of Credit

Reference Number:

The undersigned _____, an authorized representative of _____ (the "Beneficiary"), hereby certifies to [Issuing Bank Name] (the "Bank"), and _____ (the "Applicant"), with reference to Irrevocable Nontransferable Standby Letter of Credit No. { _____ }, dated _____, (the "Letter of Credit"), issued by the Bank in favor of the Beneficiary, as follows as of the date hereof:

1. The Beneficiary is entitled to draw under the Letter of Credit an amount equal to \$ _____, for the following reason(s) [check applicable provision]:
 - []A. An Event of Default, as defined in that certain Power Purchase and Sale Agreement between Applicant and Beneficiary, dated as of [Date of Execution] (the "Agreement"), with respect to the Applicant has occurred and is continuing.
 - []B. An Early Termination Date (as defined in the Agreement) has occurred or been designated as a result of an Event of Default (as defined in the Agreement) with respect to the Applicant for which there exist any unsatisfied payment obligations.
 - []C. The Letter of Credit will expire in fewer than 20 Local Business Days (as defined in the Agreement) from the date hereof, and Applicant has not provided Beneficiary alternative Performance Assurance (as defined in the Agreement) acceptable to Beneficiary.

- []D. The Bank has heretofore provided written notice to the Beneficiary of the Bank's intent not to renew the Letter of Credit following the present Expiration Date thereof ("Notice of Non-renewal"), and Applicant has failed to provide the Beneficiary with a replacement letter of credit satisfactory to Beneficiary in its sole discretion within 30 days following the date of the Notice of Non-renewal.
 - []E. The Beneficiary has not been paid any or all of the Applicant's payment obligations now due and payable under the Agreement.
 - []F. The Beneficiary is entitled to retain the entire Development Security as a result of Applicant's failure to achieve Initial Operation of the Net Contract Capacity by the Startup Deadline or any extended Startup Deadline as provided in the Agreement, or the Agreement has terminated due to an Event of Default by Applicant before the Startup Deadline.
 - []G. The Beneficiary is entitled to retain a portion of the Development Security equal to the product of either (1) \$20 per kW of Net Contract Capacity which Seller failed to demonstrate, if Seller achieved Initial Operation within 18 months of the Effective Date, or (2) \$60 per kW times the kilowatts of Net Contract Capacity which Seller failed to demonstrate, if Seller achieved Initial Operation after the 18th month following the Effective Date.
2. Based upon the foregoing, the Beneficiary hereby makes demand under the Letter of Credit for payment of U.S. DOLLARS AND ____/100ths (U.S.\$_____), which amount does not exceed (i) the amount set forth in paragraph 1 above, and (ii) the Available Amount under the Letter of Credit as of the date hereof.
 3. Funds paid pursuant to the provisions of the Letter of Credit shall be wire transferred to the Beneficiary in accordance with the following instructions:

Unless otherwise provided herein, capitalized terms which are used and not defined herein shall have the meaning given each such term in the Letter of Credit.

IN WITNESS WHEREOF, this Certificate has been duly executed and delivered on behalf of the Beneficiary by its authorized representative as of this ____ day of _____, _____.

Beneficiary: [BENEFICIARY NAME]

By: _____
Name: _____
Title: _____

*** End of Exhibit P ***

EXHIBIT R
Outage Schedule Submittal Requirements

1. General Requirements.

The Parties shall abide by the Outage Schedule Submittal Requirements described below and shall agree upon reasonable changes to these requirements and procedures from time to time, as necessary to:

- (a) Comply with the CAISO Tariff;
- (b) Accommodate changes to their respective generation technology and organizational structure; and
- (c) Address changes in the operating and Scheduling procedures of both Buyer and the CAISO, including but not limited to, automated forecast and outage submissions.

2. Seller's Availability Forecasting Submittal Requirements for all Generating Facilities.

Seller shall submit maintenance and planned outage schedules in accordance with the following schedule:

- (a) No later than January 1st, April 1st, July 1st and October 1st of each year during the Term, and at least 60 days before Parallel Operation, Seller shall submit to Buyer its schedule of proposed planned outages ("Outage Schedule") for the subsequent twenty four-month period using a Buyer-provided web-based system or an e-mail address designated by Buyer ("Web Client").
- (b) Seller shall provide the following information for each proposed planned outage:
 - (i) Start date and time;
 - (ii) End date and time; and
 - (iii) Capacity online, in MW, during the planned outage.
- (c) Within 20 Business Days after Buyer's receipt of an Outage Schedule, Buyer shall notify Seller in writing of any reasonable request for changes to the Outage Schedule, and Seller shall, consistent with Prudent Electrical Practices, accommodate Buyer's requests regarding the timing of any planned outage.
- (d) Seller shall cooperate with Buyer to arrange and coordinate all Outage Schedules with the CAISO.

- (e) In the event a condition occurs at the Generating Facility which causes Seller to revise its planned outages, Seller shall provide Notice to Buyer, using the Web Client, of such change (including, an estimate of the length of such planned outage) as required in the CAISO Tariff after the condition causing the change becomes known to Seller.

- (f) Seller shall promptly prepare and provide to Buyer upon request, using the Web Client, all reports of actual or forecasted outages that Buyer may reasonably require for the purpose of enabling Buyer to comply with Section 761.3 of the California Public Utilities Code or any Applicable Law mandating the reporting by investor owned utilities of expected or experienced outages by electric energy generating facilities under contract to supply electric energy.

*** End of Exhibit R **

**Phase II Resolution Process Term Matrix
To Resolve Party Differences Concerning the New QF Standard Contracts**

Phase II Issues Matrix		
ISSUE	TERMS	COMMENTS
PRODUCT & ELIGIBILITY		
Product Definition	<p>Product is Net Contract Capacity; all electric energy net of Station Use, Site Host Load and any over-the-fence sales conducted pursuant to PU Code Section 218(b) (“Over-the-Fence Sales”), Resource Adequacy Benefits (“RA”), Green Attributes; GHG attributes (but not GHG compliance costs) and all other attributes associated with electric energy or capacity of the Generating Facility.</p> <p>Notwithstanding the foregoing, Seller retains:</p> <ul style="list-style-type: none"> • RA (but not including RA associated with the firm capacity committed to the IOU) to the extent such RA attributes are used to meet a known and established RA obligation applicable to the Generating Facility, the Site Host or an Over-the-Fence Sales buyer at the site where the sale takes place. • Seller retains all attributes, including Green Attributes, and GHG attributes, to the extent such attributes are used or banked for use in meeting a known and established regulatory obligation applicable to the Generating Facility, the Site Host or an Over-the-Fence Sales buyer at the site where the sale takes place. <p>Parties Agreeing: PG&E, SDG&E, SCE, CCC¹</p>	<p>CAISO has no position.</p> <p>Section references in original AL contract: SCE – Exhibit A #170 PG&E and SDG&E – Section 3.1 (a)</p> <p>Section references in supplemental AL contract in which these provisions were implemented: SCE, PG&E and SDG&E – Section 3.01, 3.02, Exhibit A “Related Products”</p>
QF Status of Generating Facility	<p>QF must maintain the QF status of the Generating Facility under PURPA. It shall be an Event of Default if the Generating Facility fails to maintain its status as a Qualifying Facility, as determined by FERC; provided that if such failure results from a change in the requirements for QF status implemented after the Effective Date, then such failure shall not constitute an Event of Default so long as Seller uses commercially reasonable efforts (not to exceed \$20,000 annually over the Term) to maintain its QF status.</p> <p>Seller’s compliance with Public Utilities Code Section 216.6 is not a requirement of this contract.</p>	<p>CAISO has no position.</p> <p>Section references in original AL contract: SCE – Section 9.02 (e) PG&E and SDG&E – Section 8.1 (a) (i), 5.1(a) (i)</p> <p>Section references in supplemental AL contract in which these provisions were implemented: SCE, PG&E and SDG&E – Section 9.02 (e)</p>

¹ Although CAC/EPUC submitted comments which purport to agree to many of the terms in this matrix, CAC/EPUC appeared to condition that agreement on the inclusion of other terms that were not contained in the matrix and to reserve their rights to dispute provisions in the proposed standard contract. As such, CAC/EPUC is not listed as an “agreeing party” in this matrix. Additionally, IEP did not indicate its agreement or disagreement with the terms in this matrix, and as such, IEP is also not listed as an “agreeing party.”

	<p>Parties Agreeing: PG&E, SDG&E, SCE, CCC</p>	
<p>Firm/As Available</p>	<p>A hybrid QF may execute a contract of up to ten (10) years if (i) 90% or more of the Generating Facility’s Net Contract Capacity is committed as firm capacity under the PPA, or (ii) less than 90% of the Max Capacity (but more than zero %) is committed as firm capacity under the PPA solely as a result of the requirements of the Host or Over-the-Fence customers</p> <p>The Parties agree to the following parameters governing the capacity payment:</p> <ul style="list-style-type: none"> • QF may set differing firm capacity levels for on-peak (i.e. summer) and off-peak (i.e. winter) seasons. • 95% performance requirement is applicable to each TOD period of each month. • Performance, for capacity payment purposes, is to be measured by applicable TOD Period by month. • QF is entitled to receive a 100% capacity payment for any monthly TOD Period if it meets the 95% performance for the monthly TOD Period. • Production to be truncated hourly for capacity payment/performance purposes. • Slope of adjustment: two (2) percent for each one (1) percent of reduction in available capacity below 95%, subject to the QF receiving a zero payment if available capacity is below the “cliff” level set below. • Capacity payment in any TOD period will not go below \$0. • Cliff (i.e. zero capacity payment) for a TOD Period where availability in the TOD Period is below 60%. • No other consequence in contract for missing 95% performance standard other than reduction in capacity payment. • Generating Facility (i.e. committed, and separately metered and scheduled, generating units as set forth Exhibit B) cannot sell energy or capacity to any purchaser other than the IOU, the host or to Over-the-Fence purchasers. • CPUC-approved capacity allocation factors applied to each monthly TOD period as set forth in Exhibit F of the PPA, not to be adjusted. • PG&E to use four peak months, June through September. SDG&E to use its current five months, May through September. SCE to use four peak months, June through September. <p>Parties Agreeing: PG&E, SDG&E, SCE, CCC</p>	<p>CAISO has no position.</p> <p>Section references in original AL contract: SCE – Section 1.03 (a) (i)-(iv), Exhibit F PG&E and SDG&E – Section 3.1 (a), 3.11 (a), 4.1, Appendix III</p> <p>Section references in supplemental AL contract in which these provisions were implemented: SCE, PG&E and SDG&E – Section 1.02 (a)-(d), 1.04, Exhibit D</p>
<p>Delivery Point</p>	<p>Point of Interconnection of the Generating Facility with the CAISO grid. Seller bears responsibility, risk and expense of getting product to the CAISO grid.</p> <p>For imports, QF is required to bring power into CAISO grid, and bears congestion risk and</p>	<p>CCC comment: Seller should bear risk for getting product to the CAISO grid, subject to appropriate credit in capacity payment formula.</p>

	<p>losses to and at the delivery point.</p> <p>Parties Agreeing: PG&E, SDG&E, SCE, CCC, CAISO</p>	<p>Section references in original AL contract: SCE – Section 1.03(a)(v) PG&E and SDG&E – Not addressed</p> <p>Section references in supplemental AL contract in which these provisions were implemented: SCE, PG&E and SDG&E – Section 1.03</p>
Term	<p>Purely firm QFs may execute a contract of up to 10 years. Purely as-available QFs may execute a contract of up to 5 years. See above for hybrid QFs.</p> <p>Parties Agreeing: PG&E, SDG&E, SCE, CCC</p>	<p>CAISO has no position.</p> <p>Section references in original AL contract: SCE – Section 1.01 PG&E and SDG&E – Section 2.1</p> <p>Section references in supplemental AL contract in which these provisions were implemented: SCE, PG&E and SDG&E – Section 1.01</p>
Resource Location	<p>A QF may contract with any California IOU regardless of where the Generating Facility is located.</p> <p>Parties Agreeing: PG&E, SDG&E, SCE, CCC</p>	<p>CAISO has no position.</p> <p>Not specifically addressed in the contract.</p>
Dedication of Entire Output	<p>Other than Host and Over-the-Fence sales, entire electrical output of the Generating Facility (look to Product definition) will be dedicated to the IOU. Generating Facility will be defined as including the specific units committed to the Buyer under the PPA (Exhibit B, separate meter, separate resource ID).</p> <p>Parties Agreeing: PG&E, SDG&E, SCE, CCC</p>	<p>CAISO has no position.</p> <p>Section references in original AL contract: SCE – Section 3.01, 3.02, 9.02 (c) and (d) PG&E and SDG&E – Section 3.1 (a)</p> <p>Section references in supplemental AL contract in which these provisions were implemented: SCE, PG&E and SDG&E – Section 3.01, 3.02, 9.02 (c) and (d)</p>

<p>New QFs vs. Existing QFs (significance relates to credit requirements and to QF expansion rights during the PPA term)</p>	<p>Addition to Section 3.07:</p> <ol style="list-style-type: none"> 1. QFs to notify utility of any change (other than a routine fluctuation in output or consumption) to the facility or thermal host, or their respective operations, that could change (i) capacity by greater of 1 MW or 5% of nameplate rating, (ii) energy output by 5% of expected annual production, (iii) fuel source, or (iv) materially the electrical characteristics (to be defined) of the Generating Facility. 2. A QF Generating Facility that is modified, repaired or repowered will not be considered a new QF if (i) the capacity added as a result of the modification, repair or repower is within the applicable MW limit set forth in the chart set forth below (including addition of steam turbine) , or (ii) in the event of a change in law or regulation, or Force Majeure, an Independent Engineer (“IE”) verifies that the modification, repair or repower is not oversized relative to other equipment on the market, with the IE cost being borne by the IOU. QF is responsible for securing all studies and upgrades necessitated by or associated with the modification, repair or repower. 3. An example of 2 (ii), based on technologies existing as of the preparation date of this matrix, would be a basic model (e.g., no STIG) LM 2500 that is repowered to an LM 2500+. <table border="1" data-bbox="338 808 1178 1084"> <thead> <tr> <th>CURRENT TURBINE NAME PLATE</th> <th>INCREASE TO TURBINE NAME PLATE</th> </tr> </thead> <tbody> <tr> <td>Less than 10MW</td> <td>5MW</td> </tr> <tr> <td>10MW-20MW</td> <td>10MW</td> </tr> <tr> <td>20MW-25MW</td> <td>15MW</td> </tr> <tr> <td>25MW-50MW</td> <td>20MW</td> </tr> <tr> <td>50MW-100MW</td> <td>25MW</td> </tr> <tr> <td>100-200MW</td> <td>35MW</td> </tr> <tr> <td>200-350MW</td> <td>45MW</td> </tr> <tr> <td>Greater than 350MW</td> <td>50MW</td> </tr> </tbody> </table> <p>Parties Agreeing: PG&E, SDG&E, SCE, CCC</p>	CURRENT TURBINE NAME PLATE	INCREASE TO TURBINE NAME PLATE	Less than 10MW	5MW	10MW-20MW	10MW	20MW-25MW	15MW	25MW-50MW	20MW	50MW-100MW	25MW	100-200MW	35MW	200-350MW	45MW	Greater than 350MW	50MW	<p>CAISO has no position, but proposes the addition of the following clarification: Section 3.07 should be clarified to note that any change in the capacity, energy output, or electrical characteristics of the QF may be subject to the CAISO’s interconnection process [which applies to QFs above 20 MW interconnected to the CAISO Controlled Grid].</p> <p>Section references in original AL contract: SCE – Section Exhibit A #147 PG&E and SDG&E – Section 1.1</p> <p>Section references in supplemental AL contract in which these provisions were implemented: SCE, PG&E and SDG&E – Section 3.07</p>
CURRENT TURBINE NAME PLATE	INCREASE TO TURBINE NAME PLATE																			
Less than 10MW	5MW																			
10MW-20MW	10MW																			
20MW-25MW	15MW																			
25MW-50MW	20MW																			
50MW-100MW	25MW																			
100-200MW	35MW																			
200-350MW	45MW																			
Greater than 350MW	50MW																			

ISSUE		COMMENTS
FIRM CAPACITY & DELIVERY REQUIREMENTS		
Energy Price – Generally	<p>Energy Price is set according to Decision 07-09-040, as implemented and/or modified by the CPUC from time-to-time.</p> <p>Parties Agreeing: PG&E, SDG&E, SCE, CCC</p>	<p>CAISO has no position.</p> <p>Section references in original AL contract: SCE – Exhibit F PG&E and SDG&E – Section 4.2 (a) (ii), 4.3(b)</p> <p>Section references in supplemental AL contract in which these provisions were implemented: SCE, PG&E and SDG&E – Exhibit D</p>
Energy Price – Basis for Measuring Quantity	<p>When IOU is SC, QF is paid on metered amounts. When IOU is not SC, QF is paid on Inter SC Trades in the IFM (day ahead scheduled amounts), subject to mechanism to be agreed upon to address potential gaming of schedules (e.g., sales from market rather than from Generating Facility).</p> <p>Parties Agreeing: PG&E, SDG&E, SCE, CCC</p>	<p>CAISO has no position.</p> <p>Section references in original AL contract: SCE – Section 4.03, Exhibit A #136, Exhibit F PG&E and SDG&E – Section 4.2 (a) (ii), 4.3 (b), 3.4 (b) and (c)</p> <p>Section references in supplemental AL contract in which these provisions were implemented: SCE, PG&E and SDG&E – Section 4.03, Exhibit A “Metered Energy,” Exhibit D</p>
Energy Price – Losses or Other Adjustment Factors	<p>CPUC adopted loss factors will apply.</p> <p>Parties Agreeing: PG&E, SDG&E, SCE, CCC</p>	<p>CAISO has no position.</p> <p>Section references in original AL contract: SCE – Exhibit F Section 2 (a) PG&E and SDG&E – Section 3.3 (c)</p> <p>Section references in supplemental AL contract in which these provisions were implemented:</p>

		SCE, PG&E and SDG&E – Section 2(a), Exhibit D
Capacity Price – Basis for Measuring Quantity	Capacity payments will be based upon Metered Amounts, truncated hourly, in each monthly TOD Period. Parties Agreeing: PG&E, SDG&E, SCE, CCC	CAISO has no position. Section references in original AL contract: SCE – Section 4.03, Exhibit A #136, Exhibit F PG&E and SDG&E – Section 4.1 (b), 4.3 (a) Section references in supplemental AL contract in which these provisions were implemented: SCE, PG&E and SDG&E – Section 4.03, Exhibit A “Metered Energy,” Exhibit D
Capacity Payment Calculation – Establishing level of As-Available Capacity	QF may designate monthly capacity amount up to PMax or its equivalent for Generating Facilities without a PMax. Parties Agreeing: PG&E, SDG&E, SCE, CCC	CAISO has no position. Section references in original AL contract: SCE – Exhibit F Section 3 (a) and (b) PG&E and SDG&E – Section 4.3 (a) Appendix III Section references in supplemental AL contract in which these provisions were implemented: SCE, PG&E and SDG&E – Section 3(a) and (b), Exhibit D
Capacity Payment Calculation – Firm Contract Capacity, generally (incl., allocation factors)	See discussion of capacity payment method above. Parties Agreeing: PG&E, SDG&E, SCE, CCC	CAISO has no position. Section references in original AL contract: SCE – Exhibit F PG&E and SDG&E – Section 4.2 (a) (i), 4.2 (b) (i), Appendix III Section references in supplemental AL contract in which these provisions were implemented: SCE, PG&E and SDG&E – Exhibit D

<p>Capacity Payment Calculation – Factors Which Are Used to Calculate Availability Adjustment (incl. outages)</p>	<p>See discussion of capacity payment method above.</p> <p>Parties Agreeing: PG&E, SDG&E, SCE, CCC</p>	<p>CAISO has no position.</p> <p>Section references in original AL contract: SCE – Exhibit F 3 (m), 1.03(b)(i), 1.04, Exhibit J PG&E and SDG&E – Section 4.1 (b), 3.9</p> <p>Section references in supplemental AL contract in which these provisions were implemented: SCE, PG&E and SDG&E – Section 1.05, Exhibit D Section 3(m), Exhibit E</p>
<p>Capacity Payment Calculation – Methodology For Incorporating Adjustment Factors – Calculations Used to Determine Amount of Availability Adjustment for Nonavailability</p>	<p>See discussion of capacity payment method above.</p> <p>Parties Agreeing: PG&E, SDG&E, SCE, CCC</p>	<p>CAISO has no position.</p> <p>Section references in original AL contract: SCE – Exhibit F 3 (i)- 3 (o) PG&E and SDG&E – Section 4.1 (c), 4.2 (b)</p> <p>Section references in supplemental AL contract in which these provisions were implemented: SCE, PG&E and SDG&E – Section Exhibit D Section 3(i)-3(n)</p>

ISSUE	TERMS	COMMENTS
OPERATIONAL REQUIREMENTS AND CAISO TARIFF		
<p>Forecasting Requirements – IOU is SC & QF is not in PIRP</p>	<ol style="list-style-type: none"> 1. Utility to pay QF based upon Metered Amounts. 2. Utility to absorb CAISO charges and credits attributable to generator imbalance for deviations within bandwidth that is greater of (a) 3% of Seller’s Energy Forecast (most recent) or (b) 1 MW, in any Settlement Interval. 3. For deviations outside of bandwidth: (a) utility to pass deviation charge/payment equal to product of (i) volume of deviation outside of bandwidth and (ii) difference between (x) CAISO uninstructed deviation charge and (y) contract price (See spreadsheet for illustration); and (b) QF to pay CAISO Uninstructed Deviation GMC Rate times volume of deviation outside of bandwidth. 4. If CAISO imposes UDP or other restriction to limit generator imbalances, QF will pay this charge and 3 above will no longer apply. 5. MAE: Seller shall be subject to Mean Absolute Error (“MAE”) penalty arising from deviations between day-ahead forecast and Metered Amounts (plus quantities associated with a forced outages), as follows. In any month (i) where the MAE, as calculated in the PPA, is greater than fifteen percent (15%) and (ii) where the average absolute deviation from the day-ahead schedule over the month is greater then 3 MW (“MAE Failure”), Seller shall pay to the IOU 2X the monthly scheduling coordinator fee (“SC Fee”) for the month. If there is a MAE Failure in any two additional months in any twelve month period following initial failure, for a total of three months in any twelve month period, SC fee is also double for each of those two additional months, and the capacity payment converts to an as-available payment for all of the following months unless and until Seller achieves two consecutive months where there is not an MAE Failure, in which case, starting with the second of such months, Seller’s capacity payment reverts back to the firm capacity payment; <i>provided</i>, that if the QF demonstrates to Buyer’s reasonable satisfaction that the MAE Failure was the result of unexpected changes in electrical or steam demand from thermal host or any Over-the-Fence Purchaser, that month shall not count as a month in which there was a MAE Failure. If IOU is not the SC, QF pays the SC fee. <p>Parties Agreeing: PG&E, SDG&E, SCE, CCC</p>	<p>CAISO has no position.</p> <p>Section references in original AL contract: SCE – Exhibit I PG&E and SDG&E – Section 3.4, Appendix VIIi</p> <p>Section references in supplemental AL contract in which these provisions were implemented: SCE, PG&E and SDG&E – Exhibit I</p>
<p>Forecasting Requirements – IOU is SC & QF is PIRP Eligible</p>	<p>MAE mechanism applies to availability forecasts. IOU absorbs CAISO charges and takes the benefits.</p> <p>Parties Agreeing: PG&E, SDG&E, SCE, CCC</p>	<p>CAISO has no position.</p> <p>Section references in original AL contract : SCE – Exhibit I PG&E and SDG&E – Section 3.4, Appendix VIII</p>

		<p>Section references in supplemental AL contract in which these provisions were implemented: SCE, PG&E and SDG&E – Exhibit I</p>
<p>Forecast Accuracy & Financial Consequences – IOU is SC & QF Provides Firm Contract Capacity & is not PIRP Eligible</p>	<p>See first forecasting box above.</p> <p>Parties Agreeing: PG&E, SDG&E, SCE, CCC</p>	<p>CAISO has no position.</p> <p>Section references in original AL contract: SCE – Exhibit I PG&E and SDG&E – Section 3.4 (b) and (c), Appendix VIII</p> <p>Section references in supplemental AL contract in which these provisions were implemented: SCE, PG&E and SDG&E – Exhibit I</p>
<p>Pre-MRTU Forecasting & Scheduling – IOU is not SC</p>	<p>SC to SC trade, pay on schedule. MAE penalty applies as stated above. QF to bear CAISO charges (positive and negative).</p> <p>Parties Agreeing: PG&E, SDG&E, SCE, CCC</p>	<p>CAISO has no position.</p> <p>Section references in original AL contract: SCE – Section 3.14 (d) PG&E and SDG&E – Section 3.4 (c) Appendix VII</p> <p>Section references in supplemental AL contract in which these provisions were implemented: SCE, PG&E and SDG&E – Section 3.14 (d), Exhibit I</p>

<p>Post-MRTU Forecasting & Scheduling – IOU is not SC (incl. converted physical trades and load uplift obligation)</p>	<p>IST-PHY (Inter-Scheduling Coordinator Trade with Physical Trades), pay on IST IFM scheduled amounts. MAE penalty applies as stated above. QF to bear CAISO charges/revenues.</p> <p>Parties Agreeing: PG&E, SDG&E, SCE, CCC</p>	<p>CAISO has no position.</p> <p>Section references in original AL contract: SCE – Section 3.14 (e) and (f), Exhibit R PG&E and SDG&E – Section 3.4, Appendix VII</p> <p>Section references in supplemental AL contract in which these provisions were implemented: SCE, PG&E and SDG&E – Section 3.14 (e) and (f), Exhibit L and M</p>
<p>Testing/Demonstration</p>	<ol style="list-style-type: none"> 1. Utility or QF may call a Capacity Test if: (a) there is a Material Change in the facility ("Material Change" means a change in equipment that is expected to remain in effect for at least three full months and that results in a change in the generating capacity of the facility in excess of the lesser of 5 MW or 5% of the net generating capacity of the facility); (b) a Force Majeure event affecting directly the generating capacity of the facility or a Forced Outage affects the facility and lasts for more than two weeks; or (c) the facility fails, during a peak month, to meet the performance requirements during the peak TOD Period. 2. Only a six hour demonstration will apply to annual demonstrations. 3. Firm Capacity may be increased within to be agreed upon limits (chart limits). <p>Parties Agreeing: PG&E, SDG&E, SCE, CCC</p>	<p>Section references in original AL contract: SCE – Exhibit K PG&E and SDG&E – Section 3.11</p> <p>Section references in supplemental AL contract in which these provisions were implemented: SCE, PG&E and SDG&E – Exhibit C</p>
<p>Maintenance Hours and other Allowable Outages</p>	<ul style="list-style-type: none"> • No credits for maintenance in the on peak months • No paid scheduled outage in the on peak months, but if taken, not an event of default. • 550/year with ability to carry over up to 50 hours to be applied to later years’ annual maintenance • Annual maintenance credit will never exceed 600 hours in any contract year. • Credit for one major overhaul during any year during a contract of five or more years, and a second one at any time after forty-eight months following the first major overhaul, with a limit of two during the term of the contract. 750 hours for each one. • Good faith coordination on timing of maintenance, with IOU option to request shift in schedule based on 	<p>CAISO has no position but proposes the addition of the following clarification: Clarification should be added to note that outages need to be coordinated with the CAISO for SCs and QFs subject to the CAISO Tariff.</p> <p>Section references in original AL contract: SCE – Section 1.03 (b) (i), 1.04 PG&E and SDG&E – Section 3.8 (e)</p>

	<p>agreement from and payment to QF.</p> <ul style="list-style-type: none"> • If during a major overhaul a QF runs out of hours, it may convert remaining annual maintenance hours to major overhaul hours. • All limits are on a per unit basis. <p>Parties Agreeing: PG&E, SDG&E, SCE, CCC</p>	<p>Section references in supplemental AL contract in which these provisions were implemented: SCE, PG&E and SDG&E – Section 1.05, Exhibit E</p>
<p>Curtailement Provisions</p>	<p>Revise Section 3.16 as follows and strike Section 3.17 or sign FERC jurisdictional IFA, in which case Section 3.16 will not apply:</p> <p><u>3.16 Power Product Curtailments at Transmission Provider’s or CAISO’s Request</u></p> <p>(a) Seller shall promptly curtail the production of the Power Product upon receipt of a notice or instruction from the Transmission Provider or the CAISO (which may be communicated by Buyer if Buyer is the SC) which notice shall be provided only when it reasonably believes that curtailment of the Power Product is required to comply with:</p> <p>(i) Transmission Provider’s maintenance requirements and operating orders;</p> <p>(ii) CAISO declared or Transmission Provider declared System Emergency.</p> <p>(b) Notwithstanding the above, except as may be required to respond to any Emergency, Buyer shall:</p> <p>(i) Use reasonable good faith efforts to coordinate Transmission Provider’s curtailment needs with Seller to the extent it can influence such needs; or</p> <p>(ii) Request the Transmission Provider and CAISO limit the curtailment duration.</p> <p>Parties Agreeing: PG&E, SDG&E, SCE, CCC</p>	<p>CAISO supports, subject to the following clarification: Section 3.16 should be clarified to make clear that it does not directly bind the CAISO’s issuance of Dispatch Instructions (but it could also clarify that the CAISO’s ability to issue Dispatch Instructions for curtailments is explicitly limited by the CAISO Tariff and QF PGA).</p> <p>Section references in original AL contract: SCE – Section 3.16, 1.03 (b) (ii), 3.17 PG&E and SDG&E – Section 3.4</p> <p>Section references in supplemental AL contract in which these provisions were implemented: SCE, PG&E and SDG&E – Section 3.15</p>

<p>CAISO Tariff Requirements</p>	<p>PPA to state that Seller will comply with the CAISO Tariff, including that Seller will execute all agreements required by the CAISO Tariff.</p> <p>IOUs to remove specific provisions in the PPA which attempt to restate or may conflict with the provisions of the CAISO Tariff. IOUs reviewing PPA.</p> <p>Parties Agreeing: PG&E, SDG&E, SCE, CCC, CAISO</p>	<p>Section references in original AL contract: SCE – Section 3.06 PG&E and SDG&E – Section 3.5 (a), 3.14</p> <p>Section references in supplemental AL contract in which these provisions were implemented: SCE, PG&E and SDG&E – Section 3.06</p>
<p>CAISO Charges or Other Mechanisms to Address Deviations</p>	<p>See above.</p> <p>Parties Agreeing: PG&E, SDG&E, SCE, CCC</p>	<p>CAISO has no position.</p> <p>Section references in original AL contract: SCE – Exhibit G, H PG&E and SDG&E – Section 3.4 (b) and (c)</p> <p>Section references in supplemental AL contract in which these provisions were implemented: SCE, PG&E and SDG&E – Exhibit J and K</p>
<p>Scheduling Coordinator Fee</p>	<p>Monthly fees based on Net Contract Capacity: \$2,500; under 10 MW. \$5,000; 10 MW to 100 MW \$7,500; above 100 MW.</p> <p>Parties Agreeing: PG&E, SDG&E, SCE, CCC</p>	<p>CAISO has no position.</p> <p>Section references in original AL contract: SCE – Exhibit L Section 4 PG&E and SDG&E – Section 3.4 (a)</p> <p>Section references in supplemental AL contract in which these provisions were implemented: SCE, PG&E and SDG&E – Exhibit G Section 4</p>

<p>NERC Reliability</p>	<p>1. Revise SCE PPA Section 3.14(y) and (z) as follows:</p> <p>Seller to register with NERC as the Generating Facility’s Generator Owner and Generator Operator if Seller is required to so register by NERC; and</p> <p>Seller to maintain documentation of all procedures applicable to the testing and maintenance of the Generating Facility protective devices as necessary to comply with NERC reliability standards applicable to protection systems for electric generators, if Seller is required to maintain such documentation by NERC.</p> <p>2. Revise SCE PPA Section 3.25 as follows:</p> <p><u>NERC Electric System Reliability Standards.</u></p> <p>During the Term, for purposes of complying with any NERC Reliability Standards that are applicable to the Generating Facility, Seller (or an agent of Seller as agreed to by Buyer in its reasonable discretion) must be registered with NERC as the Generator Operator and the Generator Owner for the Generating Facility and must perform all Generator Operator Obligations and Generator Owner Obligations except those Generator Operator Obligations that Buyer, in its capacity as Scheduling Coordinator, is required to perform under this Agreement or under the CAISO Tariff.</p> <p>Notwithstanding anything to the contrary set forth in this Section 3.25 and subject to the indemnity obligations set forth in Section 9.03(g), each Party acknowledges that such Party’s performance of the Generator Operator Obligations or Generator Owner Obligations may not satisfy the requirements for self-certification or compliance with the NERC Reliability Standards, and that it shall be the sole responsibility of each Party to implement the processes and procedures required by NERC, WECC, the CAISO, or a Governmental Authority to comply with the NERC Reliability Standards.</p> <p>3. Revise SCE PPA Section 9.03(g) as follows:</p> <p>Seller is solely responsible for any NERC Standards Non-Compliance Penalties arising from or relating to Seller’s failure to perform the Generator Operator Obligations or the Generator Owner Obligations, for which Seller is responsible in accordance with Section 0, and will indemnify, defend and hold Buyer harmless from and against all liabilities, damages, claims, losses, and reasonable costs and expenses (which shall include reasonable costs and expenses of outside or in-house counsel) incurred by Buyer arising from or relating to NERC Standards Non-Compliance Penalties or an attempt by any Governmental Authority, person or entity to assess such NERC Standards Non-Compliance Penalties against Buyer. Buyer will indemnify, defend and hold Seller harmless from and against all liabilities, damages, claims, losses, and reasonable costs and expenses (which shall include reasonable costs and expenses of outside or in-house counsel) incurred by Seller for any NERC Standards Non-Compliance Penalties to the extent that they are due to Buyer’s fault or negligence in performing its role as Seller’s Scheduling Coordinator during the Term.</p> <p>4. Buyer as SC will reasonably cooperate with Seller to the extent necessary to enable Seller to comply and for Seller to demonstrate Seller’s compliance with the NERC standards stated above. This cooperation</p>	<p>CAISO has no position.</p> <p>Section references in original AL contract: SCE – Not addressed PG&E and SDG&E – Section 3.5 (a)</p> <p>Section references in supplemental AL contract in which these provisions were implemented: SCE, PG&E and SDG&E – Section 3.14 (w) and (x), 3.21, 9.03 (g)</p>
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	<p>shall include the provision of information in Buyer's possession that Buyer as SC has provided to the CAISO related to Seller's Generating Facility or actions Buyer has taken as SC related to Sellers NERC compliance standards stated above.</p> <p>Parties Agreeing: PG&E, SDG&E, SCE, CCC</p>	
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ISSUE	TERMS	COMMENTS
CREDIT AND COLLATERAL		
<p>Pre-Operating Security for New QFs</p>	<p>\$20/kW for 18 months; \$60/kW thereafter</p> <p>Parties Agreeing: PG&E, SDG&E, SCE, CCC</p>	<p>CAISO has no position.</p> <p>Section references in original AL contract: SCE – Section 1.05 (a) (i), Exhibit O Section 1.07 and 1.08 PG&E and SDG&E – Appendix VI</p> <p>Section references in supplemental AL contract in which these provisions were implemented: SCE, PG&E and SDG&E – Section 1.07, Exhibit F</p>
<p>Operating Period Security for New QFs</p>	<p>12 months of revenue; no second lien.</p> <p>Parties Agreeing: PG&E, SDG&E, SCE, CCC</p>	<p>CAISO has no position.</p> <p>Section references in original AL contract: SCE – Section 1.05 (a) (ii), Exhibit M, N, and O PG&E and SDG&E – Appendix VI</p> <p>Section references in supplemental AL contract in which these provisions were implemented: SCE, PG&E and SDG&E – Section 1.07, Exhibit F</p>

<p>Financial Reporting Requirements for New QFs</p>	<p>QFs to review proposed responsible officer certification for QFs who don't have audited financials. IOUs to limit distribution to Risk Management group or other groups as necessary to administer and enforce the contract.</p> <p>Parties Agreeing: PG&E, SDG&E, SCE, CCC</p>	<p>CAISO has no position.</p> <p>Section references in original AL contract: SCE – Section Exhibit O 1.01 (a) PG&E and SDG&E – Appendix VI</p> <p>Section references in supplemental AL contract in which these provisions were implemented: SCE, PG&E and SDG&E – Section 1.01, Exhibit F</p>
<p>Credit & Collateral Covenants for New QFs</p>	<p>IOUs to delete debt to equity ratio, 2nd lien and covenants related to 2d lien, including Exh. O Sections: 1.06(b), (c), (d), (e), (f) and (g).</p> <p>Parties Agreeing: PG&E, SDG&E, SCE, CCC</p>	<p>CAISO has no position.</p> <p>Section references in original AL contract: SCE – Exhibit O 1.06 PG&E and SDG&E – Not addressed</p> <p>Section references in supplemental AL contract in which these provisions were implemented: SCE, PG&E and SDG&E – Exhibit F</p>
<p>FASB 46 Financial Information</p>	<p>Agree to provide information if project falls outside of safe-harbor.</p> <p>Parties Agreeing: PG&E, SDG&E, SCE, CCC</p>	<p>CAISO has no position.</p> <p>Section references in original AL contract: SCE – Section 3.24 PG&E and SDG&E – Not addressed</p> <p>Section references in supplemental AL contract in which these</p>

		<p>provisions were implemented: SCE, PG&E and SDG&E – Section 3.20</p>
<p>Insurance</p>	<p>\$5MM for each occurrence/\$10MM aggregate.</p> <p>Self insurance provision (in most recent PPA draft from SCE).</p> <p>Limits on deductibles reflecting commercially reasonable standard.</p> <p>Parties Agreeing: PG&E, SDG&E, SCE, CCC</p>	<p>CAISO has no position.</p> <p>Section references in original AL contract: SCE – Section 9.10 PG&E and SDG&E – Appendix IV</p> <p>Section references in supplemental AL contract in which these provisions were implemented: SCE, PG&E and SDG&E – Section 9.10</p>

ISSUE	TERMS	COMMENTS
EVENTS OF DEFAULT, TERMINATION, LEGAL		
Events of Default	<p>The following SCE Events of Default are to be modified as follows:</p> <p>No default for overdeliveries if deliveries on an annual basis are greater than 120% of Expected Annual Net Energy Production, as that figure may be revised based upon acceptable facility modifications during the contract term as described above (needs engineer's stamp on reason for forecast change), but utility need not pay for deliveries above 120%.</p> <p>Following change to be made to Section 6.01(c)(iii):</p> <p>The total quantity of Metered Energy, in any calendar year is less than ten percent (10%) of the Expected Annual Net Energy Production amount set forth in Section 1.03(a)(vi), and Seller fails to demonstrate, within ten (10) Business Days after Notice from Buyer, a legitimate reason for such failure</p> <p>QFs to review SCE redraft of Section 6.01 (c) (v) to reflect Over-the-Fence sales.</p> <p>Parties Agreeing: PG&E, SDG&E, SCE, CCC</p>	<p>CAISO has no position.</p> <p>Section references in original AL contract: SCE – Section 6.01 PG&E and SDG&E – Section 5.1</p> <p>Section references in supplemental AL contract in which these provisions were implemented: SCE, PG&E and SDG&E – Section 6.01</p>
Relief from Purchase Obligations if QF Defaults	<p>If QF defaults neither SCE, PG&E nor SDG&E is obligated for one year to enter into a new agreement with defaulting QF or its affiliates with a tie to the management or more than 20% ownership of the defaulting QF.</p> <p>Parties Agreeing: PG&E, SDG&E, SCE, CCC</p>	<p>CAISO has no position.</p> <p>Section references in original AL contract: SCE – Section 2.03 (c) PG&E and SDG&E – Section 5.6</p> <p>Section references in supplemental AL contract in which these provisions were implemented: SCE, PG&E and SDG&E – Section 2.02 (c)</p>
Termination Rights	Refer to issues list below.	<p>CAISO has no position.</p> <p>Section references in original AL contract: SCE – Section 5.03, 2.03 (a), (b), 6.03</p>

		<p>PG&E and SDG&E – 5.2 – 5.6</p> <p>Section references in supplemental AL contract in which these provisions were implemented: SCE, PG&E and SDG&E – Section 2.02 (a) and (b), 5.03, 6.03</p>
<p>Dispute Resolution Procedures</p>	<p>Confidentiality provisions to allow mutual disclosure of all contract information to the CPUC for any regulatory purpose, excluding financial statements, but including efficiency data of QFs subject to appropriate redaction and protection provisions.</p> <p>Parties Agreeing: PG&E, SDG&E, SCE, CCC</p>	<p>CAISO has no position.</p> <p>Agreeing parties’ comment: Further disclosure to other federal and state agencies will be discussed among the parties.</p> <p>Section references in original AL contract: SCE – Article 10 PG&E and SDG&E – Article 9</p> <p>Section references in supplemental AL contract in which these provisions were implemented: SCE, PG&E and SDG&E – Article 10</p>
<p>Payment (incl. invoicing, timing, methods & offset rights)</p>	<p>IOU may net claims arising under the PPA. IOUs also require the right to net other claims, disputed or not, against the Seller related to the Generating Facility.</p> <p>Parties Agreeing: PG&E, SDG&E, SCE, CCC</p>	<p>CAISO has no position.</p> <p>Section references in original AL contract: SCE – Section 4.03 (a) – (d) PG&E and SDG&E – Article 6</p> <p>Section references in supplemental AL contract in which these provisions were implemented: SCE, PG&E and SDG&E – Section 4.03 (a) – (d)</p>

ISSUE		COMMENTS
UNRESOLVED ISSUES		
GHG Compliance costs	IOU willing to pay for GHG compliance costs associated with dispatchable capacity. Parties disagree on whether Seller or Buyer should bear such costs to the extent associated with nondispatchable capacity.	
Termination Rights	Parties agree to disagree re termination right tied to a FERC elimination of the MPO and re: termination right tied to recovery of above-market costs from departing load.	
Treatment of small QFs	IOUs will review proposal on specific provisions. Contract form will accommodate appropriate provisions or checked boxes.	

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

Aglet	Department of the Army	Northern California Power Association
Agnews Developmental Center	Dept of General Services	Occidental Energy Marketing, Inc.
Alcantar & Kahl	Division of Business Advisory Services	OnGrid Solar
Ancillary Services Coalition	Douglas & Liddell	PITCO
Anderson & Poole	Douglass & Liddell	PPL EnergyPlus, LLC
Arizona Public Service Company	Downey & Brand	Pinnacle CNG Company
BART	Duke Energy	Praxair
BP Energy Company	Duncan, Virgil E.	R. W. Beck & Associates
Barkovich & Yap, Inc.	Dutcher, John	RCS, Inc.
Bartle Wells Associates	Ellison Schneider & Harris LLP	RMC Lonestar
Blue Ridge Gas	Energy Management Services, LLC	Recon Research
Braun & Associates	FPL Energy Project Management, Inc.	SCD Energy Solutions
C & H Sugar Co.	Foster Farms	SCE
CA Bldg Industry Association	Foster, Wheeler, Martinez	SESCO
CAISO	Franciscan Mobilehome	SMUD
CLECA Law Office	G. A. Krause & Assoc.	SPURR
CSC Energy Services	GLJ Publications	Santa Fe Jets
California Cotton Ginners & Growers Assn	Goodin, MacBride, Squeri, Schlotz & Ritchie	Seattle City Light
California Energy Commission	Green Power Institute	Sempra Utilities
California League of Food Processors	Hanna & Morton	Sequoia Union HS Dist
California Public Utilities Commission	Heeg, Peggy A.	Sierra Pacific Power Company
California Water Company	Hitachi	Silicon Valley Power
Calpine	Hogan Manufacturing, Inc.	Smurfit Stone Container Corp
Cameron McKenna	Imperial Irrigation District	Southern California Edison Company
Cardinal Cogen	Innercite	St. Paul Assoc.
Casner, Steve	International Power Technology	Sunshine Design
Cerox	Intestate Gas Services, Inc.	Sutherland, Asbill & Brennan
Chamberlain, Eric	J. R. Wood, Inc.	TFS Energy
Chevron Company	JTM, Inc.	Tabors Caramanis & Associates
Chris, King	Los Angeles Dept of Water & Power	Tecogen, Inc.
City of Glendale	Luce, Forward, Hamilton & Scripps LLP	TransCanada
City of Palo Alto	MBMC, Inc.	Turlock Irrigation District
City of San Jose	MRW & Associates	U S Borax, Inc.
Clean Energy Fuels	Manatt Phelps Phillips	United Cogen
Coast Economic Consulting	Matthew V. Brady & Associates	Utility Cost Management
Commerce Energy	McKenzie & Associates	Utility Resource Network
Commercial Energy	Meek, Daniel W.	Utility Specialists
Constellation	Merced Irrigation District	Vandenberg Air Force
Constellation New Energy	Mirant	Verizon
Consumer Federation of California	Modesto Irrigation District	Wellhead Electric Company
Crossborder Energy	Morgan Stanley	Western Manufactured Housing Communities Association (WMA)
Davis Wright Tremaine LLP	Morrison & Foerster	White & Case
Day Carter Murphy	New United Motor Mfg., Inc.	eMeter Corporation
Defense Energy Support Center	Norris & Wong Associates	
Department of Water Resources	North Coast SolarResources	